

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

**RSA No.6110 of 2015 (O&M)
Date of decision: 20.02.2017**

Surinder Singh and another

... Appellants

Vs.

Abdul Hameed @ Dalip (since deceased) through LRs and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Aayush Gupta, Advocate
for the appellants.

RAMESHWAR SINGH MALIK, J. (ORAL)

Feeling aggrieved against the impugned judgment and decree dated 23.10.2015 passed by learned first appellate Court, dismissing their first appeal against the impugned judgment and decree dated 15.04.2011 of the learned trial Court, partly decreeing the suit of the plaintiffs for possession by way of specific performance of agreement to sell dated 07.12.2002, defendants No.2 and 3 have approached this Court by way of present regular second appeal.

Brief facts of the case, as noticed by learned first appellate Court in paras 2 and 3 of its impugned judgment, are that the plaintiffs filed the suit for possession by way of specific performance of agreement to sell dated 07.12.2002, writing dated 31.12.2003 and agreement dated 23.02.2004 of suit land measuring 09 bighas 08 biswas, which is 188/1360 share of land measuring 65 bighas 07 biswas, fully detailed in the head note of the plaint,

situated in the revenue estate of village Akhtarapur, Tehsil Malerkotla, for a consideration of Rs.5,26,400/- i.e. @ Rs.56,000/- per bigha and on payment of Rs.1,26,400/- after adjusting Rs.4,00,000/- paid as earnest money to defendant No.1 by the plaintiffs vide agreement dated 07.12.2002. Relief of declaration that the agreement dated 06.05.2002 executed Shafi Khan in favour of Surinder Singh and Karnail Kaur; defendants No.2 and 3 was forged, fictitious, anti-dated etc. and that the said agreement had been forged by defendants No.1 to 3 after execution of sale deed No.3698 dated 18.01.2005 with ulterior motive to jeopardize the interest of the plaintiffs. The declaration that the sale deed No.3698 dated 18.01.2005 executed by defendant No.1 in favour of defendants No.2 and 3 and mutation No.620 sanctioned on the basis of the sale deed in favour of defendants No.2 and 3 are illegal, null and void, result of collusion etc. and were liable to be cancelled. Further, declaration has been sought that defendants No.2 and 3 were bound to join with defendant No.1 as vendors for executing the sale deed of the suit land in favour of the plaintiffs since the alleged sale deed and mutation sanctioned on its basis in favour of defendants No.2 and 3 were illegal, null and void and liable to be set aside. Relief of permanent injunction restraining the defendants No.2 and 3 from alienating the suit land in any manner to any person except the plaintiffs had been sought. Alternative relief of recovery of Rs.5,30,000/-, which includes Rs.4,00,000/- as earnest money and Rs.1,30,000/- as damages along with future interest @ 1% per month from the date of filing of the suit till realization and for creating charge of the decretal amount on the suit land had been sought.

It was mentioned in the plaint that on 07.12.2002, defendant No.1 represented to the plaintiffs that he was owner in possession of the suit land and

had right to sell it. He asked the plaintiffs to purchase it from him. The plaintiffs believing the representation of defendant No.1 to be true, agreed to purchase the suit land @ Rs.56,000/- per bigha and paid Rs.4,00,000/- as earnest money to defendant No.1 on 07.12.2002. The sale deed was to be executed on 31.12.2003 in favour of the plaintiffs or their nominee. The expenses for registration of sale deed were to be borne by the plaintiffs. The balance sale consideration was to be paid by the plaintiffs to defendant No.1 at the time of execution and registration of the sale deed. It was also agreed that defendant No.1 will deliver the actual possession of the suit land to the plaintiffs at the time of execution and registration of the sale deed. On the failure of defendant No.1 to perform his part of the contract, the plaintiffs were entitled to get the sale deed executed in their favour through Court by filing suit for possession by way of specific performance. The plaintiffs could also recover Rs.4,00,000/- as damages, besides earnest money of Rs.4,00,000/-. On the failure of the plaintiffs to perform their part of the contract, the earnest money paid by them was to be forfeited. The agreement of sale was thumb marked by the defendant after admitting its contents to be true and correct and after receipt of Rs.4,00,000/- from the plaintiffs. Plaintiff Abdul Hamid signed the agreement. The agreement was entered at serial No.827 dated 07.12.2002 in the register of the deed writer. On 31.12.2003 with the mutual consent of the plaintiffs and defendant No.1, the date of execution of sale deed was extended from 31.12.2003 to 15.03.2004 and a writing was executed on the over-leaf of the first page of the agreement and was thumb marked by defendant No.1 and signed by plaintiff Abdul Hamid. On 23.02.2004, defendant No.1 came to the plaintiffs and showed his inability to execute the sale deed upto 15.03.2004 due to some domestic circumstances and

requested to extend the date upto 05.03.2005. The date was extended accordingly by the plaintiffs to avoid litigation. On 23.02.2004, an agreement was executed between the plaintiff and defendant No.1 vide which the defendant No.1 admitted the execution of the agreement to sell dated 07.12.2002 and writing dated 31.12.2003. The date of execution of sale deed was extended from 15.03.2004 to 05.03.2005. The plaintiffs have been ready and willing to perform their part of the contract. They were also ready with the remaining sale consideration and expenses for execution and registration of sale deed. They tendered the remaining sale consideration and other expenses to defendant No.1 and requested him to execute the sale deed and deliver the possession, but in vain. Defendant No.1 rather threatened to alienate the suit land to some other person. The plaintiffs then filed a suit for permanent injunction on 24.01.2005 for restraining the defendant No.1 from alienating the suit land in any manner to any person except the plaintiffs. That case is pending. The last date for execution of sale deed was 05.03.2005. The plaintiffs came to the office of Sub Registrar, Malerkotla, but it was holiday due to Saturday. The defendant did not turn up. The plaintiffs got their affidavits executed and attested from the Notary Public, Malerkotla. On 07.03.2005, on the opening of the office of Sub Registrar, Malerkotla, the plaintiffs again came to the office of the Sub Registrar, Malerkotla and brought with them balance sale consideration and other expenses for execution and registration of sale deed. They waited for the defendant from morning to evening, but he did not turn up. The plaintiffs got an affidavit executed and attested from Sub Registrar-cum-Executive Magistrate, Malerkotla. After stipulated date, the plaintiffs requested defendant No.1 a number of times to execute the sale deed in favour of the plaintiffs and

to deliver possession, but he did not agree. He had received Rs.4 lacs under the terms of the agreement and writing. He stood in fiduciary relationship with the plaintiffs qua the suit land and had no right to alienate the same to any other person except the plaintiffs. The defendants No.2 and 3 alleged that they have agreed to purchase the suit land from defendant No.1 vide agreement dated 06.03.2002. This agreement was anti-dated, forged, fictitious and result of collusion between the defendants. No reference of this agreement or receipt of earnest money was given in the sale deed dated 18.01.2005 and full consideration was shown to have been paid at the time of registration the sale deed. It proved that the agreement was forged and had been prepared after obtaining stamp paper of previous dates. Sale deed dated 18.01.2005 executed by defendant No.1 in favour of defendants No.2 and 3 qua the suit land and mutation No.620 sanctioned on the basis of sale deed were null and void, result of collusion between the defendants and ineffective qua the rights of the plaintiffs. Defendants No.2 and 3 were bound to join with defendant No.1 to execute the sale deed of the suit land in favour of the plaintiffs. Defendants No.2 and 3 were also threatening to sell the suit land to other persons and were liable to be restrained. In case, relief of specific performance of agreement of sale and writing was not granted, then the plaintiffs were entitled to recover Rs.4 lacs. as return of earnest money and Rs.1,30,000/- as damages along with interest @ 1% per month from the date of filing of suit till payment. Defendant No.1 was liable to be restrained from alienating the suit land in any manner to any person except the plaintiffs.

Having been served in the suit filed by the plaintiffs, defendants appeared. Defendant No.1 filed his contesting written statement, raising more

than one preliminary objections. Defendants No.2 and 3-appellants herein, filed their separate written statement. Plaintiffs filed their replication. After completion of pleadings of the parties, learned trial Court framed the following issues: -

1. Whether the defendant No.1 entered into an agreement to sell dated 31.12.2003 with the plaintiffs for the sale of his property?OPP
2. Whether a sum of Rs.4,00,000/- as earnest money was paid to defendants by the plaintiffs?OPP
3. Whether the plaintiffs were/are ready and willing to perform his part of agreement?OPP
4. Whether the plaintiffs are entitled to possession by way of specific performance of said agreement to sell?OPP
5. Whether the plaintiff No.1 is entitled for the alternative relief of recovery of the suit amount?OPP
6. Whether the plaintiff is entitled to injunction as prayed for? OPP
7. Whether the agreement dated 06.05.2002 executed by defendant No.1 in favour of defendants No.2 and 3 is anti-dated, forged, fictitious, fabricated document and result of collusion between them?OPP
8. Whether the alleged sale deed No.3698 dated 18.01.2005 executed by defendant No.1 in favour of defendants No.2 and 3 qua the suit land is illegal, null and void and result of collusion between them?OPP

9. Whether the mutation No.620 is also illegal, null and void?

OPD

10. Whether the suit is not maintainable in the present form?

OPD

11. Relief.

In order to prove 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 the plaintiffs have duly proved their case for a decree of possession by way of specific performance of agreement to sell dated 07.12.2002. Accordingly, suit of the plaintiffs was partly decreed, granting them the primary relief and dismissing their suit for alternative relief, vide impugned judgment and decree dated 15.04.2011. First appeal was filed by defendants No.2 and 3, which also came to be dismissed by learned first appellate Court, vide impugned judgment and decree dated 23.10.2015. Hence this regular second appeal at the hands of defendants No.2 and 3.

Heard learned counsel for the appellants.

Placing reliance on the judgments of the Hon'ble Supreme Court in **Ram Awadh (dead) by LRs Vs. Achhaibar Dubey, 2000 (2) SCC 428, Zorawar Singh Vs. Sarwan Singh (dead) by LRs, 2002 (4) SCC 460, H.P. Pyarejan Vs. Dasappa (dead) by LRs and others, 2006 (2) SCC 496, Sita Ram and others Vs. Radhey Shyam, 2007 (14) SCC 415, M/s Virgo Industries (Eng.) P. Ltd. Vs. M/s Venturetech Solutions P. Ltd., 2013 (1) SCC 625 and I.S. Sikandar (D) By LRs Vs. K. Subramani and others, 2013**

(15) SCC 27 and a judgment of this Court in **Suresh Singla Vs. Smt. Phool Pati and another, 2013 (1) RCR (Civil) 503**, learned counsel for the appellants submits that the learned Courts below misdirected themselves, while passing their respective impugned judgments and decrees, causing manifest injustice to the appellants. He further submits that the appellants were bonafide purchaser for due consideration. Learned counsel for the appellants would next contend that the learned first appellate Court illegally dismissed the application of the appellants filed under Order 41 Rule 27 of the Code of Civil Procedure ('CPC' for short) for additional evidence, which ought to have been allowed. He prays for setting aside the impugned judgments and decrees, by allowing the present appeal.

Having heard the learned counsel for the appellants at considerable length, after careful perusal of the record of the case and giving thoughtful consideration to the contentions raised, this Court is of the considered opinion that keeping in view the totality of facts and circumstances of the case in hand, the impugned judgments and decrees passed by the learned Courts below are factually correct and legally justified, which deserve to be upheld and the present appeal is liable to be dismissed, for the following more than one reasons.

A bare combined reading of both the impugned judgments and decrees passed by the learned Courts below would make it crystal clear that the plaintiffs have duly proved their case for the relief of possession by way of specific performance of agreement to sell dated 07.12.2002 Ex.P1, writing dated 31.12.2003 Ex.P2 and agreement dated 23.02.2004 Ex.P3. Plaintiffs brought on record sufficient and cogent documentary as well as oral evidence,

in support of their pleaded case. On the other hand, defendants No.2 and 3-appellants herein, miserably failed to prove their pleaded case before the learned Courts below. Their agreement to sell dated 06.05.2002 Mark-A was not proved on record, in accordance with law. It was also not found to be a genuine document. Stamp papers were purchased from Longowal, in spite of the fact that vendor was resident of Malerkotla. It is neither pleaded nor argued case on behalf of the appellants that the stamp papers were not available at Malerkotla. They failed to give any explanation in this regard. Having said that, this Court feels no hesitation to conclude that the learned Courts below were well within their jurisdiction to pass their respective impugned judgments and decrees, which deserve to be upheld.

Appellants also withheld the best evidence available with them, while not producing their vendor as a witness before the Court. Further, it was rightly recorded by the learned Courts below that the sale deed Ex.D1 dated 18.01.2005 did not mention about the agreement to sell dated 06.05.2002 Mark-A, nor the amount of Rs.1,00,000/-, allegedly paid by the appellants to their alleged vendor as earnest money, was deducted from sale consideration. A cumulative effect of all the abovesaid material facts referred to hereinabove, is that the defendants colluded with each other with a view to defeat the genuine claim of the plaintiffs, however, they failed to achieve their ulterior motive before both the learned Courts below. Under these circumstances, it can be safely concluded that the appellants were not bonafide litigants and suit of the plaintiffs was rightly decreed by the learned Courts below, thus, the impugned judgments and decrees deserve to be upheld, for this reason also.

The abovesaid view taken by this Court also finds support from the

following judgments of the Hon'ble Supreme Court and this Court: -

1. *P.C. Varghese Vs. Devaki Amma Balambika Devi and others, 2005 (8) SCC 486.*
2. *Gautam Sarup Vs. Leela Jetly and others, 2008 (7) SCC 85.*
3. *Garre Mallikharjuna Rao (D) by LRs and others Vs. Lalabothu Punniiah, 2013 (4) SCC 546.*
4. *K. Prakash Vs. B.R. Sampath Kumar, 2015 (1) SCC 597.*
5. *Mohan Singh and another Vs. Kulwinder Singh, 2001 (1) RCR (Civil) 399.*
6. *Gurbachan Singh and another Vs. Gurmit Singh, 2003 (4) RCR (Civil) 223.*
7. *Bahadur Ram Vs. Lakhwinder Singh and others, 2008 (3) RCR (Civil) 457.*
8. *Abhay Singh and others Vs. Ramesh Kumar and others, 2009 (3) CivCC 774.*
9. *Balbir Singh Vs. Manjit Kaur and another, 2013 (1) RCR (Civil) 740.*
10. *Nirmal Singh Vs. Darshan Kumar @ Sudershan Kumar through his LRs and others, passed in RSA No.1365 of 1996, decided on 13.01.2014.*

Coming to the judgments relied upon by learned counsel for the appellants, there is no dispute about the observations made and law laid down therein. However, on close perusal of the cited judgments, none of them has been found of any help to the appellants. As noticed hereinabove, the appellants were rightly not found the bonafide purchaser by the learned Courts below. In

fact, the appellants have not been found to be bonafide litigants who had been trying to defeat the genuine claim of the plaintiffs-respondents, by misusing the process of law. Appellants have miserably failed to prove their agreement to sell dated 06.05.2002 Mark-A to be a genuine document, which was found surrounded by suspicious circumstances, as noticed hereinabove. Further, 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 **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: (AIR 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."

Before arriving at a just conclusion, learned first appellate Court reconsidered and re-appreciated the factual as well as legal aspect of the matter, in correct perspective. Findings recorded by the learned first appellate Court have been found based on sound reasons. Cogent findings recorded by the learned Additional District Judge in paras 15 to 17 of his impugned judgment, which deserve to be noticed here, read as under: -

"The plaintiffs examined plaintiff Hukam Din, one of the LRs of plaintiff Abdul Hamid, who has proved vide his affidavit Ex.PW1/A the case of the plaintiffs regarding due execution of the agreement of sale dated 07.12.2002 Ex.P1, writing Ex.P2 dated 31.12.2003

*and agreement dated 23.02.2004 Ex.P3 vide which the dates for execution of the sale deed were extended to 15.03.2004 and 05.03.2005. Two marginal witnesses namely Daljinder Singh and Sarabjit Singh were also examined by the plaintiffs to prove the due execution of the agreements and the writing by defendant Shafi Khan in favour of the plaintiffs. Scribe Sanjiv Kumar Gupta has also proved that he scribed agreement Ex.P1 at the instance of defendant No.1 Shafi Khan in favour of plaintiffs. Defendant Shafi Khan in his written statement has denied having executed the agreement Ex.P1 and writings Ex.P2 and Ex.P3. He did not step into the witness box to depose as per his case. He did not cross examine the witnesses of the plaintiffs. He could have contested the suit on all the grounds taken in the written statement, but his failure to lead any evidence proves that the evidence led by the plaintiffs regarding due execution of the agreement of sale Ex.P1 and writings Ex.P2 and Ex.P3 have remained unrebutted and unchallenged. Defendants No.2 and 3 could not have contested the suit on the same pleas as taken by defendant No.1, as defendant No.1 himself has contested the suit and had an opportunity to lead evidence to rebut the case of the plaintiffs. In **Amrik Kaur and another Versus Mohinder Singh and others, 2013 (1) PLR 498**, the only plea in the written statement was that thumb impressions was obtained on blank papers. Defendant No.1, who was a very material witness to prove the version of the defendants, had not stepped into the witness box, it was held that a strong adverse*

inference can be drawn against defendant No.1 due to his non-appearance as a witness in the Court. This ruling is applicable to the facts of this case. The due execution of the agreement Ex.P1 dated 07.12.2002, writing Ex.P2 dated 31.12.2003 and agreement dated 23.02.2004 Ex.P3 is proved by the plaintiff by his evidence. The payment of Rs.4,00,000/- by plaintiff Abdul Hamid to defendant Shafi Khan has not been denied by defendant Shafi Khan. According to him, this amount was taken as loan by him. But the witnesses of the plaintiffs have stated that this amount was paid as earnest money by Abdul Hamid to defendant Shafi Khan. Plaintiff Hukam Din has stated that his father Abdul Hamid paid Rs.4,00,000/- as earnest money at the time of execution of agreement of sale in his presence. PW2 Daljinder Singh, the marginal witness has also stated in his cross-examination that he asked defendant Shafi Khan and was told that he had received the earnest money of Rs.4,00,000/-. No money was given in his presence. The evidence of this witness also proves the payment of Rs.4,00,000/- by plaintiff Abdul Hamid to defendant Shafi Khan. PW3 Sanjiv Kumar Gupta scribe in his cross-examination has also stated that the earnest money of Rs.4,00,000/- was paid by the plaintiff to defendant No.1 in his presence. PW3 Sarabjit Singh, the second marginal witness has also stated in his cross-examination that earnest money of Rs.4,00,000/- was paid in his presence. Thus, the payment of earnest money of Rs.4,00,000/- as per the terms of the agreement Ex.P1 is also proved. It is also

proved that the dates for execution and registration of the sale deed were also extended vide documents Ex.P2 and Ex.P3.

The plaintiffs have also proved that Abdul Hamid remained ready and willing to perform his part of the contract and remained present in the office of Sub Registrar on 05.03.2005 and 07.03.2005 and got his presence marked by executing affidavits Ex.P4 and Ex.P5, which have been attested by a Notary Public (Ex.P4) and by Executive Magistrate (Ex.P5).

The evidence of the defendants has proved that Shafi Khan executed the sale deed Ex.D1 dated 18.01.2005. Defendant Surinder Singh and DW2 Santokh Singh Nambardar, one of the marginal witnesses of the sale deed, have proved sale deed Ex.D1. The agreement of sale Ex.P1 dated 07.12.2002 was already executed by defendant Shafi Khan in favour of plaintiffs regarding his share i.e. suit land. He was not entitled to sell his share to defendants No.2 and 3 vide sale deed Ex.D1. As discussed earlier, the agreement of sale dated 06.05.2002 mark "A" is not a genuine document and cannot be taken into consideration. The plaintiffs are entitled to the relief of possession by way of specific performance as prayed for. The learned Lower Court has rightly declared the sale deed Ex.D1 qua the share of defendant Shafi Khan as null and void. The mutation sanctioned on its basis qua the share of Shafi Khan has also been set aside. I do not find any ground to interfere with the finding of the learned Lower Court on any of the issues. All the defendants are liable to join with each

other to execute the sale deed of the suit land in favour of the plaintiffs as per agreement Ex.P1.”

The application filed by the appellants under Order 41 Rule 27 CPC was also rightly dismissed by the learned first appellate Court, because the appellants failed to show exercise of due diligence on their part. It was rightly observed by the learned first appellate Court that the suit remained pending from 22.03.2005 till 15.04.2011 and during all this long period of more than six years, appellants did not move any such application for additional evidence. No reasonable explanation was forthcoming on behalf of the appellants as to why they could not move any such application for additional evidence before the learned trial Court, in spite of the fact that all these documents were in the knowledge and possession of the appellants right from day one. It seems that the appellants were trying to fill serious lacuna in their case. In such a situation, moving an application under Order 41 Rule 27 CPC was nothing, but an afterthought, which was rightly declined by the learned first appellate Court.

During the course of hearing, learned counsel for the appellants could not substantiate any of his abovesaid arguments. He also could not point out any illegality or perversity in any of the impugned judgments. Further, no question of law, much less substantial question of law has been pointed out, which is sine qua non for entertaining the regular second appeal at the hands of this Court, while exercising the appellate jurisdiction under Section 100 CPC. 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 the present regular second appeal is wholly misconceived, bereft of merit and without any substance, thus, it must fail. No ground for interference has been made out.

Resultantly, with the abovesaid observations made, instant Regular Second Appeal stands dismissed, however, with no order as to costs. All pending applications shall also be disposed of.

20.02.2017
vishnu

[RAMESHWAR SINGH MALIK]
JUDGE

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