

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA-2110 of 2019 (O&M)
Date of decision: 21.01.2020

Kamal Singh

... Appellant

versus

Satish Kumar

... Respondent

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. Prem Chand Yadav, Advocate,
for the appellant.

ARUN MONGA, J.

CM-5947-C of 2019

For the reasons stated in the application, the same is allowed
and delay of 15 days in re-filing the appeal stands condoned.

CM-5948-C of 2019

The deficiency in Court fee has already been made good by the
appellant. Application stands disposed of accordingly.

RSA-2110 of 2019

1. Concurrent findings of the Court below and consequent money
decree for recovery of Rs.1,12,863/- along with 12% interest from the date
of execution of sale deed till filing of the suit and @ 6% per annum
pendente lite and future interest in favour of plaintiff(respondent herein)
and against defendant(appellant herein) has led to the present second
appeal.

2. Plaintiff-respondent filed a suit for recovery of Rs.3,88,163/-
against the defendant on the ground that since the defendant lost his title in
respect of 10 *marlas* of land, which he sold to the plaintiff vide sale-deed
dated 27.01.2006 executed by defendant in his favour for Rs.1,06,000/-, the

plaintiff is entitled to recover the said amount along with interest and costs accrued thereupon, as per the recital of sale-deed.

3. The stand of the defendant was that the plaintiff was aware of the litigation going on between the defendant and his sister in respect of the suit land and still he purchased it. Therefore, the plaintiff is not entitled to recovery of any amount, as claimed.

4. The trial Court, on the basis of evidence adduced by the parties, partially decreed the suit for recovery of Rs.1,12,863/- alongwith interest, in the manner indicated above. The findings of the trial Court were upheld by the Appellate Court. Hence, this regular second appeal by the defendant.

5. I have heard learned counsel for the appellant and have gone through the judgments passed by the Courts below.

6. Admittedly, the defendant was owner of the suit land by virtue of sale-deed dated 04.08.2004 and sold it to the plaintiff vide registered sale-deed dated 27.01.2006. Dispute qua suit land was going on between Maina Devi and the defendant. The suit though was dismissed by the trial Court on 22.03.2011, but the appeal filed by Maina Devi was allowed by the Appellate Court vide judgment dated 21.10.2015 and sale-deed dated 04.08.2004 in favour of defendant was set aside. The plaintiff had stepped into the shoes of defendant and since the defendant lost his title in the suit property, the plaintiff also ceased to have his rights in the suit property. The pendency of litigation, which culminated into setting aside of sale-deed in favour of defendant, was not brought to the notice of the plaintiff before executing the sale-deed. Admittedly, in the sale-deed the defendant undertook to refund the sale consideration along with incidental charges in case there was any lacuna in his title or any dispute was raised by other co-

sharers. In the premise, both the Courts below were justified in directing the appellant to refund the amount of sale consideration alongwith interest, as per recitals in the sale-deed. No fault could be found with the approach adopted by the Courts below including the plea of limitation raised by the appellant. Even otherwise, it has been pointed out that the amount has already been paid by the appellant in the execution filed by the plaintiff and the decree has been satisfied.

7. There seems no perversity or illegality in the concurrent findings of facts returned by the Courts below by appreciation of evidence. No interference is called for to disturb the concurrent findings of facts recorded by the Courts below.

8. Furthermore, neither any question of law much less substantial question of law, which is *sine qua non* for entertaining second appeal before this Court is involved in present appeal, so as to exercise appellate jurisdiction under Section 41 of the Punjab Courts Act read with Section 100 of Civil Procedure Code.

9. In view of my discussion above and the reasons recorded therein, this appeal is dismissed being bereft of any merit. Resultantly, both the impugned judgments and decrees passed by learned Courts below are upheld.

10. Pending applications stand disposed of.

11. No order as to costs.

(ARUN MONGA)
JUDGE

January 21, 2020

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Whether speaking/reasoned :

Yes/No

Whether reportable :

Yes/No