IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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RSA-1618-2017 (O & M)
Date of decision : 16.01.2018

Harmail Singh

...Appellant

Vs.

Sukhjinder Kaur and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL.

Present: Mr. A.P.Kaushal, Advocate
for the appellant.

...

ANIL KSHETARPAL, J. (Oral)

CM-3894-C-2017

For the reasons stated in the application, which is duly supported by an affidavit, delay of 925 days in re-filing the appeal is condoned.

Application is allowed.

Main Case

Defendant No.3-appellant is in the regular second appeal against the concurrent findings of fact arrived at by the Courts below while decreeing the suit for specific performance of the agreement to sell dated 08.09.2004.

Plaintiff claimed that defendant No. 1 was owner of the property and had entered into an agreement to sell with him for a total sale consideration of Rs.1,30,000/-, out of which Rs. 1,00,000/- as an earnest money and remaining payment of Rs.30,000/- was to be paid on the date of

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execution of sale deed i.e.30.04.2005. It is further the case of the plaintiff that she visited the office of the Sub Registrar on 30.04.2005 but she came to know that on 30.04.2005 and 01.05.2005 are holidays. Accordingly, the plaintiff once again visited the office of the Sub Registrar on 02.05.2005 along with the balance sale consideration but the defendants did not turn up to perform his part of the contract.

It is further the case of the plaintiff that she got her presence marked by getting an affidavit attested from the Sub Registrar. Plaintiff has further pleaded that two notices were served upon defendant No. 1 on 07.05.2005 and 02.06.2005 calling upon him to come and execute the sale deed. However, the defendant refused. Plaintiff further pleaded that defendant No. 1 has infact with a view to avoid execution of sale deed in favour of the plaintiff executed a sale deed dated 14.12.2004 in favour of defendant No. 2 for alleged consideration of Rs. 50,000/-.

Plaintiff has further pleaded that she has got an FIR registered against defendant Nos. 1 and 2 in this regard. Plaintiff has further pleaded that defendant No. 2 has further transferred the property in favour of defendant No.3, who is sister's son of defendant No.1 vide sale deed dated 04.08.2005 for a consideration of Rs. 87,500/-. Plaintiff pleaded that all these transactions are only to de-fraud her. She has further pleaded that the sale deeds are mere paper transactions.

Defendant No.1 contested the suit and denied execution of the agreement as well as receipt of the earnest money, whereas remaining defendants filed claim that they are bona fide purchasers.

Both the Courts after appreciation of evidence available on the file, decreed the suit filed by the plaintiff.

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I have heard learned counsel for the appellant at length and with his able assistance gone through the judgments passed by both the Courts below.

Learned counsel for the appellant has submitted that the agreement to sell has not been proved on record. While elaborating, he has submitted that only one attesting-respondent Sukhraj Singh has been examined, who is husband of the plaintiff. He has thus submitted that since remaining two attesting witnesses have not been examined, therefore, agreement to sell has not been proved.

I have considered the submissions. However, this Court does not find any substance therein. Plaintiff herself has appeared as PW-1 whereas her husband-Sukhraj Singh who is also a marginal witness of the agreement to sell has appeared as PW-2. Agreement to sell is not required to be attested by the marginal witnesses. Agreement to sell is a contract between the parties agreeing to sell the property. Once there is no requirement that the agreement to sell must be attested by two marginal witnesses, non-examination of two marginal witnesses would not make any difference. In any case, one attesting witness has already appeared and supported the case of the plaintiff.

In view thereof, there is no ground to interference with the concurrent findings of fact.

The present regular second appeal is dismissed.

16.01.2018 **(ANIL KSHETARPAL)**
Harish Kumar/sheetal **JUDGE**

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No

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