

IN THE HIGH COURT OF PUNJAB AND HARYANA,
AT CHANDIGARH

RSA No. 1885 of 2016 (O&M)

Date of Decision: 10.11.2016

Sh.Jhandu (since deceased) through LRs

.... Appellants

Vs.

Atalvir and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. Jasbir Singh Ahlawat, Advocate,
for the applicants-appellants.

AMOL RATTAN SINGH, J.

CM No. 4997-C-2016

This is an application filed under Order 22 Rule 3 CPC, by the legal representatives of the appellant-defendant, Jhandu, who is stated to be the vendor of the suit land, by which they seek to be impleaded as his LRs, so as to enable them to file the accompanying appeal, Jhandu having died after the passing of the judgment and decree of the learned lower appellate Court.

Though no death certificate of Jhandu has been annexed with the application, however as the applicants, whose name are given in para 2 of the application, are all depicting themselves to be the sons and daughters of Jhandu, I see no reason to reject the application and consequently, the application is allowed subject to all just exceptions and the legal heirs heirs of Jhandu, as are named in paragraph 2 of the application, are ordered to be taken on record as his Legal Representatives, to represent his interest as

appellants in this appeal.

RSA No. 1885 of 2016

This appeal has been filed by the first defendant, now represented by his LRs, in a suit filed by respondent no.1 (hereinafter referred to as a plaintiff), seeking possession of the suit land, by way of specific performance of an agreement of sale, with the consequential relief of permanent injunction also sought.

The suit was partly decreed only against the appellant herein, by the learned Additional Civil Judge (Sr.Div.), Bahadugarh.

Against the aforesaid judgment and decree the plaintiff preferred an appeal before the learned District Judge, Jhajjar, with defendant no.3, Banwari Lal also having filed an appeal, arraying the plaintiff as the first respondent and the present appellant and defendant no.2, as proforma respondents.

2. The learned Ist Appellate Court allowed the appeal of the plaintiff and decreed his suit in toto, while dismissing the appeal filed by Banwari Lal, defendant no.3.

No appeal has been filed by Banwari Lal before this Court, with only the legal representatives of defendant no.1 in the suit, i.e. Jhandu, having preferred the present appeal.

3. As per the suit of the plaintiff, the late appellant herein, Jhandu (hereinafter referred to as the appellant) was owner in possession of agricultural land measuring 85 kanals fully described in the plaint, situated in the revenue estate of village Soldha, Tehsil Bahadurgarh, District Jhajjar. On 20.01.2006, Jhandu entered into an agreement to sell 60 kanals out of the aforesaid holding to the plaintiff, Atalvir, @ ₹5,85,000/- per acre,

together with all easmentary rights. An advance amount / earnest money of ₹4 lacs was stated to have been paid to the appellant at the time of the agreement and it was contended that the sale deed was to be executed on or before 20.05.2006, upon payment of the remainder amount of ₹39,87,500/-.

It was further contended that in case of failure by Jhandu to execute the deed, the plaintiff would be entitled to get it executed through a court of law.

4. However, it was further contended in the plaint that as the appellant-vendor failed to execute the sale deed, he was “confronted before the Biradari Panchayat” on 31.01.2006 and before the Panchayat, the appellant is stated to have agreed to execute the sale deed within two weeks.

He not having done so, a legal notice was issued to him on 15.02.2006 asking him to remain present before the Sub Registrar on 27.02.2006 to execute the deed. He not having come present then too, the plaintiff got his presence “marked” before the Sub Registrar by executing an affidavit in that regard.

The appellant is stated to have replied to the legal notice informing the plaintiff that the suit land had actually been sold to defendant no.2, Rajesh Devi, who had further sold it to one Banwari Lal, defendant no.3 in the suit.

5. Consequently the plaintiff instituted the suit in the present lis on 10.04.2006, seeking a declaration that the sale deeds dated 06.02.2006 and 18.04.2006, and the agreement dated 27.06.2005, stated to have been executed by the appellant with defendants no.1 & 2, be declared to be illegal, null and void and further, that defendant no.3, Banwari Lal, be injuncted against alienating the suit land.

Alternatively, recovery of ₹ 4 lacs with interest @ 18% per annum was prayed for in the suit.

6. Upon notice issued, initially the present appellant-defendant no.1, as also defendant no.2, Rajesh Devi, filed their written statements and it seems that actually Banwari Lal had not been impleaded at that stage as a defendant, but filed an application under Order 1 Rule 10 CPC, seeking to be so impleaded, which was allowed.

He too filed a written statement contending that he was a bonafide purchaser of the suit land for valuable consideration, who did not have notice of the pendency of the suit.

It is further recorded in the judgment of the learned Civil Judge, that actually it was thereafter that the amended plaint was filed and an amended written statement was taken on record to the above effect (seemingly by defendants no.1 and 2).

7. The present appellant wholly denied the agreement between him and the plaintiff, further denying that any “Biradari Panchayat” was convened, and yet further denying receipt of any legal notice dated 15.02.2006, or filing any reply thereto.

It was contended by the appellant that the suit land had actually already been agreed to be sold to Rajesh Devi, defendant no.2, and was finally sold to her vide a registered sale deed dated 06.02.2006, for a consideration of ₹29,40,000/-. She, in turn, had further alienated it to Banwari Lal vide a registered sale deed dated 18.04.2006.

Hence, dismissal of the suit was prayed for by the present appellant.

8. A similar version is stated to have been given by Rajesh Devi

in her written statement, stating that she had entered into an agreement with the appellant, Jhandu, on 27.02.2005, with her having advanced a sum of ₹5 lacs to him by way of earnest money on 27.06.2005, against a separate receipt issued.

Further, defendant no.2 also reiterated that she had sold suit land to defendant no.3, Banwari Lal, on 18.06.2006.

9. A similar stand was taken by defendant no.3 in his written statement, claiming to have become owner in possession of 59 kanals 7 marlas of the total suit land vide a registered sale deed dated 18.04.2006, after sale consideration was duly paid by him.

10. No replication having been filed, the following issues were framed by the learned Additional Civil Judge:-

“1. Whether the plaintiff is entitled to a decree for possession by way of specific performance of contract with regard to the land mentioned in para no.1 of the plaint?OPP

2. Whether the agreement dated 27.06.2005 between the defendants no.1 & 2 and the sale deeds nos. 7471 dated 6.2.2006 and 239 dated 18.04.2006 are illegal, null and void and not binding on the plaintiff and defendant no.3 is liable to be restrained from alienating, leasing out, mortgaging the suit property during the pendency of the suit?OPP

3. Whether, in the alternative, the plaintiff is entitled to a decree for recovery of ₹4 lacs with interest @ 18% per annum from date of agreement till realization of the

amount along with stamp and Court fee charges?OPD

4. *Whether the suit is pre-mature and is liable to be dismissed?OPD*

5. *Whether the suit is liable to be dismissed on the ground that the property in dispute is not identifiable?OPD*

6. *Whether the plaintiff has no locus-standi to file the present suit?OPD*

7. *Whether the suit is not maintainable in the present form?OPD*

8. *Whether the plaintiff has not come to the court with clean hands and the material facts have been suppressed by the plaintiff? If so, to what effect?OPD*

9. *Whether the plaint does not disclose any cause of action and is liable to be dismissed?OPD*

10. *Whether the plaintiff is estopped from filing the present suit due to his own act and conduct?OPD*

11. *Whether the defendants no.2 & 3 being the bonafide purchasers are protected under Section 41 of the Transfer of Property Act?OPD*

12. *Relief.”*

11. The plaintiff, Atalvir, examined eight witnesses, including the Registry Clerk, a Handwriting and Fingerprint Expert, himself, another Registry Clerk, the deed writer, Sh.Somvir Joon, Advocate and Sh. R.S.Lochhab, Advocate.

He also tendered various documents in evidence, including the

agreement dated 20.01.2006 and a 'fard jamabandi' for the year 1998-99.

The sale deeds dated 06.02.2006 and 18.04.2006 were also tendered, but not as exhibited documents and simply as Marks B & C respectively.

The affidavit of the plaintiff executed before the Sub Registrar and reply dated 01.03.2006, to the legal notice dated 15.02.2006, were also led in evidence.

12. The defendants examined the present appellant, one Satpal, Hoshiyar Singh, defendant no.2 Rajesh Devi and defendant no.3 Banwari Lal, further tendering various documents in evidence, including the original sale deed dated 06.02.2006 as Ex.D1, a special power of attorney in favour of the aforesaid Satpal as Ex.D2, and the agreement to sell dated 26.07.2005 (also shown to be Ex.D2), a receipt of the same date, Ex.D3 and the sale deed dated 18.04.2006 as Ex.D4. The agreement dated 26.07.2005, a mutation no.2817, another receipt and a photo copy of the jamabandi for the year 1998-99 were also tendered as marked documents, as detailed in the judgment of the learned Additional Civil Judge.

13. Upon appraising the evidence and the pleadings, the learned Additional Civil Judge held that the village of the appellant vendor not being such a big village, it was not possible that its inhabitants would not know of the acts of the sale and purchase of land, which was also corroborated by PW2, Anil. Hence, it was held that the plaintiff who had undoubtedly executed an agreement with the present appellant on 20.01.2006, could not claim to be a bonafide purchaser who had no knowledge of the earlier agreement entered into by the appellant with defendant no.2, Rajesh Devi.

It was further held that there was no proof of a “Biradari Panchayat” having been held at the instance of the plaintiff, with the appellant vendor having agreed to execute a sale deed within two weeks, i.e. by 27.02.2006.

Further elaborating on the aspect of the agreement in favour of Rajesh Devi, including the fact that it was inadvertently shown to be dated 27.06.2005 whereas it was actually 26.07.2005, it was held that the plaintiff was not entitled to a decree of specific performance, the agreement with Rajesh Devi having been executed before that with the plaintiff.

However, with the agreement of the present appellant with the plaintiff also having been proved to be executed and ₹4 lacs having been paid by the plaintiff also having been proved, he was held entitled to recovery of the aforesaid sum, along with interest thereupon @ 18% per annum, running from the date of the agreement, i.e. 20.01.2006, till the date of realisation of the amount.

14. An issue having been framed whether defendants no.2 & 3 being bonafide purchaser are protected under Section 41 of the Transfer of Property Act, it was held by the Additional Civil Judge that with Rajesh Devi having entered into an agreement with the present appellant, Jhandu, on 26.07.2005, i.e. prior to the institution of the suit on 10.04.2006, her title to the suit property was protected and was not hit by principle of lis pendens. However, with the third defendant, i.e. Banwari Lal, having failed to prove that he had ever agreed to purchase, or that he had purchased, the suit land without any notice of the pendency of the suit, he was held not entitled to such protection and therefore the said issue was decided in favour of defendant no.2 and against defendant no.3.

15. As already noticed, the plaintiff, Atalvir, filed an appeal before the first appellate Court, against the aforesaid judgment and decree, as did Banwari Lal against the aforesaid finding against him.

16. The learned District Judge, after appraising the entire evidence, found that as regards the execution of the agreement between the present appellant-defendant no.1 and the plaintiff, dated 20.01.2006, it stood duly proved and in any case, defendant no.1, i.e. Jhandu, had not challenged that finding, nor in fact had even defendant no.3, Banwari Lal, done so in his appeal.

Discussing the testimony and the report of the Fingerprint Expert (PW3), to the effect that the thumb impression on the said agreement was that of Jhandu, it was held that Jhandu was not a truthful man and with the Advocate, Sh. Somvir Joon, PW7, also having deposed with regard to having replied to the notice issued to the present appellant, Jhandu, it had to be concluded that the agreement dated 20.01.2006 was executed by Jhandu in favour of the plaintiff.

17. As regards the agreement dated 26.07.2005, relied upon by defendant no.2 to have been executed in her favour by the appellant Jhandu, it was found that her husband, Satpal, DW2 and the said defendant herself, as DW4, had admitted that they had very warm relation with Jhandu, with Satpal also being related to him.

Further findings were recorded that the stamp paper for the said agreement dated 26.07.2005 was in fact purchased in the name of Satpal and not Rajesh Devi and further yet, she had failed to disclose the name of the deed writer, who had typed it out, and Satpal also could not disclose the name of the stamp vendor from whom he had purchased stamp paper.

Hence, with all these three circumstances seen together, it was held by the learned District Judge that as a matter of fact, the agreement of sale dated 26.07.2005, had been ante-dated by Jhandu in connivance with defendant no.2, Rajesh Devi, her husband Satpal and DW3 Hoshiyar Singh.

On the aforesaid reasoning, it was held that Rajesh Devi could not claim to be a bonafide purchaser of the suit land and consequently, the finding of the trial Court on that issue was reversed.

18. With the main issue having been decided in favour of the plaintiff, the others were also decided against the defendants, including on the transfer of the property to the subsequent vendee, Banwari Lal.

On the aforesaid findings, the suit of the plaintiff was decreed in toto, holding him entitled to a decree of possession by way of specific performance, upon him paying the balance sale consideration in Court within two months.

Thus, the appeal of the plaintiff was accepted and that filed by defendant no.3, Banwari Lal, dismissed.

19. Before this Court, Mr.Ahlawat, learned counsel for the appellants, submitted that firstly, the learned lower appellate court has wholly erred in holding that just because the stamp paper was purchased in the name of the witness, Satpal, it could not be believed that the agreement executed, which was actually in favour of his wife Rajesh Devi, respondent no. 2, was a valid agreement.

He further submitted that the agreement with Atalvir, respondent no. 1, having been entered into on 21.01.2006, which in any case is not in dispute, cannot be honoured, in view of the fact that Atalvir cannot be stated to be a *bona fide* purchaser, he admitting even in his cross-

examination that in a small village, transactions qua land, including agreements for sale of land, are usually known to every person. Therefore, it is contended that he being of the same village, it cannot be believed that he did not know of an earlier transaction between Rajesh Devi, with Jhandu, the appellant-plaintiff. He further submitted that PW-2, Anil Kumar, also testified to the same effect.

He has further relied upon a judgment of a co-ordinate Bench of this Court in **Shiv Charan** vs. **Siri Ram and another** (2008) 2 PLR 645, to submit that simply on surmises and conjectures, cogent evidence led cannot be brushed aside.

He has, still further, relied upon a judgment of the hon'ble Supreme Court in **Thiruvengada Pillai** vs. **Navaneethammal and another** 2008 (2) RCR (Civil) 262, to submit that simply because there was some irregularity in the purchase of stamp papers, the agreement could not be disbelieved.

A judgment of a Single Bench of the Chhattisgarh High Court, in **Asha Pandey and others** vs. **D.K. Dubey** 2010 (42) RCR (Civil) 103, to the same effect, has also been relied upon by learned counsel.

Mr.Ahlawat further submitted that the courts below have not considered even the fact that earnest money of Rs. 5,00,000/- was paid on 27.07.2005 by Rajesh Devi, to the appellant.

20. Having considered the arguments, I do not find any ground to interfere in the judgment of the learned lower appellate court, for the reason that the agreement with respondent no. 1, Rajesh Devi, (shown to have been executed prior to the agreement with respondent no. 1, Atalvir), itself has been disbelieved by that Court, on the ground that Jhandu, i.e. the appellant-

plaintiff, was not a believable witness, as he even denied ever having engaged Sh. S.S. Joon, Advocate, as his counsel, who had testified to the effect that a reply to the legal notice sent by the plaintiff, had been issued by him on behalf of the present appellant.

It was further held by that Court that DW-2, Satpal, husband of Rajesh Devi, had not disclosed the name of the stamp vendor from whom they had purchased the stamp paper, nor had they produced any deed writer who drafted the agreement dated 26.07.2005. Hence, seen with the fact that both Satpal and Rajesh Devi admitted to having a close relationship with Jhandu, I see no reason to differ with the conclusion of the District Judge to the effect that the only inference that could be drawn was that had the register of the stamp vendor been produced by defendant no.2 (Rajesh Devi), it would have let the “cat out of the bag”.

On the aforesaid reasoning the learned lower appellate court held that the agreement dated 26.07.2005 had been ante-dated by the appellant, Jhandu, in connivance with Rajesh Devi, her husband Satpal and Hoshiyar Singh, and as such, it could not be relied upon and consequently, there being no appeal having been filed (before that Court), by the appellant or Rajesh Devi, qua the finding by the learned Civil Judge that the said agreement with respondent-plaintiff Atalvir had actually been executed, that agreement was to be honored, by granting a decree of specific performance.

21. It is further to be noticed by this Court that this appeal has been filed by the LRs of the defendant vendor, i.e. Jhandu and not by the alleged vendee (Rajesh Devi) in whose favour an agreement is stated to have been entered into prior in time to the agreement entered into by Jhandu with the respondent-plaintiff Atalvir. Rajesh Devi is a respondent arrayed

in this appeal by the LRs of Jhandu.

Thus, other than the finding of the lower appellate Court that Jhandu, having denied even engaging his own counsel, was not a believable witness, it is not possible for this Court to believe that the agreement entered into with respondent Rajesh Devi was a genuine agreement, as neither she, nor even the alleged subsequent vendee, Banwari Lal (defendant no.3 in the suit), who were both contended to be bonafide purchasers of the suit land, have bothered to challenge the judgment and decree of the learned lower appellate Court. If indeed they were bonafide purchasers of the suit land, with consideration already having been paid to Jhandu by Rajesh Devi and to Rajesh Devi by Banwari Lal, then the decree of the suit for specific performance in favour of the plaintiff, would have first affected them and actually not the LRs of Jhandu, who in any case had already sold off the land for consideration. Thus, it would seem to this Court, as was held even by the lower appellate Court, that the agreement with Rajesh Devi was only ante dated to defeat the suit of the respondent-plaintiff.

Hence, with neither Rajesh Devi or Banwari Lal being even co-appellants in this appeal, the inference that would be drawn by this Court is that if the appeals were to be allowed, the land would actually revert back to the LRs of Jhandu and not to the aforesaid two persons, they actually not being genuine buyers thereof.

22. As regards the contention of Mr. Ahlawat with regard to no finding having been recorded by the learned lower appellate court on the issue of the earnest money of Rs. 5,00,000/- paid on 27.07.2005, undoubtedly the learned counsel is correct to the extent that the lower

appellate court has not dealt with the issue after noticing the evidence led by the parties. However, that alone, in the opinion of this Court, would not prove that the agreement dated 26.07.2005 in favour of Rajesh Devi was a validly executed one and was not actually an agreement that was ante-dated, in view of the fact that the only persons who deposed in favour of such consideration having passed, (i.e. the earnest money of Rs. 5,00,000/-), were the witnesses for the appellant, with no documentary proof thereof.

23. Hence, in the circumstances given herein above, including those given by the learned lower appellate court, I find no ground to interfere with the judgment of that court and consequently, finding no merit in this appeal, it is dismissed in *limine* but with no order as to costs.

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In view of the fact that the appeal itself has been dismissed on merits, without notice having being issued, the question of condoning the delay of 10 days in re-filing and 47 days in filing the appeal, is rendered academic and is not gone into.

**(AMOL RATTAN SINGH)
JUDGE**

November 10, 2016
nitin/davinder

Whether speaking/reasoned	Yes
Whether Reportable	Yes