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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-2662-2019 (O&M)

Date of Decision:05.08.2022

Jiwan Singh

.. Petitioner

Vs.

Joginder Singh and another

..Respondents

CORAM: HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Ms. Himani Kapila, Advocate for the petitioner.

...

Manoj Bajaj, J. (Oral)

CM-7340-C-2019

This application under Section 5 Limitation Act, has been filed for condonation of delay of 84 days in re-filing the appeal.

Heard.

For the reasons mentioned in the application, delay of 84 days in re-filing the appeal is condoned.

CM stands allowed.

RSA-2662-2019 (O&M)

The appellant/plaintiff is aggrieved against the judgement and decree dated 01.12.2018 passed by Addl. District Judge, Ferozepur in Civil Appeal No.83 dated 15.09.2018, affirming the judgment and decree dated 07.08.2018 passed by Civil Judge (Jr. Divn), Ferozepur in Civil Suit No.48 dated 12.07.2017, whereby his suit for declaration and consequential relief of permanent injunction, was dismissed.

Briefly, the facts of the case are that the plaintiff Jiwan Singh brought a suit against his brothers Joginder Singh and Mohinder Singh to seek a declaration that the sale deed dated 07.02.1986 (Ex. P-2) was not voluntarily executed by him and was a result of fraud and as no

consideration was passed on to him, therefore, the same be declared null and void. Apart from the relief of declaration, as a consequential relief, plaintiff also prayed for decree of permanent injunction restraining the defendants from alienating the suit property in any manner.

The suit was contested by the defendants and they filed their written statement and raised preliminary objections relating to delay in filing the suit, maintainability etc. and on merits, it was pleaded that the sale deed was executed by plaintiff willingly and ever since passing on title in the favour of defendants, they are enjoying the possession of the suit property without any hindrance. Denying all other averments contained in the plaint, it was prayed that the suit be dismissed.

Upon considering the pleadings of the parties, the trial Court in all, framed four issues and thereafter, the parties adduced their respective evidence. The trial Court after considering the pleadings and evidence, dismissed the suit vide judgment and decree dated 07.08.2018.

Dis-satisfied with the said judgment and decree dated 07.08.2018, the plaintiff preferred an appeal before the first appellate Court and the same was also dismissed vide judgement and decree dated 01.12.2018 passed by Addl. District Judge, Ferozepur. Hence this second appeal.

Learned counsel for the appellant has argued that the instrument dated 07.02.1986 was in fact an agreement to sell, whereas deed contains the recital that the sale consideration was paid in the presence of Sub-Registrar. According to learned counsel, during cross-examination, it was admitted by defendants that the sale consideration was passed on to vendor at the house of plaintiff and it is further argued that the Courts have

failed to appreciate the evidence in proper manner, which has resulted in miscarriage of justice to the appellant. He prays that the impugned judgment and decree dated 01.12.2018 be set aside.

After hearing the learned counsel and considering the arguments, this Court finds that the case of the parties is based upon documentary material and perusal of sale deed (Ex.P-2), which is a registered instrument does contain the fact of passing on consideration to the vendor, who has failed to explain the delay in filing the suit to question the validity of the sale deed. Even during the course of hearing, it is not disputed by learned counsel that after execution of this document dated 07.02.1986, the parties were having cordial relations. A perusal of the impugned judgment and decree shows that the trial Court has taken into consideration the vital admissions suffered by the plaintiff, while holding that the plaintiff was very much aware of the fact that after execution of the sale deed, the mutation etc. was also recorded in favour of the defendants and proceeded to dismiss the suit on delay. Apart from it, the trial Court also held that the suit is not maintainable for want of *ad volerm* court fee. Further, the appellate Court has affirmed these findings by carefully analyzing the pleadings and evidence on record. Thus, this Court has no hesitation in holding that the impugned findings returned by both the Courts are based upon proper appreciation of evidence.

Resultantly, this Court is of the opinion that the appeal does not involve any substantial question of law and is devoid of merits, and is dismissed. No costs.

05.08.2022
Jasmine Kaur

(MANOJ BAJAJ)
JUDGE