

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

**1** **RSA No.4643 of 2012 (O&M)**  
**Date of Decision-12.07.2016**

Gurlal Singh and another --- Appellants

Versus

Baldev Singh and another --- Respondents

**2.** **CR No.2943 of 2014**

Gurlal Singh and another --- Appellants

Versus

Baldev Singh and another --- Respondents

**CORAM:-HON'BLE MR. JUSTICE RAJ MOHAN SINGH**

Present: Mr. Avtar Singh Bhatti, Advocate for the appellants.

Mr. Ranjit Saini, Advocate for the respondents.

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**RAJ MOHAN SINGH, J.**

[1]. Vide this common judgment, RSA No.4643 of 2012 titled as Gurlal Singh and another Vs. Baldev Singh and others and CR No.2943 of 2014 titled as Gurlal Singh and another Vs. Baldev Singh and others are being disposed of.

[2]. For the sake of convenience, facts are being taken from RSA No.4643 of 2012.

[3]. Defendants No.2 and 3 have preferred this appeal against the judgment and decree dated 11.08.2012 passed by Additional District Judge, Tarn Taran vide which judgment and decree dated 13.05.2011 passed by Civil Judge, Junior Division, Patti was set aside and the suit of the plaintiff was decreed.

Defendant No.3 was directed to get the sale deed executed and registered in favour of the plaintiff in respect of suit land within a period of 2 months and all the defendants were directed to join hands in execution and registration of the sale deed. Plaintiff was directed to deposit an amount of Rs.5,03,000/- in the trial Court within a period of one and a half month payable to defendants No.2 and 3 in equal shares.

[4]. Plaintiff-respondent No.1 filed suit for possession by way of specific performance and mandatory injunction directing the defendants to execute and register the sale deed in his favour in respect of suit land as depicted in the head-note of the plaint. Relief for permanent injunction was also sought, restraining the defendants from alienating the suit land in favour of any other person except the plaintiff.

[5]. Plaintiff alleged that defendant No.1 was owner in possession of 9 kanals 6 marlas of land along with half share in the tubewell connection, bore and motor etc. Bargain was struck between the plaintiff and defendant No.1 in respect of suit land along with half share in the tubewell connection for a consideration of Rs.5,03,000/-. Defendant No.1 executed a sale deed in favour of the plaintiff on 28.05.2009 for a consideration of Rs.5,03,000/-. The sale deed was scribed by Resham Singh. Sukhdev Singh and Baldev Singh in the presence of Sarpanch Mohan Singh and Bakhshish Singh put their signatures and thumb

impressions respectively as attesting witnesses. When the sale deed was to be produced before the Sub Registrar, Patti, defendant No.1 slipped away without disclosing anything to the plaintiff. Defendant No.1 evaded execution and registration of sale deed for one pretext or the other. On 02.06.2009, plaintiff come to know that defendant No.1 was going to execute the sale deed in favour of defendants No.2 and 3. Plaintiff approached Tehsil Complex and moved an application to the Tehsildar disclosing that defendant No.1 had already executed the sale deed in his favour. The application of the plaintiff was endorsed to the registration Clerk. At the same time, defendants No.1 to 3 came and the plaintiff apprised them about the sale deed executed by defendant No.1 in his favour.

[6]. Plaintiff alleged that defendants did not care to appreciate the claim of the plaintiff and refused to accept the request of the plaintiff. Plaintiff also alleged that defendants No.2 and 3 were not bona fide purchaser of the suit land in good faith as they were already apprised of the drafted sale deed which was to be registered before the Sub Registrar in favour of the plaintiff.

[7]. Suit was contested by defendant No.1 on the ground that the plaintiff had suppressed material facts as defendant No.1 agreed to sell the suit land for a sale consideration of Rs.12 lacs in lump sum. The sale deed was to be executed for Rs.5.03,000/-. The plaintiff agreed to pay the balance sale consideration before

the Sub Registrar before registration of the document. An amount of Rs.6,70,000/- was to be paid and the expenses towards stamp papers were to be divided equally. Plaintiff never paid the amount of balance consideration of Rs.6,70,000/-, nor he paid the half share of the expenses towards stamp papers. Therefore, defendant No.1 refused to register the sale deed before the Sub Registrar, Patti and the amount of Rs.5,03,000/- was not in possession of the plaintiff at the relevant time. At that time, plaintiff told defendant No.1 that he will pay the entire sale consideration after registration of the sale deed. Suit was claimed to be not maintainable. On 02.06.2009, sale deed was executed by defendant No.1 in favour of defendants No.2 and 3. Defendants No.2 and 3 were claimed to be bona fide purchaser besides, taking other objections, defendant No.1 claimed for dismissal of the suit.

[8]. Similarly, defendants No.2 and 3 contested the suit claiming that they were bona fide purchaser of the suit land on the basis of sale deed dated 02.06.2009. Suppression of facts by the plaintiff were alleged, besides taking other objections, they also prayed for dismissal of the suit.

[9]. After filing replication by the plaintiff, parties went to trial on the following issues:-

*“1. Whether the plaintiff is entitled to specific performance with mandatory injunction as prayed for? OPP*

*2. Whether the plaintiff is entitled to permanent injunction possession as prayed for? OPP*

*3. Whether the plaintiff has suppressed the material facts? OPD*

*4. Whether the suit is not maintainable and plaintiff has no locus standi? OPD*

*5. Whether the defendant Nos.2 and 3 are bona fide purchasers in good faith for consideration and are protected under Section 41 of Transfer of Property Act? OPD*

*6. Whether the Court has no jurisdiction? OPD*

*7. Whether the suit is not properly valued? OPD*

*8. Relief.”*

[10]. Both the parties led their respective evidence to prove their case. Plaintiff himself appeared as PW1 and got examined Subhash Chander as PW2 and Resham Singh scribe of Ex.P1 as PW3. Mohan Singh was examined as PW4 who was witnessed to Ex.P1.

[11]. On the other hand, defendant No.1 got himself examined as DW1 and also examined Surat Singh as DW2, scribe of the document Ex.D1. Bahal Singh was examined as DW3 who was witnessed to the sale deed Ex.D1. Gurjit Singh stepped into witness box as DW4.

[12]. Plaintiff examined Paramjit Singh Reader of Tehsildar, Patti in rebuttal as PW5 in respect of marking of attendance by the plaintiff on 02.06.2009.

[13]. Trial Court dealt with issues No.1, 2 and 5 jointly and decided all these issues against the plaintiff and in favour of the defendants. Issues No.3, 4, 6 and 7 were not pressed by the defendants. Ultimately, the suit was dismissed vide judgment and decree dated 13.05.2011.

[14]. Plaintiff went in appeal before the lower Appellate Court. Lower Appellate Court held defendants No.2 and 3 to be not bona fide purchaser without notice of execution of draft sale deed Ex.P1 dated 28.05.2009 by defendant No.1 in favour of the plaintiff in view of application submitted by the plaintiff in the office of Sub Registrar which was duly endorsed and was proved by Paramjit Singh, Reader to Tehsildar, Patti. The lower Appellate Court reversed the judgment and decree of the trial Court vide judgment and decree dated 11.08.2012. That is, how, the present regular second appeal came to be filed.

[15]. Following substantial questions of law have been framed by the appellants in the grounds of appeal:-

*“(i). Whether the appellants are bona fide purchaser and liable to be protected under Section 41 of the Transfer of Property Act?*

*(ii). Whether suit of the plaintiff is maintainable?*

*(iii). Whether the plaintiff affixed proper court fee on the suit?*

*(iv). Whether first appellate court by decree the suit of the plaintiff has caused grave miscarriage of justice to the appellants?”*

[16]. I have heard the arguments on both sides and have also perused the record.

[17]. The entire controversy hinges upon the fact that whether defendants No.2 and 3/appellants can be considered as bona fide purchaser for a lawful consideration. No doubt, sale deed Ex.P1 was drafted/executed between the plaintiff and defendant No.1, but the same was not registered. The draft document did not mention about any payment having been paid by the plaintiff to defendant No.1. Since the document was not registered, therefore, the document cannot fall under the category of sale deed as it did not satisfy mandatory requirement of Section 17 read with Section 49 of the Registration Act, 1908. The document at the most could have been considered for collateral purposes only. The plea that appellants/defendants No.2 and 3 were bona fide purchaser was solely dependent upon the evidence of notice of intended transaction between the plaintiff and defendant No.1 arising out of drafted sale deed. In this regard, Paramjit Singh, Reader of Tehsildar, Patti was examined as PW5. Statement of PW5 Paramjit Singh would reveal that the plaintiff filed an application on 02.06.2009 with the plea that Sukhdev Singh had executed a sale deed in favour of defendants No.2 and 3. It was stated by plaintiff-Baldev Singh that defendant

No.1 Sukhdev Singh had already executed sale deed in his favour and it was to be executed on 28.05.2009. Prayer was made by plaintiff-Baldev Singh that the sale deed could not be registered because Sukhdev Singh defendant No.1 had already executed the sale deed in his favour. The witness while deposing in examination-in-chief identified the signature of Rajesh Sharma Tehsildar and submitted photocopy of the application as Mark-A.

[18]. Perusal of the statement of Paramjit Singh Reader to Tehsildar, Patti would show that the witness did not depose with regard to filing of application by the plaintiff in the presence of defendants No.2 and 3. As per cross examination of the witness, an application filed by the plaintiff was endorsed by the Tehsildar and the same was handed over to the plaintiff in original. The original of the application was not produced by the plaintiff and it was alleged that the same was given to the registry clerk by the plaintiff. No registry clerk was examined by the plaintiff, therefore, production of application as Mark-A could not be proved on record in terms of execution. Mark-A on record could not make out any head and tale viz-a-viz receipts of the application and endorsement made by Tehsildar under his signature. Admittedly, the application was given to the plaintiff in original as per cross examination of the Reader of the Tehsildar, but the same was not produced by the plaintiff in original. Reader was examined only in rebuttal and he could not narrate as to why the original was not

produced by the plaintiff. Mark document was ruled out on consideration by the trial Court.

[19]. Plaintiff in para No.9 of the plaint pleaded that land measuring 4 kanals i.e. 80/3805 share of land measuring 190 kanals 5 marlas was mortgaged in favour of the plaintiff and his brother Major Singh for a consideration of Rs.55,000/- for a period of 5 years but the said fact was not mentioned in the sale deed. Surprisingly, despite pleading the aforesaid fact, no evidence was led by the plaintiff. No case was ever built up on said plea by the plaintiff. Admission made by the Reader in respect of filing of application Mark-A cannot cloth the document Mark-A to be lawfully executed and proved document on record. The photostat copy of Mark-A even otherwise was not proved in terms of its execution. Plaintiff was the best person to prove his case for not adducing the original copy of application which was allegedly handed over to him by the Tehsildar and the same was handed over to registry clerk in original. Plaintiff was legally required to examine registry clerk to show that the original was available with him. No effort was made to prove the loss of the document, nor any application for producing secondary evidence was made by the plaintiff. If the document Mark-A is ruled out from consideration, appellants/defendants No.2 and 3 would fall under the category of bona fide purchaser.

[20]. Next question which arises for consideration before this Court is whether unregistered sale deed can be termed to be an agreement of sale? Learned counsel for the respondents referred to Section 77 of Registration Act and contended that even after drafting the sale deed the same could not be presented for registration. Section 77 of the Registration Act was not attracted and a comprehensive suit for specific performance of agreement (treated to be oral agreement) seeking direction for registration of sale deed was maintainable. Admittedly, there was no agreement to sell in the present case. Only a draft sale deed was relied for the intentions of the parties viz. plaintiff and defendant No.1 for execution and registration of sale deed. It was not a case of completed transaction/sale deed.

[21]. Learned counsel for the respondents by referring to **Kalavakurti Venkata Subbaiah Vs. Bala Gurappagari Guruvi Reddy, AIR 1999 SC 2958** and **S. Kala Devi Vs. V.R. Somasundaram and others, 2010(2) RCR (Civil) 824** contended that in case of unregistered sale deed, oral agreement between vendor and vendee to sell the property can be inferred where full consideration was proved to have been paid by vendor to vendee. The refusal by the vendee at the time of registration of sale deed was taken to be an instance to show that unregistered sale deed could have been treated as admissible piece of evidence. The tendering of unregistered sale deed though was not an evidence of complete sale but was a proof of oral agreement to sell

between the parties and unregistered sale deed can be received an evidence of oral agreement to sell under proviso to Section 49 of the Registration Act.

[22]. In the instant case, even as per the recital in the draft/unregistered sale deed, nothing was paid at the time of preparing draft sale deed as the total amount of Rs.5,03,000/- was to be received at the time of registration of the sale deed before the Sub Registrar. In view of aforesaid, the analogy as projected on the strength of S. Kaladevi's case (supra) was not attracted to the instant case. Since, it was not a case of agreement to sell, therefore, in the absence of any payment made by the plaintiff to defendant No.1, the unregistered sale deed even if considered a document for collateral purposes could not project true picture of the claim of the plaintiff. If the aforesaid aspect is read in consonance with the evidentiary value of Mark A than the case of the plaintiff falls through. Substantial question of law No.1 does not arise in the present case as appellants/defendants No.2 and 3 were proved to be bona fide purchaser for a lawful consideration. Questions No.2 to 4 are not the questions of law much less substantial questions of law.

[23]. In view of aforesaid discussion, this Court feels that the lower Appellate Court has misread the evidence of Parmjit Singh Reader to Tehsildar, Patti and had erroneously come to the conclusion that defendants No.2 and 3 were having knowledge of

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intended registration of sale deed between the plaintiff and defendant No.1. Since the application Mark-A could not be proved in terms of execution, the draft sale deed without any recital of payment of full consideration could not be relied as an instance of oral agreement between the parties. Even for collateral purposes the document lacked bona fide in view of stand taken by defendant No.1 in the written statement.

[24]. Having considered the controversy in detail, I am of the view that the impugned judgment and decree dated 11.08.2012 passed by the lower Appellate Court is not sustainable in the eyes of law and therefore, the same is hereby set aside. Appeal is allowed, dismissing the suit of the plaintiff. Parties are left to bear their own costs.

[25]. As a consequence of decision of RSA No.4643 of 2012, the revision petition i.e. CR No.2943 of 2014 filed by defendants No.2 and 3 has become infructuous and the same stands dismissed as rendered infructuous.

**(RAJ MOHAN SINGH)**  
**JUDGE**

12.07.2016

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