

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

Civil Revision No.1547 of 2014 (O&M)

Date of decision: 17.11.2015

Smt. Inder and others

.....Petitioners

Versus

Parmod Kumar and others

.....Respondents

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Ashok Aggarwal, Advocate,
for the petitioners.

Mr. Naveen S. Bhardwaj, Advocate,
for respondent Nos.1 to 3.

Ritu Bahri, J.

Challenge in this petition is to the orders dated 05.12.2013 (Annexures P-3 & P-4) passed by the Additional District Judge, Palwal, whereby, application filed by the appellant-petitioners for condonation of delay in filing the appeal has been dismissed.

Initially, plaintiffs-respondent Nos.1 to 3 filed a suit in the year 2001 against Dhan Singh-defendant No.1 and others, alleging therein that they intended to purchase some land in village Chhapraula, Tehsil Palwal, therefore, they approached Dhan Singh, whereupon he had agreed to sell his agricultural land to the plaintiffs for a sale consideration of Rs.3,15,450/-. Rs.1,60,000/- were paid by the plaintiffs as earnest money to defendant No.1 (Rs.1,10,000/- in cash and Rs.50,000/- by way of bank draft). After receipt of earnest money, defendant No.1 executed an agreement to sell in respect of the suit land on 10.06.1991 in the presence of witnesses. Sale deed was to

be executed on or before 15.09.1991. Thereafter, defendant No.1 received payment of Rs.2,15,000/- from the plaintiffs vide receipt dated 19.08.1991. Plaintiffs further made payment of Rs.1,00,000/- on 08.09.1991, regarding which a receipt was also issued by defendant No.1. After making payment of entire sale consideration, plaintiff No.1 requested Dhan Singh-defendant No.1, through his attorney, to execute sale deed in his favour. In the year 1998, plaintiff No.1 came to know that a suit had been instituted against him by defendant No.1 and his son Tara Chand. However, this suit was withdrawn by defendant No.1 on 16.09.1998. Defendant No.1 executed a lease deed for a period of 99 years in favour of plaintiff No.2-Kavita. He also executed a General Power of Attorney in favour of plaintiff No.3-Jagdish Kumar, father of plaintiff Nos.1 and 2. Thereafter, the plaintiffs came to know that defendant No.1 had sold the suit land to defendant No.2-Samay Singh (predecessor-in interest of petitioners) by way of concealment of material facts. Hence, this suit.

The suit filed by the plaintiffs-respondent Nos. 1 to 3 was decreed vide judgment and decree dated 13.10.2010 (Annexure P-1). Consequently, sale deed No.4744 and mutation thereof, executed by defendant No.1 in favour of defendant No.2 was declared null and void.

During the pendency of the suit, defendant No.2-Samay Singh died on 22.09.2007 leaving behind the petitioners as his legal heirs. Before his death, he had sold the suit property to Jagat Pal son of Hira Lal and others vide registered sale deed dated 06.10.2005. As per petitioners, pendency of suit was not in the knowledge of bonafide purchasers namely Jagat Pal Singh and others. LRs of defendant No.2 i.e. petitioners were not aware about the pendency of suit or decision thereof, till 14.11.2011. They

suit land. Thereafter, legal heirs of defendant no.2 filed an appeal along with application under Section 5 of the Limitation Act for condonation of 374 days in filing the said appeal. The application as well as appeal were dismissed by the lower appellate Court vide impugned orders dated 05.12.2013 (Annexures P-3 and P-4). Hence, this petition.

Learned counsel for the petitioners has referred to the judgments passed in Amalendu Kumar Bera Vs. State of West Bengal, 2013 (2) CCC 296; Dnyandev Vs. Sunita, 2013 (3) PLR 33 and Ishab Rani and others Vs. Gurbant Singh, 2013 PLR 209, to contend that the trial Court should have taken a liberal view in condoning the delay in view of the fact that after the death of defendant No.2, his legal heirs came to know about the pendency and decision of the suit from Jagat Pal, one of the purchasers of the suit property.

A perusal of the impugned order shows that dispute in the present case was between the plaintiffs and defendant No.1-Dhan Singh. After receiving entire sale consideration, defendant No.1 refused to execute sale deed in favour of the plaintiffs. At the same time, he had sold the land in dispute in favour of defendant No.2-Samay Singh, who further sold the same to Jagat Pal etc. during the pendency of the suit. Against the judgment (Annexure P-1), no appeal was filed by subsequent purchasers or defendant No.1-Dhan Singh. The execution proceedings with regard to registration of sale deed in favour of plaintiffs had been completed with the intervention of the Court. The lower appellate Court has rightly rejected the plea of the petitioners that they came to know about pendency and decision of the suit from Jagat Pal, who was bonafide purchaser from defendant No.2. Since defendant No.2 had alienated the suit property during his lifetime, the

the version of legal heirs of defendant No.2 that they were not aware about the pendency of original suit. Moreover, intimation regarding death of defendant No.2 was never given to the trial Court by his counsel. At this stage, the petitioners, who are legal heirs of defendant No.2, cannot take benefit of the aforesaid judgments. Moreover, the judgments referred to above, are not applicable to the facts of the present case as neither the State is litigant nor there is any proper explanation for condoning the delay.

In view of above, no illegality, much less perversity has been found in the impugned orders warranting interference by this Court in exercise of its revisional jurisdiction.

Dismissed.

17.11.2015
ajp

(RITU BAHRI)
JUDGE