

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No. 117 of 2021(O & M)

Date of decision : March 10, 2021

Kulwant Singh

.....Appellant

Versus

Mangal Singh

....Respondent

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. R.K. Arya, Advocate for the appellant.

LISA GILL, J.

This matter is being taken up for hearing through video conferencing due to outbreak of the pandemic, COVID-19.

This appeal has been filed by the defendant – appellant challenging judgment and decree dated 24.03.2007 passed by the learned Civil Judge (Senior Division), Gurdaspur as well as judgment and decree dated 14.01.2011 passed by the learned Additional District Judge, Gurdaspur.

Respondent – plaintiff filed a suit for possession by way of specific performance of agreement dated 07.07.2001 for sale of land as described therein. Both the learned courts below have returned concurrent findings that agreement dated 07.07.2001 was executed by the present appellant for consideration of Rs.1,90,000/- in respect to the property in dispute. Sale deed was to be executed on or before 07.07.2003. Appellant had received Rs.1,00,000/- as earnest money at the time of execution of agreement to sell. Possession of land in dispute was admittedly with the plaintiff – respondent from the date of execution of mortgage deed dated 03.11.1998 in his favour. A sum of Rs.30,000/- was adjusted as mortgage money and Rs.70,000/- was paid in cash. It is further held that plaintiff – respondent was always ready and willing to perform his part of the contract but

the present appellant failed to execute sale deed of the suit land in plaintiff's favour. Stand of the appellants that the agreement to sale dated 07.07.2001 is forged, bogus, fabricated and fraudulent was not accepted by both the learned courts below. It is specifically held that the plaintiff was successful in proving due execution of the agreement of sale dated 07.07.2001 and that the appellant failed to lead any evidence whatsoever to prove that the said agreement to sell was forged, fabricated or fraudulent.

Learned counsel for the appellant is unable to deny that it is incumbent upon the party, who alleges fraud, to prove the same by leading cogent and convincing evidence to that effect. Learned counsel for the appellant is unable to point out any evidence on record to indicate the said agreement of sale to be forged or fabricated. Reference to evidence of the finger expert PW4 examined by the plaintiff is of no avail.

Both the learned counsel below have rendered concurrent findings of fact based on proper appreciation of the evidence on record, which calls for no interference by this Court in Regular Second Appeal.

There is no question of law, much less a substantial question of law, which is involved for consideration in this regular second appeal.

Moreover, it is relevant to note that there is delay of 3436 days in filing of this appeal. Reasons as given in the application for condonation of appeal read as under:-

“ That the present appeal required to be filed on or before 14.04.2011 but somehow the applicant/appellant could not arrange sufficient fund for engaging counsel for filing instant appeal before this Hon'ble Court. Consequently, delay of 3436 days took place in filing the above mentioned appeal.

That a perusal of the bona fide facts stated above itself shows that delay of 3436 days took place in the above mentioned appeal due

to the facts which is beyond the control of the applicant/appellant which deserves to be condoned.”

There is nothing on record neither any averment even at the time of arguments to indicate such state of penury faced by the appellant that he could not arrange a sum of Rs.4332/- appended as Court fee or the incidental cost. Appellant has failed to set forth any explanation leave alone a reasonable and plausible explanation for the colossal delay in filing of this appeal.

Accordingly, appeal is, dismissed being time barred as well as on merits.

March 10, 2021
Rts

(Lisa Gill)
Judge

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