

RSA No.6589 of 2016 (O&M)

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

RSA No.6589 of 2016 (O&M)

Date of decision:22.05.2019

Jaspal Kaur

... Appellant(s)

Vs.

Baij Nath and others

... Respondent(s)

RSA No.6658 of 2016 (O&M)

Date of decision:22.05.2019

Jaspal Kaur

... Appellant(s)

Vs.

Baij Nath and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. B.S.Jaswal, Advocate
for the appellant.

AMIT RAWAL J. (Oral)

C.M.No.17227-C of 2016 in RSA No.6589 of 2016

For the reasons stated in the application which is duly supported by an affidavit, delay of 91 days in-filing the appeal is condoned.

C.M. stands allowed.

RSA Nos.6589 and 6658 of 2016 (O&M)

This order of mine shall dispose of two regular second appeals bearing Nos.6589 and 6658 of 2016 accompanied by applications seeking condonation of delay of 91 days and 100 days in filing both the appeals respectively.

Both appeals have been filed by the appellant-plaintiff qua

dismissal of the suit and decretal of the counter claim.

The appellant-plaintiff sought the declaration of the ownership of the suit land on the basis of the sale deed dated 28.4.2000 allegedly executed by defendants no.3 to 6 through attorney Mohinder Singh in pursuance to the agreement to sell dated 4.12.1998 with regard to ½ share of the suit property for a total sale consideration of Rs.1,20,000/- against the receipt of Rs.1,10,000/- as earnest money. It was alleged that defendants no.3 to 6 executed some transfer documents in connivance with defendant no.2-Jasbir Singh son of Brahm Dass.

Defendant no.2 opposed the suit and alleged that he was owner by virtue of the sale deed dated 10.6.1999 executed by defendants no.3 to 6. The power of attorney was cancelled on 31.05.1999, therefore, there was no power with the agent i.e. husband of the plaintiff to execute the sale deed dated 28.04.2000 on the basis of which declaration was sought.

Both the parties led extensive evidence.

Mr. B.S.Jaswal, learned counsel appearing on behalf of the appellant-plaintiff submitted that both the Courts below have non-suited the plaintiff in not noticing the legal position with regard to the cancellation of the power of attorney, though it was registered one but no notice was served upon him. It was unilateral act. The major amount of consideration of Rs.1,10,000/- had already been paid to defendants no.3 to 6 and only Rs.10,000/- remained un-paid. Defendants no.3 to 6 played fraud upon the plaintiff. On acquisition of the knowledge, the suit was filed in 2005 and the counter claim in such circumstances could not have been decreed. There

was factual error in the findings of the Courts below regarding non-mentioning of khasra number in the agreement to sell.

I have heard the learned counsel for the appellant, appraised the judgments and decrees of the Courts below and of the view that there is no force and merit in the submissions of Mr. Jaswal for the simple reason that on the date when the sale deed propounded by the appellant i.e. 28.4.2000, principal i.e. defendants no.3 to 6 did not have the title and they parted with their share vide sale deed dated 10.06.1999. Neither any proof of payment of Rs.1,10,000/- has been placed on record. In fact, the suit in such circumstances was not maintainable as the remedy was to seek specific performance but sometimes greed is not satisfied resulting into execution of the sale deed by Mohinder Singh, husband of the plaintiff and power of attorney of defendants no.3 to 6. The identity of the property was not in dispute therefore argument of Mr. Jaswal with regard to non-reference of khasra number in the agreement to sell is meaningless.

The arguments of Mr. Jaswal, Advocate have not been able to bring the case within the realm of illegality and perversity to form a different opinion than the one arrived at by the Courts below. No substantial question of law arises for adjudication of the present appeals.

Resultantly, the appeals are dismissed.

(AMIT RAWAL)
JUDGE

May 22, 2019
savita

Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No