

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

**RSA No.1807 of 2018 (O&M)
Date of decision : April 05, 2018**

Shish Pal

..... Petitioner

Versus

Ajmer Singh

..... Respondent

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Himanshu Rao, Advocate for the petitioner.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
2. To be referred to the Reporter or not.
3. Whether the judgment should be reported in the digest ?

KULDIP SINGH J. (ORAL)

CM-4985-C-2018

As per office report, the deficiency of the Court fee has been made good.

The application stands disposed of.

CM-4986-C-2018

There is delay of 354 days in re-filing the present appeal.

For the reasons mentioned in the application, delay of 354 days in re-filing the present appeal is condoned, subject to all just exception.

Application stands disposed of.

Main Case

Impugned in the present regular second appeal is the judgment dated 16.12.2016 passed by learned Addl. District Judge, Yamuna Nagar at Jagadhri, affirming the judgment and decree dated 10.03.2012 passed by learned Civil Judge (Jr. Divn.), Yamuna Nagar at Jagadhri, whereby the suit of the plaintiff-respondent for possession by way of specific performance of the contract dated 24.09.2004 was decreed.

I have heard learned counsel for the appellant and have also carefully gone through the case file.

It comes out that party to the suit are real brothers. As per case of the plaintiff-respondent, defendant-appellant agreed to sell $\frac{1}{2}$ share of the suit property, vide agreement to sell dated 24.09.2004 for a total sale consideration for ₹36,000/-. ₹30,000/- were paid as earnest money and the balance amount was to be paid at the time of execution of the sale deed i.e. on 30.06.2005. On the said date, the plaintiff-respondent No.1 remained present in the office of Joint Sub Registrar, Mustfabad for getting the sale deed executed and registered along with requisite money but the defendant-appellant did not turn up.

The defendant-appellant took the plea that he had borrowed a sum of ₹30,000/- from the plaintiff-respondent and as a security some documents were got executed from him. Therefore, no agreement to sell of his land was executed.

Both the Courts below after considering the evidence of both the parties, disbelieved the story put forth by the defendant-appellant and held that the defendant-appellant has executed an agreement to sell. Accordingly, the suit was decreed. There are concurrent findings of facts recorded by two Courts below.

Learned counsel for the defendant-appellant has contended that it is the only residential house of the defendant-appellant. Two suits were filed through separate agreement and $\frac{1}{2}$ share of each property was sold. If the specific performance to agreement is ordered, he will face undue hardship. Therefore, alternative relief should be granted.

I am of the view that in the present case, the parties are not strangers but are the real brothers. Defendant-appellant owned a house and decided to sell the same to his real brother, which appears to be a family settlement. Defendant-appellant admitted that that he had borrowed ₹30,000/- from his brother, which is according to the plaintiff-respondent was earnest money. Therefore, it is not a case of undue hardship. No question of law arises in the present regular second appeal. Therefore, there is no ground to interfere in the concurrent findings recorded by both the Courts below.

As such, the present regular second appeal is dismissed. Since, the main appeal has been dismissed, therefore, pending application, if any, also stands dismissed.

(KULDIP SINGH)
JUDGE

April 05, 2018

sarita

Whether speaking / reasoned Yes

Whether Reportable: No