



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

104

**RSA-5016-2019 (O&M)
Date of Decision: 27.08.2024**

Budh Ram (since deceased) through LRs

....Appellants

Versus

Ram Pal

....Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS SURI

Present: Mr. Manoj Sharma, Advocate for
Mr. Sanpreet Sandhu, Advocate
for the appellants.

VIKAS SURI, J. (Oral)**CM-14248-C-2019**

This is an application under Section 5 of the Limitation Act, seeking condonation of delay of 32 days in filing the appeal.

For the reasons mentioned in the application, supported by affidavit, the same is allowed and the delay of 32 days in filing the appeal is condoned.

CM stands disposed of.

RSA-5016-2019

1. This regular second appeal has been preferred by the defendant/appellant aggrieved by the judgment and decree dated 12.04.2019 passed by learned Additional District Judge, Yamuna Nagar at Jagadhri, affirming the judgment and decree dated 25.09.2015 passed by learned Additional Civil



Judge (Senior Division) Yamuna Nagar at Jagadhri, whereby the suit filed by the plaintiff-respondent for possession by way of specific performance of agreement to sell dated 21.06.2010, was decreed.

2. The facts of the case, in brief, are that plaintiff–Ram Pal filed a suit for possession by way of specific performance of agreement to sell dated 21.06.2010 in respect of land measuring 8 *kanal* 0 *marla* being 1/3rd share of the appellant in land measuring 24 *kanal* 0 *marla* situated at Village Nagli, Sub Tehsil Radaur, Tehsil Jagadhri, District Yamuna Nagar as per Jamabandi for the year 2004-2005.

3. Upon notice of the suit, defendant opposed the same and denied the execution of agreement to sell and also denied having received the alleged earnest money. It was further pleaded that the suit land is an ancestral property of the defendant, which cannot be alienated but for legal necessity. The further defence taken was that the defendant was an agriculturist by profession and used to sell his produce through the firm of the plaintiff and in the past, while making payment of crops, the plaintiff had asked the defendant to put his thumb impressions on some papers, on the pretext that the same were required for payment of bonus to the farmers as per the scheme introduced by the government. It was, however, admitted that the said land was mortgaged with the bank. After considering the rival pleadings, the following issues were framed:-

- “1. Whether the plaintiff is entitled for a decree of specific performance of agreement to sell dated 21.06.2010, as prayed for? OPP.
2. If so, whether the defendant is entitled to a decree for permanent injunction restraining the defendant from



interfering in the possession of the suit property, as prayed for? OPP.

3. Whether the suit of the plaintiff is not maintainable? OPD
4. Whether the plaintiff has no cause of action to file the present suit? OPD
5. Whether the plaintiff has concealed the true and material facts from the Court? OPD
6. Relief.”

4. On consideration of the pleadings, evidence led by the parties and the rival submissions advanced by both the sides, the trial Court decreed the suit and directed the defendant to execute and get registered the sale deed in terms of agreement to sell dated 21.06.2010 on payment of balance sale consideration within a period of two months. The defendant was further restrained from alienating the suit land to anybody else.

5. Aggrieved by the aforesaid, defendant preferred first appeal and the same was also dismissed vide judgment and decree dated 12.04.2019 while returning concurrent findings.

6. Heard learned counsel for the appellant and perused the paperbook.

7. Learned counsel for the appellant has emphatically submitted that challenge to the impugned judgments and decrees, returning concurrent findings, is based on the factual aspect as pleaded in the written statement and raised before the first appellate Court. It is, however, not disputed that the first appellate Court was the final Court of facts and the factual pleas cannot be raised in regular second appeal under the provision of Section 100 CPC.

8. The courts below after appraising the evidence adduced on record



have come to the conclusion that on the target date for the execution of sale deed, the defendant Budh Ram did not turn-up to perform his part of the contract. As the defendant did not come present, the plaintiff (Ram Pal) got his presence marked before the Executive Magistrate, Radaur, on 17.06.2011, by getting his affidavit (Ex. P-2) attested from the Executive Magistrate on the same day. In the said affidavit plaintiff-Ram Pal had expressed his intention to get the sale deed executed, in his favour from the defendant-Budh Ram, by making payment of balance sale consideration but Budh Ram did not turn-up. Learned counsel for the appellant has not referred to any material evidence, from the record of the case, to counter the said finding recorded by the Courts below. The plea of fraud having been committed upon the defendant, has not been proved on the record, by any cogent evidence. The doubt sought to be created regarding the non-adjustment of the alleged amount of Rs. 60,000/-, falls short of discharging the onus of proof to establish the plea of fraud. It is well settled that fraud has to be proved by the party alleging the same, like a criminal charge, which the defendant-appellant has failed to discharge.

9. During the course of hearing, learned counsel for the appellants has failed to point out any patent illegality or perversity in either of the impugned judgments.

10. No other issue has been raised.

11. In view of the aforesaid, it is clear that the case does not involve any substantial question of law, which is *sine qua non* for exercising appellate jurisdiction under Section 100 of the Code of Civil Procedure, 1908. The concurrent finding of facts recorded by the Courts below, have been found to



RSA-5016-2019 (O&M)

-: 5 :-

be legally justified and based on proper reasoning. Hence, no case for interference has been made out.

12. Resultantly, the present regular second appeal stands dismissed.

August 27, 2024

Varinder

**(VIKAS SURJ)
JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No