



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

RSA No. 72 of 2020 (O&M)
Date of Decision: 13.01.2025

Lal Singh

..... Appellant

Versus

Mohammad Yasin and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Anil Kumar Garg, Advocate
for the appellant-defendant.

HARKESH MANUJA, J. (ORAL)

CM-246-C-2020

Prayer in the present application moved on behalf of the applicant-appellant, is for condonation of delay of 858 days' in filing the appeal.

A perusal of the contents of application shows that delay in re-filing the appeal occurred for want of affixation of adequate Court fee. Though, it has not been mentioned in the application, yet, learned counsel for the applicant-appellant submits that the appellant being a poor person was not able to collect money for the purpose of affixation of proper Court fee; thus, there was delay in re-filing the appeal.

After hearing learned counsel for the applicant-appellant, in the humble opinion of this Court, rather than non-suiting the applicant on technical grounds, the appeal has been heard on merits and finding that the

reason expressed before this Court, appears to be *bona fide*, thus, prayer made in the instant application for condonation of delay of 858 days' in re-filing the appeal, which occurred for want of affixation of adequate Court fee, is accepted. The delay of 858 days' in re-filing the appeal is condoned.

Application stands **disposed off** accordingly.

RSA-72-2020 (O&M)

By way of present appeal, challenge has been laid to the judgment and decree dated 26.11.2015 passed by the Court of Additional District Judge, Sangrur (**hereinafter to be referred as "First Appellate Court"**), whereby first appeal filed at the instance of respondents-plaintiffs against the judgment and decree dated 02.05.2013 passed by the Court of Civil Judge (Junior Division), Malerkotla (**hereinafter to be referred as "trial Court"**), dismissing his suit for possession, was partly allowed.

[2] Facts of the case are that the respondent-plaintiff filed a suit for possession by way of specific performance of agreement to sell dated 03.09.2002 or in the alternative praying for suit for recovery and prohibitory permanent injunction on the ground that on 03.09.2002, appellant-defendant agreed to sell his house and plot measuring 0-14 biswas 16 biswas to Khushi Mohammad (since deceased) for a total sale consideration of Rs.1,50,000/- and received Rs.1,00,000/- as earnest money with the promise to execute the sale deed upto 03.07.2005. As per the pleadings, the appellant-defendant also agreed to give possession of the suit property to Khushi Mohammad at the time of execution and registration of the sale deed and it was also decided that in case defendant fails to perform his part of agreement and does not execute sale deed of suit property, then deceased-

Khushi Mohammad will have the right to get the sale deed executed in his favour by way of specific performance of agreement to sell through Court and may recover Rs.1,00,000/- as damages besides earnest money of Rs.1 lakh from defendant and in case deceased Khushi Mohammad fails to perform his part of agreement, then defendant will be at liberty to forfeit his earnest money. The terms and conditions were reduced into writing/agreement to sell dated 03.09.2002, however, Khushi Mohammad died on 23.02.2003 leaving behind plaintiff Nos. 1 & 3 as his sons; plaintiff Nos.2 & 4 as the daughters and plaintiff No.5 as his widow. So, respondents-plaintiffs are natural and legal heirs of deceased-Khushi Mohammad. The last date for execution and registration of sale deed was 03.07.2005, but there was holiday on 03.07.2005 being Sunday, as such respondent No. 1-plaintiff No.1 (Mohd. Yasin) himself and as General Power of Attorney (GPA) of plaintiff Nos. 2 to 5, came present in the office of Sub Registrar, Malerkotla on 04.07.2005 alongwith the remaining sale consideration and other expenses for registration of sale deed and waited for defendant to get the sale deed of suit property executed and registered in their favour, but defendant did not come present. Thereafter, plaintiff No.1 got his affidavit attested from Executive Magistrate in token of his presence and willingness. Even after 04.07.2005, the respondents-plaintiffs requested the defendant number of times to execute and register the sale deed of suit property in their favour, but defendant started threatening them to alienate the suit property to some other person. Upon this, plaintiffs initially filed suit for permanent prohibitory injunction for restraining the defendant from alienating the suit property in any manner and later filed the present suit while pleading that by

refusing to execute the sale deed, the appellant-defendant had violated the terms and conditions of agreement to sell dated 03.09.2002. The plaintiffs further claimed that in case the relief of specific performance of agreement to sell dated 03.09.2002 was not granted, then in the alternative, a decree for recovery of Rs.1,50,000/- i.e. Rs.50,000/- as damages and Rs.1,00,000/- paid to defendant as earnest money by deceased-Khushi Mohammad with future interest @ 2% per month from the date of filing of suit till payment be granted. Respondents-plaintiffs further claimed a decree for permanent prohibitory injunction for restraining the defendant from alienating the suit property in any manner. Hence, the suit.

[3] Upon notice, the appellant-defendant, appeared and filed a detailed written statement, wherein it was pleaded that neither he entered into any agreement to sell with deceased-Khushi Mohammad nor he ever received any earnest money from him. It was further pleaded that the alleged agreement to sell was a forged and fictitious document and does not bears the thumb impressions and signatures of defendant and his wife-Balwinder Kaur. It was also pleaded that he was not the owner of the suit property at the time of alleged agreement to sell and even the plaintiffs were neither the legal heirs of deceased-Khushi Mohammad nor were they entitled to inherit the estate of Khushi Mohammad. The appellant-defendant denied the averments of the plaint, besides raising objections that the suit of the plaintiffs was not maintainable and prayed for dismissal the suit.

[4] The respondents-plaintiffs filed replication reiterating the averments made in the plaint. On the basis of pleadings of the parties, the trial Court framed the following issues:-

- “1. Whether defendant agreed for the sale of disputed property in favour of Khushi Mohammad? OPP*
- 2. Whether defendant received earnest money to the tune of Rs.1,00,000/- and executed agreement dated 03.09.2002? OPP*
- 3. Whether Khushi Mohammad and plaintiffs remained ready and willing to perform their part? OPP*
- 4. Whether plaintiffs are entitled to decree for specific performance of agreement dated 03.09.2002 or for alternative relief? OPP*
- 5. Whether present suit is maintainable? OPP*
- 6. Whether agreement dated 03.09.2002 is forged and fabricated document? OPD*
- 7. Whether plaintiff are stopped by their own act and conduct from filing the present suit? OPD*
- 8. Whether suit property does not fall in khasra numbers mentioned in agreement dated 03.09.2002? OPD*
- 9. Relief. ”*

[5] The trial Court, vide its judgment and decree dated 02.05.2013, dismissed the suit, filed at the instance of respondent-plaintiffs.

[6] Aggrieved against the same, the respondents-plaintiffs filed the first appeal, which came to be partly accepted / decreed for alternative relief for recovery of Rs.1,00,000/- with costs along with interest @ 9% per annum from 03.09.2002, vide judgment and decree dated 16.11.2015 passed by the First Appellate Court. Hence, the present appeal.

[7] Impugning the aforesaid judgment and decree dated 16.11.2015 passed by the First Appellate Court, learned counsel for the appellant-defendant submits that since the appellant-defendant was not owner of the property as alleged in the agreement, there was no occasion for him to have executed the agreement and receive the earnest money; the agreement to sell

dated 03.09.2002 was a forged and fabricated document and the khasra numbers mentioned in the said agreement to sell were not in the ownership of appellant-defendant; he, thus, submits that the trial Court rightly appreciated the evidence of the appellant-defendant and dismissed the suit in toto; therefore, the judgment and decree dated 16.11.2015 passed by the First Appellate Court, partly accepting the appeal filed at the instance of plaintiffs for alternative relief (i.e. for recovery of amount received by appellant-defendant), was liable to be set aside.

No other argument has been raised on behalf of the appellant-defendant.

[8] After hearing learned counsel for the appellant and having gone through the paper-book / records, I am unable to find substance in the submissions made on behalf of the appellant-plaintiff.

[9] In the present case, to prove agreement to sell (Ex.P1), respondents-plaintiffs examined Irshad Ahmed as PW-1, who scribed the agreement to sell and PW-4 Bashir Khan Lambardar, its marginal witness, who established on record that appellant-defendant agreed to sell his 14 biswa 16 biswasis land to deceased-Khushi Mohammad for a total sale consideration of Rs.1,50,000/- and the appellant-defendant received a sum of Rs.1,00,000/- as earnest money from the purchaser in his presence. After scribing the agreement to sell (Ex.P1), the Deed Writer, Malerkotla, at the instance of the parties, even read over and explained to the appellant-defendant who after hearing, understanding and admitting the same to be true and correct and after receiving Rs.1,00,000/- in cash as earnest money from Khushi Mohammad put his thumb impression over the agreement to

sell (Ex.P1). Also, the agreement to sell was witnessed by Balwinder Kaur, wife of appellant-defendant. The agreement to sell was thus proved on file by the statements of PW-1 and PW-4 to be having thumb marked by the appellant-defendant and signed by his wife.

[10] So far as the contention of learned counsel for the appellant-defendant that the agreement to sell Ex.P-1 was forged and fabricated document, appellant-defendant would have easily proved the forgery regarding document in question by examining hand-writing / finger print expert, but he failed to do so. Sanctity attached to a written document duly thumb marked by the parties cannot be said to be diminished merely on the ground that witnesses to the same could not remember certain related or surrounding circumstances after the lapse of 10 years of its execution.

[11] Further, since the appellant-defendant denied the execution of agreement to sell and respondent-plaintiffs could not prove the defendant to be the owner and having transferable title pertaining to the property in dispute, there was no reason to deny the grant of decree of alternative relief of recovery of earnest money proved to be given by Khushi Mohammad to the appellant-defendant.

[12] Accordingly, in view of the discussion made hereinabove, finding no illegality or perversity with the findings of the fact recorded by the First Appellate Court, there being no ignorance or any mis-interpretation pointed out towards the pleadings and the evidence available on record; the present appeal being devoid of merits, the same is hereby **dismissed**.

[13] Since, the main appeal has been decided / dismissed, no orders are required to be passed in the pending application(s) including the condonation of delay in filing the appeal, the same shall stand disposed off.

January 13, 2025
'dk kamra'

(HARKESH MANUJA)
JUDGE

<i>Whether Speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>