

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

**RSA No.4282 of 2014 (O&M)
Date of Decision.11.12.2018**

Tarlok SinghAppellant
Vs

Baldev Singh and others ...Respondents

2. RSA No.4284 of 2014

Tarlok SinghAppellant
Vs

Baldev Singh and another ...Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Atul Goyal, Advocate
for the appellant.

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AMIT RAWAL J. (ORAL)

C.M. No.9924-C of 2014 in RSA No.4282 of 2014

For the reasons stated in the application, delay of 129
days in re-filing of the appeal is condoned.

Application is allowed.

C.M. No.9929-C of 2014 in RSA No.4284 of 2014

For the reasons stated in the application, delay of 235
days in re-filing of the appeal is condoned.

Application is allowed.

C.M. No.9925-C of 2014 in RSA No.4282 of 2014

For the reasons stated in the application, delay of 26 days
in filing of the appeal is condoned.

Application is allowed.

C.M. No.9930-C of 2014 in RSA No.4284 of 2014

For the reasons stated in the application, delay of 55 days

in filing of the appeal is condoned.

Application is allowed.

C.M. No.14681-C of 2016 in RSA No.4282 of 2014

C.M. No.14669-C of 2016 in RSA No.4284 of 2014

In view of the decision taken in the main appeals, both the applications are dismissed as having become infructuous.

Main cases

This order of mine shall dispose of two appeals bearing Nos.4282 and 4284 of 2014 preferred at the instance of Tarlok Singh, who was defendant No.4 in the civil suit bearing No.244 of 2005 titled as “Baldev Singh Vs. Hargopal Singh and others” (hereinafter called as first suit) and plaintiff in civil suit bearing No.71 of 2009 titled as “Tarlok Singh Vs. Baldev Singh and another” (hereinafter called as second suit) wherein specific performance of agreement to sell dated 18.11.2003 was sought.

In the second suit plaintiff-Tarlok Singh sought specific performance of agreement to sell dated 18.11.2003 in respect of land measuring 77 kanals 14 marlas executed with one Hargopal Singh son of Baldev Singh, though Baldev Singh was owner of land measuring 239 kanals 8 marlas including the subject matter of the agreement to sell. Total price was fixed as ₹14,57,000/- against the receipt of earnest money of ₹11,87,000/-.

In the first suit, Baldev Singh sought injunction against Hargopal Singh including the appellant Tarlok Singh-defendant No.4 of forcible interference and dispossession.

Pipal Singh also filed a suit bearing No.128 of 2009 for specific performance of agreement to sell of even date.

The injunction suit i.e. first suit was decreed whereas suits for specific performance of both persons i.e. Pipal Singh and Tarlok Singh were dismissed for discretionary relief, however, confined to alternative relief.

Tarlok Singh filed two appeals against the grant of injunction and another for dismissal of the suit for specific performance, which also resulted into dismissal.

Kashmir Singh was common attesting witness in both the agreement to sell between Pipal Singh on one hand and Tarlok Singh on the other with Hargopal Singh whereas Arjan Singh was another attesting witness. The stipulated date for execution and registration of the sale deed was 17.11.2008 whereas the suit for specific performance on behalf of Tarlok Singh was filed on 31.03.2009.

Mr. Atul Goyal, learned counsel appearing on behalf of the appellant in support of the memorandum of appeal raised following submissions:-

- (i) Vide application bearing No.14958-C of 2016 by invoking provisions of Order 41 Rule 27 CPC, statement of Hargopal Singh under Section 313 Cr.P.C. in a criminal case lodged at the instance of the appellant has been sought to be placed on record. The aforementioned statement established that Hargopal Singh had admitted regarding specific consent from his father, Baldev Singh.
- (ii) Baldev Singh died during the pendency of the appeal in the year 2016 and therefore, provisions

of Section 43 of the Transfer of Property Act would be attracted.

(iii) Keeping the target date as 17.11.2008 was adjustment of the lease amount as Tarlok Singh was lessee of Baldev Singh.

(iv) Attesting witnesses have also categorically stated with regard to consent of the original owner, therefore, there is abdication.

I have heard learned counsel for the appellant, appraised the paper book and of the view that there is no force and merit. Before I could assign reasons, it is necessary to extract the provisions of Section 43 of the Transfer of Property Act and the same reads as under:-

“43. Transfer by unauthorised person who subsequently acquires interest in property transferred.—Where a person 1 [fraudulently or] erroneously represents that he is authorised to transfer certain immoveable property and professes to transfer such property for consideration, such transfer shall, at the option of the transferee, operate on any interest which the transferor may acquire in such property at any time during which the contract of transfer subsists. Nothing in this section shall impair the right of transferees in good faith for consideration without notice of the existence of the said option.”

On plain and simple reading of the aforementioned provisions, it is revealed that even if a person has malafidely or fraudulently entered into agreement to sell or professes to be owner, the transferee would be able to enforce the agreement by believing

that a proclaimer, who had professed to be owner, acquires the ownership. No doubt Baldev Singh as in the meantime died but such cause of action had only accrued in the year 2016 and not before. Nobody can imagine or envision the demise of a particular person as it is an act of God or otherwise. The discretionary relief can only be granted whereby person has been able to prove the continuous readiness and willingness. It is not a case where the plaintiff has not been denied refund of money as an alternative remedy but no explanation has come forward as to why period of five years after paying substantial amount against the total sale consideration, particularly, when the possession with Baldev Singh has been proved, was kept. Baldev Singh emphatically denied the delegation or consent to his son Hargopal Singh, who had appeared and contested the suit for specific performance, though in the injunction suit remained absent.

All these reasons weighed in the mind of Courts below in confining to alternative relief. The concurrent finding of fact and law arrived at by the Courts below cannot be faulted with, much less, no substantial question of law arises for determination by this Court. No ground for interference is made out.

Resultantly both the appeals stand dismissed.

(AMIT RAWAL)
JUDGE

December 11, 2018

Pankaj*

Whether Reasoned/Speaking Yes

Whether Reportable No