

**CM-11667-C-2014 in/and  
RSA-4948-2014(O&M)**

**-1-**

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

**CM-11667-C-2014 in/and  
RSA-4948-2014(O&M)  
Date of Decision: March 24, 2015**

Mewa Singh

.....Appellant

Versus

Gurpreet Singh and others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE NARESH KUMAR SANGHI**

Present: Mr.N.S.Swaitch, Advocate  
for the appellant.

.....

1. *Whether Reporters of local papers may be allowed to see the judgment ?*
2. *To be referred to the Reporters or not ?*
3. *Whether the judgment should be reported in the Digest?*

**Naresh Kumar Sanghi, J.(Oral)**

**CM-11667-C-2014**

The present application filed under Section 151, CPC,  
is for condonation of delay of 13 days in refiling the appeal

In view of the facts mentioned in the application, delay  
of 13 days in refiling the appeal is condoned.

CM disposed of.

**RSA-4948-2014**

By way of Regular Second Appeal, Mewa Singh appellant-plaintiff has challenged the judgment and decree dated 24.03.2014 passed by the learned District Judge, Fatehgarh Sahib, whereby the appeal filed by the appellant-plaintiff challenging the judgment and decree dated 11.02.2013 passed by learned Additional Civil Judge (Senior Division), Fatehgarh Sahib, was dismissed.

Tersely stated, the case of the appellant-plaintiff before the learned trial Court was that an agreement to sell, dated 07.01.2008, was entered into between Gurpreet Singh, respondent-defendant No.1 and appellant-plaintiff with regard to the land detailed in the head-note of the plaint and described in the judgments passed by both the Courts below. Respondent-defendant No.1 had to execute the sale-deed as per agreement on receipt of balance sale consideration. When respondent-defendant No.1 failed to execute the sale-deed, then finding no other alternative, the appellant-plaintiff was constrained to file the suit for specific performance of agreement to sell, dated 07.01.2008 of the land in dispute against respondent-defendant No.1 for getting the sale-deed executed as per averments in the

plaint on receipt of balance sale consideration and also sought declaration to the effect that sale-deed No.1013 dated 06.06.2008, executed by respondent-defendant No.1 in favour of respondent-defendant Nos.2 and 3 regarding the land in dispute be declared as illegal, null and void, inoperative, ineffective, result of collusion between the respondent-defendants and without consideration. It was further prayed that mutation sanctioned on the basis of said sale-deed be also declared as null and void. In addition, the appellant-plaintiff sought relief of recovery of Rs.3,00,000/- (Rupees three lacs only), i.e. earnest amount paid by appellant-plaintiff to respondent-defendant No.1 along with interest from the date of agreement to sell till final realisation thereof and also sought permanent injunction restraining respondent-defendant Nos.2 and 3 from alienating the land in dispute. Appellant-plaintiff averred that respondent-defendant No.1 had executed an agreement to sell, dated 07.01.2008, to sell the land in dispute to which respondent-defendant No.1 was the owner, for total sale consideration of Rs.8,50,000/- (Rupees eight lacs fifty thousand only) and at that time an amount of Rs.3,00,000/- (Rupees three lacs only) was paid as earnest money by the appellant-plaintiff to respondent-defendant No.1. The said

transaction was duly witnessed by the marginal witnesses of the agreement to sell. It was agreed that respondent-defendant No.1 would get the sale deed registered in favour of the appellant-plaintiff upto 06.01.2009 on receipt of the balance sale consideration and in case he (respondent-defendant No.1) failed to do so within the stipulated period, then the appellant-plaintiff would have right to get the sale-deed executed by enforcing the agreement through Court of law and in case the appellant-plaintiff failed to perform his part of the contract, in that eventuality, the earnest money paid by appellant-plaintiff would be forfeited. Respondent-defendant No.1 failed to execute the sale-deed in favour of the appellant-plaintiff within the stipulated period in spite of the fact that the appellant-plaintiff remained present in the Office of Sub Registrar, Fatehgarh Sahib, from 9.00 a.m. to 5.00 p.m. on 06.01.2009. Thereafter, the appellant-plaintiff attempted to contact respondent-defendant No.1 for execution of the agreement and getting the sale-deed registered but respondent-defendant No.1 avoided to meet the appellant-plaintiff. In the meantime, respondent-defendant No.1 sold the property in dispute to respondent-defendant Nos.2 and 3 vide Vasika No.1013 dated 06.06.2008. Even the mutation was

sanctioned in favour of respondent-defendant Nos.2 and 3 on the basis of the sale-deed executed in their favour.

Upon notice, the respondent-defendants appeared and contested the suit filed by the appellant-plaintiff. Respondent-defendant No.1 filed separate written statement. Several pleas were raised. Execution of the agreement to sell, dated 07.01.2008 by respondent-defendant No.1 in favour of the appellant-plaintiff was also disputed. It was also pleaded that appellant-plaintiff was a money lender and used to lend money on interest to the general public. It was also averred that respondent-defendant No.1 was in need of Rs.1,00,000/- (Rupees one lac only) and the appellant-plaintiff paid Rs.1,00,000/- (Rupees One lac only) to respondent-defendant No.1 on interest @ 2% per month. At that time, the appellant-plaintiff obtained signatures of respondent-defendant No.1 on blank papers and afterwards taking benefit of the said signatures, forged the agreement to sell. In fact, respondent-defendant No.1 had never agreed to sell his land to the appellant-plaintiff. It was also averred that the value of the land in dispute was Rs.22 lacs (Rupees Twenty-two lacs) per acre at the time of the alleged agreement to sell and, as such, it was not possible for

respondent-defendant No.1 to agree to sell the land in dispute for a meagre amount of Rs.8,50,000/- (Rupees Eight lacs and fifty thousand only). By and large, all the averments of the plaint were denied by respondent- defendant No.1 and he prayed for dismissal of the suit.

Respondent-defendant Nos.2 and 3 filed their joint written statement alleging that the appellant-plaintiff had no locus standi to file the suit; material facts were concealed; the agreement to sell executed between the appellant-plaintiff and respondent-defendant No.1 was also disputed and it was further averred that the said agreement to sell was illegal, null and void and if it was in existence, then the same was in collusion between the appellant-plaintiff and respondent-defendant No.1 so that the legal rights of respondent-defendant Nos.2 and 3 were defeated. They also pleaded that after paying the reasonable amount, respondent-defendant No.1 had executed the sale-deed in favour of respondent-defendant Nos.2 and 3 and, as such, they (defendant Nos.2 and 3) were bona fide purchasers for a valid sale consideration. Even the possession of the land in dispute was delivered to respondent-defendant Nos.2 and 3 and their names were entered in the revenue record.

On the basis of the pleadings of the parties, the following issues were framed by the learned trial Court:-

“1. Whether defendant No.1 had executed an agreement to sell dated 07.01.2008 in favour of the plaintiff? OPP

2 Whether the agreement dated 07.01.2008 is a forged and fabricated document? OPD

3. If issue No.1 and 2 are proved in favour of plaintiff, whether the plaintiff remained ready and willing to perform his part of the contract? OPP

4. Whether if all above issues are proved in favour of the plaintiff, whether the plaintiff is entitled to specific performance of the agreement or to alternate relief claimed for? OPP

5. Whether the defendants No.2 and 3 are bona fide purchasers without notice, for consideration without notice? OPD

6. Relief.”

In order to substantiate his version, appellant-plaintiff

Mewa Singh stepped into the witness box as PW1 and also

examined Sukhvir Singh as PW2; Ramdial Saddi as PW3; Karam Singh as PW4; Major Singh as PW5 and Bikram Jeet Singh as PW6. He also tendered into evidence certain documents and thereafter closed his case.

To rebut the evidence of appellant-plaintiff, respondent-defendant No.1 appeared as DW1 and also examined Jatinder Singh (respondent-defendant No.2) as DW2, Kuldeep Singh as DW3 and Balwinder Singh as DW4. Respondent-defendant Nos.2 and 3 also tendered into evidence copy of *Jamabandi* Ex.D2 and closed their evidence.

After hearing the arguments, the learned trial Court decided issue Nos.1 and 2 in favour of the appellant-plaintiff and against respondent-defendant No.1. Issue No.3 was also decided in favour of the appellant-plaintiff and against the defendants. Issue No.5 was decided in favour of respondent-defendant Nos.2 and 3 and against the appellant-plaintiff and hence, the suit was partly decreed. The said judgment and decree were challenged by the appellant-plaintiff before the learned District Judge, Fatehgarh Sahib, but the findings of the learned trial Court were upheld and the appeal filed by the appellant-plaintiff was dismissed.

At the very outset, learned counsel for the appellant-plaintiff submits that both the Courts below have gone wrong in not accepting the suit as a whole. In fact, the learned trial Court should have directed respondent-defendant No.1 to execute the sale-deed in favour of the appellant-plaintiff in terms of the agreement to sell dated 07.01.2008. However, he fairly concedes that alternate relief for return of the earnest money, i.e. Rs.3,00,000/- (Rupees three lacs only) along with interest has been correctly passed by the learned trial Court and upheld by the learned Appellate Court.

It was also argued that the learned trial Court has miserably failed to hold that the sale-deed executed by respondent-defendant No.1 in favour of respondent-defendant Nos.2 and 3 was null and void.

Perusal of the material available on record would reveal that the sale-deed executed by defendant No.1 in favour of defendant Nos.2 and 3 dated 06.06.2008 (Ex.D1) was much prior to filing of the suit on 16.01.2009. In order to substantiate their version, respondent-defendant No.2 stepped into the witness box as DW2 and tendered into evidence his sworn affidavit Ex.DW2/A. He deposed that before purchasing the land

in dispute from respondent-defendant No.1, detailed enquiries from revenue authorities regarding pendency of any litigation and the title of the property in dispute were made. It was further deposed that respondent-defendant No.1 never disclosed the fact that he (respondent-defendant No.1) had ever entered into an agreement to sell of the disputed property in favour of the appellant-plaintiff. Kuldeep Singh had appeared as DW3 and deposed in tune with respondent-defendant No.2. It was also well proved by respondent-defendant Nos.2 and 3 that adequate amount was paid to respondent-defendant No.1 by respondent-defendant Nos.2 and 3 at the time of execution of the sale deed (Ex.D1) in their favour. On the other hand, the appellant-plaintiff has failed to substantiate his version to the effect that respondent-defendant Nos.2 and 3 were not the bona fide purchasers. He also miserably failed to substantiate that in order to defeat his (appellant-plaintiff) right, the sale-deed was executed in favour of respondent-defendant Nos.2 and 3.

This Court is of the firm view that both the Courts below have rightly arrived at a consensus that appellant-plaintiff was entitled to the alternate relief of recovery of Rs.3,00,000/- (Rupees three lacs only) along with interest, which was paid to

respondent-defendant No.1 as earnest money. It was also rightly held that the appellant-plaintiff was entitled to proportionate costs.

No other point has been urged.

No question of law, much less substantial, as raised in the grounds of appeal, arises in this appeal for consideration.

Both the Courts below have given cogent reasons for granting alternate relief to the appellant-plaintiff and declining his prayer for accepting the plea of getting the sale deed executed in favour of the appellant-plaintiff by respondent-defendant No.1 and, as such, there is no merit in the present appeal and the same is hereby dismissed.

**March 24, 2015**  
meenu

**(NARESH KUMAR SANGHI)**  
**JUDGE**