

**CM No. 11169 and 11171-C of 2019 in
CM No. 12064-C of 2018 in/and
RSA- 2236 of 2016**

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PARAMJIT KAUR SAINI
2019.11.28 13:06
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In the High Court of Punjab and Haryana at Chandigarh

**CM No. 11169 and 11171-C of 2019 in
CM No. 12064-C of 2018 in/and
RSA- 2236 of 2016 (O&M)
Date of Decision: 16.11.2019**

Karambir

---Applicant-Appellant

versus

Dhanender @ Mast Ram and others

---Non-applicants-Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

**Present: Mr. Brijender Kaushik, Advocate
for the applicant-appellant**

Rekha Mittal, J.

CM No. 11169-C of 2019

Prayer in this application is for condoning delay of 8 days in filing the application for restoration of the application for restoration of appeal.

Heard.

Allowed as prayed for. Delay of 8 days in filing the application for restoration of the application for restoration of appeal stands condoned.

CM No. 11171-C of 2019

Prayer in this application is for restoration of the application (CM No. 12064-C of 2018) which was dismissed in default.

In view of averments made in the application supported by an

affidavit of Sh. Brijender Kaushik, Advocate, counsel for the applicant and arguments raised, the application is allowed and CM No. 12064-C of 2018 is allowed to be restored.

Disposed of accordingly.

CM No. 12064-C of 2018

Prayer in this application is for restoration of the appeal which was dismissed in default.

In view of averments made in the application supported by an affidavit of Sh. Rahul Vats, Advocate, counsel for the applicant-appellant and arguments raised, the application is allowed. The appeal is allowed to be restored to its original number and stage.

Disposed of accordingly.

Main case

Challenge in the present appeal has been directed against concurrent findings recorded by the courts whereby suit for declaration and permanent injunction on the basis of registered sale deed dated 23.6.2008 bearing Vasika No. 2549 was dismissed by the trial court vide judgment and decree dated 16.9.2013 that came to be affirmed in appeal by the Additional District Judge, Palwal.

Indisputably, the suit land measuring 4 kanal 12 marlas to the extent of half share out of land measuring 9 kanal 4 marlas, detailed in para 1 of the judgment of trial court, was owned by Dhanender @ Mast Ram-defendant No. 1. The sale deed propounded by the appellant-plaintiff was executed by Ravi son of Ram Niwas (defendant No. 2 therein) as attorney of defendant No. 1. As the appellant had approached the court for getting

the relief of declaration and permanent injunction by staking his claim on the basis of sale deed aforesaid, it was his obligation to prove that Ravi-defendant No. 2 was duly authorized by defendant No. 1 to alienate the suit property. The courts have consistently held that neither the original power of attorney nor a copy thereof purported to be executed by defendant No. 1 in favour of defendant No. 2 had seen the light of day, therefore, the appellant-plaintiff failed to establish his claim that title to the suit property was validly transferred in his favour on the basis of sale deed executed by Ravi.

Counsel for the appellant has not disputed factual findings that appellant/plaintiff failed to produce any evidence in respect of authority of Ravi to execute the sale deed on behalf of Dhanender to confer a valid title qua the suit property in favour of the appellant-plaintiff. In the given circumstances, I do not find an error much less perversity in consistent findings recorded by the courts that would call for intervention.

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

(Rekha Mittal)
Judge

16.11.2019

PARAMJIT

Whether speaking/reasoned : Yes

Whether reportable : Yes/No