

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.14944-2018 (O&M)
Date of Order:02.03.2020

Kamaljeet

..Appellant

Versus

Krishan Lal

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Munish Kumar, Advocate,
for the appellant.

ANIL KSHETARPAL, J(Oral)

C.M.No.19281-C-2018

Prayer in this application is for condonation of delay of 285 days in re-filing the appeal.

For reasons mentioned in the application which is supported by an affidavit, the delay of 285 days in re-filing the appeal is condoned.

Application is allowed.

MAIN

The defendant-appellant has filed the present regular second appeal against the concurrent findings of fact arrived at by the courts below while decreeing a suit for mandatory injunction with a consequential relief of permanent injunction as also for recovery of mesne profit for use and occupation of the premises.

The plaintiff had filed the present suit with the prayer that he should be handed over half portion of House No.169, B-III, near Forest Colony, Main (Upper) Bazar, Pinjore, Tehsil Kalka, District Panchkula.

The plaintiff claims that he has purchased the property through a registered

sale deed from Kuldeep Singh, elder brother of the defendant. The plaintiff has submitted that the licence in favour of the defendant has been terminated and, therefore, the decree for mandatory injunction directing the defendant to hand over possession thereof be passed.

Defendant contested the suit and claimed that he is joint owner in possession along with his brother.

In fact, father of the defendant as well as his brother Kuldeep Singh had executed a registered gift deed in favour of Kuldeep Singh. The defendant-appellant filed a suit challenging the aforesaid gift deed which was dismissed by the trial Court vide judgment and decree dated 27.02.2012, affirmed in appeal by the first appellate court vide judgment and decree dated 17.12.2014. It was declared that the defendant has no right, title or interest in the property.

Keeping in view the aforesaid facts, both the courts have decreed the suit filed by the plaintiff.

This court has heard learned counsels for the parties at length and with their able assistance gone through the judgments and decrees passed by the Courts below and the record.

Learned counsel for the appellant has submitted that the sale deed is with respect to plot measuring 2 biswas, whereas the plaintiff now wants to claim more than that. However, when learned counsel for the appellant was asked to draw attention of the court to any issue on the aforesaid fact or the discussions before the courts below, he fairly admitted that this argument was never pressed.

The argument of learned counsel is based upon facts but no factual foundation in that regard has been laid, therefore, cannot be

permitted to be pressed for the first time.

In view thereof, there is no ground to interfere.

Dismissed.

March 02, 2020
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned	: Yes/No
Whether reportable	: Yes/No