

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

**RSA No.6435 of 2017 (O&M)
Date of Decision.26.02.2019**

Kulwinder Kaur

...Appellant

Vs

Joginder Singh and another

...Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Suresh Kumar Aneja, Advocate
for the appellant.

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AMIT RAWAL J. (ORAL)

C.M. No.16642-C of 2017

The prayer in the present application is for seeking condonation of delay of 203 days in filing of the appeal on the premise that there was an error in the judgment and decree of the lower Appellate Court and an application in this regard was remained pending and when the error was corrected, the appeal has been filed.

For the reason aforementioned, delay of 203 days in filing of the appeal is condoned.

Application is allowed.

RSA No.6435 of 2017

The appellant-defendant is in regular second appeal against the concurrent finding of fact whereby suit of the respondent plaintiff for possession by way of specific performance of agreement to sell and permanent injunction has been decreed.

The respondent-plaintiff sought specific performance of agreement to sell dated 15.02.2008 in respect of land measuring 8 kanals 14 marlas detailed as under:-

(a) Land measuring 19 marlas out of Khewat No.88, Khatauni No.170.

(b) Land measuring 12 marlas comprised of Rectangle No.46, Killa No.5/1/2.

(c) Land measuring 01 kanal 12 marlas out of Khewat no.144.

(d) Land measuring 05 kanals 11 marlas out of Khewat No.92, situated at village Chak Maujdin Wala, Tehsil Jalalabad (W), District Ferozepur

on the premise that defendant No.1 on 15.2.2008 had entered into agreement to sell for a sum of ₹3,75,000/- per acre and received ₹3,90,000/- as earnest money in the presence of attesting witnesses. The plaintiff had already been ready and willing to perform his part on the stipulated date i.e. 14.01.2009 but defendant No.1 did not turn up. Since defendant No.1 was relative and stated that she had not been able to clear some loan, therefore, could not execute the sale deed and requested for some time. Plaintiff believed her but she did not adhere to the request, thus, suit was filed in May, 2011.

Defendant No.1 opposed the suit by denying the agreement to sell and stated it to be a loan transaction. As regards the earlier transaction, it was stated that an agreement to sell dated 20.11.2006 was entered into. Defendant No.1 failed to pay earlier loan installment and in such circumstances, the present agreement to sell was entered only for security of the loan and with no intention to sell.

Defendant No.2 opposed the suit to the extent that the suit property was mortgaged with the Bank.

Plaintiff in support of the evidence examined himself as PW2, Ladha Singh, attesting witness as PW1 and Amarjit Singh Rai, advocate-cum-Notary as PW3. On the other defendant No.1 appeared as DW1, Such Singh, ex-Panch as DW2 and closed the evidence.

Mr. Aneja, learned counsel appearing on behalf of the appellant submitted that once the substantial amount had already been paid by the defendant and the stipulated date was fixed as 14.01.2009, almost 11 months thereafter, it cannot be construed to be an agreement to sell as the intention between the parties was only to secure the loan amount. Since the plaintiff alleged himself to be a relative of defendant, therefore, he was yielding influence and dominance. Readiness and willingness on the part of plaintiff was conspicuously wanting as no explanation has come forth for not filing the suit immediately after stipulated date was over.

I am afraid aforementioned arguments are not sustainable, as the appellant-defendant No.1 has not been able to belie her thumb impression on the agreement to sell. If at all, it was a loan transaction, official of the Bank ought to have been examined that plaintiff had advanced loan and document in question or that agreement to sell was executed as security of the land transaction. The attesting witness Laddha Singh had been very cogent and consistent in not only expressing intention of the parties but exchange of the earnest money. It is common practice adopted by defendant-vendor to take plea of loan transaction after having executed

agreement to sell. While refuting the averment in para 5, defendant did not deny the specific averment in the plaint qua relation between the parties. In such circumstances, a person cannot be said to have taken legal measure immediately in order to prevent bickering amongst relatives but if another relative does not come forward and show respect to the relation, the suit aforementioned was filed.

In view of such circumstances, the concurrent finding of fact and law rendered by the Courts below cannot be said to be suffering from illegality and perversity, much less, no substantial question of law arises for determination by this Court. No ground for interference is made out. Resultantly, the second appeal is dismissed.

(AMIT RAWAL)
JUDGE

February 26, 2019
Pankaj*

Whether Reasoned/Speaking Yes

Whether Reportable No