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

**Date of decision: 24.07.2019**

**1. RSA No.4862 of 2016 (O&M)**

**Ramji Lal @ Ramji Dass**

**.....Appellant**

**Versus**

**Sh. Bhagwan Dass**

**.....Respondent**

**2. RSA No.4883 of 2016 (O&M)**

**Ramji Lal @ Ramji Dass**

**.....Appellant**

**Versus**

**Sh. Bhagwan Dass**

**.....Respondent**

**CORAM:HON'BLE MS. JUSTICE RITU BAHRI**

Present: Mr. Gaurav Sharma, Advocate,
for the appellant(s).

Mr. S.S. Ghangas, Advocate,
for the respondent(s).

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**Ritu Bahri, J.**

**CM Nos.12625-12626-C of 2016**

For the reasons mentioned in the applications, same are allowed and delay of 790 days in filing and 368 days in re-filing of the appeal is condoned.

**RSA Nos.4862 of 2016 &**
**RSA No.4883 of 2016**

This judgment shall dispose of two appeals i.e. FAO Nos.4862 of 2016 and 4883 of 2016 together as common questions of law and facts are

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involved in both the appeals.

Both the appeals i.e. FAO Nos.4862 of 2016 and 4883 of 2016 have been filed against a common judgment dated 14.02.2013 passed by the Additional District Judge, Panipat, whereby appeals filed by Ramji Lal @ Ramji Dass against the judgments and decrees dated 11.05.2011 passed by the Additional Civil Judge (Senior Division), Panipat, have been dismissed and suit of Bhagwan Dass has been decreed.

Brief facts of the case are that Ramji Lal (appellant) and Bhagwan Dass (respondent) are sons of Sohna Ram. They are fighting for 1/2 share in the suit property. Initially, Ramji Lal (appellant) filed a civil suit No.221/11 dated 11.04.2007/20.01.2011 for partition of the entire suit property and separate of his 1/2 share. His brother Bhagwan Dass contested the said suit on the ground that his brother Ramji Lal ceased to be owner of 1/2 share in the suit property because he (Ramji Lal) had sold his 1/2 share to him (Bhagwan Dass). In this regard, an agreement dated 07.02.2006 for consideration of Rs.2,00,000/- had been executed.

Later on, Bhagwan Dass (respondent herein) filed second suit i.e. Civil Suit No.91/2008 seeking specific performance of agreement dated 07.02.2006 with nominal possession of 1/2 share.

The said suit had been contested by Ramji Lal by denying execution of the alleged agreement and receiving of any consideration. It was alleged that the aforesaid agreement was the result of fraud and forgery.

The trial Court, vide order dated 27.11.2008, had consolidated both the suits with the consent of learned counsel for the parties. It was ordered that proceedings would be carried in the first suit and no independent proceedings would take place in the second suit.

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From the pleadings of the parties, following preliminary issues were framed by the trial Court:-

1. Whether the plaintiff is entitled to the possession of the suit property? OPP
2. Whether the plaintiff's suit is not maintainable? OPD
3. Whether plaintiff's suit is not properly assessed for Court fees? OPD
4. Relief.

Trial Court, after going through the evidence on record, dismissed the first suit i.e. Civil Suit No.221/11 (**Ramji Lal vs. Bhagwan Dass)** . However, second suit i.e. Civil Suit No.91/08 (**Bhagwan Dass vs. Ramji Lal**) was decreed with cost. Consequently, Ramji Lal was directed to execute sale deed in favour of Bhagwan Dass at the expenses of Bhagwan Dass qua 1/2 share as per agreement dated 07.02.2006. Against the said judgment, Ramji Lal @ Ramji Dass filed two separate appeals, which were dismissed by the lower appellate Court.

Heard. Both the Courts have given concurrent finding of fact that Bhagwan Dass proved on record sale deed Ex.DC, vide which, he (Bhagwan Dass) and Ramji Lal had jointly purchased the suit property. Ramji Lal was co-owner of half share. Thereafter, he executed an agreement dated 07.02.2006 Ex.DW3/A in favour of his brother Bhagwan Dass and received entire sale consideration of Rs.2,00,000/-. As per terms of the agreement, Ramji Lal was under obligation to execute the sale deed qua his half share. A perusal of the agreement shows that there was a stipulation that right from the date of purchase of suit property in the year 1973, vide sale deed Ex.DC, Bhagwan Dass (purchaser) was continuing in possession over entire suit property and by virtue of agreement, Bhagwan

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Dass became owner in possession of 1/2 share of Ramji Lal also. Since, possession had already been given to plaintiff-Bhagwan Dass at the time of execution of agreement to sell, the said agreement did not require registration as per judgment passed in ***Smt. Joginder Kaur and othrs vs. Amrik Singh,*** 2009 (4) Civil Court Cases 25 (P&H).

Further, Ramji Lal did not choose to appear in the witness box to depose with regard to his allegations that his signatures were taken by Bhagwan Dass by fraud and misused the same by converting the same into the agreement to sell in question. On the other hand, Bhagwan Dass himself appeared in the witness box as DW-1 and examined attesting witness Darshan Lal (DW-3). He also examined expert evidence witness namely Shamsher Singh Malik (DW-2). Since, Ramji Lal did not appear in the witness box, site plan Ex.P1 and sale deed Ex.P2 were not duly proved.

Before the lower appellate Court, Ramji Lal had made an application under Order 41 Rule 27 read with Section 151 CPC for permission to adduce additional evidence by examining the stamp vendor. However, the said application was dismissed by the lower appellate Court on the ground that the agreement to sell was within the knowledge of the appellant-Ramji Lal before the trial Court and he could examine the said witness before the trial Court itself.

Learned counsel for the respondent(s) has informed that in the execution proceedings, decree has already been executed and respondent-Bhagwan Dass has since died. Moreover, no interim stay was granted by the Court.

Resultantly, after going through the impugned judgments, this Court is of the view that appellant-Ramji Lal has failed to lead any

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cogent and convincing evidence to prove his case. In the absence of any substantial evidence, suit filed by him has been rightly dismissed by both the Courts below. No illegality, much less perversity, has been found in the impugned judgments warranting interference by this Court.

No substantial question of law arises for consideration.

Resultantly, both the appeals i.e. RSA No.4862 of 2016 and RSA No.4883 of 2016 are dismissed.

**(RITU BAHRI)**
**JUDGE**

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

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