

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

RSA No.9711 of 2018(O&M)

Date of decision : 15.03.2019

Bhola Ram

...Appellant

Versus

Badlu @ Bablu

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Anoop Kumar Yadav, Advocate for the appellant.

ANIL KSHETARPAL, J. (ORAL)

CM No.18814-C of 2018

Deficiency in Court fee has already been made good.

Application is allowed.

CM No.18816-C of 2018

For the reasons stated in the application, which is duly supported by an affidavit, delay of 31 days in re-filing the appeal is condoned.

Application is allowed.

Main case

The defendant-appellant is in the Regular Second Appeal against the concurrent findings of fact arrived at by both the Courts below while decreeing the suit for recovery of Rs. 9,00,000/- against him. Defendant sold land measuring 23 kanals 18 marlas to the plaintiff for a

sum of Rs. 75,21,250/- and it was stipulated in the sale deed that in case, there is defect in title, the vendee shall be entitled to recover the amount.

Plaintiff filed the suit claiming that the land sold is not complete and in fact, apart from land measuring 21 kanals 13 marlas, the remaining land is in the name of State Government. Thus the plaintiff had only prayed that he should be compensated proportionately with respect to the land which he has not got pursuant to the aforesaid sale deed.

Both the Courts below on appreciation of evidence have found merit in the claim of the plaintiff and decreed the suit.

Learned counsel appearing for the appellant submitted that no doubt the land is recorded in the name of the State, however, the aforesaid piece of land has never been acquired nor any compensation has been received. He further submitted that the defendant-appellant has also filed a separate suit against State of Haryana which is pending.

The defendant transferred the land measuring 23 kanals 18 marlas but the plaintiff got only land measuring 21 kanals 13 marlas. As per terms of the sale deed, a suit for recovery has been correctly decreed.

As regards, contention of the learned counsel that a suit is pending, it may be noted that before the First Appellate Court, although defendant-appellant had pleaded this ground in his ground of appeal, however, attention of the First Appellate Court was not drawn such material and no contention at the time of arguments on this basis was raised. The defendant if succeeds in the suit, he would be declared owner of the property, however, at this stage, the plaintiff cannot be deprived of the amount to which he is entitled too.

Hence, there is no ground to interfere with the concurrent findings of fact arrived at by both the Courts below.

Accordingly, Regular Second Appeal is dismissed.

All the pending miscellaneous application, if any, are disposed of in view of the abovesaid judgment.

15.03.2019

Rakesh/Pawan

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No