

CM-2893-C of 2021 and
CM-15036-C-2014 in
RA-RS-72-C of 2014 in
RSA No. 3602 of 2003

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

**CM-2893-C of 2021 and
CM-15036-C-2014 in
RA-RS-72-C of 2014 in
RSA No. 3602 of 2003**

Date of decision : December 13, 2021

Mohd. Juber and others

.....Appellants

Versus

Badri Parshad and others

....Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Naveen S. Bhardwaj, Advocate for the applicant-appellants.

Mr. Suman Jain, Advocate for the non-applicant/respondents.

LISA GILL, J.

This matter is being taken up for hearing through video conferencing due to outbreak of the pandemic, COVID-19.

CM-2893-C-2021 has been filed on behalf of the applicant/appellants No. 3 to 7 supported with an affidavit of appellant No. 6, Sabir alias Shabbir Ahamad, seeking extension of interim order dated 21.03.2013 regarding stay of final orders/proceedings before the learned Executing court during pendency of proceedings in the present matter.

Learned counsel for the parties were ad idem that arguments in review application itself be heard rather than just the application being taken up.

CM-2893-C of 2021 and
CM-15036-C-2014 in
RA-RS-72-C of 2014 in
RSA No. 3602 of 2003

Therefore, at request and with consent of learned counsel for the parties, arguments were heard in the review application as well, on two occasions. Accordingly, the miscellaneous application/s and review application stand decided by this order.

Brief facts necessary to be adverted to at this stage are that the appellants including the present applicants filed RSA-3602-2003 being aggrieved of judgment and decree dated 18.02.1999 passed by the learned Additional Civil Judge (Senior Division), Palwal as well as judgment and decree dated 11.11.2002 passed by the learned District Judge, Faridabad, whereby suit filed by the respondent – plaintiffs seeking specific performance of the contract regarding suit land was decreed in their favour. Above said regular second appeal was dismissed on 16.10.2003. Same was subject to challenge in SLP(civil) 3183 of 2004/Civil Appeal No. 6925 of 2005 filed by the appellants, which was ultimately disposed of on 08.12.2010 with the observations that certain points have been raised by the appellants, which were not mentioned in the impugned judgment. It is further observed that it is not open to the party to raise such points before an appellate Court. Relevant portion of order dated 08.12.2010 reads as under:-

“ The presumption in law is that a Judge deals with every point which is pressed before him, and if a point is not mentioned in his judgment, the presumption is that it was never pressed. It often happens that an advocate takes, say, ten grounds in the memorandum of appeal but at the time of arguments in the Court, he only pressed three of them. Naturally, the Judge will deal with those points which were urged before him and it has to be deemed that the other points were abandoned. However, this presumption is a rebuttable presumption, and if the party wants to rebut it, he has to go before the same Judge with a suitable amendment application stating that certain points were argued but they have not been dealt with in the

CM-2893-C of 2021 and
CM-15036-C-2014 in
RA-RS-72-C of 2014 in
RSA No. 3602 of 2003

judgment. If the party satisfies the said Judge that he indeed pressed those points at the time of arguments, the Judge may deal with those contentions, but it not open to a party to raise those points before an appellate Court.

With these observations, the appeal is disposed of.”

Thereafter, the appellants filed CM-4709-C-2011 for amendment of order dated 16.10.2003 and for rehearing of the appeal after recall of order dated 16.10.2003 subsequent to condonation of delay in filing the application. Said application was ultimately dismissed on 29.07.2011 with the following observations:-

“ During the course of arguments, it has been very fairly submitted by learned counsel for the applicants/appellants that the only remedy available to the petitioner is to file a review application and the present application under Section 151 CPC for amendment of the order dated 16.10.2003 cannot be entertained.

Hence, the present application is dismissed. The applicants, if so advised, may take lawful remedy, available to them.”

Curiously, CM-10818-C-2011 was again filed for re-hearing of the appeal by appellants No. 3 to 7 only, alongwith other applications i.e. CM-10816-CII-2011 for placing on record certain documents, CM-10817-C-2011 for condonation of delay etc. and other applications which remained pending till 12.01.2015. CM-3435-C-2013 was filed by the applicant/appellants No. 3 to 7 seeking stay of execution proceedings. While issuing notice in this application on 12.01.2015, it was directed that proceedings before the Executing Court may go on till the next date of hearing but final order be not passed. In the meanwhile, on 16.10.2014, Review Application RA-RS-72-C-2014 was filed on behalf of

CM-2893-C of 2021 and
 CM-15036-C-2014 in
 RA-RS-72-C of 2014 in
 RSA No. 3602 of 2003

appellants No. 3 to 7 alongwith CM-15036-C-2014 seeking condonation of delay of 4050 days in filing the review application. Various miscellaneous applications for re-hearing of the appeal etc. were ultimately dismissed as not pressed on 12.01.2015 and application for review alongwith condonation of delay in filing the same survived with notice being issued in the said applications on 12.01.2015. CM-3435-C-2013, CM-10816-C-2011 and CM-15036-C-2014 also remained pending. It is to be noted at this stage that the pending applications are on behalf of appellants No. 3 to 7 only. Appellants No. 1 and 2 i.e. legal representatives of Chhanga have not come forward. Above said being the factual position regarding various applications filed after passing of final order in RSA-3602-2003, it is necessary to refer to the brief facts of the case itself for proper appreciation of controversy at hand.

Respondent – plaintiffs filed the suit for specific performance of the agreement dated 29.11.1991. It is pleaded that suit land measuring 53 kanals 5 marlas less land acquired by the State of Haryana as described in the plaint was agreed to be sold to plaintiff No. 1 – Badri Parshad and Budhi Mal son of Tulsi Ram by defendants No. 1 and 2 as per agreement dated 29.11.1991 at rate of Rs.1,25,000/- per acre and an amount of Rs.5 lakhs was paid by the plaintiffs to defendant No. 1 - Chhanga and Ishaq at the time of agreement as part payment/earnest money. It was further alleged that defendants No. 1 and 2 with mala fide intention had executed lease deeds for 99 years regarding the suit land with defendant No. 1 leasing out his share in favour of defendant No. 4 namely Jamil Ahmed (appellant No.3 in this appeal) i.e. son of defendant No. 2 and defendant No. 2 executing a lease deed in favour of defendant No. 3, namely Mohd.Juber (appellant No.1 in this appeal), who is the son of defendant No. 1.

CM-2893-C of 2021 and
 CM-15036-C-2014 in
 RA-RS-72-C of 2014 in
 RSA No. 3602 of 2003

Defendant – appellants filed a joint written statement wherein execution of agreement dated 29.11.1991 was not denied. However, it is alleged that plaintiffs filed the suit on the basis of forged document inasmuch as first two pages of the agreement were changed. It is pleaded that agreement was entered into at the rate of Rs.6,46,000/- per acre i.e. for total sale consideration of Rs.42 lakhs on 28.11.1991 and that it is the plaintiffs who did not have the amount in question. Learned trial Court on finding that plaintiffs had proved their case, decreed the suit vide judgment and decree dated 18.02.1999 passed by the learned Additional Civil Judge (Senior Division), Palwal. Appeal filed by the defendants – appellants was dismissed by learned District Judge, Faridabad vide judgment and decree dated 11.11.2002 passed by the learned District Judge, Faridabad. RSA No. 3602 of 2003 filed by the appellants was dismissed in limine with the following observations:-

“ There is concurrent finding of fact recorded by both the courts below that the respondent – plaintiffs had proved that defendants No. 1 and 2 namely Chhanga and Ishaq had entered into an agreement to sell dated 29.11.1991 at the rate of Rs.1.25 lacs per acre of land and had received a sum of Rs. 5 lacs as earnest money and further they are ready and willing to get the sale deed executed but the appellants had committed default in the same. Counsel for the appellants contended that there is unconscious agreement and thereby the respondents have gained unreasonable benefit. However, from the evidence on record, I do not find that there is unconscious agreement in view of the mutations Ex.P6 to P8. No substantial question of law is involved. Hence, this regular second appeal is dismissed.”

As noted in the foregoing para, appellants approached the Hon'ble Supreme Court challenging order dated 16.10.2003 with SLP(civil) 3183 of

CM-2893-C of 2021 and
CM-15036-C-2014 in
RA-RS-72-C of 2014 in
RSA No. 3602 of 2003

2004/Civil Appeal No. 6925 of 2005 being disposed of on 08.12.2010. Various applications as noted above were filed.

Learned counsel for the applicant-appellants vehemently argued that delay of 4050 days in filing of this review application is clearly explained inasmuch as time taken by the applicants in pursuing SLP(civil) 3183 of 2004/Civil Appeal No. 6925 of 2005 and thereafter civil miscellaneous applications filed for recalling of order dated 16.10.2003 and that the delay has occurred due to bona fide mistake and erroneous impression that application for re-hearing of the appeal was to be filed and that the applicant-appellants are not to benefit in any manner by delay of the proceedings.

Learned counsel for the applicants submits that applicants' appeal has been dismissed vide order dated 16.10.2003 without recording specific arguments as raised and the reasons for dismissal. It is submitted that it is the specific case of the applicants that agreement dated 29.11.1991 is a forged and fabricated document as the first two pages had been changed and that PW2 Hukam Chand, the only witness of the agreement produced by the plaintiff – respondents had himself stated that vendors and witnesses had signed the first page of the agreement whereas their signatures are not present on the first page. It is further stated that evidence of Expert witness DW3 Vir Kumar Sukhuja has been wrongly rejected and that presumption drawn against the defendant – appellants for failing to examine the stamp vendor had been wrongly drawn. It is, thus, prayed that review application be allowed.

Learned counsel for the respondents while opposing the arguments raised by the applicant-appellants submits that it is clear that intention of the

CM-2893-C of 2021 and
CM-15036-C-2014 in
RA-RS-72-C of 2014 in
RSA No. 3602 of 2003

applicant-appellants at all times has been to delay the matter in order to defeat the rights of the plaintiffs – respondents so that they may not enjoy the fruits of the decree in their favour. It is contended that first and foremost the Hon'ble Supreme Court on 08.12.2010 never allowed any liberty to the applicant-appellants to seek review in the present case. Moreover, even if the same is to be accepted, applicant-appellants in an absolutely mala fide manner after lapse of a number of months filed CM-4709-C-2011 for recall of order dated 16.10.2003 in April 2011. Thereafter again, CM-10818-C-2011 was filed for re-hearing of the appeal. Still further, CM-12532-C-2011 was filed by appellants No. 1 and 2 for re-hearing of the appeal.

Learned counsel for the respondents submits that after dismissal of CM-4709-C-2011 on 29.07.2011, appellants again waited till the year 2014 to file review application No. 72-C-2014, therefore, it is apparent that intention of the applicant – appellants is only to delay the matter so as to hold on to possession of the suit property. Learned counsel for the respondents further submits that an application for review cannot be permitted to be argued by the counsel other than the one who had earlier argued the matter. Learned counsel further submits that both the courts below have rendered concurrent findings on the basis of evidence on record. Appellants have failed to lead any evidence on record to prove that there has been any change of the pages of the agreement as alleged by them. It is submitted that onus of proving the document to be forged or fabricated has not been discharged by the appellants as has been rightly held by both the learned courts below. Moreover, the plaintiffs, it is further submitted, have proved the value of land on record. The agreement to sell is duly admitted by the defendants, therefore, any forgery or fraudulent nature of the agreement had to be proved by

CM-2893-C of 2021 and
CM-15036-C-2014 in
RA-RS-72-C of 2014 in
RSA No. 3602 of 2003

the said respondents by leading cogent evidence, which has not been done. It is further submitted that legal representatives of Chhanga have not come forward to raise any further challenge in this matter. It is, thus, prayed that review application be dismissed.

I have heard learned counsel for the parties at length and have gone through the file with their able assistance.

Preliminary objection had been raised by learned counsel for the non-applicant/respondents that review application is not maintainable having been filed by a counsel other than the one who had argued the appeal which was decided on 16.10.2003. Learned counsel for the respondents was, however, unable to deny that learned senior counsel, who had argued the matter on 16.10.2003 is no more and that CM-4709-C-2011 was indeed filed from the office of the same counsel, who had argued Regular Second Appeal and the present review application consists of the same grounds as are mentioned in CM-4709-C-2011. Therefore, I do not find any justification in dismissing the review application solely on this ground.

It is a matter of record that the respondent – plaintiffs filed the suit for specific performance of contract dated 29.11.1991 regarding suit land. As per the pleadings, defendant No. 1 - Chhanga and defendant No. 2 - Ishaq sons of Sh.Chahat Khan entered into an agreement for sale dated 29.11.1991 with plaintiff No. 1 – Badri Parshad and one Budhi Mal son of Tulsi Ram for sale of agricultural land measuring 53 kanals 5 marlas less land acquired by the State of Haryana as described in the plaint. One of the proposed vendee Budhi Mal passed away and plaintiffs No. 2 to 13 are stated to be his legal heirs. Suit land was agreed to be sold by defendants No. 1 and 2 as per agreement dated 29.11.1991 at

CM-2893-C of 2021 and
CM-15036-C-2014 in
RA-RS-72-C of 2014 in
RSA No. 3602 of 2003

rate of Rs.1,25,000/- per acre and an amount of Rs.5 lakhs was paid to them by plaintiff No. 1 and Budhi Mal at the time of agreement as part payment/earnest money. Defendants No. 1 and 2 agreed to execute and register the sale deed in favour of the prospective vendees on or before 15.04.1992. Remaining sale consideration was to be paid at the time of execution and registration of the sale deed. It was further agreed that land which had been acquired for the road after measurement would be deducted from the land mentioned in the agreement and possession thereof would be delivered at the time of registration of the sale deed. Plaintiff No. 1, Budhi Mal and after his death his legal heirs, it is pleaded, were always ready and willingly to perform their part of contract but defendants No. 1 and 2 failed to carry out their part of contract. It is further pleaded that plaintiffs had sought execution of sale deed on numerous occasions but defendants No. 1 and 2 on one pretext or other, kept postponing the matter and did not even obtain Income Tax Clearance certificate. Notice was served upon defendants No. 1 and 2 but they did not come present for execution of the sale deed. There are pleadings in respect to the steps taken by the plaintiffs for registration of the sale deed with defendants No. 1 and 2 not coming forward for the same.

It is further stated that defendants No. 1 and 2 with mala fide intention executed a lease deed for 99 years regarding the suit land merely to defeat the rights of the plaintiffs. Defendant No. 1 leased out his share in favour of defendant No. 4, Jameel Ahamd and defendant No. 2 instituted a lease deed for 99 years in favour of defendant No. 3, Mohd. Juber. It is alleged that lease deeds are a mere camouflage as defendant No. 3 is the son of defendant No. 1 and defendant No. 4 is the son of defendant No. 2. Therefore, said lease deeds are not

CM-2893-C of 2021 and
CM-15036-C-2014 in
RA-RS-72-C of 2014 in
RSA No. 3602 of 2003

binding on the rights of the plaintiffs. When the defendants refused to admit the plaintiffs' claim, suit was filed.

Joint written statement was filed by all the defendants wherein execution of agreement dated 29.11.1991 is not denied at all. It is, however, alleged that the suit has its foundation on a forged document, as plaintiff No. 1 has entered into an agreement with defendants No. 1 and 2 for purchase of the suit land at the rate of Rs.6,46,000/- per acre for total sale consideration of Rs.42 lakhs on 28.11.1991. Defendants pleaded that first and second pages of the agreement were signed by defendants No. 1 and 2 and it was agreed that sale deed would be executed and registered on 09.04.1992. Agreement produced by the plaintiffs is alleged to be forged and fabricated to the extent that first page of the agreement on which operative part of the agreement was typed has been changed by replacing it with another in place of the original one in collusion with the stamp vendor as well as the typist. Defendants claimed to have been defrauded and cheated by the plaintiffs. Receipt of Rs.5 lakhs as earnest money is not denied. It is further stated that defendants No. 1 and 2 as well as plaintiff No. 1 had duly attended the office of Sub Registrar on 09.04.1992 but plaintiffs themselves were not in position to arrange the balance amount of Rs.37 lakhs. Therefore, it was decided that they would come present on 16.04.1992 at the office of Sub Registrar but the plaintiffs again failed to arrange the sale consideration.

Both the learned courts below on appreciation of the evidence on record, facts and circumstances, concluded that the plaintiffs had successfully proved their case against the defendants. It is held that the main grievance of the defendants that first page of the agreement has been changed by the plaintiffs,

CM-2893-C of 2021 and
CM-15036-C-2014 in
RA-RS-72-C of 2014 in
RSA No. 3602 of 2003

remains totally unsubstantiated by the evidence on record. Learned Additional District Judge, Faridabad observed that the stamp paper had admittedly been purchased by respondent No. 1 – Chhanga himself and in case defendants had suspected change of the first page of the agreement, they should themselves have produced the stamp vendor at the earliest opportunity. A co-ordinate Bench after hearing the arguments in appeal on 16.10.2003 dismissed the appeal while noting that there is concurrent finding of fact recorded by both the learned courts below that respondent – plaintiffs had proved the factum of defendants No. 1 and 2 entering into an agreement to sell dated 29.11.2021 at the rate of Rs.1.25 lakhs per acre and had received a sum of Rs.5 lakhs as earnest money and that plaintiffs are ready and willing to get the sale deed executed while appellants had committed default. It is relevant to note at this stage that defendants No. 1 and 2 before the learned trial Court as revealed from perusal of the plaint were Chhanga and Ishaq sons of Sh.Chahat Khan. Defendant No. 3 was Mohd. Juber, who is arrayed as appellant No. 1 in this appeal and Jameel Ahmad – defendant No. 4 is arrayed as appellant No. 3. Mohd. Juber is admittedly the son of Chhanga and Jameel Ahmad is the son of Ishaq. It is not denied that legal representatives of Chhanga i.e. appellants No. 1 and 2 have not filed review application.

Grievance raised by learned counsel for the applicants is that while dismissing the appeal on 16.10.2003, evidence of one of the attesting witness PW2 Hukam Chand has not been considered in its correct perspective. It is submitted that once the plaintiffs' witness himself stated that vendors and witnesses had signed on the first page of the agreement, both the learned courts below have wrongly ignored the plea that document (Ex.P5) is not the document, which was signed by the defendants. It is further submitted that evidence of the

CM-2893-C of 2021 and
CM-15036-C-2014 in
RA-RS-72-C of 2014 in
RSA No. 3602 of 2003

expert witness should have been considered by both the learned courts below.

Moreover, market value of land was much more than what is mentioned in the agreement and that the learned courts below have wrongly held that defendants did not produce the stamp vendor at the earliest opportunity especially in view the fact that an application under Order 41 Rule 27 read with Section 151 CPC was moved for leading additional evidence before the learned District Judge, Faridabad, which was admittedly dismissed.

It is a matter of record that defendants No. 1 and 2 have not denied execution of agreement to sell dated 29.11.1991 with plaintiff No. 1 and Budhi Mal. What has been alleged by defendants No. 1 and 2 is that first two pages mentioning the relevant particulars have been changed and that the total sale consideration was Rs.42 lakhs and that the plaintiffs were not in a position to arrange the balance amount of Rs.37 lakhs. Receipt of Rs.5 lakhs as earnest money is also admitted by the defendants. Plaintiffs have otherwise proved the agreement to sell (Ex.P5) by examining plaintiff Badri Parsad as PW3. PW3 has given the complete details while submitting that the stamp papers for the agreement were brought by Hazi i.e. defendant No. 1 - Chhanga and the agreement was also got typed by him. There is no denial of the same. PW2 Hukam Chand, an independent witness, is a retired teacher who has deposed that defendants No. 1 and 2 had agreed to sell their land in favour of plaintiffs at the rate of Rs.1.25 lakhs per acre on 29.11.1991. He has also deposed about Rs.5 lakhs earnest money being received by the defendants at the time of agreement. Perusal of testimony of PW2 reveals that he specifically denied the suggestion of the agreement being for a consideration of Rs. 42 lakhs. He has reiterated that agreement was at the rate of Rs.1.25 lakhs per acre while expressing ignorance

CM-2893-C of 2021 and
CM-15036-C-2014 in
RA-RS-72-C of 2014 in
RSA No. 3602 of 2003

about the number of stamp papers of the agreement. PW2 has also denied that first page of the agreement has been changed. Reference to a stray line in the cross examination of PW2 to the effect that the name of Ishaq, Chhanga and the witnesses were there on the first page can by no stretch of imagination be treated to be cogent evidence to prove the document (Ex.P5) to be a forged or fraudulent document in the factual matrix of the case.

Similarly both the learned courts below have rightly discarded evidence of hand writing expert DW3 as well as PW4 while specifically observing that experts examined by both the parties have tried to support the case of their respective pay masters and their statements do not help the court in reaching any conclusion. Reliance on the testimony of Mohd. Juber DW1, who is one of the attesting witnesses of the agreement, is clearly of no avail to the applicant-appellants. This is so for the reason that though DW1 Mohd. Juber is the attesting witnesses of the agreement, he is admittedly the son of defendant No. 1 Chhanga. Apart from being an interested witness, DW1 himself admits that the first page of the agreement was not signed by the witnesses. In the given factual matrix, both the learned courts below have correctly given credence to the testimony of PW2 Hukam Chand who is a retired teacher, not related to any of the parties and clearly an independent witness having no axe to grind with anyone. It is further a matter of record that defendants failed to examine the other attesting witnesses i.e. Jagpal Singh and Iliyas, Lambardar who are educated persons. Moreover, plaintiffs also proved on record that the rate of land at the relevant time was about Rs.1,00,000/- per acre. 12 kanals of land was sold for about Rs.1,50,000/- as evident from Exs. P6 to P8. There is no evidence brought on record by the defendants to prove otherwise.

CM-2893-C of 2021 and
CM-15036-C-2014 in
RA-RS-72-C of 2014 in
RSA No. 3602 of 2003

Last but not least, argument raised that non production of stamp vendor at an earlier stage by the defendants should not have been taken against the defendants, in view of application moved under Order 41 Rule 27 read with Section 151 CPC before the learned Appellate Court is of no avail to the applicants. Said application has been correctly dismissed by the learned First Appellate Court while specifically observing that the application was filed after lapse of one year from the date of institution of appeal. Evidence of the defendants was closed by the trial Court on 19.08.1998. An opportunity for production of additional evidence had been afforded by the High Court on the defendants' application. However, at that time also, no such application had been moved and it is after one year of filing of the appeal before the learned District Judge that the application was moved and it was only an attempt on the part of the defendants to re-open the entire case. As the stamp paper was produced by the defendants, they are presumed to know the name of stamp vendor, therefore, it was held that they should have produced the same vendor at the earliest opportunity before the trial Court. Application was, thus, dismissed. Moreover, this is only one of the factors in the entire conspectus of the case. The sequence of events as has been described in the foregoing paras clearly indicates that effort of the applicant-appellants has been to retain possession of the property and to delay the proceedings. It is further a matter of record that LR's of defendant No. 1 – Chhanga have not come forward to seek review of order dated 16.10.2003.

Having heard learned counsel for the parties at length on the entire issue, I am of the considered opinion that no ground whatsoever is made out for any interference by this court in the review application.

CM-2893-C of 2021 and
CM-15036-C-2014 in
RA-RS-72-C of 2014 in
RSA No. 3602 of 2003

As the review application has been heard and decided on merits, question of condonation of delay of the same is rendered academic. Application for condonation of delay in filing the same is, thus, disposed of, accordingly.

Pending applications, if any, are disposed of, accordingly.

December 13, 2021
rts

(LISA GILL)
JUDGE

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