

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

1. CR No.4934 of 2000 (O&M)
Date of decision : 26.09.2017

Chhotu Ram

...Petitioner

Versus

Hem Raj Jain, (since deceased) through his LRs and others

...Respondents

2. RSA No.4769 of 2012 (O&M)
Date of decision : 26.09.2017

Prem Chand

...Appellant

Versus

Saroj Jain and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL.

Present: Mr. Rajesh Sethi, Advocate and
Mr. Arun Biriwal, Advocate and
Mr. Tushar Gera, Advocate for the petitioner
(In CR No.4934 of 2000)

Mr. Vikas Kumar, Advocate
for the appellant (In RSA No.4769 of 2012)

Mr. M.L. Saggar, Sr. Advocate with
Mr. Rohit Joshi, Advocate
for the respondent No.1 (In CR No.4934 of 2000)

Mr. Sanjiv Gupta, Advocate and
Mr. Gaurav Mohunta, Advocate
for respondent Nos.2 to 5 (In CR No.4934 of 2000)

Mr. Saurabh Mago, Advocate
for respondent Nos.5 and 6 (In RSA No.4769 of 2012)

Mr. Ashok Verma, Advocate for the applicant
(In CM No.19625-CII of 2004 in CR No.4934 of 2000)

Mr. Sapan Dhir, Advocate for the applicant
(In CM No.25564-CII of 2010)

ANIL KSHETARPAL, J.

By this common judgment, I shall be disposing of Civil
Revision No.4934 of 2000 and Regular Second Appeal No.4769 of 2012.

FACTS:-

Chhotu Ram was allotted a plot No.952, Sector-8, Panchkula by
Haryana Urban Development Authority vide allotment letter dated
29.04.1980. He entered into an agreement to sell with regard to the
aforesaid property with Sh. Hem Raj Jain on 17.05.1980. On that day,
Chhotu Ram executed an agreement to sell, a general power of attorney duly
registered with the Sub-Registrar and a Will in favour of Sh. Hem Raj Jain.
He disputes the written agreement to sell. However, he admits that there was
an oral agreement to sell and he received payment of ₹9489.95 in cash and
₹7741/- by way of bank draft. It is further admitted that remaining amount
was to be paid by Hem Raj to Haryana Urban Development Authority
directly.

The possession of the plot was also handed over to Hem Raj
Jain.

Chhotu Ram become dishonest and cancelled the Will as well

as general power of attorney on 21.10.1980.

The agreement to sell provided for dispute resolution through sole Arbitrator Sh. Hans Raj Bansal. Hem Raj Jain requested the Arbitrator to resolve the dispute. Sh. Hans Raj Bansal entered into a reference and issued notices to Chhotu Ram. However, Chhotu Ram could not be served although number of attempts were made. Ultimately, notices were got published in two newspapers-one English Daily and second Hindi newspaper directing Chhotu Ram to appear on 06.03.1982. Apart from that, the Arbitrator also sent notices through registered A.D. and UPC. The registered letter was received back with the remark "refused returned to addressee".

Since, Chhotu Ram did not appear, therefore, the Arbitrator proceeded ex parte against him. During the arbitration proceedings, attesting witness of the agreement to sell namely Baldev Singh was examined. After noticing the facts and the evidence produced, the Arbitrator passed an award. The relevant part of the award is extracted as under:-

"11. Relief:- The irrevokable power of attorney Ex.C3 executed by Sh. Chhotu Ram in favour of Sh. Hem Raj Claimant, which was revoked illegally by Shri Chhotu Ram by his letter dt. 13.5.81, is hereby revived.

ii) That the transfer which is made by Sh. Chhotu Ram in favour of his real brother, of plot in dispute is declared illegal and inoperative and is hereby cancelled. The original agreement to sell Ex.C1 is revived.

iii) It is also declared that the claimant Sh. Hem Raj is rightfully in actual physical possession of plot No.952, Sector 8, Panchkula. It is further ordered that Sh. Chhotu

Ram should make all arrangements to transfer the plot in dispute in favour of Sh. Hem Raj Jain.”

Initially, Hem Raj Jain filed an application under Section 14(2) read with Section 17 of the Indian Arbitration Act before the Court of Subordinate Judge, Chandigarh. However, the same was rejected on the ground that the Court at Chandigarh does not have territorial jurisdiction. Thereafter, Hem Raj Jain moved an application before the Subordinate Judge, Ambala for making the award as Rule of the Court. Before the Subordinate Judge, the Arbitrator also filed an application for making the award a Rule of the Court. During the proceedings before the Subordinate Judge, Ambala, Chhotu Ram was summoned and he filed objections praying that the award is liable to be set aside under Sections 30 and 33 of the Arbitration Act, 1940. Execution of the agreement to sell was disputed. It was further disclosed that Chhotu Ram has transferred the plot in favour of his brother Prem Chand after getting permission from the authorities.

The objections filed by Chhotu Ram were found to be beyond the prescribed time as per Article 119 of the Schedule attached to the Limitation Act. It was noticed that the objections have been filed after more than one year from the date the notice was served upon the Objector informing him about filing of the award. It may be noticed that Chhotu Ram appeared in the Court on 26.09.1984. The case was adjourned to 22.10.1984 for filing objections. However, Chhotu Ram did not appear and was proceeded ex parte. Later on, he moved an application for setting aside ex parte proceedings. Ex parte proceedings were set aside on 10.04.1985. Objections were filed after a period of seven months of setting aside of ex

parte proceedings. After appreciating the evidence available on the file, the learned Subordinate Judge made the award a Rule of the Court vide judgment dated 12.10.1992.

Appeal filed by Chhotu Ram was also dismissed by learned Additional District Judge, Panchkula while giving detailed reasons.

Chhotu Ram has filed this revision petition, which was admitted. Now this case has come up for final arguments in 2017.

I have heard learned counsel for the parties at length. Learned counsel for the petitioner-Chhotu Ram has made following submissions:

- i) Original agreement to sell was not produced before the Arbitrator and only a copy was produced which could not be examined by the Arbitrator.
- ii) The award is required to be registered and since it is not registered, therefore, the award cannot be enforced.
- iii) As per Clause 12 of the allotment letter, there is a restriction on the transfer of the plot and, therefore, the agreement to sell cannot be enforced. Both the parties were under a mistake at the time when agreement to sell was executed and, therefore, the agreement to sell cannot be enforced.
- iv) Application before the Subordinate Judge was barred by time.
- v) Haryana Urban Development Authority and Prem Chand are not party to the proceedings, therefore, no direction can be issued to the Haryana Urban Development Authority.
- vi) The Arbitrator has misconducted.

On the other hand, learned counsel for Hem Raj Jain has

submitted that relief granted by the Arbitrator does not create any right in the immovable property. He further submits that original agreement to sell was duly produced before the Arbitrator and a photocopy thereof was retained and original was seen and returned. He has further submitted that Chhotu Ram had applied for permission to Haryana Urban Development Authority seeking transfer of the plot in favour of Hem Raj Jain vide letter dated 27.05.1980. Chhotu Ram had also executed an affidavit, indemnity bond and handed over all the original documents of the allotment of the property in dispute to Hem Raj Jain.

DISCUSSIONS:-

i) Original agreement to sell was not produced before the Arbitrator and only a copy was produced which could not be examined by the Arbitrator:-

A reading of the award passed by the Arbitrator do show that the photocopy of the agreement to sell has been exhibited as Ex.C1. The Arbitrator was an Advocate. He knew the procedure as to how the agreement is to be exhibited. Still further, a reading of the judgment passed by the Subordinate Judge shows that the petitioner did not raise this contention either before the Subordinate Judge, or before the First Appellate Court.

Still further, the original agreement to sell has been produced by the counsel for the respondents before me. In these circumstances, there is no force in the argument of learned counsel for the petitioner.

ii) The award is required to be registered and since it is not registered, therefore, the award cannot be enforced:-

In this regard, as noticed above, the operative part of the award which has been reproduced above is not creating any right in immovable property. As per Haryana Urban Development (Disposal of Land and Buildings) Regulations 1978, the allottee is not entitled to transfer his right in the land/building except with the previous permission of the Estate Officers.

The property continues to vest in the Haryana Urban Development Authority till the entire payment is made to Haryana Urban Development Authority. It is thereafter the Haryana Urban Development Authority executes a conveyance deed in favour of the transferee. The allottee is not entitled to execute the sale deed in favour of transferee directly. In view of the aforesaid fact, the Arbitrator has only issued directions to Chhotu Ram to make all arrangements to transfer the plots in dispute in favour of Hem Raj Jain. In fact, Chhotu Ram was not the owner of the property. He was merely a allottee. A reading of the agreement would show that Chhotu Ram had not made entire payment to the Haryana Urban Development Authority and purchaser had retained a sum of ₹23,250/- for payment to Haryana Urban Development Authority.

One can examine the issue from another angle. Chhotu Ram had agreed to transfer his allotment rights to Hem Raj Jain. It was the case of transfer of actionable rights. Chhotu Ram was not the owner of the plot till that day. He had only agreed to transfer the rights under the allotment letter. Therefore also the award was not required to be registered.

In view of the discussion made above, it is held that the award

is not creating any right in the immovable property for the first time and, therefore, the award was not required to be registered.

iii) As per Clause 12 of the allotment letter, there is a restriction on the transfer of the plot and, therefore, the agreement to sell cannot be enforced. Both the parties were under a mistake at the time when agreement to sell was executed and, therefore, the agreement to sell cannot be enforced:-

In this respect, it is found that there is no absolute bar on the transfer of the plot. Clause 12 of the allotment letter reads as under:-

“12. The land/building shall continue to belong to the Authority until the entire consideration money together with interest and other amount, if any, due to the Authority on account of sale of such land or building or both is paid. You shall have no right to transfer by way of sale, gift, mortgage, or otherwise the plot/building or any right, title or interest therein till the full price is paid to the Authority, except with the prior permission of the competent authority.”

It is clear from the reading of the aforesaid Clause that with prior permission, the property could be transferred. Haryana Urban Development (Disposal of Land and Buildings) Regulations 1978, also provide for the same procedure. It is not in dispute that Chhotu Ram did apply to Haryana Urban Development Authority for permission to transfer the plot in favour of Hem Raj Jain.

Therefore, there is no force in the submission of learned counsel for the petitioner that the agreement was on account of mistaken belief by both the parties.

iv) Application before the Subordinate Judge was barred by time:-

It is not in dispute that on passing of the award, application was submitted before the Subordinate Judge at Chandigarh. Subordinate Judge, Chandigarh held that it lacks territorial jurisdiction. Thereafter, application was filed before the Subordinate Judge, Ambala. An application under Section 14 of the Limitation Act was filed for excluding the time spent in the proceedings before the Chandigarh Court. The application was allowed. Therefore, there is no force in the submission of the learned counsel.

v) Haryana Urban Development Authority and Prem Chand are not party to the proceedings, therefore, no direction can be issued to the Haryana Urban Development Authority:-

There is no force in the submission of the learned counsel as Haryana Urban Development Authority is only an agency which develops the urban areas. The agreement containing the arbitration clause was between Chhotu Ram and Hem Raj Jain. In these proceedings, Haryana Urban Development Authority or Prem Chand were not required to be impleaded as party.

vi) The Arbitrator has misconducted:-

Counsel for the petitioner could not point out any specific instance to show the misconduct of the Arbitrator. The Arbitrator gave repeated notices to Chhotu Ram. However, Chhotu Ram failed to appear before the Arbitrator. The Arbitrator after examining all the documents and after noticing the evidence produced before him, has passed a speaking award. Therefore, there is no force in the submission of learned counsel.

CONCLUSION:-

For the reasons recorded above, there is no force in the revision petition, the same is dismissed with a cost of ₹50,000/-.

RSA No.4769 of 2012

This appeal has been filed by Prem Chand, the brother of Chhotu Ram.

Prem Chand filed a suit seeking declaration that he is absolute owner of residential plot bearing No.952, Sector-8, Urban Estate, Panchkula on the basis of transfer/allotment letter dated 10.11.1980 and conveyance deed dated 26.04.2007 registered with the Sub-Registrar on 03.05.2007.

Both the Courts have dismissed the suit, finding that suit is abuse of the process of the Court as the Arbitrator had given an award with respect to the aforesaid property on 31.03.1982 and objections and appeal have been dismissed.

Learned counsel for the appellant could not address any meaningful arguments to show how the concurrent judgments passed by the Courts below are erroneous.

Prem Chand is a brother of Chhotu Ram. It has been found that Chhotu Ram had agreed to transfer the plot in question in favour of Hem Raj Jain vide agreement to sell dated 17.05.1980. Chhotu Ram had also executed General Power of Attorney, Will, Indemnity Bond and Affidavit. Chhotu Ram had applied to the Haryana Urban Development Authority for permission to transfer the plot in favour of Hem Raj Jain. Chhotu Ram had also admitted the receipt of the agreed amount. The possession of the plot was also delivered to Sh. Hem Raj Jain.

Further in view of the detailed discussion made while deciding Civil Revision No.4934 of 2000 which are not being repeated, this appeal is bound to be dismissed.

In view thereof, there is no scope for interference in the concurrent findings of fact arrived at by the Courts below.

Regular Second Appeal is dismissed.

Note:- Large number of applications have been filed to implead subsequent transferees as party respondents. All the applications are disposed of in terms of abovesaid judgment.

26.09.2017

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- **Yes/No**

Whether reportable:- **Yes/No**