

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

**RSA No.1653 of 2015 (O&M)  
Date of Decision.01.06.2018**

Ram Kumar .....Appellant

Vs

Mallo Devi and others .....Respondents

**2. RSA No.1680 of 2015 (O&M)**

Ram Kumar .....Appellant

Vs

Mallo Devi and another .....Respondents

**CORAM:HON'BLE MR. JUSTICE AMIT RAWAL**

Present: Mr. C.B. Goel, Advocate  
for the appellant(s).

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**AMIT RAWAL J.**

**C.M. No.4594-C of 2015 in RSA No.1653 of 2015**  
**C.M. No.4633-C of 2015 in RSA No.1680 of 2015**

For the reasons stated in the applications, delay of 446 days in refiling the respective appeals is condoned.

Applications are allowed.

**Main cases**

This order of mine shall dispose of two regular second appeals bearing No.1653 of 2015 (hereinafter called as 'first appeal') arising out of Civil Suit bearing No.446 of 207 titled as “Ram Kumar Vs. Mallo Devi and others” seeking specific performance of agreement to sell dated 2.8.1999 in respect of land measuring 37 kanals 4 marlas (hereinafter called the suit land) and 1680 of 2015 (hereinafter called as 'second appeal') arising out of civil suit No.343

of 2003 titled as “Ram Kumar Vs. Mallo Devi and another” seeking specific performance of agreement to sell dated 5.6.2002 in respect of land described in khewat No.727 min/1084 min, rect. No.29/19 situated in village Keorak, Tehsil and District Kaithal.

In the first appeal, the plaintiff filed the aforementioned suit alleging that in pursuance of the written agreement to sell dated 2.8.1999, the defendant No.1 agreed to sell the land @₹1,50,000/- per acre and a sum of ₹4 lacs against the valid receipt was paid as earnest money. The balance amount was to be paid on 1.8.2000 i.e. the stipulated date, however, before the expiry of the stipulated date, on 10.6.2000 both the parties had mutually agreed to extend the period of registration of the sale deed upto 15.6.2001 on receipt of a further amount of ₹2,50,000/-, thus, a total sum of ₹6,50,000/- was paid. On 15.06.2001, again mutually the execution of the sale deed was extended upto 15.06.2002. Since 15.6.2002 and 16.6.2002 were holidays, the plaintiff remained present in the office of Sub Registrar on 17.6.2002 but defendant No.1 did not turn up for execution and registration of the sale deed. The plaintiff also marked his presence by submitting application. A legal notice 09.09.2002 was served upon defendant No.1, which was replied on 01.10.2002 admitting the agreement and requesting for extension of time for getting the sale deed executed by 15.2.2003. The plaintiff received another letter dated 10.2.2003 by defendant No.1 requesting for extension of time upto 15.5.2003 but by then, defendant No.1 qua 24 kanals of land executed a sale deed dated 21.2.2003 in favour of defendant No.2. During the pendency of the suit, defendant No.1 further alienated

land measuring 26 kanals, out of which land measuring 5 kanals being part of suit property vide sale deed dated 25.2.2003 for total sale consideration of ₹1,44,000/- and remaining 21 kanals of different khewant number vide sale deed dated 6.3.2003 for consideration of ₹6,04,000/-. The aforementioned sale deeds dated 21.2.2003, 25.2.2003 and 6.3.2003 were also assailed.

Defendant No.1 challenged the suit by raising numerous preliminary objections and denied the execution of agreement to sell by stating it to be a forged and fabricated document and as well as the receipt of legal notice. It was averred that Joginder Singh son of defendant No.1 had colluded with the plaintiff.

Defendant No.2 filed separate written statement alleging that plaintiff and defendant No.1 were in collusion with each other as wife of Ram Kumar and wife of Joginder were real sisters and in order to defeat the claim of defendant No.2, they prepared forged documents. Defendant No.2 claimed to be bona fide purchaser for a valuable consideration. The sale deeds were executed after verifying the title and there was no disclosure by defendant No.1 with regard to the existence of the agreement to sell.

Defendant No.3 filed the separate written statement stating that defendant No.1 dishonestly executed the sale deed qua lesser area.

Since the parties were at variance, the trial Court framed as many as five issues including the issue of relief.

The plaintiff in support of pleadings examined as many as 16 witnesses including Om Parkash Thareja, stamp vendor as PW-

11, Ram Phal, Stamp Vendor as PW-12 and Vijay Kumar Sharma, deed writer as PW14 and placed on record numerous documents Ex.P1 to P5, PW6/A to Ex.PW16 D5 to D8. On the other hand, defendants examined as many as six witnesses and brought on record documents Ex.D1 to D15.

In the second appeal, the suit was based on the same premise. However, the defendants while contesting the same had taken a stand that the appellant-plaintiff had got two agreements to sell in his favour and instituted the suit which was pending in the Court of Civil Judge (Senior Division), Kaithal. The factum of alleged agreement to sell dated 2.8.1999 in respect of 37 kanals 4 marlas @ ₹1,50,000/- was emphatically denied.

The evidence led in the second suit was identical to the other suit.

The trial Court on the basis of aforementioned evidence brought on record did not grant the discretionary relief but ordered for recovery of ₹6,50,000/- with interest @6% per annum in the suit which is subject matter of challenge in the first appeal and ₹1,85,000/- along with interest @10% per annum which is subject matter of challenge in the second appeal. The appeals preferred against the aforementioned judgments and decrees also met with the same fate.

Mr. C.B. Goel, learned counsel appearing on behalf of the appellant-plaintiff submitted that the Courts below committed illegality and perversity in not granting the discretionary relief, for, the execution of the agreement to sell had been proved, much less, the

extensions. The last extension was upto 15.06.2002, which was a holiday and the plaintiff marked presence in the office of Sub Registrar on 17.06.2002. Legal notice was sent on 09.09.2002 which was replied on 1.10.2002 and after then a letter was received by the plaintiff from the side of defendants for extension of execution of the agreement to sell upto 15.02.2003, which gave cause of action to file the suit on 21.2.2003. The readiness and willingness as per the provisions of Section 16(c) of the Specific Relief Act had also been proved to the hilt.

The Courts below failed to notice that agreement to sell dated 17.7.1999, Ex.D5 was ante dated, forged and fabricated which was prepared in favour of defendant No.3 and was never executed.

DW-2 stated in cross-examination that the agreement Ex.D5 was not entered in his case diary and register nor he was maintaining any register. Number of FIRs had been lodged against the aforementioned witness and copy of one of the FIRs had been brought on record as Ex.P-10. All these factors revealed that the agreement dated 17.7.1999 was ante dated.

The expert witness PW-16 stated in his cross-examination that the thumb impression on agreement dated 17.7.1999 was unfit for comparison because of the insufficient ink, thus, was not possible to be compared. The same was reply to the document dated 15.7.2000 for extension of time as the middle portion ridges were printed in broken manner, therefore, the expert's evidence did not prove thumb impression of respondent No.1.

The appellant-plaintiff not only categorically stated but

proved on record that he was in possession over the suit land, which was delivered by respondent No.1 on 15.6.2001 at the time of execution of agreement to sell dated 15.6.2001, Ex.P5 and the same was proved by PW1 Sushil Kumar. Respondent No.2 produced copy of khasra girdawari and the jamabandi but the same were prepared after sanction of the mutation in their favour and as such they did not have any relevancy in the eyes of law. The respondent No.1 had sold her entire land and no other land left in her name in the revenue record but that does not mean that the Court can decline the discretionary relief.

The Courts below also failed in appreciating that the sale deed in favour of respondent No.2 was hit by doctrine akin to lis pendens as the agreement to sell with the appellant-plaintiff by respondent No.1 was dated 2.8.1999 and with respondent No.2 on 13.5.2000. Admittedly, the sale deed with respondent No.1 was executed on 20.02.2003 and registered by the Sub Registrar on 21.02.2003. The sale deed was executed in pursuance to the agreement dated 13.05.2000, therefore, the finding of the Courts below that the sale deed was executed on 20.2.2003 at 9.30AM was totally illegal and cryptic, for, all the public transactions are done by the Treasurer from 10 AM to 1.30 PM on working day and from 10 AM To 12 Noon on 10<sup>th</sup> and last working day of the month. Therefore, respondent No.2 and 3 were not bona fide purchasers as no consideration was passed, thus, urges this Court for setting aside the judgments and decrees under challenge.

I have heard learned counsel for the appellant-plaintiff,

appraised the paper book and of the view that there is no force and merit in the submissions of Mr. Goel and the reasons are not one but many.

(i) The readiness and willingness has to be seen from the date of agreement to sell, during its subsistence and till the filing of the suit, its pendency or till the passing of the decree. The appellant-plaintiff has not been able to prove agreement to sell dated 17.7.1999, Ex.D5 to be ante dated and forged document. The agreement dated 17.7.1999, Ex.D5 was scribed by N.S. Azad, Advocate which was duly witnessed by Joginder Singh son of defendant No.1. The date for execution and registration of the sale deed was 16.07.2000, however, by separate writing dated 15.07.2000, it was extended to 30.12.2001. The said writing was also witnessed by Joginder Singh and Harnam Singh. Again on 30.12.2001, date of execution of sale deed was extended to 30.6.2003. There was a charge over the property, therefore, the same was not acquired. In pursuance of the aforementioned agreement, two sale deeds in favour of defendant No.3 dated 25.2.2003 and 6.3.2003 were executed by defendant No.1. Though defendant No.3 was entitled to a larger area but defendant No.1 executed the sale deed only qua land mentioned in the said two sale deeds. No piece of evidence has been brought on record to belie the testimony of subsequent vendees that they had the

knowledge of the agreement to sell allegedly executed by defendant No.1 in favour of the plaintiff. The agreement of the year 1999 is prior to the institution of the suit and as well the agreement in question.

(ii) DW-2 Navtej Singh, scribe of the agreement Ex.D5 proved execution of the same and having failed to enter the document in the register could not be fatal. Another witness to the agreement of the year 1999 namely Gurdial Singh was also examined as DW4. He also proved the execution of the agreement and therefore, in view of the testimony of the aforementioned witnesses, the agreement dated 17.7.1999, which became genesis of two sale deeds dated 25.2.2003 and 6.3.2003, cannot be said to be ante-dated and forged.

(iii) Ex.P14/A, photocopy of receipt, did not establish that the previous document was cancelled. In fact, the plaintiff failed to connect the alleged aforementioned receipt with the alleged agreement nor had been able to prove that the sale deed between defendant No.1 and defendant No.2 was without consideration.

(iv) No doubt the sale deeds in favour of defendant No.2 have been executed after the institution of the suit but the sale deed dated 21.2.2003, Ex.D4 had been executed on the same date on which the suit was filed. The plaintiff, who appeared as PW1 admitted that he had presented the suit at 10 AM on that date whereas DW1

Manoj stated in his cross-examination that the agreement to sell was executed at 9.30AM. No evidence had been brought on record to prove the alleged collusion between defendant No.1 and defendant No.2.

(v) The plaintiff also failed to prove possession over the suit property, as on one hand, the defendants proved on record through khasra girdawari Ex.D13 to D15 that they were in actual possession.

(vi) PW1, deed writer in cross-examination stated that his entire register was full of blank pages which bore signatures of the witnesses. The factum of managing the aforementioned entry by the plaintiff being legal practitioner cannot be ruled out.

All the factors have been weighed in the mind of the Courts below while rendering concurrent finding of fact, which do not suffer any illegality and perversity. The argument of Mr. Goel has not been able to bring the case within the realm of illegality and perversity enabling this Court to form a different opinion than the one already arrived at, much less, no substantial question of law arises for determination by this Court. No ground for interference is made out. Both the appeals are dismissed.

**(AMIT RAWAL)**  
**JUDGE**

**June 01, 2018**  
**Pankaj\***

Whether reasoned/speaking      Yes

Whether reportable      No