

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

**RSA No.2222 of 2009 (O&M)
Date of decision : May 10, 2018**

Munish Chopra

..... Appellant

Versus

Smt. Hardev Kaur and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. S.S. Salar, Advocate for the appellant.

Mr. Namit Gautam, Advocate for respondent Nos.1 and 2.

Mr. Anil Kumar Sharma, Advocate for respondent Nos.3 and 4.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
2. To be referred to the Reporter or not.
3. Whether the judgment should be reported in the digest ?

KULDIP SINGH J. (ORAL)

CM Nos.6642-C and 6643-C of 2009

There is delay of 98 days in re-filing and 9 days in filing the present regular second appeal.

For the reasons mentioned in the applications, delay of 98 days in re-filing and 9 days in filing the present regular second appeal is condoned, subject to all just exception.

Applications stand disposed of.

Main Case

Impugned in the present regular second appeal is the judgment dated 28.07.2008 passed by learned Addl. District Judge, Fast Track Court, Ludhiana, affirming the judgment and decree dated 27.03.2006 passed by learned Civil Judge (Sr. Divn.), Ludhiana, vide which the suit filed by the

plaintiff-appellant was dismissed.

The facts of the case are that one Hardial Singh (now deceased) son of Thaman Singh was allotted one Plot No.60E, measuring 400 sq. yards in Rishi Balmik Nagar, 256 Acre Scheme, by the Improvement Trust, Ludhiana (for short 'the Trust')-defendant No.3. A memo dated 07.11.1989 certifying the allotment was issued to the said Hardial Singh. In terms of the allotment, Hardial Singh deposited ₹12,000/- being 1/4th payment of the total sale consideration of ₹48,000/- on the next day i.e. 08.11.1989. The balance 75% was to be deposited in five six monthly installments along with interest @ 10% per annum. It was stipulated in the allotment letter that if the payment is not made, the plot can be resumed or the entire amount has to be deposited with the Trust along with interest and penalty @ 20% of the cost of the plot. The allotment of the said plot was made to said Hardial Singh, out of quota of Local Displaced Persons (LDP). Hardial Singh had already deposited a sum of ₹500/- on 09.04.1975 with the Trust on account of his entitlement for allotment of a plot. Hardial Singh died in the year 1990, leaving behind defendant Nos.1 and 2. However, before his death on 12.12.1989, he entered into an agreement of sale with the plaintiff through his General Power of Attorney Naginder Singh to sell the said plot for ₹2,00,000/-. ₹2,00,000 were paid by the plaintiff-appellant to said Hardial Singh at the time of said agreement dated 12.12.1989 and the remaining costs of the plot were to be paid to the Trust by the plaintiff-appellant. Naginder Singh also executed a registered Special Power of Attorney in favour of a person, namely, Narinder Bhalla, named by the plaintiff. The plaintiff has been approaching defendant Nos.3 and 4 i.e. the Trust for

accepting the balance payment but they kept putting of the matter on the pretext that the entire allotments made by the Trust to the Local Displaced Persons has been stayed by the State Government. Thereafter, the plaintiff-appellant filed suit for specific performance of the agreement by defendant No.1 and 2 and sought mandatory injunction against defendant Nos.3 and 4, directing them to accept the balance payment of the allotted plot No.60E, situated in Rishi Balmik Nagar, 256 Acre Scheme by the Trust, to the plaintiff-appellant.

Defendant Nos.1 and 2 in their joint written statement admitted the claim of the plaintiff-appellant. However, defendant Nos.3 and 4 contested the claim and stated that the allotment of the plot No.60E, situated in Rishi Balmik Nagar, 256 Acre Scheme, by the Trust, was cancelled by the Government of Punjab under Section 72 of the Punjab Town Improvement Act, 1922. It was also stated that the plot was got allotted by way of concealment of facts and by playing fraud upon the Trust by Hardial Singh and his General Power of Attorney Naginder Singh. As per Land Disposal Rules of the Improvement Act, the area acquired is 500 sq. yards and plot measuring 400 sq. yards could not be allotted to the plaintiff-appellant. Further stand was taken that the plaintiff through his General Power of Attorney Tarjit Singh played a fraud and got allotted another plot No.244-C, measuring 250 sq. yards in Model Town Scheme 11 as Local Displaced Person. On coming to know about the said allotment, the Punjab Government cancelled the allotment of plot No.60E, Rishi Balmik Nagar, Ludhiana and an FIR was also directed to be registered against the guilty persons. A letter bearing memo No.4222, dated 08.09.1998 was addressed

to the Senior Superintendent of Police, Ludhiana, for registration of a criminal case against Hardial singh son of Thaman Singh, but no action was taken. Then, reference was also made to one suit filed by Harminder Kaur for grant of permanent injunction for plot No.244-C, Model Towan, Extension Scheme Part II, Ludhiana.

From the pleadings, following issues were framed:

“1. Whether plaintiff is entitled to mandatory injunction on the facts pleaded? OPP.

2. Whether Hardial Singh now deceased entered into an agreement of sale through his General Power of Attorney Sh. Narinder Singh with plaintiff on 12-12-89 regarding plot in question for a consideration of Rs. 2 lacs and received the entire sale consideration? OPD

3. Whether Narinder Singh, General Attorney of Hardial Singh (now deceased) executed Special Attorney in favour of Narinder Bhalla authorizing him to deal with the plot in question, if so its effect? OPP.

4. Whether plaintiff is remained ready and willing ready to perform his part of the contract? OPP.

5. Whether plaintiff is entitled to possession by specific agreement dated 12-12-89 executed by Hardial Singh (now deceased) in favour of plaintiff?OPP

6. Whether suit is not maintainable in the present form? OPD 1 & 2

7. Whether suit is bad for want of notice U/S 98 of Punjab Town Improvement Act, 1922?OPD

8. Whether suit is within time?OPD.

9. Relief.”

The trial Court after discussing the evidence, took the view that the plot was never transferred in the name of Hardial Singh. It is to be first transferred to his legal heirs and only thereafter, the plaintiff-appellant could claim the allotment. The view was also taken that the Trust was not party to the agreement and it was not bound by the same. The note regarding the cancellation of plot was also taken and specific performance and mandatory injunction was refused. The said views were upheld in appeal by the learned Addl. District Judge, Fast Track Court, Ludhiana, holding that since the plaintiff-appellant Munish Chopra himself admitted that plot has been cancelled. Therefore, the cancellation should have been challenged.

I have heard learned counsel for the parties and have also carefully gone through the case file.

Admittedly, the plea of the Trust is that Hardial Singh was a Local Displaced Person and he committed fraud and got two plots allotted in his name. In the written statement, the Trust pleaded the cancellation of the disputed plot No.60E, Rishi Balmik Nagar, Ludhiana, by the Punjab Government under Section 72 of the Punjab Town Improvement Act, 1922.

In this case, though the official of the defendant, namely Z.R. Khan admitted that the said cancellation order is not on file and the Trust itself has not cancelled the said plot but the plaintiff-appellant Munish Chopra while appearing as PW1 admitted in his cross-examination that the plot No.60E, has been cancelled by the Punjab Government. Since the Punjab Government has cancelled the allotment, therefore, the Trust was not required to pass another order over and above the order passed by the Punjab Government. The mere fact that on the file summoned from the

office of the Trust, the said cancellation order is not there, but the plaintiff-appellant having come to know should have summoned the said letter from the Trust and the said cancellation should have been challenged. Until or unless the said cancellation is set aside, no relief can be granted to the plaintiff-appellant.

Further, the copy of the letter addressed to the Senior Superintendent of Police, Ludhiana is also on file regarding registration of the case against Hardial Singh for committing fraud with the Trust for getting double allotment of the plots. Apparently, the police did not take any action in the matter as Hardial Singh died in the year 1990 and the letter was addressed to the Senior Superintendent of Police, Ludhiana on 08.09.1998 i.e. after the death of Hardial Singh.

It being so, there is no illegality or infirmity in the findings recorded by two Courts below. Consequently, there is no force in the present regular second appeal and the same is, accordingly, dismissed.

Since, the main appeal has been dismissed, therefore, the pendency application, if any, also stands disposed of.

(KULDIP SINGH)
JUDGE

May 10, 2018

sarita

Whether speaking / reasoned Yes

Whether Reportable: No