IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.6237 of 2017 (O&M)
Date of Order: 27th February, 2018

Ajit Singh since deceased through his LRs

..Appellants

Versus

Harbans Singh and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Inderjit Sharma, Advocate,
for the appellants.

ANIL KSHETARPAL, J.

C.M.No.16253-C-2017

Allowed as prayed for.

C.M.No.16254-C-2017

Prayer in this application is for condonation of delay of 24 days in filing the appeal.

For reasons mentioned in the application, which is supported by an affidavit, the delay of 24 days in filing the appeal is condoned.

Application is allowed.

MAIN

Plaintiffs-appellants are in regular second appeal against the judgment passed by the learned first appellate court.

Plaintiffs filed a suit for declaration seeking to set aside the judgment and decree passed by a civil court in a previous suit for specific performance of the agreement to sell.

At the outset, it must be noticed that the plaintiffs-appellants

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filed objections resisting execution of the decree and those objections were dismissed. Learned counsel appearing for the plaintiffs-appellants in the execution petition also made a statement that the plaintiffs have no objection to deliver possession of the property under the previous decree.

Learned trial court in this suit erred in passing the judgment on the basis of confusion with regard to identification of the property in dispute by khasra numbers.

Learned first appellate court after re-appreciating the evidence available on the file, reversed the judgment of the trial court and dismissed the suit filed by the plaintiffs. Learned first appellate court has given broadly the following reasons to reverse the judgment and decree passed by the trial court:-

(i) The objections filed by the plaintiffs-appellants were dismissed by the Executing Court. The Court has relied upon provisions of Order 21 Rules 97, 98 and 100 to hold that the adjudication of the objections filed by the plaintiffs-appellants is to be treated as a decree under Rule 103 of Rule 21;

(ii) The Judgment debtor Wassan Singh also filed application under Order 9 Rule 13 CPC for setting aside the ex-parte decree, which was also dismissed;

(iii) the objections filed by the plaintiffs-appellants before the Executing Court while resisting delivery of possession are same as are the contents of the present plaint;

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(iv) In an urban area, once the property is identified by measurements and the property located on all four sides, khasra numbers in which property was situated cannot be given much credence;

(v) The suit filed by the plaintiffs is barred by limitation as the decree for specific performance of the agreement to sell was passed on 25.11.1991, whereas the present suit has been filed on 17.08.2002;

(vi) Pursuant to the decree for specific performance of an agreement to sell, the sale deed has been executed in favour of defendant no.1.

This court has heard learned counsel for the appellants at length and with his able assistance gone through the judgments passed by both the courts below.

Plaintiffs are claiming the right in the property on the basis of certain transfer deeds. Plaintiffs have failed to prove title of their vendor. Plaintiffs are also asserting that the previous judgment and decree passed in a suit for specific performance of the agreement to sell was result of collusion. However, the learned first appellate court has noticed that the judgment debtor in the previous round had filed an application under Order 9 Rule 13 CPC for setting aside the ex-parte decree, which was ultimately dismissed.

Learned counsel for the appellants could not point out any substantive error in the judgments passed by the learned first appellate court or non-appreciation of evidence.

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Once the objections filed by the plaintiffs in the execution petition pursuant to the previous judgment and decree have been dismissed, and such order is to be treated as a decree, this court does not find any good ground to interfere with the detailed and well reasoned judgment passed by the learned first appellate court.

The regular second appeal is dismissed.

27th February, 2018 **(ANIL KSHETARPAL)**
nt **JUDGE**

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

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