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

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RSA-2278-2022 (O&M)

Date of decision: 27.08.2026

Himanshi Saini

....Appellant

Vs.**Dhan Singh and others**

....Respondents

CORAM : HON'BLE MR. JUSTICE HARSH BUNGER

Present: Mr. M.R. Sharma, Advocate
for the appellant.

HARSH BUNGER J.

1. For convenience, the parties herein are being addressed as per their status in the original suit.

2. This is the plaintiff's regular second appeal challenging the judgment and decree dated 18.12.2017 passed by learned Civil Judge (Junior Division), Faridabad, as well as the judgment and decree dated 13.12.2019 passed by learned District Judge, Faridabad.

3. Briefly, the appellant/plaintiff filed a suit for declaration to the effect that the transfer application as well as the affidavit submitted by defendants No.1 and 2 qua Plot No.288, Sector 2, Faridabad, be declared null and void. A consequential relief of permanent injunction was also sought.

3.1 The pleaded case of the plaintiff was that defendant No.3 - Estate Officer, Haryana Urban Development Authority (in short the 'HUDA') allotted the suit property i.e. Plot No.288, Sector 2, Faridabad, on

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payment of Rs.22,29,000/- on freehold basis to defendant No.1 (Dhan Singh).

3.2 Thereafter, defendant No.1. (Dhan Singh) agreed to sell/transfer the property in the name of plaintiff (Himanshi Saini) and defendant No.2 (Kanta Saini) in equal share. Defendant No.3 (HUDA) had also given the permission to transfer the plot in name of plaintiff and defendant No.2 vide letter dated 04.12.2008, after charging transfer fee.

3.3 It is averred that plaintiff (Himanshi Saini) and defendant No.2 (Kanta Saini) paid a sum of Rs.12,50,000/- (in cash) to the defendant No.1 (Dhan Singh), before defendant No.3.

3.4 It is the case of the plaintiff that now defendant No.1 and 2 in collusion with defendant No.3 wants to transfer the property in question to one Sh. Narender Singla or any other person for which they have no right, title or interest as defendant No.1 (Dhan Singh) had already relinquished/transferred all his rights in the name of plaintiff and defendant No.2.

3.5 It is further averred that, if any transfer application or permission letter is given by defendant No.1 (Dhan Singh) to defendant No.3 (HUDA) in collusion with defendant No.2 (Kanta Saini), then the same is liable to be declared null and void. Accordingly, the suit was filed.

4. Upon issuance of notice in the aforesaid suit, the defendant No.1 (Dhan Singh) filed his written statement raising various preliminary objections and also categorically denying that he entered into any agreement with plaintiff qua suit property. However, he admitted that he is the allottee

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of the suit property, which was allotted by HUDA (defendant No.3). He further stated that the plaintiff was never in possession of the suit property and therefore, there is no question of dispossession.

4.1 Defendant No.2 (Kanta Saini) filed her separate written statement, *inter alia*, raising preliminary objection as regards maintainability of the suit, etc. It was averred that the husband of plaintiff and defendant No.2 were partners in Ashok Chit Private Limited. It was stated that defendant No.1 approached them for loan, which has been repaid by him. It has been further stated that husband of plaintiff has taken signatures of Dhan Singh on some blank papers in garb of a loan, qua which the defendant No.2 had no knowledge. The said private limited company (Ashok Chit Private Limited) is stated to have been dissolved for the last one year. It is further stated that defendant No.3 (HUDA) gave permission to transfer the plot in the name of the plaintiff and defendant No.2 on 04.12.2008, however, there was no execution of sale deed in name of plaintiff and defendant No.2. Now the price are sored up, therefore, the present suit has been filed.

4.2 On the other hand, defendant No.3 (HUDA) in its separate written statement has stated that the suit property has been allotted to defendant No.1 (Dhan Singh) vide letter dated 30.05.2007 and possession was delivered vide memo dated 28.10.2011. It is further stated that transfer permission in the name of plaintiff and defendant No.2 was issued, which was provisional, subject to the condition that the same has to be completed within a period of 90 days from the date of issuance of the letter, failing which; the transfer permission to sell stood cancelled automatically.

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5. It appears that no replication was filed by the plaintiff.

6. From the pleading of the parties, following issues were framed by the learned Trial Court:-

- “1. Whether the plaintiff is entitled to a decree of declaration to the effect that the transfer application and any affidavit moved by defendant No.1 and 2 qua suit property in favour of any third person be declared null and void? OPP.*
- 2. Whether the plaintiff is entitled to a decree of permanent injunction restraining the defendant from selling/alienating/transferring/mortgaging, changing the nature of the suit property? OPP*
- 3. Whether the suit of the plaintiff is not maintainable in the present form? OPD*
- 4. Whether the suit of the plaintiff is liable to be dismissed? OPD*
- 5. Whether the plaintiff has no jurisdiction to try or entertain the present suit? OPD*
- 6. Whether the Suit of the plaintiff is bad for mis-joinder and non-joinder of necessary parties? OPD*
- 7. Relief.”*

7. Thereafter, the parties led their respective evidence on the aforesaid issues.

8. The learned Trial Court after considering the facts, pleadings as well as the evidence available on record, dismissed the suit of the plaintiff vide judgment and decree dated 18.12.2017, by observing as under:-

“12. Precisely, the case of the plaintiff is that defendant no. 3 allotted the suit property in favour of the defendant no. 1. Plaintiff and defendant no. 2 entered into an agreement to sell with defendant no. 1 and in pursuance of which they have made

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payment of Rs. 12,50,000/- in cash to defendant no. 1 which was deposited to defendant no. 3 and thereafter, all the defendants colluded and intended to transfer the property in favour of third person and therefore, since the payment was made by plaintiff, this instant suit has been filed with the prayer that if any transfer application or a permission letter is given by the defendant no. 1 to defendant no. 3 that is HUDA, same shall be declared null and void. The case of the defendant on the other hand is that they never entered into any such kind of agreement or transfer with the plaintiff for selling suit property. This has been categorically denied by defendant no. 1. Defendant no. 3 has admitted the factum that qua the suit property one transfer permission was granted in the name of plaintiff and defendant no. 2 vide office memo no. 50703/04 dated 4.12.2008 which was a provisional transfer to be completed within 90 days from the date of issuance of the letter only after which the transfer permission stood automatically revoked and cancelled. Defendant no. 2 on the other hand has denied any agreement to have been entered between the parties and has stated that husband of the plaintiff obtained signatures of defendant no. 1 on some blank papers in the garb of a loan agreement who were partners of Asian Chit private limited which now stands dissolved. Plaintiff has proved the allotment in favour of defendant no. 1 that is Mark P-1 which is an admitted document. The transfer permission in favour of the plaintiff and defendant no. 2 is Ex. P-3. However, most important document in this case is the alleged agreement to sell which was executed in favour of the plaintiff and defendant no. 2 by defendant no. 1. This document is not on record. Plaintiff PW-1 in her cross-examination has deposed that she does not have the copy of agreement and receipt on the basis of which the suit has been filed. She further volunteered that same was is

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with the partners and this factum was not mentioned either in the plaint or in her affidavit. The very basis of this case is agreement to sell in question which was allegedly entered between the parties. As per the version of the plaintiff in her cross-examination a copy of the same was kept with the partners and she does not have a copy of the same. Even if assuming that there was an oral agreement between the parties, same has not been proved by the plaintiff. On the basis of this alleged agreement plaintiff has pleaded that she paid an amount of Rs. 12,50,000/-to defendant no. 1 which was subsequently deposited to defendant no. 3 HUDA. Even this fact has not been proved. Plaintiff has placed on record Ex. P-8 which is the account statement of Suraj Parkash Saini who is neither the husband of plaintiff nor privy to the agreement from whom the sale consideration is passing. This suit is basically for declaring a document null and void which does not have any existence and in the anticipation that if it gets moved in future it shall be declared null and void. It is significant to mention that a document which is not in existence as on date can not be declared null and void. Therefore, from the foregoing reason, issue no.1 and 2 is decided in favour of the defendant and against the plaintiff”

9. Feeling aggrieved, the plaintiff preferred an appeal before the learned District Judge, Faridabad, which has also been dismissed vide judgment and decree dated 13.12.2019.

10. In the aforementioned circumstances, present regular second appeal has been filed by appellant/plaintiff before this Court.

11. I have heard the learned counsel for the appellant and perused the paperbook with his able assistance.

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12 The case of the plaintiff is based upon an agreement, which she claimed to have been executed by defendant No.1 in favour of plaintiff and defendant No. 2. Evidently, the said document has not been produced on record. Plaintiff while deposing as PW-1 has admitted in her cross-examination that she does not have the copy of the agreement as well as the receipt on the basis of which, the suit has been filed. She voluntarily said that the said documents were with the partners, however, the said factum is not mentioned in the plaint or either in the affidavit.

12.1 Learned Trial Court has gone to the extent of observing that even if assuming that there was an oral agreement between the parties, the same has not been proved by the plaintiff. The plaintiff has also not proved the fact that she had paid Rs.12,50,000/- to defendant No.1 (Dhan Singh). Since the suit has been filed for declaring the transfer permission to be null and void and no such document has been proved to be in existence on the date of passing of the impugned judgment dated 18.12.2017 by the learned Trial Court, accordingly, the suit filed by the plaintiff was dismissed.

13. The findings returned by the learned Trial Court has been further affirmed by the learned First Appellate Court, by observing as under:-

“19. Assuming for the sake of arguments that permission was granted by Haryana Urban Development Authority in favour of defendant No.1 to transfer the plot to plaintiff & defendant No.2, it was subject to completion of certain conditions to be fulfilled within 90 days from the date of issue of the letter. The letter was issued on 04.12.2008 and the validity period of permission expired after 90 days i.e. on 04.03.2009. During her

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cross-examination, plaintiff Himanshi candidly admitted that conditions mentioned in letter Ex.P3 were not fulfilled within 90 days. Present suit had been filed on 11.11.2011 without seeking any specific performance. No reason whatsoever has been given as to why the conditions mentioned in Ex.P3 were not fulfilled.

20. Plaintiff also claims to have paid 12,50,000/- to the defendant No.1 or Haryana Urban Development Authority. In her cross-examination, plaintiff claims to be an Income Tax payee for the last 14 years, having income from her beauty parlor. She also claims to be maintaining bank account. However, neither any bank account nor any Income Tax returns have been placed on record to show any payment by the plaintiff despite the fact that PW1 plaintiff claims to show her all expenses and income in her returns.

21. Plaintiff placed on record bank statement of account Ex.P6 (also Ex.P8). However, perusal of the said bank statement reveals that it is not regarding the account of plaintiff Smt. Himanshi and rather, it is regarding the account of one Suraj Parkash Saini, who is admittedly not the husband of plaintiff. Plaintiff also relies upon certificate Ex.P5 issued by Oriental Bank of Commerce to show that amount from time to time was deposited with Estate Officer, Haryana Urban Development Authority during September 2006 to June 2007. The said certificate reveals that entries pertain to the account in the name of Suraj Parkash Saini and Baljit Saini. However, this certificate is absolutely silent as to for what purpose, the amount had been deposited by Suraj Parkash Saini and Baljit Saini. There is absolutely no mention that this document as reflected in certificate Ex.P5 pertains to the suit property or on account of alleged agreement between defendant No.1 on one hand and plaintiff and defendant No.2 on the other hand.

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22. Apart from above, learned lower Court rightly observed that plaintiff wants to seek declaration by way of present suit regarding some documents which never came into existence, Plaintiff seeks declaration that transfer permission, if granted by defendant No.3 to any third person in collusion with defendants No.1 and 2 be declared as null and void. There is nothing on record that any such document came in existence and it has been rightly observed by learned lower Court that no such declaration regarding a non-existing document can be granted. Plaintiff also claims injunction to restrain the defendants from alienating the suit property to dispossessing her. Plaintiff failed to prove her possession, which as per defendant No.3 is with the allottee i.e. defendant No.1. Besides, defendant No.1 being the allottee/owner of the suit property is free to dispose of the same or transfer the same in any manner whatsoever and so, none of the injunctions as sought by the plaintiff, can be granted. In fact, under the garb of present suit for declaration and injunction, plaintiff wants specific performance of an. agreement, which she has absolutely failed to prove.

23. On the basis of entire discussion as above, it is held that learned lower Court did not commit any error in deciding both the material issues No.1 and 2 against the plaintiff-appellant and by holding that she is neither entitled to any declaration nor any injunction. Findings of both these issues are affirmed.

24. No other point was urged.

25. Consequent to entire discussion as above, the impugned judgment and decree passed by learned lower Court are maintained. Holding the present appeal to be devoid of merits, same is hereby dismissed with costs.....”

14. Before this Court, learned counsel appearing for the appellant has failed to dislodge the aforesaid observations made by the learned Courts



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below nor it has been shown as to how the aforesaid findings are either illegal, perverse or based upon any misreading or mis-appreciation of evidence available on record.

15. Keeping in view the aforementioned facts and circumstances, I see no reason, which may warrant interference by this Court in the present regular second appeal. No question of law, much less substantial question of law arises for adjudication in this regular second appeal. Resultantly, the instant regular second appeal fails and the same is accordingly **dismissed**.

16. All the pending application(s), if any, shall also stand closed.

27.08.2026
Ankit

(HARSH BUNGER)
JUDGE

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