

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

RSA No. 1770 of 2018(O&M)

Date of decision: 14.5.2018

Ludhiana Improvement Trust, Ludhiana

....Appellant

VERSUS

Hans Raj and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. S.P.S. Tinna, Advocate for the appellant.

REKHA MITTAL, J.(Oral)

CM No.4818-C of 2018

Prayer in this application is for condoning delay of 13 days in re-filing the appeal.

Heard.

In view of averments made in the application supported by an affidavit of Mr. S.P.S. Tinna, Advocate, the application is allowed. Delay of 13 days in re-filing the appeal stands condoned.

Disposed of accordingly.

RSA No.1770 of 2018

The present appeal directs challenge against concurrent findings recorded by the Courts whereby suit for specific performance of agreement to sell dated 28.08.1989 executed by Satish Kumar predecessor in interest of perform respondents (defendants No.1 to 4) in favour of Hans Raj – respondent No.1 in respect of plot No.88E measuring 400

square yards situated in 256 acres scheme, Rishi Balmik Nagar, Ludhiana

and to transfer the said plot in the name of respondent/plaintiff was decreed by the trial Court vide judgment and decree dated 28.03.2014 and the appeal preferred by the Trust did not find favour with Additional District Judge, Ludhiana.

The sole submission made by counsel for the appellant is that defendants No.1 to 4/performa respondents filed the written statement and raised a plea that agreement propounded by the respondent/plaintiff is the result of fraud as the respondent/plaintiff offered to extend financial assistance to Sh. Satish Kumar and advanced loan of Rs.20,000/- and in the process obtained signatures on blank stamp papers, therefore, decree passed on the basis of such a document should not be allowed to sustain. The second submission made by counsel is that after death of Satish Kumar, the performa respondents filed an application for transfer of the plot in question in their favour and the same was allowed after giving public notice but the respondent/plaintiff never raised objection against transfer of the plot in the name of legal heirs of deceased Satish Kumar much less setting up an agreement in those proceedings.

I have heard counsel for the appellant, perused the paper-book particularly the judgments passed by the Courts.

Indisputably, the respondent/plaintiff staked his claim to the suit property on the basis of agreement to sell dated 28.08.1989 executed by Satish Kumar. The contesting defendants did not deny signatures of Satish Kumar on the said agreement but raised a plea that signatures of Satish Kumar were obtained on blank papers at the time financial assistance to the tune of Rs.20,000/- was extended by the respondent/plaintiff to said Satish Kumar who later passed away. Perusal of judgment of trial Court would make it evident that though Rubi Sooda

and others, legal heirs of Satish Kumar filed the written statement contesting claim of the respondent/plaintiff in the manner highlighted by counsel for the appellant but later they absented from the proceedings and did not adduce any evidence to substantiate their plea raised in the written statement. As a matter of fact, they even did not cross-examine the witnesses produced by the respondent/plaintiff to prove the agreement of sale and his entitlement to specific performance of the agreement. As the Trust is not a privy to any such transaction between respondent/plaintiff and predecessor in interest of performa respondents, the Trust possibly cannot raise an issue with regard to genuineness and correctness of the agreement whereby the proposed vendee had already paid entire sale consideration agreed between the parties to the agreement and no time was fixed for execution of the sale deed. Merely because the respondent/plaintiff did not respond to any such public notice issued by the Trust or transfer of suit property in favour of legal heirs of Satish Kumar is not a ground to set aside the concurrent findings recorded by the Courts.

No other point has been raised.

For the foregoing reasons, the appeal fails and is accordingly dismissed in limine.

MAY 14, 2018

‘D. Gulati’

(REKHA MITTAL)

JUDGE

Whether speaking/reasoned : yes/no

Whether reportable : yes/no