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

**RSA-941-2018 (O&M)
Decided on : 14.01.2025**

Adish Gupta

..... Appellant

Versus

Amar Nath @ Nathi Ram (since deceased) through LRs

..... Respondent

CORAM : HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Present : Ms. Sonia G. Singh, Advocate
for the appellant.

VIKRAM AGGARWAL, J (ORAL)

CM-2328-C-2018

Prayer in the present application filed under Section 5 of the Limitation Act, is for condonation of delay of 84 days in filing the accompanying appeal.

Heard.

For the reasons, mentioned in the application which is duly supported by an affidavit, the same is allowed and the delay of 84 days in filing the accompanying appeal is condoned.

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The plaintiff (Adish Gupta) assails the judgment and decree dated 19.05.2017, passed by the Court of learned Additional District Judge,



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Karnal, dismissing the appeal filed by the appellant-plaintiff against the judgment and decree dated 10.11.2014, passed by the Court of learned Civil Judge (Junior Division), Karnal vide which the suit for recovery of ₹6,25,000/- alongwith interest @ 18% per annum filed by the appellant-plaintiff was dismissed.

2. For the sake of convenience and clarity, parties shall be referred to as per their original status.

3. The plaintiff filed a suit for recovery of ₹6,25,000/- alongwith interest @ 18% per annum against the defendant. The case set up by the plaintiff was that, for, the defendant was in need of money, he approached the plaintiff and expressed his willingness to sell his land measuring 19 kanals situated at Tehsil Gharaunda, District Karnal (hereinafter referred to as 'the suit property') for a total sale consideration of ₹67,00,000/-. An oral agreement to sell was entered into between the parties. A sum of ₹7,50,000/- was paid on various occasions from 21.07.2007 onwards on account of earnest money. In fact, out of the said amount, a sum of ₹1,25,000/- had been returned on 04.11.2009. An assurance had been given by the defendant that a written agreement to sell would also be executed. An affidavit is also stated to have been executed by the defendant before the Magistrate at Gharaunda, affirming that possession of the suit property had been handed over to the plaintiff. It was also stated that SLP No.12273 of 2006 had been dismissed on 07.12.2009 which was brought to the notice of the plaintiff on 18.09.2010, after which the plaintiff had been approaching the defendant to execute the written agreement to sell and the sale deed but to no avail. Eventually, a legal notice dated 14.12.2011 was served upon the defendant.



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4. The suit was opposed by the defendant. Preliminary objections as regards the maintainability, cause of action, the plaintiff having concealed and mis-stated the facts etc. were raised. The parties having entered into an oral agreement to sell was denied. The payment of ₹6,25,000/- was, however, admitted. It was averred that the said amount had been paid to the defendant on account of earth having been excavated by the plaintiff from the field of the defendant in 2007 for doing filling up work in the factory of the plaintiff which was stated to be adjacent to the suit property. All other averments were denied.

5. From the pleadings of the parties, the following issues were framed:-

1. Whether the plaintiff is entitled to a decree for recovery of Rs.6,25,000/- along with future interest and costs, as prayed for ? OPP
2. Whether the plaintiff has no cause of action to file and maintain the present suit ? OPD
3. Whether the plaintiff has not come to the court with clean hands and has suppressed the true and material facts from the Court ? OPD
4. Relief.

6. Parties led their respective evidence.

7. The trial Court dismissed the suit filed by the plaintiff and the appeal filed against the said decision was also dismissed, leading to the filing of the present regular second appeal.

8. I have heard learned counsel for the appellant and have also perused the record which was duly summoned.



9. Ms. Sonia G.Singh, learned counsel representing the appellant made strenuous efforts to convince the Court that the decisions rendered by the Courts below are not sustainable and that the suit filed by the plaintiff deserves to be decreed. Reference has been made to the oral and documentary evidence led on the record of the case and it has been submitted that both the Courts below did not consider the matter from the correct perspective resulting in erroneous dismissal of the suit.

10. I have considered the submissions made by the learned counsel for the appellant but find the same to be devoid of merit. The plaintiff had set up the plea of an oral agreement to sell having been entered into between the plaintiff and the defendant as regards the suit property. It was not averred in the plaint as to when the oral agreement was entered into nor any cogent evidence was led before the Courts below to prove this fact. It was neither pleaded nor proved as to what were the terms and conditions of the said oral agreement and when the sale deed was to be executed. The defendant admitted the payment of ₹6,25,000/- but stated that the same had been paid on account of earth having been removed by the plaintiff from the suit property. The Courts below noticed that being a leading businessman, it was most unnatural for the plaintiff to have entered into an oral agreement to sell to purchase the suit property for a total sale consideration of ₹67,00,000/- paying ₹7,50,000/- as earnest money. The testimony of the defendant, while he stepped into the witness box as DW1, was found to be trustworthy and unimpeachable. Reliance was also placed upon the photographs Ex.D1 and other documents which depicted lifting of earth from the field of the defendant. While appearing as PW2, the plaintiff admitted that the



machinery in the photographs was his. As regards affidavit Mark-F alleged to have been executed by the defendant admitting handing over of possession of the suit property, the same was not relied upon as the document had not been proved in accordance with law. Even in criminal proceedings initiated by the plaintiff against the defendant, no case was stated to have been made out.

11. The claim of the plaintiff that the written agreement to sell was not executed on account of the pendency of the SLP before the Supreme Court of India is also found to be devoid of merit, for no details of such litigation were given nor the copy of the order passed in the SLP was produced. It was also not brought before the Court as to what effect, the said SLP and the decision thereon had on the alleged agreement entered into between the parties.

12. Further, apart from the bald and self serving statement of the plaintiff, there was no cogent and convincing evidence to support his assertions as regards the execution of the alleged oral agreement to sell and payment of earnest money in that regard.

13. Learned counsel for the appellant has not been able to pin point any illegality in the impugned judgments and, in the considered opinion of this Court, all issues were discussed threadbare in both judgments. It has to be borne in mind that it was for the plaintiff to prove his case by leading cogent evidence, which in the considered opinion of this Court, the plaintiff miserably failed to do and was, therefore, rightly non-suited. No occasion, therefore, arises to interfere in the pure findings of facts recorded in the judgments under challenge.



In view of the above, I do not find any merit in the present appeal and the same is accordingly dismissed.

Pending application(s), if any, stand(s) disposed of accordingly.

14.01.2025

mamta

(VIKRAM AGGARWAL)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No