

CM Nos. 12550-C and 12551-C of 2016 in/and -1-
RA-RS-117-C-2016 in
RSA No. 2113 of 2011

IN THE HIGH COURT OF PUNJAB AND HARYANA,
AT CHANDIGARH

CM No. 12550-C and 12551-C of 2016 in/and
RA-RS-117-C-2016 in
RSA No. 2113 of 2011
Date of Decision: 28.09.2016

Jalifo and others

.....Appellants

Vs.

Nawab Ali and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. Sunil K. Nehra, Advocate,
for the applicant-appellant No. 4.

AMOL RATTAN SINGH, J. (ORAL)

By this review application, the judgment of this Court dated 05.08.2011 is sought to be reviewed, primarily on the ground that the decree issued in favour of the plaintiffs-respondents, by the learned Civil Judge, was based upon a fraud perpetuated by the respondents *inter se*, in collusion with each other, against the applicants-appellants.

The judgment and decree having been upheld in the first and second appeals, it is contended that the judgment of this Court in the 2nd appeal is liable to be reviewed on the basis of the fraud alleged to have been perpetuated upon the appellants by the respondents-plaintiffs.

2. It is contended by Mr. Nehra, that prior to the agreement allegedly entered into by Tayab, i.e. the predecessor-in-interest of the appellants, husband of appellant No.1 and father of appellants No. 2 and 3,

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on 01.04.1998, an agreement to sell some land was entered into by the father of Tayab and Ashraf Ali (Farjand Ali) on 17.11.1995, with appellant No.6 (Asra). Pursuant to that agreement 4 marlas of land were actually transferred in favour of appellants No.4 to 6, but the suit land remained untransferred and it was actually to honour the commitment made by the late Farjand Ali, that his son, the late Tayab, subsequently transferred the suit land also in favour of appellants No.4 to 6.

It is further contended that the agreement to sell set up by the respondents-plaintiffs, dated 01.04.1998, was actually never entered into by Tayab, who testified to that effect in the present *lis*, but subsequently died.

The said agreement being the result of fraud and collusion between the respondents-defendants, is also sought to be proved from the fact that one of the attesting witnesses thereto was Kurban, whose sister-in-law (brothers' wife) is the sister of the respondents.

Consequently, this witness deposed in favour of the respondents, stating that the agreement by Tayab had been entered into in his presence. The other witness, i.e. Prem Pal Saini, in fact had testified that the earnest money was not paid in his presence, but that he had verified from Tayab at the time of attesting the agreement (Ex.P-1), that Tayab had actually received it.

Learned counsel further submits that now the respondents-plaintiffs have transferred the suit land to their sister, Sadiqan, who is the wife of the brother of the attesting witness, Kurban.

Thus, he submits that the entire transaction of first creating an agreement to sell, with Kurban as an attesting witness along with Prem Pal

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Saini, and thereafter getting Kurban to testify in Court to being the attesting witness, and the suit therefore, being decreed in their favour of the respondents-plaintiffs, emanates from a fraud perpetuated in collusion between the defendants.

Therefore, Mr. Nehra submits, that the judgment of this Court dated 05.08.2011 deserves to be reviewed.

3. Having considered the aforesaid, it is seen that, naturally, it would be necessary to first go into the issue of whether at all a fraud was perpetuated, because other than the fact that Kurban, who is obviously not a direct beneficiary as per the aforesaid contention, but is sought to be shown as such beneficiary by way of his brothers' wife having benefited from the transaction, further, this Court would then need to take into consideration the agreement to sell now referred to, dated 17.11.1995, which was never exhibited before the Courts below, or even at the time when this second appeal was heard and disposed of.

In effect, it would mean that the application under Order 41 Rule 27 CPC, which has now been filed along with this appeal, seeking to place on record by way of additional evidence, the aforesaid agreement as also the mutation stated to have now been entered in favour of the aforesaid Sadiqan, would need to be gone into, in a review application in a second appeal, which review application has also been filed after a delay of 1835 days, i.e. about five years.

Mr. Nehra has contended that as regards the additional evidence, the mutation obviously came into existence only last year, i.e. on 07.04.2015 and as regards the agreement dated 17.11.1995, between the

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father of the late Tayab, i.e. between Farjand Ali and one of the appellants, it also came into the knowledge of the appellants only recently, as it is stated to have been earlier not known but discovered only now, allegedly as it had been misplaced.

In the opinion of this Court, even if all contentions were to be *prima facie* accepted, it would still be stretching the power of review, as also the jurisdiction conferred under Order 41 Rule 27 (c) too far. A review application is entertainable under Section 114 of the Code of Civil Procedure read with Order 47 thereof, if there is a discovery of a new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the applicant or could not be produced by him at the time when the decree or order was passed, or if there is a mistake or error apparent on the face of the record of the order or decree passed or, in fact, even for any other sufficient reason which the Court may consider.

However, even though it has been contended that the agreement entered into between Farjanad Ali and appellant No. 6, Asra, was not discovered or it had been misplaced, and was eventually discovered/rediscovered only shortly before the filing of this review application, at this stage, that too after a delay of 1835 days, to entertain such additional evidence, is not correct, in the opinion of this Court, the appeal itself having been dismissed in *limine* on 05.08.2011.

As such, I find no ground to entertain this review application, both, on the ground of an inordinate delay in filing it, as also for the reason that in a review application filed after a delay of more than five years, additional evidence, would not be acceptable.

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Consequently, finding no merit in the application, it is dismissed in *limine*, with no orders as to costs.

**(AMOL RATTAN SINGH)
JUDGE**

September 28, 2016
vcgarg/nitin

Whether speaking/reasoned	Yes
Whether Reportable	Yes