

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

**RSA No. 3788 of 2015 (O&M)
Decided on : 12.08.2015**

Ram Singh and others

...Appellants

Versus

Gurdeep Singh and others

...Respondents

CORAM : HON'BLE MR. JUSTICE K. C. PURI

Present : Mr. Ish Puneet, Advocate.

K. C. PURI, J.

Challenge in this appeal is to the judgment and decree dated 20.03.2010 passed by Ms. Rupinderjit Chahal, Additional District Judge, Patiala, vide which the appeal preferred by one of the defendant against the judgment and decree dated 15.11.2006 passed by Shri Harpal Singh, Additional Civil Judge (Senior Division), Rajpura, was dismissed.

Brief facts as gathered from the record are that the plaintiff filed a suit for specific performance of contract for sale dated 24.10.1994 in respect half share in agricultural land measuring 22 bigahs 7 biswas as detailed in head note of the plaint, with possession along with share in the tubewell installed in the land. Further

declaration to the effect that sale deed No. 4480 dated 09.01.2001 and No. 4486 dated 10.01.2001 executed by defendant No.1 in favour of defendant No.2 in respect of suit land were null and void.

It was pleaded by the plaintiff that defendant No.1 vide written agreement dated 24.10.1994 agreed to sell the agricultural land mentioned above, to the extent of half share with the plaintiffs with share in tubewell installed in the said land, for a sale consideration of Rs.1,32,000/- per killa. It was further pleaded that defendant No.1 received Rs.1,00,000/- as earnest money at the time of execution of said agreement to sell. Sale deed was agreed to be executed on or before 15.06.1995 on receipt of balance sale consideration. The plaintiff was always ready and willing to perform his part of the contract and he remained present on 15.06.1995 along with the balance consideration amount but defendant No.1 did not turn up. The plaintiff got his affidavit attested on that day. Plaintiff also sent notice to defendant No.1 but the defendant refused to execute the sale deed. Hence, the suit was filed.

On put to notice, defendant No.1 appeared and filed written statement taking preliminary objections regarding maintainability of the suit. It was further pleaded that the suit property is Joint Hindu Family coparcenary property of the defendant and his sons namely Mahesh Kumar and Rajesh Kumar. It was further pleaded that the suit property was earlier owned by the ancestors of the defendant. Due to

the agreement to sell in questions, the sons of defendant become

agitated and they filed suit for declaration and permanent injunction against the defendant in the present suit which is still pending. It was further pleaded that the defendant is ready to pay back the earnest money along with interest and costs.

Defendant No2 filed separate written statement alleging therein that he purchased the property in dispute vide two different sale deeds dated 09.01.2001 and 10.01.2001 and he is the bona fide purchaser. It was further pleaded that possession of the suit property was delivered to defendant No.2 by defendant No.1.

Replication was filed reiterating the averments contained in the plaint and denying the allegations made in the written statements.

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

- 1) Whether plaintiff has always been ready and willing to perform his part of the contract dated 24.10.1994?
OPP
- 2) Whether the suit land is Joint Hindu Family coparcenary property of defendant and his sons, if so, its effect ? OPD
- 2A) Whether defendant no.2 is bona fide purchaser, without notice and for consideration ? OPD
- 4) Whether plaintiff is entitled to specific performance of contract of sale and possession of the suit land ?
OPP

5) Relief.

In order to prove his case, plaintiff himself appeared as PW-1 and examined Sucha Singh, Lambardar as PW-2 and closed the evidence.

On the other hand, defendant No.1 himself stepped into the witness box as DW-1 and defendant No.2 Balram Sharma as DW-2 and closed the evidence.

The learned trial court, after appraisal of the evidence, decreed the suit with costs.

Feeling dissatisfied with the above said judgment and decree dated 15.11.2006 passed by Additional Civil Judge (Senior Division), Rajpura, one of the defendants filed appeal which was dismissed vide judgment and decree dated 20.03.2010 passed by Additional District Judge, Patiala.

Still feeling aggrieved, the appellants have preferred the instant regular second appeal.

Learned counsel for the appellants, in para no.6 of the grounds of appeal has mentioned that following substantial questions of law have arisen in the instant appeal :-

- 1) Whether the impugned judgment and decree passed by the learned courts below is contrary to the facts and law ?

- 2) Whether the sale of the suit property effected when the suit was dismissed in default and before it was restored is null and void ?
- 3) Whether the plaintiff is allowed in law to take the defence that the sale of the suit property to Balram Sharma was not bona fide?
- 4) Whether the learned courts below could have ignored the documentary evidence as well as deposition of Jagdish Chand (defendant No.1) to conclude that the sale of the land to Balram Sharma was not bona fide ?
- 5) Whether reliance upon the statement of PW2 Sucha Singh to conclude that Balram Sharma was aware of the pendency of the lis is justified in the facts and circumstances of the present case ?
- 6) Whether the learned courts below in the facts and circumstances of the present case should have granted the alternative relief and not decreed the suit for specific performance ?
- 7) Whether Balram Sharma is a bona fide purchaser in the facts and circumstances of the present case ?
- 8) Whether the appellants were necessary parties to the suit and for this reason the impugned judgment are

unsustainable in law ?

- 9) Whether the present suit is collusive to defraud the present appellants ?
- 10) Whether the order of restoration dated 07.06.2004 is unsustainable in the eyes of law ?
- 11) Whether the suit could have been restored vide order dated 07.06.2004 without there being an application for condonation for delay as well as for the fact that the delay in filing the application for restoration was not condoned by the learned trial court ?

I have heard learned counsel for the appellant and have gone through the records of the case.

The appellants have filed CM No. 9312-C of 2015 under Order 22 Rule 10 CPC for permission to file the appeal being successor in interest of Balram Sharma-defendant No.2 now respondent No.3. Another application bearing CM No. 9313-C of 2015 has been filed for condonation of delay of 1874 days in filing the appeal. The case of the appellants is that they have purchased the suit property on 26.6.2006 for a valuable consideration. The agreement to sell is dated 24.10.1994 and the sale deed was to be executed on or before 15.6.1995. The suit was filed by the plaintiff on 19.8.1995 which was dismissed in default on 15.9.1998 but the same was restored on 7.6.2004. However, the present appellants alleged that they have purchased the property vide

sale deed dated 26.6.2006 so, the property was purchased by them during the pendency of civil suit. The said civil suit was decreed on 15.11.2006. The appeal preferred by Balram Sharma was dismissed by Additional District Judge vide judgment and decree dated 20.3.2010. The appellants now want to challenge the said judgment and decree dated 20.3.2010 by alleging that they have purchased the property on 26.6.2006 from Balram Sharma. The present appellants filed objections to resist the delivery of possession to the decree holder. The objections preferred by the present appellants were dismissed on 23.7.2014. The said order was challenged by the appellants before the Additional District Judge but vide judgment 10.12.2014 the appeal was dismissed. Aggrieved against the said judgment, the appellants filed ESA No.7 of 2015 and that ESA was dismissed vide order dated 29.5.2015 by this Court meeting all the grounds. No reasoning has been given for delay of 1874 days in filing the appeal. More so, when they have already knocked the door by filing objections before the Civil Court. After having failed before the trial Court, District Judge and before this Court, the present appeal has been preferred. The appellants can, at the most, step into the shoes of Balram Sharma who has not made out a case for interference in the present appeal. The delay has to be explained meticulously more so when his objections have already been dismissed on 23.7.2014. So, I have no hesitation in holding that no ground for condoning the delay of 1874 days in filing the appeal is made out on the facts of the present case. Consequently, the present

appeal stands dismissed on merits as well as on the ground of condonation of delay. Both the applications stand disposed of accordingly.

12.8.2015.
SN

(K.C.PURI)
JUDGE