

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

R.S.A.No.4817 of 2017 (O&M)

Date of Decision: November 02, 2018

Baljinder Kaur

...Appellant

Versus

Sawinder Singh

...Respondent

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr. Harchand Singh Batth, Advocate,
for the appellant.

AMIT RAWAL, J.

CM No.12792-C of 2017

For the reasons mentioned in the application, which is supported by an affidavit, delay of 14 days in refiling the appeal is condoned.

CM stands disposed of.

RSA No.4817 of 2017

The present Regular Second Appeal is at the instance of the appellant-defendant as the Lower Appellate Court has misread the contents of the agreement to sell to treat the sale consideration as ₹ 14,75,000/- for the entire land instead of per acre as observed by the trial Court and the cut off date has been read as 15.09.2007 instead of 15.07.2007. There were two copies of the agreement to sell as the original had not seen the light of the day. One was with the appellant-defendant. It was dated 15.07.2007 and the rate was mentioned as ₹ 14,75,000/- per killa, but in the other agreement to sell produced by the respondent-plaintiff, it was not so mentioned. The trial

Court observed it to be per killa, but the Lower Appellate Court has

reversed the finding to that effect, therefore, there is illegality and perversity.

I am afraid, the argument is not sustainable as it was obligatory upon the appellant-defendant to produce the second copy of the agreement to sell to belie the assertion made by the respondent-plaintiff, but instead photo copy was produced. Photocopy can not tell the truth as it would not be preliminary evidence. The factum of total sale consideration as ₹14,75,000/- was admitted in reply to the legal notice sent by the appellant-defendant. The contents of the agreement which have to be seen and not the circumstances and subsequent rates can always be an afterthought. The judgment and decree of the Lower Appellate Court is based upon the agreement to sell relied upon by the plaintiff. The defendant has not rebutted the onus by controverting the documents placed on record by the plaintiff.

As regards non-deposit of the balance sale consideration would be the domain of the executing court where such point can always be agitated at the behest of the vendor.

As an upshot of the aforementioned observations, I do not find any illegality or perversity in the finding of the Lower Appellate Court. No ground for interference is made out, much less involvement of any substantial question of law. Resultantly, the appeal is dismissed.

November 02, 2018
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned
Whether Reportable:

Yes/No
Yes/No