

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

1. RSA No.1302 of 2010 (O&M)  
Date of decision : 03.04.2018

Anil Kumar

...Appellant

Versus

Sudarshan Gaba and others

...Respondents

2. RSA No.1735 of 2010 (O&M)  
Date of decision : 03.04.2018

Rajeev Garg

...Appellant

Versus

Sudarshan Gaba and others

...Respondents

**CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL**

Present: Mr. Arun Jain, Sr. Advocate with  
Mr. Chetan Salathia, Advocate for the appellant  
(In RSA No.1735 of 2010)

Mr. C.B. Goel, Advocate for the appellant  
(In RSA No.1302 of 2010)

Mr. M.L. Sarin, Sr. Advocate with  
Ms. Himani Sarin, Advocate for respondent No.1.

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**ANIL KSHETARPAL, J. (ORAL)**

By this common judgment, RSA Nos.1302 and 1735 of 2010  
shall stand disposed of as both the appeals are arising out of the same suit

and first appeals were also disposed of by the consolidated judgment passed by the learned First Appellate Court. Learned counsel for the parties have also agreed that both the appeals can be disposed of by a common judgment.

Defendant Nos.4 and 5 have filed separate appeal against the judgment passed by the learned First Appellate Court decreeing the suit for possession by way of specific performance of the agreement to sell.

The plaintiff-respondent No.1 had filed a suit for possession by way of specific performance of the agreement to sell dated 19.08.1998 through which defendant Nos.1 and 2 had agreed to sell the land measuring 17 kanals 19 marlas at the rate of ₹11,20,000/- per acre, total sale consideration of ₹25,20,000/- and received earnest money of ₹2,50,000/-. It may be noticed that defendant No.2 was minor on the day the agreement to sell was executed, hence, defendant No.3, the natural father of defendant No.2 had signed the agreement to sell as natural guardian. It was provided in the agreement to sell that defendant No.3 would apply for permission from the Court as per the provisions of law before executing the sale deed. The plaintiff further pleaded that on the target date for execution and registration of the sale deed i.e. 30.12.1998, the plaintiff visited the office of the Sub-Registrar where the sale deed was to be executed and registered but defendants did not turn up and she got her affidavit attested in token of her presence (available on the file as Ex.P8).

The plaintiff also impleaded defendant No.4, subsequent purchaser, the appellant in RSA No.1735 of 2010.

Defendant No.2 filed a separate written statement, whereas defendant Nos.1 and 3 filed a joint written statement denying the execution

of agreement to sell dated 19.08.1998 but admitted that there was an agreement to sell executed between the parties on 29.06.1998. It was pleaded by the defendants that under the pretext of extension of the date for registration of the sale deed, obtained the signatures on the blank papers on which fresh agreement to sell dated 19.08.1998 has been drafted. The stand taken by defendant Nos.1 and 3 to this effect is extracted as under:-

*“In fact, a agreement was executed on 29.6.1998 between the plff. and the defendant & the stamp paper were also purchased from Sh. Rattan Lal Stamp Vendor on 29.6.1998. Agreement was executed on 29.6.98 by the plff. and the ans. defendant and the plff. paid some earnest money also to the Ans. defendant on 29.6.98 regarding the land in suit & the major sale consideration was to be paid at the time of registration of the sale deed. The original agreement dt. 29.6.98 is in possession of the plff. and she may be directed to produce on the file. Later on the plff. herself refused to purchase the land in suit & in this way the plff. herself avoided the execution of the sale deed on the basis of the agreement dt. 29.6.98. After the execution of the agreement dt. 29.6.98 the plff. contacted the ans. defendant & requested the defendant to extend the date for the sale deed on the basis of the agreement dt. 29.6.98. The Ans. defendant agreed and the plff. obtained the signature of the Ans. defendant on a blank papers on the excuse that the date for registration shall be extended. So, the Ans. defendant is having the apprehension that the plff. might have prepared the bogus alleged agreement dt. 19.8.98 on the said blank papers.”*

Defendant No.4, the appellant in RSA No.1735 of 2010 is said to have purchased the property from defendant No.1-Ram Rattan measuring

9 kanals through two different sale deeds for a sum of ₹1,20,000/- only (₹60,000/- each) vide sale deed dated 01.12.1998, whereas defendant No.5 has purchased the land measuring 8 kanals 19 marlas for a sum of ₹1,95,000/- on 09.10.2003 i.e. during the pendency of the suit.

Learned trial Court, after appreciating the evidence available on the file returned a finding that the execution of the agreement to sell and payment of earnest money is proved on the file but learned trial Court, after noticing that the sale deeds have been executed in favour of defendant Nos.4 & 5 and much water has passed under the bridge, declined to grant the relief of the specific performance of the agreement to sell but decreed the suit to the extent that the plaintiff would be entitled to recover the double of the earnest money paid alongwith interest at the rate of 6% p.a.

Only, the plaintiff filed the first appeal. No appeal or cross-objections were filed by the defendants. Learned First Appellate Court after re-appreciating the evidence available on the file decreed the suit for specific performance of the agreement to sell after arriving at a finding that agreement to sell between the parties is proved while affirming the findings of the trial Court and the plaintiff was always ready and willing to perform her part of the contract.

This Court has heard the learned counsel for the parties at length and with their able assistance gone through the judgments passed by the Courts below and the record.

Learned counsel for the appellant has submitted that the evidence of Stamp Vendor-Rattan Lal Sharma creates a doubt about the genuineness of the agreement to sell as he did not produce on file the

register in which the entry was made with regard to purchase of non-judicial stamp paper for execution of the agreement to sell. He has further referred to the evidence of the plaintiff who appeared as PW1. Learned counsel has submitted that the plaintiff could not prove on file that she had sufficient resources to pay the sale consideration. Learned counsel has further referred to the affidavit Ex.P8 to submit that the plaintiff has not even asserted that she was carrying the balance sale consideration on the target date fixed for execution and registration of the sale deed. Learned counsel for the appellant has further argued that defendant No.4, the appellant in RSA No.1735 of 2010 is a bona fide purchaser. He has further submitted that the plaintiff has failed to prove her readiness and willingness.

On the other hand, learned counsel for defendant No.5 i.e. appellant in RSA No.1302 of 2010 has reiterated the arguments of the learned counsel for defendant No.4 and has also submitted that since permission has not been granted by the Court with regard to share of minor, therefore, there cannot be any specific performance of the agreement to sell with respect to the share of Krishan Kumar-defendant No.2.

On the other hand, learned Senior Counsel for the respondent-plaintiff has supported the judgment passed by the learned First Appellate Court.

No doubt, the Stamp Vendor could not produce on file the register in which the entry was made with respect to purchase of stamp paper on which the agreement to sell dated 19.08.1998 was executed, however, Sh. Rattan Lal Sharma has explained that the register in which entry was made has been lost. In this regard, it may be noted that Ram

Rattan (defendant No.1) is one of the executant of the agreement to sell. Ram Rattan has admitted in his evidence that he had executed the agreement to sell and received the earnest money. Ram Rattan has also admitted that his father had signed the agreement to sell on behalf of defendant No.2 as natural guardian. Ram Rattan has further admitted that he had purchased the stamp paper for the execution of the agreement to sell dated 19.08.1998.

In view of the aforesaid admission, this Court does not find that non production of register of the Stamp Vendor would make any difference to the result of the case.

As far as the argument of the learned counsel that the plaintiff has failed to prove the availability of the funds for registration of the sale deed, it may be noticed that the plaintiff went to the office of the Sub-Registrar on the target date showing her intention to honour the agreement to sell. She has further pleaded in the plaint that she was always ready and willing to perform her part of the contract. When she appeared in the witness-box, she also made a statement that required amount is available with her.

Learned counsel for the appellant has drawn the attention of this Court to the statement of PW1 where she says that for payment of earnest money, she had borrowed ₹1,50,000/- from her father-in-law and ₹1,00,000/- from her son. Counsel submits that the plaintiff had borrowed the amount for payment of earnest amount, therefore, inference must be drawn that she did not had the required amount for execution of the sale deed. The father-in-law and son of the plaintiff are her family members. Ram Rattan has admitted that he has received the earnest money. The

plaintiff while appearing in the evidence has stated that she was having the balance sale consideration. She has further specifically stated that on the day she gave notice, she was having ₹26-27 lacs.

In view of the aforesaid evidence, this Court also does not find any substance in the second argument of the learned counsel for the appellant.

Next argument of the learned counsel for the appellant is that in Ex.P8, the affidavit dated 30.12.1998, the plaintiff has not asserted that she is carrying the balance sale consideration. No doubt, in Ex.P8, such fact is not recorded. However, learned counsel for the appellant has overlooked the fact that the sale deed was to be executed after necessary permission is granted by the Court with respect to sale of share of defendant No.2 who was minor. It is not in dispute that defendant No.3 filed an application under Section 8 of the Hindu Minority and Guardianship Act, 1956 for permission of the Court to sell the property of defendant No.2. The aforesaid application remained pending in the Court which was dismissed as withdrawn by defendant No.3 on 07.05.1999.

In these circumstances, execution of the sale deed on 30.12.1998 was not possible.

Next argument of the learned counsel for the appellant is that defendant No.4 is a bona fide purchaser. In this regard, it may be noticed that defendant Nos.1 and 2 had entered into an agreement to sell the total land at the rate of ₹11,20,000/-, total sale consideration of ₹25,20,000/- whereas more than half of the land is alleged to have been sold in favour of defendant No.4 for a sum of ₹1,20,000/- only. Once, the execution of the

agreement to sell is admitted by Ram Rattan, then defendant Nos.1 and 2 were entitled to receive total sale consideration of ₹25,20,000/-. Whereas by executing the sale deeds in favour of defendant Nos.4 and 5, defendant Nos.1 and 2 have only been able to secure ₹1,20,000/- + ₹1,95,000/- = ₹3,15,000/-.

Still further, Rajeev Garg-defendant No.4 has not stepped into the witness-box. He has not appeared to face the cross-examination. Once the party which is pleading to be a bona fide purchaser has failed to appear in evidence, defendant No.4 is not proved to be a bona fide purchaser. The onus to prove that defendant No.4 was a bona fide purchaser, was on him. He has only examined Dr. Naresh Garg, who is Special Power of Attorney of Rajeev Garg. The evidence of Dr. Naresh Garg does not inspire confidence.

In view of the aforesaid, this Court does not find any substance therein.

Next argument of the learned counsel for the appellant is that there cannot be any specific performance of the agreement to sell with respect to the share of Krishan Kumar-defendant No.2 who was minor at that time.

From reading of Section 8 of the Hindu Minority and Guardianship Act, 1956, it is clear that if a natural guardian enters into an agreement to sell or enters into the contract on behalf of minor, such contract is voidable at the instance of the minor. In the present case, minor Krishan Kumar did file a written statement but did not file any appeal against the judgment passed by the learned trial Court. He has not even filed

Regular Second Appeal. Originally in the memo of parties, defendant No.5 had also shown Krishan Kumar as an appellant but later on amended memo of parties was filed and name of Krishan Kumar was deleted. The Vakalatnama given to the counsel is also signed by only Anil Kumar-defendant No.5 and not by Krishan Kumar. Still further, it is proved on file that defendant No.3 had filed an application seeking permission of the Court which was withdrawn later on. Learned First Appellate Court has examined the issue and have returned a finding that the agreement to sell was executed by natural guardian for the benefit of the minor as noticed above. Krishan Kumar is to get half of the amount (₹12,60,000/-) of the total sale consideration i.e. ₹25,20,000/- whereas he is alleged to have sold the share in the property in favour of defendant No.5 for a sum of ₹1,95,000/- only. Obviously, defendant No.5 who has purchased the property during the pendency of the suit is governed by the Rule of Lis Pendense.

Learned counsel for the appellant could not point out any error in the reasoning of the learned First Appellate Court to the effect that the agreement to sell executed by the natural guardian was for the benefit of the minor.

In view of what has been discussed above, this Court does not find any good ground to interfere with the findings of fact arrived at by the First Appellate Court. Hence, the judgment passed by the learned First Appellate Court is upheld.

Learned counsel for the plaintiff has pointed out that Ram Rattan-defendant No.1 has already executed the sale deed in favour of the plaintiff on 08.04.2010. Hence, defendant No.5 is directed to join defendant

No.2 in execution of the sale deed in favour of the plaintiff on deposit of proportionate balance sale consideration within a period of two months from the date of receipt of certified copy of the order, if not already deposited with the Court.

**CM No.4681-C of 2018 in RSA No.1735 of 2002**

Application under Order 41 Rule 27 CPC has been filed for permission to lead additional evidence i.e. copy of the application dated 01.04.1999 filed by Munni Devi wife of Rajbir Singh, copies of sale deeds dated 07.11.1997 and 23.12.1997 and certified copy of the judgment dated 30.05.2002.

This Court has considered the contents of the application. The application has been filed on 25.03.2018 whereas Regular Second Appeal was filed in the year 2010. Still further, none of the documents sought to be produced on file would have any bearing on the result of the appeal.

First argument is with regard to the application filed by Munni Devi under Order 1 Rule 10 CPC in the proceedings for permission to sell the land. Two sale deeds sought to be produced on file are not between the same parties. Counsel for the appellant only wishes to prove the market rate of the property. Next document is the judgment passed by the Court in a suit filed by Ram Rattan against Rajeev Garg challenging the sale deed executed by Ram Rattan. Admittedly, the plaintiff was not party to the aforesaid judgment. Hence, this Court does not find any substance in the application for additional evidence. The application is dismissed on the ground of delay as well as on the ground that the additional evidence sought to be produced would have no bearing on the result of the appeal.

Application is disposed of.

Hence, both the Regular Second Appeals are dismissed.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

**03.04.2018**

*Pawan*

**(ANIL KSHETARPAL)  
JUDGE**

**Whether speaking/reasoned:-                      Yes/No**

**Whether reportable:-                                      Yes/No**