

In the High Court of Punjab and Haryana at Chandigarh.

**C R No. 7151 of 2009 (O&M)
Decided on 16.1.2015**

Madho Ram

--Petitioner

Vs.

Satpal and others

--Respondents

CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN

Present: Mr. Amarjit Markan, Advocate, for the petitioner

Mr. Kanwal Goyal, Advocate, for the respondents

Rakesh Kumar Jain,J: (Oral)

This petition is against the order dated 19.10.2009 by which application filed by the respondents under Order 41 Rule 27 of the Code of Civil Procedure, 1908 (for short, 'the Code') has been allowed and an enquiry has been ordered by the Appellate Court to find out the genuineness of those documents.

The facts given to me are that Satpal, Sohan Lal and Sheela Devi, were the owners of land measuring 58 kanals 7 marlas. They entered into an agreement to sell the said land with Madho Ram vide agreement dated 06.1.1988. As per the agreement, the sale deed regarding ½ share of the land was to be executed in favour of the plaintiff on or before

15.6.1988 and the sale deed regarding the remaining $\frac{1}{2}$ land was to be executed in his favour on or before 15.6.1989. There is no dispute, insofar as the sale deed with respect to $\frac{1}{2}$ portion of the land which was to be executed on or before 15.6.1988 is concerned. The dispute is with regard to the sale deed which was to be executed on or before 15.6.1989 as the defendants have refused to abide by the compromise, as a result thereof, the plaintiff filed a suit for specific performance of the agreement on the basis of the agreement to sell dated 06.1.1988 with regard to the sale deed which was to be executed on 15.6.1988. The evidence of the plaintiff was closed on 25.5.1995 and that of the defendant on 22.12.1995.

The application filed by the plaintiff for amendment of the plaint was allowed. That order was challenged by the defendants by way of revision in this Court. The said revision was withdrawn in the year 2005 and thereafter the case was fixed for 31.8.2005 for recording evidence of the defendants only because the plaintiff had refused to lead evidence, in terms of the amendment of the plaint. The defendants did not lead any evidence, rather they filed an application on 17.9.2005 for dismissal of the suit on the ground that the parties have entered into compromise dated 28.10.1998. The said application was, however, dismissed on 25.10.2005 and on the same date, the defendants closed their evidence, who were thereafter proceeded against *ex parte* on 05.6.2006 and ultimately an *ex parte* decree was passed on 27.7.2006.

Aggrieved against the judgment and decree, the defendants filed the appeal and during the pendency of the appeal, they filed an application under Order 41 Rule 27 of the CPC to lead evidence in regard

to the compromise dated 28.1.1998. The said application was contested by the plaintiff by filing the reply and the Appellate Court, vide its impugned orders allowed the application and directed the trial Court to afford an opportunity to both the parties to lead evidence regarding validity of the compromise dated 28.10.1998 and also ordered to send a report about the legality of the compromise.

Learned counsel for the petitioner has submitted that the defendants did not produce any compromise on record dated 28.1.1998, which they now wanted to produce by way of additional evidence. It is submitted that had there been any compromise dated 28.1.1998, the defendants would have pleaded about the said compromise in their application dated 17.9.2005 when they had prayed that the suit filed by the petitioner/plaintiff be dismissed on the ground of compromise between the parties. He has also pointed out that in the application dated 17.9.2005 Annexure P-2, the defendants had mentioned the date of compromise as 08.10.1998 and has attached photocopy of the compromise which is available on the record of the Court below bearing the date as 28.10.1998. It is submitted that the application dated 30.9.2009 is bereft of the basic ingredients of Order 41 Rule 27 of the CPC as only the prayer has been made.

Lastly, it is argued that the learned Appellate Court has adopted a novel procedure of making an enquiry with regard to the validity and legality of the compromise i.e. 28.1.1998. Though, as per law, the Appellate Court should have, if it had felt the said document is necessary to decide the lis between the parties, taken the document on record and

decided itself about its legality and validity.

On the other hand, learned counsel for the respondents has argued that the said compromise was acted upon by the parties as on the basis of the said compromise, two sale deeds were executed on 28.10.1998, one in favour of the sons of the plaintiff and other in favour of Kuldip Kaur wife of the attorney holder of the plaintiff and the defendants. It is submitted that there is no error in the approach of the Appellate Court in ordering an enquiry with regard to validity and legality of the said document because it has been challenged by the petitioner before it which could have only been decided after the parties are offered an opportunity to lead their evidence.

On the other hand, learned counsel for the respondents has argued that the Civil Revision which they had filed against the order of amendment of plaint was withdrawn only because of the reason that there was compromise between the parties, but the said fact was not brought on record of this Court.

I have heard leaned counsel for the parties and examined the record with their able assistance.

The dispute in this case is with regard to leading the additional evidence in appeal on the basis of compromise dated 28.1.1998. In my opinion, had there been any compromise dated 28.1.1998, the defendants would have mentioned that compromise in their application dated 27.9.2005 and would not have concealed it from the Court because the only document attached with the said application was a compromise dated 28.10.1998, the photo copy of which is available on the record of the Court below. Had

there been any compromise dated 28.1.1998, it would have a reference in the second compromise dated 28.10.1998. Thirdly, had there been any compromise between the parties on 28.1.1998, the petitioner would have mentioned it before this Court when the revision petition was withdrawn.

Since the defendants have concealed the factum of execution of compromise dated 28.1.1998 through out and have brought the same at the stage of appeal even without challenging that order by which application for dismissal of the suit on account of compromise was dismissed on 25.10.2005, such a document does not apparently exist and appears to be a manufactured document.

The Appellate Court has referred to the compromise deed dated 28.10.1998, though the defendants have referred to the compromise dated 28.1.1998. It appears that the Appellate Court has passed the order without application of mind to the facts and circumstances of the case.

In view thereof, this revision petition is found to be meritorious and the same is hereby allowed . The impugned order dated 19.10.2009 is set aside.

16.1.2015
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(Rakesh Kumar Jain)
Judge