

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

**RSA No.6896 of 2016 (O&M)
Date of Decision.23.04.2019**

Malkiat Singh (deceased) through LRs and another ...Appellants

Vs

Bhag Singh (since deceased) through LRs ..Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. D.S. Bali, Senior Advocate with
Ms. Anshika Sharma, Advocate
for the appellants.

Mr. Rakesh Chopra, Advocate
for the caveators/respondents.

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AMIT RAWAL J. (ORAL)

The present regular second appeal is directed at the instance of the appellants-plaintiffs, who were not successful before the Courts below claiming specific performance of agreement to sell dated 01.08.1997.

It was alleged that defendant No.1 Bhag Singh (since deceased) had entered into agreement to sell dated 1.8.1997 in respect of half share out of total land measuring 144 kanals 6 marlas situated in village Chanlon, Tehsil and District Fatehgarh Sahib @ ₹1 lakh per acre against the payment of ₹5 lakhs as earnest money in the presence of marginal witnesses. The agreement further stipulated that sale deed was to be executed within 20 (twenty) days of obtaining possession of the land, which would be taken by the plaintiffs from Balbir Singh and others with their own efforts. On 02.05.1998, possession was taken by the plaintiffs through an agreement dated 02.05.1998 on payment of ₹1,50,000/- to Balbir Singh as

compensation. Defendants were served with registered notice to be present before the Sub Registrar, Fatehgarh Sahib on 22.05.1998. Defendants refused to execute the sale deed. Accordingly, suit was filed on 4.6.1998.

Defendant No.1 Bhag Singh opposed the suit and denied the agreement to sell to be forged and fabricated document, much less, receipt of earnest money. It was explained that the land was previously owned by Channan Singh, who was issueless and after his death, the dispute regarding his property arose, resulting into litigation between Jaswant Kaur, Balbir Singh, Amarit Singh, Paramjit Singh, Balwinder Kaur, Babli sons and daughters of Karnail Singh, Jagir Singh, Didar Singh sons of Gurdit Singh and Hakikat Singh son of Mohinder Singh on one side and Santo, sister of Channan Singh, on other side by propounding a Will executed by Channan Singh. On the other hand, Santo, real sister of Channan Singh, claimed suit property being nearest legal heir. The aforementioned suit was dismissed on 30.10.1980. Another suit was filed by Santo for possession against Jaswant Kaur and others, which was decreed. Jaswant Kaur and others preferred two appeals, which were accepted by the lower Appellate Court vide judgment dated 29.07.1985. However, in the meantime, Santo died and Bhag Singh and his wife Swaran Kaur were brought on record as legal heirs. Bhag Singh and his wife filed a regular second appeal bearing No.2887 of 1985, which was accepted by the High Court on 15.12.1995 whereby finding of the trial Court was upheld. Special Leave Petition was filed by Balbir Singh and others which was

dismissed on 9.2.1998 by the Hon'ble Supreme Court. Execution with the police help was also sought. After losing the legal battle against the defendants, Balbir Singh and others fearing dispossession at the hands of defendants through legal process brought the present plaintiffs into picture. The agreement dated 1.8.1997 was a deep rooted conspiracy to deprive the defendant and his wife from reaping fruits of judgment and decree. The agreement was not scribed by regular deed writer nor it bore signatures of defendants. There was no occasion for executing the agreement to sell when defendants were pursuing the execution to recover possession of land and alleged agreement reflected address of defendant as Kothi No.35, Sewak Colony, Patiala but it was never his place of residence. In fact on the alleged date of agreement, defendant No.1 was stated to be in Delhi. The signatures were got compared through assistance of Navdeep Gupta, handwriting expert who gave report in his favour.

In the replication, plaintiffs alleged that they had always been ready and willing to perform their part of the agreement. During the pendency of the suit, defendant No.3 was impleaded as per the provisions of Order 22 Rule 10 CPC and claimed themselves to be bona fide purchaser of the land and they were not aware about the interim order dated 4.8.1998, thus, were not hit by doctrine akin to *lis pendens*.

Since the parties were at variance, the trial Court framed the following issues:-

“1. Whether the plaintiffs are entitled to specific performance of the contract on the basis of agreement to

sell dated 1.8.1997? OPP

2. Whether the plaintiffs are ready and willing to perform his part of contract? OPP

3. Whether the alleged agreement to sell is forged and fabricated document? OPD

4. Relief.”

Plaintiffs in support of pleadings, examined four witnesses including handwriting expert Gurmeet Kaur and brought on record documents Ex.P1 to Ex.P15 and few marked documents whereas defendants examined five witnesses and brought on record documents Ex.D1 to D28.

The trial Court on the basis of entire evidence brought on record held that the agreement to sell was never executed and dismissed the suit by assessing the counsel fee as ₹1000/-, which was affirmed by the lower Appellate Court in appeal.

Mr. D.S. Bali, learned Senior Counsel assisted by Ms. Anshika Sharma, learned counsel appearing for the appellants submitted that there was serious misreading, misconstruction and misdirection of the evidence. There was complete deviation from the mandate of Order 23 Rule 3 CPC as there was a compromise amongst the legal representatives of Bhag Singh with the plaintiffs but the aforementioned documents were not adjudicated upon by the lower Appellate Court. SMT Machine (India) Limited should not have been impleaded as they cannot be given a status of assignee as defined under the provisions of Order 22 Rule 10 CPC, much less, vendee. Both the Courts below have erroneously non-suited the

plaintiffs qua unwillingness as well as not ready to perform their part of agreement. The lower Appellate Court decided the matter in undue haste despite the fact that the transfer application was pending, thus, urges this Court for setting aside the judgments and decrees under challenge.

I have heard learned counsel for the appellants, appraised the paper book and of the view that there is no force and merit in the submissions of Mr. Bali. Bhag Singh had emphatically denied execution of the agreement to sell. If at all, defendants being legal representatives had entered into agreement, they could not take away valuable right in favour of Jagdeep Singh, defendant No.2 and SMT Machine (India) Limited, defendant No.3. The subsequent vendees acquired interest in the property vide sale deed executed by Bhag Singh. In other words, they were impleaded in individual capacity that too at the trial Court stage. It is settled law that in case legal representatives claim to set up separate stand and to make contentions de hors to the defence available to the deceased, they are required to be impleaded in personal capacity. Reliance is laid to the judgment rendered by Hon'ble Supreme Court in **Vidyawati Vs. Man Mohan and others (1995) 5 SCC 431**. It would be apt to refer para 2 to 5 of the same, which read as under:-

“2. It is contended for the petitioner that both the plaintiff - first defendant and the petitioner's claims are founded on the will executed by Champawati, where the first defendant had right and interest for life and the petitioner had right thereafter and as such she could raise the plea which Brijmohan Kapoor could have raised in his written statement. The courts below were

not right in refusing to permit the petitioner to file additional written statement. In support thereof, the petitioner placed strong reliance on the judgment of this Court in [Bal Kishan vs. Om Parkash & Anr](#), AIR 1986 SC 1952.

3. It is seen that the petitioner's claim of right, title and interest entirely rests on the will said to have been executed by Champawati in favour of the first defendant and herself. It is now admitted across the Bar that the first defendant had life interest created under the will executed by Champawati. Therefore, the said interest is co-terminus with his demise. Whether the petitioner has independent right, title and interest de hors the claim of the first defendant is a matter to be gone into at a later proceedings. It is true that when the petitioner was impleaded as a party - defendant, all rights under Order 22 Rule 4(2), and defences available to the deceased defendant become available to her. In addition, if the petitioner had any independent right, title or interest in the property then she had to get herself impleaded in the suit as a party defendant in which event she could set up her own independent right, title and interest, to resist the claim made by the plaintiff or challenge the decree that may be passed in the suit. This is the view the court below has taken rightly.

4. This Court in [Bal Kishan vs. Om Parkash & Anr](#). AIR 1986 SC 1952 has said thus:

"The sub-rule (2) of Rule of Order 22 authorised the legal representative of a deceased defendant to file an additional written statement or statement of objections raising all pleas which the deceased-defendant had or could have raised except those which were personal to the deceased-defendant or respondent."

5. The same view was expressed in *Jagdish Chander Chatterjee & Ors. vs. Sri Kishan & Anr.*, 1973 (1) SCR 850 wherein this Court said:

"...the legal representative of the deceased respondent was entitled to make any defence appropriate to his character as legal representative of the deceased respondent. In other words, the heirs and the legal representatives could urge all contentions which the deceased could have urged except only those which were personal to the deceased. Indeed this does not prevent the legal representatives from setting up also their own independent title, in which case there could be no objection to the court impleading them not merely as the Lrs. of the deceased but also in their personal capacity avoiding thereby a separate suit for a decision on the independent title."

Therefore, the argument of Mr. Bali with regard to non-adherence to provisions of Order 22 Rule 3 CPC must fail.

As regards readiness and willingness, Binderpal Sharma, PW3 alleged that he had entered into agreement to sell along with co-plaintiff Malkit Singh but in cross-examination he failed to prove his readiness and willingness rather admitted that agreement was prepared by a typist but not regular scribe and also denied to have known Bhag Singh prior to 1998 whereas agreement to sell was entered into 1997. He feigned ignorance with regard to previous litigation. The agreement to sell clearly specified that decree qua share share of land was in favour of Bhag Singh and his wife Swarn Kaur. To a specific question in cross-examination admitted that Bhag Singh was owner in possession of the land whereas the tenor and

mode of agreement to sell reflected that some other person was in possession. Statement of attesting witnesses Gurbachan Singh, PW1 and Gurmej Singh, PW2, if read conjunctively, they were material witnesses as both of them were known to plaintiffs and called upon for the purpose of agreement to sell. Gurbachan Singh did not know how many persons were in possession of land and unable to disclose name of typist or the stamp vendor. PW3 stated that stamps for the agreement to sell were taken from Patiala but he did not know from whom nor he knew name of the typist. The recital in the agreement reveals that possession was received in the year 1998 whereas documentary evidence Ex.D21 & D22, copy of kabja report reflected that possession by the defendants was given on 24.09.2001 through the process of the Court.

In view of aforementioned circumstances, arguments of Mr. Bali are not able to cut ice to bring the case within the realm of illegality and perversity to enable this Court to form a different opinion than the one already arrived at by the Courts below, much less, no substantial question of law arises for determination by this Court. No ground for interference is made out. Resultantly, the second appeal is dismissed.

(AMIT RAWAL)
JUDGE

April 23, 2019
Pankaj*

Whether speaking/reasoned Yes

Whether reportable No