

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

Date of decision: 18.09.2017

1. RSA No.4317 of 2015 (O&M)

Surja (deceased) through LRs and others

... Appellants

Vs.

Lakhmi (deceased) through LRs and others

... Respondents

2. RSA No.3676 of 2015 (O&M)

Surja (deceased) through LRs and others

... Appellants

Vs.

Lakhmi (deceased) through LRs and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

**Present: Mr. I.D. Singla, Advocate
for the appellants.**

RAMESHWAR SINGH MALIK, J. (ORAL)

These two identical regular second appeals, at the hands of unsuccessful plaintiffs, directed against the separate but identical impugned judgments and decrees of both the learned Courts below, are being decided together vide this common order, with the consent of learned counsel for the appellants. Suit filed by the appellants for declaration and permanent injunction was dismissed by the learned trial Court vide its impugned judgment and decree

dated 07.12.2011 and counter-claim of subsequent vendees-defendants No.6 and 7 was decreed and two first appeals filed by the plaintiffs were also dismissed by the learned first appellate Court vide its impugned judgment and decree dated 19.03.2015, upholding the judgment and decree of the learned trial Court. However, for the facility of reference, facts are being culled out from RSA No.4317 of 2015 [Surja (deceased) through LRs and others Vs. Lakhmi (deceased) through LRs and others].

Brief facts of the case, as noticed by learned first appellate Court in para 2 of its impugned judgment, are that Surja (now through his LRs) and other plaintiffs/appellants filed suit against Lakhmi (now through LRs) and others of respondent set No.1/defendants set No.1 and against Sahab defendant No.6 and Vijay defendant No.7 of defendants set No.2 seeking declaration that sale deed No.8023 dated 27.03.2006 registered with Sub Registrar, Jind executed by the defendant set No.1 in favour of the defendant set No.2 for land measuring 30 Kanal 1 marla, as detailed in the head note of the plaint and also in the first para of the plaint. Plaintiff also assailed subsequent mutation sanctioned on the basis of said sale deed and also claimed that they were owner in possession of the suit property. The plaintiff also sought relief of permanent injunction restraining the defendants from interfering into their proprietary possession and from alienating the suit property.

The case set up by the plaintiffs was that they were owner in possession of the land measuring 7 kanal 11 marla on the basis of agreement dated 26.02.1975 vide which Surja (since deceased) had purchased the part of the suit land, while remaining suit land was purchased by Sultan (father of plaintiff Nos.2 to 6) for sale consideration of Rs. 5000/- and Rs.13,000/-

respectively. It was further pleaded that Sanwalia (since deceased) father of defendant set No.1 had received sale consideration of Rs.5,000/- from Surja and Rs.12,000/- out of total sale consideration of Rs.13,000/- from Sultan (since deceased) and remaining Rs.1,000/- was to be received by said Sanwalia at the time of execution of sale deed as per terms and conditions of agreement to sell dated 26.02.1975. He further pleaded that Sanwalia did not turn up in the village after delivering possession to Surja and Sultan and thereafter, plaintiffs were coming as owner in possession over the suit land. It was further pleaded that during pendency of civil suit No.44 of 03.10.2001, Smt. Kashturi died on 02.02.2002 but defendant set No.1 in connivance of defendant set No.2 got executed sale deed on 27.03.2006 by impersonating Smt. Kitabo as Smt. Kasturi regarding which FIR No.584 dated 04.11.2006 was lodged against defendant and others. Plaintiffs pleaded that above sale deed was mere paper transaction and possession was never transferred or delivered to defendant set No.2. The defendants were requested not to act illegally and get cancelled the abovesaid sale deed, but of no avail, which necessitated them to file present suit. It was also pleaded that cause of action accrued to the plaintiff on 21.09.2006 when plaintiffs came to know regarding execution of said sale deed. It was also pleaded that suit No.44 of 03.10.2001 between plaintiffs and defendant set No.1 was dismissed and appeal thereof was pending before District Judge, Jind. Suit for specific performance of the contract between the parties titled as Puran vs Lakhmi was pending. A prayer was made to decree the suit by setting aside the sale deed No.8023 dated 27.03.2006 and consequent mutation, if any, on the basis of said sale deed.

Defendants were put to notice. Defendants No.6 and 7 filed their

joint written statement, raising more than one preliminary objections, claiming themselves to be bonafide purchasers for due consideration. Defendants No.2 to 4 filed their separate written statement supporting the stand taken by defendants No.6 and 7. It is also pertinent to note here that defendants No.6 and 7 filed their counter-claim as well, seeking possession of the suit property on the basis of title. Plaintiff Surja, predecessor-in-interest of the appellants, filed his replication to the written statements as well as reply to the counter-claim.

On completion of pleadings of the parties, learned trial Court framed the following issues: -

1. Whether plaintiff No.1 is owner in possession of the agriculture land measuring 7 kanal 11 marlas compromised in khewat No.535, khatoni No.669, rect. No.24, killa No.16 (7-11) and plaintiff No.2 to 6 are owners in possession of agriculture land measuring 22 kanals 10 marlas comprised in khatoni No.670, Rect. No.25, killa Nos.11/2 (4-18), 20 (8-0), Rect. No.43, killa Nos.3/2 (4-7), 8/1 (4-12), khatoni No.668, khasra No.325 (0-10), 423 (0-3) total measuring 30 kanals 01 marla situated in the revenue estate of village Ramgarh Dhani as alleged? OPP.
2. Whether sale deed dated 27.03.2006 executed by defendants set No.1 in favour of defendants set No.2 and the subsequent mutation afresh thereafter, on the basis of impugned sale deed are illegal and liable to be set aside on the ground as alleged? OPP.
3. Whether plaintiffs are entitled for permanent injunction, if so to what effect? OPP.
4. Whether the suit of the plaintiff is not maintainable in the present

form as alleged? OPD.

5. Whether the plaintiffs have no cause of action and locus standi to file the present suit as alleged? OPD.
6. Whether the suit is barred by limitation? OPD.
7. Whether the suit is hit by the principle of res-judicata as alleged? OPD.
8. Relief.

In order to prove their respective stands taken in their pleadings, 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 plaintiff failed to prove his pleaded case for want of cogent and sufficient evidence, whereas defendants No.6 and 7 duly proved their counter-claim by producing cogent and convincing evidence. Accordingly, suit for declaration and permanent injunction filed by the plaintiffs was dismissed and counter-claim filed by defendants No.6 and 7 was decreed by the learned trial Court, vide its common impugned judgment and decree dated 07.12.2011.

Feeling aggrieved, plaintiffs filed two first appeals and defendants No.6 and 7 filed their cross-objections. First appeal filed by the plaintiffs was dismissed by the learned Additional District Judge, whereas the cross-objections filed by 2nd set of defendants i.e. defendants No.6 and 7 was allowed, modifying the decree of the learned trial Court passed in their counter-claim, directing that defendants No.6 and 7 shall be entitled to get possession of the suit land after paying Court fee as per the Court Fee Act, 1870, vide its impugned judgment and decree dated 19.03.2015. Hence these two identical

regular second appeals at the hands of unsuccessful plaintiffs.

Heard learned counsel for the appellants.

It has gone undisputed before this Court that plaintiff Surja entered into an agreement to sell dated 26.02.1975 with Sanwalia. Sanwalia was predecessor-in-interest of first set of defendants No.1 to 5. After entering into this agreement to sell dated 26.02.1975, Sanwalia disappeared and did not return to the village. It has also gone undisputed on record that at the time of execution of agreement to sell dated 26.02.1975, Sanwalia, vendor put his prospective vendee Surja-plaintiff in possession of the suit land. It is also not in dispute that on the basis of agreement to sell dated 26.02.1975, plaintiff Surja never filed any suit for possession by way of specific performance of agreement to sell. It has also not been disputed before this Court that the agreement to sell itself was not sufficient to confer any kind of title on the plaintiff namely Surja. After proper appreciation of the evidence brought on record, the learned Courts below recorded their concurrent findings of facts and hardly any fault can be found at the hands of this Court, because of which the impugned judgments and decrees deserve to be upheld.

It is also a matter of record that Civil Suit No.44 of 03.10.2001 was filed by Puran son of Sultan against Lakhmi-defendant No.1. It was a suit for specific performance, which came to be dismissed. During pendency of this suit, Smt. Kasturi died on 02.02.2002. First set of defendants executed sale deed dated 27.03.2006 in favour of second set of defendants. Plaintiff got registered FIR No.584 dated 04.11.2006 against the defendants and attesting witnesses alleging that the said sale deed dated 27.03.2006 was result of fraud and misrepresentation. Decision of the earlier Civil Suit No.44 of 03.10.2001 was

also taken as one of the preliminary objections by second set of defendants, pointing out that present suit of the plaintiffs was barred under Order 2 Rule 2 CPC.

It is not even the argued case on behalf of the appellants that either first appeal filed by Puran came to be allowed or any favourable action, at the instance of the plaintiffs, was taken against the defendants in the abovesaid FIR No.584 dated 04.11.2006. Having said that, this Court feels no hesitation to conclude that sale deed No.8023 dated 27.03.2006 executed by first set of defendants in favour of second set of defendants was rightly held to be a valid sale deed, non-suited the plaintiffs by both the learned Courts below. Similarly, counter-claim filed by second set of defendants i.e. defendants No.6 and 7 was rightly decreed by the learned trial Court and it was correctly modified by the learned first appellate Court, by passing their respective impugned judgments and decrees and the same deserve to be upheld, for this reason also.

Appellants, being the plaintiffs, onus was on them to prove their pleaded case. They should not have waited for the alleged weakness of the case of the defendants. However, the plaintiffs failed to bring on record any cogent and convincing evidence, so as to point out any illegality in the sale deed suffered by first set of defendants in favour of second set of defendants. In fact, first set of defendants were owners of the suit land and they had every right to execute the sale deed in favour of second set of defendants. On the other hand, plaintiffs kept on sleeping over their rights, if any and never filed any suit for specific performance of agreement to sell dated 26.02.1975.

Since second set of defendants were bonafide purchasers for due consideration, they were rightly found entitled for taking possession of the suit

land from the plaintiffs on the basis of title drawn by them through sale deed No.8023 dated 27.03.2006. Under these undisputed circumstances of the case, it can be safely concluded that the learned Courts below committed no error of law, while passing their respective impugned judgments and decrees and the same deserve to be upheld, for this reason as well.

Before arriving at his judicious conclusion, the learned Additional District Judge rightly examined, considered and appreciated true facts of the case as well as the evidence available on record, in the correct perspective. The relevant and cogent findings recorded by the learned first appellate Court in para 14 of its impugned judgment, which deserve to be noticed here, read as under: -

“Now diverting to the main appeal it is observed that it is third round of litigation preferred by the plaintiffs. Perusal of file indicate that Surja plaintiff had earlier filed a civil suit titled as Surja Vs. Lakshmi bearing civil suit no.325/05 instituted on 03.10.2001 and was decided on 06.02.2008 by the court of Ms. Vani Gopal Sharma, the then learned Civil Judge (Sr. Divn.) Jind and copy of the same is available on record as Ex.D- 1. The said suit was dismissed with observation that plaintiffs could not lead any cogent evidence and were not held entitled to decree for permanent injunction. Decree sheet thereof is Ex.D-2. Plaintiff preferred appeal and the same was dismissed. Civil appeal no.71/2008, filed by plaintiffs was decided on 11.09.2009 by cuort of District Judge Jind as so evident from Ex.D5. It was held by the appellate court from totality of circumstances neither possessory

right nor proprietary title was proved from agreement to sell (Ex. P-1). Plaintiff litigated another amount of litigation by filing suit for specific performance against defendant set no. 1 on the basis of agreement to sell dated 26.02.1975 which was dismissed vide judgment dated 12.09.2009 Ex.D-3 and decree sheet is Ex.D-4. Appeal against that judgment and decree is also stated to be dismissed. The suit seeking relief of permanent injunction civil suit no.325/05 and suit seeking specific performance of agreement to sell no.259/05 were pending when present suit was filed. Plaintiffs could have amended their earlier suit so as to seek relief as sought in the present suit. In the pleadings it is mentioned that plaintiffs came to know that defendants set no.1 had executed main sale deed no.8023 dated 27.03.2006 in favour of the defendant set no.2 on 21.09.2006 but no effort was made to array the defendants set no.2 or to bring these facts on record in the earlier suits. It is also pointed out that in the appeal, judgment of which is available on record as Ex.D-5 the defendant set no.2 were made party under order 22 rule 10 CPC after substituting the other defendant Lakshmi etc. Hence, from earlier suits and litigation it is evident that the plaintiffs are re-agitating the same claim time and again. They could have sought the claim on declaring the sale deed no.8023 dated 27.03.2006 in the earlier suit specifically. Even otherwise during pendency of his earlier suit, seeking relief of specific performance on the basis of agreement to sell, any sale deed executed by defendant set no. 1 would have been declared

null and void being hit by principle of lis pendense if plaintiffs had succeeded in their suit seeking relief of specific performance on the basis of agreement to sell dated 26.02.1975. It could not explained during arguments as to why plaintiff chose to file separate suit against the defendant. The agreement to sell dated 26.02.1975 could not be substantiated by the plaintiffs in the earlier suit seeking specific performance of the agreement to sell. It is settled proposition of law that mere agreement to sell does not confer any title. Plaintiff did not sought remedy on the basis of agreement to sell dated 26.02.1975 and sale deed has not been executed till date in their favour on the basis of said agreement to sell. There is no recital in the agreement to sell dated 26.02.1975 that possession of the land was handed over to the plaintiff. The defendants set no.2, on the basis of sale deed no.8023 dated 27.03.2006, have become owner of the suit property and entitled to get possession of the suit property having purchase for valuable consideration. As regarding arguments of learned counsel for appellants that said sale deed is result of fraud, as Katabo appeared before Sub Registrar in place of Kasturi it is observed that plaintiffs cannot challenge the validity of sale deed on the ground of fraud as they have no locus standi. They are neither executant nor legal heirs of Salawia nor the persons in whose favour said sale deed was executed. The argument of learned counsel for plaintiffs that defendants set no. 2 are interfering in the possession under the grab of impugned sale deed would not hold

much water as plaintiffs lost suit seeking injunction against defendant set no. 1. The revenue entries in their favour have not been believed as earlier as well. The plaintiffs are only agitating matter again and again on the basis of agreement to sell dated 26.02.1975 and have now sought to adduce one another agreement to sell allegedly executed by Salawia in favour of Parbhu on 06.07.1971 to give new twist to the fact as it had never been his case that Salawia as earlier sold the suit land to predecessor in interest of the plaintiffs. Hence learned court below has rightly held that plaintiffs have no locus standi to challenge the validity of sale deed dated 27.03.2006 and that defendants have been brought unnecessary.”

So far as the judgment of this Court in **Teja Singh Vs. Ram Parkash Talwar (deceased by LRs) and others, AIR 1984 Punjab and Haryana 95** relied upon by learned counsel for the appellants is concerned, there is no dispute about the observations made therein. However, close perusal of the cited judgment would show that it is of no help to the appellants, being distinguishable on facts. It is settled proposition of law that peculiar facts and circumstances 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 **Padmausund 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."

During the course of hearing, learned counsel for the appellants could not point out any patent illegality or perversity in the impugned judgments and decrees. He also could not refer to any question of law, much less substantial question of law, which is sine qua non for entertaining the 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 law laid down by the Hon'ble Supreme Court in **Narayanan Rajendran and another Vs. Lekshmy Sarojini and others, 2009 (5) SCC 264.**

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 both these appeals having been found wholly misconceived, bereft of merit and without any substance, must fail. No ground for interference has been made out.

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

[RAMESHWAR SINGH MALIK]
JUDGE

18.09.2017
vishnu

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No