

RSA No. 3543 of 2011 (O&M)
RSA No. 3547 of 2011 (O&M)
RSA No. 4520 of 2015 (O&M)

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

RSA No. 3547 of 2011 (O&M)
Date of Decision: 16.3.2017

Arjan Singh

.....Appellant

Vs.

Jit Kaur and others

.....Respondent

2.

RSA No. 3543 of 2011 (O&M)

Arjan Singh

.....Appellant

Vs.

Ninder Singh and others

.....Respondents

3.

RSA No. 4520 of 2015 (O&M)

Arjan Singh

.....Appellant

Vs.

Gurdeep Kaur and others

.....Respondent

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. Avtar Singh Khinda, Advocate
for the appellant.

Mr. Saurabh Arora, Advocate
for the respondents in RSA No. 3543 of 2011.

Mr. Sunil Chadha, Sr. Advocate with
Mr. Chetan Bansal, Advocate in RSA No. 3547 of 2011.

RAMESHWAR SINGH MALIK J. (ORAL)

These three identical regular second appeals bearing RSA Nos. 3543, 3547 of 2011 and 4520 of 2015, with the consent of learned counsel for the parties, are being decided together vide this common order, as all these three appeals are arising out of similar facts. However, for the facility of reference, facts are being culled out from RSA No. 3547 of 2011.

Feeling aggrieved against the impugned judgment of reversal dated 29.3.2011 passed by the learned District Judge, whereby judgment and decree dated 1.12.2009 of the learned trial court, dismissing the suit for declaration were set aside, allowing first appeal of the plaintiffs, defendant No.4-Arjan Singh, in all these three appeals, has approached this Court by way of these three regular second appeals.

Facts necessary for disposal of these appeals, as noticed by learned first appellate court in para 2 of its impugned judgment, are that Arjan Singh,-defendant No.4 was allotted total land measuring 38 ks-16Ms, as detailed in the head note of the plaint, on 10.1.1978 and the said land was transferred to him vide conveyance deed dated 3.11.1983. Mutation was also sanctioned on 17.11.1983. Out of the said land, defendant No.4 sold the land measuring 24 kanals, as detailed in the head note of the plaint vide registered sale deeds dated 9.11.1984 and 5.12.1996 to the plaintiff and possession of the same was delivered to him on the same very dates. Before its purchase, the plaintiff had gone through the revenue record, wherein, he

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was shown to be the owner of the land. After making complete inquiry, plaintiff purchased the said land for valuable consideration without any notice. There was no restriction in the conveyance deed or in the revenue record regarding the disputed land.

It was further alleged that at the instance of defendant No.4, his son moved a false and frivolous complaint to Chief Sales Commissioner, Kapurthala, for cancellation of the allotment and the same was dismissed on 16.5.2000. Appeal preferred to the same was accepted by the Commissioner, Jalandhar Division, Jalandhar, vide order dated 23.1.2002 and the allotment in favour of defendant No. 4 stood cancelled and the land was ordered to be resumed in favour of Government. Revision preferred against the said order was dismissed by the Financial Commissioner Revenue, Punjab, Chandigarh, vide order dated 7.5.2002. The said orders were illegal, null and void. There was no rider or bar in the conveyance deed or in the allotment letter that defendant No.4 Arjan Singh could not sell his land at all or for a period of 20 years. It was further case of the plaintiff that out of the total land measuring 38 Ks-16 Ms., Arjan Singh-defendant No.4 entered into an agreement to sell of 8 kanals of land with the plaintiff. When defendant No.4 failed to execute the sale deed in favour of the plaintiff, he filed a civil suit for specific performance of the agreement and the same was decreed on 8.11.1983 by the court of Sh. Surjit Singh, Senior Sub Judge, Kapurthala. There was a specific finding of the civil court that Arjan Singh was competent to sell his land and the revenue authority could not go behind that. There was also a specific finding of the civil court that there was no bar of 20 years on the land. The defendants under the garb of said illegal

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orders were trying to take forcible possession of the land in dispute from the plaintiff to which they had got no right.

In this background, the plaintiff filed suit for declaration to the effect that he was owner in possession of 24 kanals of land on the basis of registered sale deeds dated 9.11.1994 and 5.12.1996 of the suit land, as detailed in the head note of the plaint and the orders passed by Commissioner, Jalandhar Division, Jalandhar, dated 23.1.2002 and also by Financial Commissioner, Revenue, Punjab, Chandigarh, dated 7.5.2002, cancelling the allotment of land through conveyance deed dated 10.1.1978 in favour of Arjan Singh-defendant No.4, were wrong, illegal, null and void. It was also a suit for permanent injunction restraining the defendants from interfering in the possession of the plaintiff over the land in dispute.

Defendants were served in the suit. Officials defendants No.1 to 3 appeared and filed their joint written statement, raising more than one preliminary objections. Respondent No.4 filed his separate written statement. Plaintiffs filed replications. On completion of pleadings of the parties, learned trial court framed the following issues:-

- 1) Whether the plaintiff is owner in possession of the suit land?OPP
- 2) Whether the cancellation made on 7.5.2002 of the allotment made to Arjan Singh on 10.1.1978 is illegal, null and void and without jurisdiction?OPP
- 3) Whether the plaintiff is entitled to injunction as prayed for ? OPP
- 4) Whether the suit is not maintainable in its present form ? OPD
- 5) Whether no legal an void notice U /S 80 CPC was served upon the defendants before filing the present suit?

OPD

- 6) Whether no cause of action accrued to the plaintiff to file the present suit?OPD
- 7) Whether the plaintiff has not come to the court with clean hands, if so its effect?OPD
- 8) Whether the plaintiff has not affixed court fee on the ad-valorem value?OPD
- 9) Whether the suit is within limitation?OPD
- 10) Relief.

With a view to substantiate their respective pleaded cases, both the parties produced their documentary as well as oral evidence. After hearing learned counsel for the parties and going through the evidence brought on record, learned trial court came to the conclusion that plaintiffs have failed to prove their case. Accordingly, suit was dismissed vide judgment and decree dated 1.12.2009. Dissatisfied, plaintiffs filed their first appeals, which came to be allowed by the learned District Judge, vide impugned judgment and decree dated 29.3.2011. In fact, two identical appeals were decided by the learned District Judge on the same date but by different judgments. In the third case, suit of the plaintiff was decreed by both the learned courts below. Appeals filed by the State as well as defendant No.4 were dismissed together vide common judgment dated 6.4.2015 passed by the learned District Judge, Kapurthala. Hence these three regular second appeals at the hands of defendant No.4.

Heard learned counsel for the parties.

Facts are hardly in dispute. It is a matter of record that land measuring 38 kanals 16 marlas was allotted by the competent authority of the respondent-State to appellant-Arjan Singh, vide order dated 10.1.1978

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(Ex.D3). Pursuant to the allotment, conveyance deed dated 3.11.1983 (Ex. PC) came to be executed by the competent authority in favour of the allottee-appellant. Registered sale deed dated 9.11.1984 (Ex.PA) was executed by Arjan Singh in favour of respondent-State, selling land measuring 16 kanal. Thereafter, appellant-Arjan Singh entered into an agreement to sell dated 30.11.1989 with the respondent-State for land measuring 8 kanal. Plaintiff filed his earlier suit for possession by way of specific performance which was decreed by the learned trial court vide judgment and decree dated 8.11.1993 (Ex.PI). First appeal of Arjan Singh was dismissed by the learned first appellate court vide its judgment dated 5.12.1996 (Ex.PB).

Similarly, in RSA No. 3543 of 2011, Arjan Singh executed sale deed for land measuring 4 kanal on 21.11.1983 in favour of the plaintiff Ninder Singh. In RSA No. 4520 of 2015, Arjan Singh-appellant sold land measuring 5 kanals to Smt. Gurdeep Singh-plaintiff-respondent vide sale deed dated 27.11.1983.

After executing the abovesaid three sale deeds and having failed in suit for possession by way of specific performance for agreement to sell dated 3.11.1983, it seems that Arjan Singh-appellant got filed a complaint by his own children against himself before the Chief Sales Commissioner under Section 10 of the Punjab Package Deals Properties (Disposal) Act, 1976 ('the Act' for short), which was dismissed vide order dated 16.5.2000 (Ex.PX). However, appeal filed by the complainants as well as Arjan Singh was allowed by the Commissioner, Jalandhar Division, Jalandhar, vide order dated 23.1.2002 (Ex.PF). Vendees of Arjan Singh filed their revision

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petition before the Financial Commissioner under Section 15 (1) of the Act. This revision petition was dismissed by the Financial Commissioner, vide order dated 7.5.2002 (Ex. PG). Having been left with no other option, vendees filed these three civil suits for declaration to the effect that they were owners in possession on the basis of the abovesaid sale deeds and the orders of Commissioner as well as Financial Commissioner be set aside.

Two suits in RSA No. 3543 and 3547 of 2011 were dismissed. However, first appeals of the plaintiffs were allowed by the learned District Judge vide two identical impugned judgments of even date, i.e. 29.3.2011. Since the third suit filed by Smt. Gurdeep Kaur was pending, it was decreed by the learned trial court vide judgment and decree dated 6.10.2012. First appeals filed by the official defendants as well as by defendant No.4 were dismissed together vide common judgment dated 6.4.2015 in RSA No. 4520 of 2015.

A bare reading of the impugned judgments and decrees passed by the learned District Judge would make it crystal clear that he considered each and every relevant aspect of the matter, before passing the impugned judgments. Findings recorded by the learned District Judge have been found duly supported by sound reasons. So far as appellant is concerned, he had already gone out of picture, the moment he executed abovesaid three sale deeds and the agreement to sell which was ordered to be executed by way of civil court decree dated 8.11.1993. Once he has sold the suit land in favour of the plaintiffs in all these three cases and put the plaintiffs into possession after receiving the amount of consideration, he would have no say either on facts or in law. Having said that, this Court feels no hesitation to conclude

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that learned first appellate court in RSA No. 3543 and 3547 of 2011 and both the learned courts below in RSA No. 4520 of 2015, committed no error of law, while passing their respective impugned judgments and decrees, thus, the same deserve to be upheld.

In view of what has been discussed hereinabove, appellant has not been found to be a bonafide litigant. He has been misusing the process of law from time to time, contradicting himself while changing his stand as per his own suitability. Such a litigant is not entitled for any kind of relief from the courts of law. Under these circumstances, Section 16 of the Act regarding the bar of jurisdiction of civil court would not be attracted.

On the other hand, once appellant-Arjan Singh had already sold the suit land in favour of the plaintiffs much before 1991, these cases would be covered under Rule 10-A of the Act. This Rule 10-A of the Act came to be inserted vide notification dated 3.9.1991 and was made applicable w.e.f 13.9.1991. Under these circumstances, when the learned counsel for the appellant was confronted as to how, Full Bench judgment of this Court in **Smt. Niranjana Kaur and others Vs. The Financial Commissioner, Revenue & Secretary to Government, Punjab and others, 2010 (4) RCR (civil) 610**, would be applicable to the facts of the cases in hand, he had no answer and rightly so, it being a matter of record. In this view of the matter, it can be safely concluded that the learned first appellate court was well justified, while passing the impugned judgments and decrees and the same deserve to be upheld, for this reason also.

Appellant had been taking the justice delivery system for a ride. The moment he sold the suit land, he had no locus standi to contest the

genuine claim of the plaintiffs. He did not come to the court with clean hands. He has been found playing hide and seek with the authorities of the State Government as well as with the courts. It is the settled proposition of law no litigant can be permitted to misuse the process of law. It seems that appellant was trying to blackmail the plaintiffs, with a view to extract more money from them. His case was based on falsehood right from day one. Plaintiffs had purchased the suit land for due consideration. Under these undisputed facts and circumstances, it is unhesitatingly held that the learned first appellate court was well within its jurisdiction in passing the impugned judgments and decrees and the same deserve to be upheld, for this reason also.

On conduct of the litigants, observations made by Hon'ble the Supreme Court in para 31 to 35 of its judgment in Kishore Samrite Vs. State of U.P. and others, 2013 (2) SCC 398, which can be gainfully followed in the present case, read as under:-

“31. It has been consistently stated by this Court that the entire journey of a Judge is to discern the truth from the pleadings, documents and arguments of the parties, as truth is the basis of the Justice Delivery System.

32. With the passage of time, it has been realised that people used to feel proud to tell the truth in the Courts, irrespective of the consequences but that practice no longer proves true, in all cases. The Court does not sit simply as an umpire in a contest between two parties and declare at the end of the combat as to who has won and who has lost but it has a legal duty of its own, independent of parties, to take active role in the proceedings and reach at the truth, which is the foundation of administration of justice. Therefore, the truth

should become the ideal to inspire the courts to pursue. This can be achieved by statutorily mandating the Courts to become active seekers of truth. To enable the courts to ward off unjustified interference in their working, those who indulge in immoral acts like perjury, prevarication and motivated falsehood, must be appropriately dealt with. The parties must state forthwith sufficient factual details to the extent that it reduces the ability to put forward false and exaggerated claims and a litigant must approach the Court with clean hands. It is the bounden duty of the Court to ensure that dishonesty and any attempt to surpass the legal process must be effectively curbed and the Court must ensure that there is no wrongful, unauthorised or unjust gain to anyone as a result of abuse of the process of the Court. One way to curb this tendency is to impose realistic or punitive costs.

*33. The party not approaching the Court with clean hands would be liable to be non-suited and such party, who has also succeeded in polluting the stream of justice by making patently false statements, cannot claim relief, especially under Article 136 of the Constitution. While approaching the court, a litigant must state correct facts and come with clean hands. Where such statement of facts is based on some information, the source of such information must also be disclosed. Totally misconceived petition amounts to abuse of the process of the court and such a litigant is not required to be dealt with lightly, as a petition containing misleading and inaccurate statement, if filed, to achieve an ulterior purpose amounts to abuse of the process of the court. A litigant is bound to make “full and true disclosure of facts”. (Refer : **Tilokchand H.B. Motichand & Ors. v. Munshi & Anr. [1969 (1) SCC 110]**; **A. Shanmugam v. Ariya Kshatriya Rajakula Vamsathu Madalaya Nandhavana Paripalanai Sangam & Anr. [(2012) 6 SCC 430]**; **Chandra Shashi v. Anil Kumar Verma [(1995) SCC 1 421]**; **Abhyudya***

Sanstha v. Union of India & Ors. [(2011) 6 SCC 145]; State of Madhya Pradesh v. Narmada Bachao Andolan & Anr. [(2011) 7 SCC 639]; Kalyaneshwari v. Union of India & Anr. [(2011) 3 SCC 287)].

34. *The person seeking equity must do equity. It is not just the clean hands, but also clean mind, clean heart and clean objective that are the equi-fundamentals of judicious litigation. The legal maxim jure naturae aequum est neminem cum alterius detrimento et injuria fieri locupletiolem, which means that it is a law of nature that one should not be enriched by the loss or injury to another, is the percept for Courts. Wide jurisdiction of the court should not become a source of abuse of the process of law by the disgruntled litigant. Careful exercise is also necessary to ensure that the litigation is genuine, not motivated by extraneous considerations and imposes an obligation upon the litigant to disclose the true facts and approach the court with clean hands.*

35. *No litigant can play 'hide and seek' with the courts or adopt 'pick and choose'. True facts ought to be disclosed as the Court knows law, but not facts. One, who does not come with candid facts and clean breast cannot hold a writ of the court with soiled hands. Suppression or concealment of material facts is impermissible to a litigant or even as a technique of advocacy. In such cases, the Court is duty bound to discharge rule nisi and such applicant is required to be dealt with for contempt of court for abusing the process of the court. {**K.D. Sharma v. Steel Authority of India Ltd. & Ors. [(2008) 12 SCC 481].**}*

Before arriving at a just conclusion, learned District Judge rightly examined, considered and appreciated true facts of the case as well as evidence available on record, in the correct perspective. Cogent findings recorded by the learned District Judge in para 10 of its impugned judgment,

which deserve to be noticed here, read as under:-

“ I have given thoughtful consideration to the submission made by counsel for both the parties.

It is the case of the defendants that the suit land was allotted by defendant No.3 to defendant No.4 on the basis of possession, since, he belong to Scheduled Caste. The same was allotted to him under the Punjab Package Deal Properties, (Dispoal), Act, 1976 and a condition was laid down in the allotment and conveyance deed that he could not sell the same to any non-scheduled caste person for a period of 20 years. A plea has also been taken by defendant No.4 that he had taken some loan from the bank and the plaintiff had agreed to repay the said loan amount and in lieu thereof, the suit land was sold to him through two different sale deeds. Actually, no sale price was ever given by plaintiff to the said bank and thus, the said sale deeds cannot stand in the eyes of law. However, there is no evidence led by defendants to prove all these facts. Rather, the plaintiff had taken a right plea that he is bonafide purchaser with consideration without notice and was protected under Section 41 of the Specific Relief Act. He made bonafide inquiries before purchase of the suit land and had gone through the mutations, jamabandies, conveyance deed and allotment letter and in all these documents, he found that it was defendant No.4 who was owner in possession of the suit land and he sold that suit land to the plaintiff the rough these two sale deeds. The evidence led by the plaintiff further show that defendant NO.4 refused to sell 8 kanals of land as per the agreement executed between the parties and then, the plaintiff had to file a suit for specific performance against defendant No.4 in the civil court and the same was decreed vide judgment and

decree dated 8.11.1983 and the appeal preferred to the same by defendant No.4 had been dismissed. A clear cut finding had been given by the civil court judgment and decree that defendant No.4 was owner in possession of the suit land and he was bound to execute the sale deed of the suit land in favour of the plaintiff. When he refused to execute the decree, then, the same was got executed through the court of law. The revenue courts, i.e. the Commissioner, Jalandhar Division, Jalandhar, and the Financial Commissioner, Punjab, Chandigarh cannot interfere in the finding given by the civil court. So, they have traveled beyond their jurisdiction while cancelling the allotment order in favour of defendant No.4. The pleas taken by defendant No.4 and defendant No.1 to 3 have already been taken into consideration by the civil court, as discussed above, but the said pleas were not accepted by the civil court. Now, the same pleas have been agitated by these defendants and thus, now, they also cannot be taken into consideration. So, the plaintiff is protected under Section 41 of the Specific Relief Act.

The above discussion clearly shows that the plaintiff is in possession of the suit land and the cancellation order, i.e. 7.5.2002 of the allotment made to Arjan Singh on 10.1.1978 is illegal, null, void and without jurisdiction and the plaintiff is entitled to declaration and injunction prayed for. So, issues No.1, 2 and 3 are decided in favour of the plaintiff and the finding given by the trial court with respect to these issues against the plaintiff is set aside.”

During the course of hearing, learned counsel for the appellant failed to point out any patent illegality or perversity in the abovesaid findings recorded by the learned District Judge. He also could not refer to

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any question of law much less substantial question of law, which is sine qua non for entertaining a regular second appeal at the hands of this Court, while exercising its appellate jurisdiction under Section 100 of the Code of Civil Procedure. In this regard, reliance can be placed on the judgments of the Hon'ble Supreme Court in **Naryanan Rajendran and another Vs. Lekshmy Sarojini and others, 2009 (2) RCR (civil) 286** and **Santosh Hazari Vs. Purshottam Tiwari, 2001 (3) SCC 179.**

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 all these three appeals are misconceived, bereft of merit and without any substance. Thus, these must fail. No case for interference has been made out.

Resultantly, with the abovesaid observations made, all these three second appeals stand dismissed, however, with no order as to costs.

(RAMESHWAR SINGH MALIK)
JUDGE

16.3.2017
Ak Sharma

Whether speaking/reasoned Yes/No
Whether reportable: Yes/No