

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of decision: 21.09.2017

1. CR No.6098 of 2015 (O&M)

Mollu Ram

... Petitioner

Vs.

Rashmi and others

... Respondents

2. CR No.7814 of 2015 (O&M)

Rashmi

... Petitioner

Vs.

Mollu Ram and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Rajesh Dhiman, Advocate for
Mr. Jagjeet Beniwal, Advocate
for the petitioner (in CR-6098-2015) and
for respondent No.1 (in CR-7814-2015).

Mr. Vijay Pal, Advocate
for the petitioner (in CR-7814-2015) and
for respondents No.1 & 2 (in CR-6098-2015).

RAMESHWAR SINGH MALIK, J. (ORAL)

These two identical civil revision petitions, one at the hands of

plaintiff-Mollu Ram and other by defendant No.1-Rashmi, filed under Article 227 of the Constitution of India, are directed against the similar orders passed by the learned trial Court, whereby two identical applications moved by defendants No.1 and 2 under Order 7 Rule 11 of the Code of Civil Procedure were allowed, directing the plaintiff-petitioner to pay ad-valorem Court fee. With the consent of learned counsel for the parties, both these revision petitions are being decided together vide this common order. However, for the facility of reference, facts are being culled out from CR No.6098 of 2015 (Mollu Ram Vs. Rashmi and others).

Notice of motion was issued.

Heard learned counsel for the parties.

It is a matter of record that plaintiff-petitioner has filed the suit for declaration for setting aside two sale deeds bearing No.9749 and 9778 of even date i.e. 09.01.2014, allegedly executed in favour of defendant No.1. Ground taken by the plaintiff-petitioner for challenging both the sale deeds is that the sale deeds were result of fraud and misrepresentation, without consideration and were obtained fraudulently. Thus, plaintiff-petitioner is the victim of fraud played upon him by the defendants, as alleged by the plaintiff in his plaint. Under these undisputed circumstances of the case, the learned trial Court exceeded its jurisdiction, while passing the impugned order dated 03.09.2015 (Annexure P-5), directing the plaintiff-petitioner to pay ad-valorem Court fee. This was the reason that while issuing notice of motion, operation of the impugned order was stayed by this Court. Having said that, this Court feels no hesitation to conclude that since the impugned order has

been found suffering from patent illegality and perversity, it cannot be sustained.

When confronted with the abovesaid factual as well as legal aspect of the matter, learned counsel for the defendants-respondents had no answer and rightly, so it being a matter of record. The law laid down by the Hon'ble Supreme Court in **Suhrid Singh @ Sardool Singh Vs. Randhir Singh and others, 2010 (12) SCC 112**, as relied upon by learned counsel for the defendants-respondents, is of no help to learned counsel for the respondents, the cited judgment being distinguishable on facts. Admittedly, in the matter before the Hon'ble Supreme Court in **Suhrid Singh's** case (supra), plea of fraud was conspicuously missing.

Further, it is the settled proposition of law that peculiar facts of each case are to be examined, considered and appreciated first before applying any codified or judgemade law thereto. Sometimes, difference of even one additional fact or circumstance can make the world of difference, as held by the Hon'ble Supreme Court in **Padmausundrao Rao and another Vs. State of Tamil Nadu and others, 2002 (3) SCC 533**, **Union of India Vs. Amrit Lal Manchanda and others, 2004 (3) SCC 75**, **State of Orissa Vs. Md. Illiyas, 2006 (1) SCC 275** and **State of Rajasthan Vs. Ganeshi Lal, 2008 (2) SCC 533**.

With a view to avoid repetition and also for the sake of brevity, the observations made by the Hon'ble Supreme Court in para 11 and 12 of its later judgment in **Ganeshi Lal's** case (supra), reiterating its earlier view taken in **Amrit Lal Manchanda's** case (supra) and **Mohd. Illiyas's** case (supra),

which can be gainfully followed in the present case, read as under:-

“11. “12....Reliance on the decision without looking into the factual background of the case before it is clearly impermissible. A decision is a precedent on its own facts. Each case presents its own features. It is not everything said by a Judge while giving a judgment that constitutes a precedent. The only thing in a Judge’s decision binding a party is the principle upon which the case is decided and for this reason it is important to analyse a decision and isolate from it the ratio decidendi. According to the well-settled theory of precedents, every decision contains three basic postulates; (i) findings of material facts, direct and inferential. An inferential finding of facts is the inference which the Judge draws from the direct, or perceptible facts; (ii) statements of the principles of law applicable to the legal problems disclosed by the facts; and (iii) judgment based on the combined effect of the above. A decision is an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically flows from the various observations made in the judgment. The enunciation of the reason or principle on which a question before a Court has been decided is alone binding as a precedent. (See: State of Orissa v. Sudhansu Sekhar Misra and Ors. (AIR 1968 SC 647) and Union of India and Ors. v. Dhanwanti Devi and Ors. (1996 (6) SCC 44). A case is a precedent and binding for what it

explicitly decides and no more. The words used by Judges in their judgments are not to be read as if they are words in Act of Parliament. In Quinn v. Leathem (1901) AC 495 (H.L.), Earl of Halsbury LC observed that every judgment must be read as applicable to the particular facts proved or assumed to be proved, since the generality of the expressions which are found there are not intended to be exposition of the whole law but governed and qualified by the particular facts of the case in which such expressions are found and a case is only an authority for what it actually decides. Coming to the peculiar fact situation obtaining on record of the present case, it is unhesitatingly held that learned Permanent Lok Adalat discussed, considered and appreciated each and every relevant aspect of the matter, before passing the impugned award. The only endeavour made by the learned Permanent Lok Adalat was to do complete and substantial justice between the parties and this approach adopted by learned Permanent Lok Adalat has been found well justified on facts as well as in law. Ed. See State of Orissa Vs. Mohd. Illiyas, (2006) 1 SCC 275 at p.282, para 12.

12. 15....Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are neither to be read as Euclid's theorems nor as provisions of the statute and that too taken out of

their context. These observations must be read in the context in which they appear to have been stated. Judgments of Courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes. In London Graving Dock Co. Ltd. V. Horton (1951 AC 737 at p.761), Lord Mac Dermot observed: (All ER p. 14 C-D)

"The matter cannot, of course, be settled merely by treating the ipsissima verba of Willes, J as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that most distinguished judge."

16. In Home Office v. Dorset Yacht Co. (1970 (2) All ER 294) Lord Reid said (at All ER p.297g-h), "Lord Atkin's speech.....is not to be treated as if it was a statute definition. It will require qualification in new circumstances." Megarry, J in Shepherd Homes Ltd. V. Sandham (No.2) (1971) 1 WLR 1062 observed: (All ER p. 1274d-e) "One must not, of course, construe even a reserved judgment of Russell L.J. as if it were an Act of Parliament." And, in Herrington v. British Railways Board (1972

(2) WLR 537) Lord Morris said: (All ER p. 761c)

"There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances made in the setting of the facts of a particular case."

17. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper.

15. The following words of Lord Denning in the matter of applying precedents have become locus classicus: (Abdul Kayoom v. CIT, AIR 1962 SC 680

"Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect, in deciding such cases, one should avoid the temptation to decide cases (as said by Cordozo) by matching the colour of one case against the colour of another. To decide therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive."

"Precedent should be followed only so far as it marks the path of justice, but you must cut the dead wood and trim off the side branches else you will find yourself lost in thickets and

branches. My plea is to keep the path to justice clear of obstructions which could impede it Ed. See Union of India Vs. Amrit Lal Manchanda, (2004) 3 SCC 75, pp. 83-84, paras 15-18."

It is pertinent to note here that defendant No.1 Smt. Rashmi still felt aggrieved against the impugned order passed by the learned trial Court allowing her application, because some observations on other aspects, including question of maintainability, lack of cause of action, limitation and concealment of facts etc. were not found acceptable to her. However, the learned trial Court was justified to observe that it would be premature to give any finding on the abovesaid aspects, unless the parties adduce their evidence on record. In this view of the matter, no fault can be found with the said observations made by the learned trial Court and instant civil revision petition filed at the hands of defendant No.1 is wholly misconceived and the same is liable to be dismissed.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that the impugned orders passed by the learned trial Court directing the plaintiff to pay ad-valorem Court fee has since been found suffering from patent illegality and perversity, the same cannot be sustained. Accordingly, the impugned order dated 03.09.2015 in CR No.6098 of 2015 is hereby set aside. However, the order dated 03.09.2015 passed by the learned trial Court, challenged by Smt. Rashmi-defendant No.1 against the abovesaid

observations made by the learned trial Court on maintainability of the suit, limitation and concealment of facts etc, has been found well justified and the revision petition bearing CR No.7814 of 2015 being wholly misconceived is liable to be dismissed. Accordingly, CR No.6098 of 2015 filed by the plaintiff Mollu Ram is allowed and CR No.7814 of 2015 filed by defendant No.1 Smt. Rashmi is dismissed.

Resultantly, with the abovesaid observations made, both these revision petitions stand disposed of, however, with no order as to costs.

[RAMESHWAR SINGH MALIK]
JUDGE

21.09.2017
vishnu

Whether speaking/reasoned Yes/No

Whether reportable Yes/No