

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

CM No. 588 and 591 C of 2019 in/and
RSA No. 266 of 2019 (O&M)
Date of decision: 29.4.2019

Bhup Singh

...Appellant

Versus

Pawan Kumar

...Respondent

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Sunil Saharan, Advocate,
for the applicant/appellant.

Mr. P.S. Jammu, Advocate,
for the respondent.

JAISHREE THAKUR, J.

CM No. 591 C of 2019

This is an application that has been filed for condonation of 68 days' delay in filing the appeal.

For the reasons stated in the application, which is supported by an affidavit, the delay in filing the appeal is condoned.

CM stands disposed of.

CM No. 588 C of 2019

This is an application that has been filed for making the deficiency in court fee good.

For the reasons stated in the application, which is supported by an affidavit, the same is allowed and delay in making the court fee good is condoned.

CM stands disposed of.

Main case

This instant Regular Second Appeal challenges the judgment and decree passed by the Additional District Judge, Hisar, dated 6.8.2018, by which the appeal filed by the appellant herein against the judgment and decree passed by the trial court dated 9.12.2013, decreeing the suit filed by the plaintiff/respondent herein, has been dismissed.

In brief, the facts are that the plaintiff/respondent herein filed a suit for possession by way of specific performance of the agreement dated 28.6.2010 in respect of the land described in the head note of the plaint. It was averred in the plaint that the appellant herein had entered into an agreement to sell dated 28.6.2010 for selling the suit land for total sale consideration of ₹9 lacs and ₹5,50,000/- was received by the appellant as earnest money in the presence of the witnesses. It was further submitted that on 28.12.2010, the date fixed for execution of the sale deed, the plaintiff/respondent herein remained present in the office of the Sub-Registrar, Hisar from 9 a.m. to 5 p.m. but the appellant did not turn up. He got marked his presence through an application as well as through an affidavit duly attested by the Notary Public. It was also pleaded that the respondent has always been and is still ready and willing to perform his part of the agreement.

On notice, the appellant contested the suit by filing written statement, taking preliminary objections of locus standi and maintainability of the instant suit. The appellant denied execution of the agreement as well as receipt of earnest money, as alleged by the respondent herein. Rather it was averred that the appellant had mortgaged his 1/4th share of land without possession with the respondent, vide registered mortgage deed 4499 dated

5.7.2004 for a consideration of ₹ 2 lacs with a settlement of paying interest at the rate of 2% per month. It was further averred that on 28.6.2010, the appellant made the payment to the plaintiff to get his land redeemed and had never entered into any agreement to sell, as alleged.

On the pleadings of the parties, the trial court framed the following issues:-

- “1. Whether the plaintiff is entitled to seek decree for possession by way of specific performance of agreement dated 28.6.2010 in respect of 6 kanal of land being 1/4th share in the land total 24 kanal fully detailed in the head note of the plaint, as per jamabandi for the year 2002-2003 situated at village Kaimri, Tehsil and District Hisar on payment of balance sale consideration of Rs. 3,50,000/-? OPP*
- 2. Whether the plaintiff is entitled for consequential relief of permanent injunction prohibitory injunction restraining the defendant from alienating the above land through sale, gift and decree or encumbering it in any manner? OPP*
- 3. Whether the suit of the plaintiff is not maintainable in the present form? OPD*
- 4. Whether the plaintiff has no locus standi and cause of action to file the present suit? OPD*
- 5. Whether the plaintiff has not come to the court with clean hands and has suppressed the true and material facts from the court? OPD*
- 6. Whether the suit of the plaintiff is false, frivolous and the same has been filed with ulterior motives only to grab the land of defendant and is liable to be dismissed with special costs under Section 35-A CPC? OPD*
- 7. Relief.”*

Thereafter, both the parties led evidence in support of their respective case.

The trial court, after scrutinizing the oral as well as documentary evidence, decreed the suit of the plaintiff/respondent herein. Aggrieved against the judgment and decree of the trial court, the appellant herein filed an appeal before the first Appellate Court, which was dismissed, leading to the filing of the instant Regular Second Appeal.

Learned counsel for the appellant submits that both the courts below have erred in decreeing the suit filed by the respondent herein. It is submitted that the evidence led by the parties has not been considered in its right perspective. It is further submitted that both the courts below ignored the fact that the second attesting witness of the alleged agreement to sell Ex. P.1 has clearly stated that no agreement to sell has been executed between the appellant and the respondent herein in his presence and therefore, execution of the agreement to sell is not proved on the record. It is further submitted that the respondent has not produced on record any account of book to show from which source he had paid such a huge amount of earnest money.

I have heard learned counsel for the appellant and have also perused the impugned judgments.

In order to prove the due execution of the agreement Ex. P1, the plaintiff examined PW-1 Surajbhan, Deed Writer, who deposed that the writing was firstly read over to the appellant—Bhup Singh, who then signed the same after taking it to be correct. PW2—Sube Singh, Stamp Vendor proved purchase of the stamp of ₹10/- by the appellant, in which Ex. P.1 was scribed. The said witness further proved the photo copy of his register wherein he had taken the thumb impression of the appellant, while issuing the stamp papers to him. Both these witnesses are the independent

witnesses and no suggestions with regard to any motive of false deposition has been given to them. Apart from that, the respondent examined himself as PW3, his father as PW5 and Mr. N.K. Gautam, Advocate as PW4, who identified the parties for getting the agreement Ex. P.1 attested through the Notary Public to prove due execution of the agreement to sell. While dealing with the contentions as raised by the learned counsel for the appellant that the second attesting witness of the agreement to sell Ex. P.1 has not supported the case of the appellant herein, the trial court held as under:-

“...To rebut the plaintiff's case, the defendant himself appeared in the witness box as DW-2 and also examined one of the attesting witness namely Amarjeet as DW-1. DW-1 Amarjeet has deposed that, he had visited the court premises on 28.06.2010 and the plaintiff's father namely Bhola Ram had obtained his signatures upon 2/3 papers without disclosing about the contents of the said papers. He stated that no agreement to sell has been executed in his presence between the plaintiff and defendant and no earnest money has been received by the defendant in his presence. The learned counsel for the plaintiff attacked the testimony of DW-1 by relying upon the documents Ex. PX which is the certified copy of the challan under Section 173 Cr.P.C. filed against the witness Amarjeet (DW1). As per the contents of the challan Ex. PX, the plaintiff already had lodged a criminal case against DW1-Amarjeet Singh bearing FIR No. 439 dated 30.05.2011 under Sections 323/427/452/506/34 IPC, Police Station, City Hisar. The learned counsel for the plaintiff submitted that the said witness had turned hostile towards the agreement Ex. P1 Only for the reasons for revalry occurred between the plaintiff and DW1 during the pendency of the present.

Apparently, the relationship of DW-1 had not remained cordial with the plaintiff party as he had been implicated in a

criminal case at the instance of plaintiff party after the execution of the document Ex. P1. In the course of his cross-examination, he admitted his signatures upon the document Ex. P1 and further admitted to have signed it after getting it written from the typist/scribe. He admitted that, the thumb impression of defendant was already existing at the time of taking his signature upon the agreement Ex. P1. He admitted the presence of Bhup Singh at the time of signing the document Ex. P1 by saying that he had seen the defendant Bhup Singh first time on 28.06.2013.”

The above findings of fact were affirmed by the first Appellate Court, on appeal being filed by the appellant. From bare reading of the evidence brought on record, due execution of the agreement to sell Ex. P1 stand proved by the respondent herein. Both the courts below have appreciated the documentary as well as oral evidence on record and the pleadings of the parties in right perspective and no fault could be found in the same. Learned counsel for the appellant has not been able to point out any perversity or irregularity in the impugned judgments. The judgments of both the courts below are well considered. No question of law, much less substantial question of law arises for consideration in the present appeal.

The Regular Second Appeal stand dismissed accordingly.

29.4.2019

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**(JAISHREE THAKUR)
JUDGE**

Whether speaking/reasoned
Whether reportable

Yes
No