

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

RSA No.2599 of 2019(O&M)

Date of decision: 15.7.2019

M/s Adish Associates Pvt. Ltd.

.....Appellant

VERSUS

Rakesh Gupta and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Keshav Partap Singh, Advocate for the appellant.

REKHA MITTAL, J.

CM No.7101-C of 2019

Prayer in this application is for condoning delay of 3 days in re-filing the appeal.

Heard.

In view of averments made in the application supported by an affidavit of Narender Kumar Jain, Director of the appellant firm, the application is allowed. Delay of 3 days in re-filing the appeal stands condoned.

Disposed of accordingly.

RSA No.2599 of 2019

Challenge in the present appeal has been directed against judgment and decree dated 27.09.2018 passed by the Additional District Judge, Gurugram whereby appeal against judgment and decree dated 10.08.2016 passed by the trial Court was partly allowed to the extent of

ownership of respondents/plaintiffs qua 35 bighas of suit land as Mawasi – defendant No.1 was owner of only 35 bighas at the time of execution of sale deed dated 14.11.1984 and defendants No.3 and 4 were directed to enter and sanction mutation of land to the extent of 35 bighas on the basis of sale deed No.1193 dated 14.11.1984 and mutations entered on the basis of sale deeds Ex.P3, P5, P7, P9 and P11 were set aside. The respondents/plaintiffs were also left at liberty that when the consolidation proceedings comes to an end and if Mawasi was held to have ownership in excess of 35 bighas of land at the time when sale deed dated 14.11.1984 was executed, the plaintiffs may file their claim over the said land and thereafter defendants No.5 to 13 to raise their claim if ownership of defendant No.1 is found at the time when alleged sale deeds Ex.P3, P5, P7, P9 and P11 were executed by defendant No.1 in favour of defendants No.5 to 13.

The appellant – M/s Adish Associates Pvt. Ltd. is arrayed as defendant No.5 and it has staked its claim to suit land to the extent of 32 bighas on the basis of sale deed bearing vasika No.1490 dated 01.01.1987 purported to be executed by defendant No.1 in its favour.

The sole submission made by counsel for the appellant is that defendant No.5 raised a specific plea that it is a bona fide purchaser for consideration, thus, sale in its favour is protected in law. It is argued that one of the authorized representatives of the appellant namely Narinder Kumar Jain appeared in the witness box and reiterated plea of the appellant with regard to its being a bona fide purchaser on the basis of sale deed propounded by the appellant. It is further argued that since in the revenue records examined by the appellant before execution of the sale deed dated

01.01.1987, Mawasi was recorded to be owner to the extent of 35 bighas of land, sale of 32 bighas of land out of 35 bighas by said Mawasi is valid and legal, therefore, the Appellate Court has wrongly set aside the sale deed executed in favour of the appellant.

I have heard counsel for the appellant and perused the paperbook.

Apart from the fact that the appeal has been filed after delay of 60 days, the appeal sans merit and deserves to be dismissed.

Indisputably, Mawasi executed sale deed in respect of land measuring 48 bighas in favour of respondents/plaintiffs vide sale deed No.1193 dated 14.11.1984. In respect of sale in favour of the plaintiffs, mutation No.1196 dated 27.11.1984 was sanctioned but later the same was cancelled with remarks "Nazar Sani". Narinder Kumar Jain, a representative of the appellant appeared in the witness box and stated that the appellant is a bona fide purchaser of land measuring 32 bighas on the basis of sale deed dated 01.01.1987. His testimony is conspicuously silent as to what inquiries were made by the purchaser or what revenue records were examined before purchase of 32 bighas of land. Counsel for the appellant has not disputed that with regard to sale in favour of the respondents/plaintiffs qua 48 bighas of land vide sale deed dated 14.11.1984, mutation No.1196 dated 27.11.1984 was sanctioned but later the same was cancelled on the ground that defendant No.1 had sold the land in excess of his share. Had the appellant made due inquiries or examined the revenue records, it would have immediately come to know that Mawasi had already sold 48 bighas of land vide sale deed dated 14.11.1984 as in column No.13 of mutation No.1196, there is clear

reference to sale deed No.1193 dated 14.11.1984 in favour of Rakesh Kumar to the extent of half share and Rajesh Gupta of remaining half share. When testimony of Narinder Kumar Jain is examined in the face of document Ex.P2 vide which mutation was sanctioned on the basis of sale deed aforesaid in favour of the respondents/plaintiffs but later made as 'Nazar Sani', it is difficult to accept contention of the appellant that it can protect its sale by invoking Section 41 of the Transfer of Property Act, 1882. In this view of the matter, I do not find an error much less perversity in the judgment and decree passed by the Court in appeal.

In view of what has been discussed hereinbefore, finding no merit, the appeal fails and is accordingly dismissed in limine.

JULY 15, 2019

'D. Gulati'

(REKHA MITTAL)

JUDGE

Whether speaking/reasoned	:	yes/no
Whether reportable	:	yes/no