

**C.M. No.12760-C of 2017 in/and
RSA No.4796 of 2017(O&M)**

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

**C.M. No.12760-C of 2017 in/and
RSA No.4796 of 2017(O&M)
Date of Decision: 23.01.2018**

Malkiat Singh

... Appellant

Versus

Pritam Singh

... Respondent

CORAM:- HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: Mr. Raj Kumar Kakkar, Advocate,
for the appellant.

RAMENDRA JAIN, J.(Oral)

C.M. No.12760-C of 2017

For the reasons mentioned in the application, which is supported by an affidavit, the same is allowed. Delay of 53 days in re-filing the appeal is condoned.

RSA No.4796 of 2017(O&M)

Unsuccessful defendant, after losing before both the Courts below has come up before this Court by way of the instant regular second appeal, challenging the judgment and decree of the First Appellate Court dated 12.09.2016 affirming the judgment and decree of the trial Court dated 16.12.2013, whereby suit of the respondent-plaintiff for specific performance of the agreement/unregistered sale deed dated 18.01.2011 was decreed in toto.

Put pithily, the respondent-plaintiff by way of a suit for specific performance of the agreement/unregistered sale deed dated 18.01.2011 duly executed by the appellant-defendant pleaded that the total sale consideration of ₹1,20,000/- settled in between the parties was paid by him to the appellant

at his home and thereafter, they along with the witnesses came to the Court-cum-Tehsil premises and approached Subhash Chander, document writer, to scribe the sale deed, who after scribing the same, read over its contents to both of them as well as the witnesses and then only the appellant and his two witness including his brother DW-3 Darshan Singh and Pannu Namberdar (DW-2) had affixed their signatures/thumb impressions over the same. Thereafter, the appellant-defendant became dishonest and refused for registration of the impugned sale deed (Ex.P-1).

The trial Court after holding trial, decreed the suit of the respondent-plaintiff in its entirety, directing the appellant-defendant to execute and get registered the sale deed within a period of one month from the date of passing of judgment and decreed dated 16.12.2013.

Being aggrieved, the appellant-defendant approached the First Appellate Court, but remained unsuccessful as his appeal too was dismissed vide judgment and decree dated 12.09.2016.

Learned counsel for the appellant submits that both the courts below have failed to appreciate that DW-3 Darshan Singh and DW-4 Santokh Singh, Registration Clerk have fully supported the case of the appellant qua the fact that the respondent-plaintiff had committed fraud with the appellant as he by giving assurance that he would pay the entire sale consideration at his home, obtained the thumb impression of the appellant upon sale deed, but later on became dishonest.

Both the Courts below have also failed to appreciate that there were major discrepancies in the statements of the witnesses and that on the alleged day of execution of sale deed (Ex.P-1) i.e. 18.01.2011, the office of the Sub-Registrar, Zira, was very much working. Therefore, the plea taken by

respondent-plaintiff that the impugned sale deed could not be registered on that day on account of becoming the computers of the office of Sub-Registrar out of order, is false.

Having given thoughtful consideration to the submissions made by learned counsel for the appellant, I find that the instant appeal is completely devoid of any merit for the reasons follow:-

1. No question of law much less substantial arises for consideration in this second appeal. Therefore, the same is not maintainable.
2. The statement of DW-3 Darshan Singh has rightly been discarded and disbelieved by both the Courts below on two counts.
 - i. that he is an interested witness being real brother of the appellant.
 - ii. His statement that the appellant-defendant did not thumb mark the sale deed is contrary to the statement on oath of the appellant himself that he had thumb marked the sale deed after admitting its contents as correct on being read over to him by scribe.

The statement of DW-4 Registration Clerk Santokh Singh also does not help the appellant-defendant for the simple reason that this witness has categorically admitted in his cross-examination that on 18.01.2011 he was not posted as registration Clerk in the office of Sub-Registrar. Therefore, his testimony from any angle is hearsay qua the fact that as to whether the computers of the office of Sub-Registrar had turned out of order on that date, more particularly when he showed his ignorance about the said fact while

admitting that on the next date i.e. 19.01.2011, no document was registered. The above fact disclosed by DW-4 Registration Clerk by in itself is sufficient to draw an inference in favour of the respondent-plaintiff that impugned sale deed (Ex.P-1) could not be registered on the date of its execution on 18.01.2011 on account of becoming the computers of the office of the Sub-Registrar out of order.

The appellant has categorically admitted that the sale deed was read over to him before he thumb marked the same. It is pertinent to mention here that there is a specific recital in the sale deed that entire sale consideration was paid to the respondent-plaintiff at his home before proceeding to the office of Sub-Registrar for the execution of the sale deed. Therefore, the appellant cannot be permitted to wriggle out from the contents of the sale deed duly admitted by him in his statement while appearing as DW-1.

I have gone through the judgments of both the Courts below and find no illegality in the same.

In view of the above, the instant appeal stands dismissed.

23.01.2018
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(RAMENDRA JAIN)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No