

RA-RS-3-2020(O&M) in
RSA-2252-2017

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

RA-RS-3-2020(O&M) in
RSA-2252-2017
Date of decision:-28.07.2022

Soma Jassal

...Review Applicant/Appellant

Versus

Dhilpreet Singh Gill and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Sumeet Mahajan, Sr.Advocate with
Mr.Mandeep Singh, Advocate and
Ms.Rubani Attri, Advocate
for the applicant/appellant.

Mr.V.K. Jindal, Sr.Advocate with
Mr.Gopal Soni, Advocate
for the non-applicant/respondents No.3 and 4.

H.S. MADAAN, J.

RA-RS-3-2020(O&M)

1. By this order, I shall disposed of an application under Section 114 read with Order 47 Rule 1 and Section 151 of CPC for review of the judgment and decree dated 10.12.2019 passed by this Court in RSA No.2252 of 2017 vide which the appeal had been dismissed.

2. Briefly stated, facts of the case are that plaintiff Dhilpreet Singh Gill, aged about 51 years son of Harbeant Singh Gill, resident of Mohali had brought a suit against defendants i.e. Smt. Pritam Kaur wife of

late Lal Singh, resident of Village Agwar Gujran, Tehsil Jagraon, District Ludhiana and Smt. Soma Jassal wife of Laslie Jassal, resident of 126-White Barn Lane, Dagenham, England, seeking possession of land measuring 151K-3M, situated at Village Galib Kalan-I, Tehsil Jagraon, District Ludhiana fully described in headnote of the plaint, by way of specific performance of agreement to sell dated 11.12.2004, executed by defendant No.1 Pritam Kaur in favour of the plaintiff. In that suit the plaintiff sought a declaration that order dated 17.03.2005 passed by the Collector, Jagraon setting aside mutation No.1960 of Village Galib Kalan-II and mutation No.14703 of Village Galib Kalan-I, which had been sanctioned on the basis of valid exchange effected between the defendants was hit by principle of lis-pendence, estoppel and liable to be ignored, which had been obtained in order to defeat the rights of the plaintiff, as such the same was not binding on the plaintiff. He had further sought a declaration that mutation No.1960 of Village Galib Kalan-II, mutation No.14703 of Village Galib Kalan-I and mutation No.25136/1 of Village Agwar Gujran were perfectly legal, valid and binding upon the defendants on the basis of legal and valid exchange and further to direct defendant No.2 to join defendant No.1 to execute and get the sale deed registered in favour of the plaintiff. In the alternative, the plaintiff had sought a decree for recovery against defendant No.1 in the form of damages for the loss caused to him; again in the alternative, the plaintiff had sought a suit for possession of land by way of specific performance of agreement to sell dated 27.10.2004 executed by defendant No.2 through her attorney Parvinder Singh son of Lal Singh and to get the sale deed registered etc.

3. As per version of the plaintiff, Soma Jassal defendant No.2 through her attorney Parvinder Singh had entered into an agreement with him to sell the suit land measuring 151K-3M at the rate of Rs.10 lacs per acre, receiving earnest money of Rs.50,000/- vide a written agreement dated 27.10.2004. Subsequently, Smt. Pritam Kaur-defendant No.1, who is mother of Parvinder Singh, attorney of defendant No.2, represented that she had got the suit land in exchange from defendant No.2. Accordingly, defendant No.1 entered into an agreement to sell dated 11.12.2004 with the plaintiff at the rate of Rs.10 lacs per acre receiving Rs.50,000/- on 27.10.2004 and Rs.3 lacs as well as Rs.15,50,000/- on two subsequent occasions, total amount received by him as earnest money came out to be Rs.19 lacs. A sum of Rs.7 lacs was paid by the plaintiff to defendant No.1 upto 01.06.2005 and sale deed for half acre of land was to be executed and for the remaining area till 01.12.2005. Since in the month of February, 2005, the defendants started negotiations for selling the suit land to some other persons on account of rising prices, the plaintiff filed a suit for permanent injunction, wherein the Court granted ad interim injunction in favour of the plaintiff restraining defendant No.1 from alienating the suit land; the plaintiff was ready and willing to execute the sale deed on 1.6.2005 defendant No.1 did not come forward to do so; as a matter of fact Defendant No.2 in connivance with defendant No.1 had filed an appeal before the Collector, Jagraon, challenging the order of mutation No.1960 of Village Galib Kalan-II and mutation No.14703 of Village Galib Kalan-I, pertaining to exchange of the suit land in favour of defendant No.1 in return for the land of defendant No.1 situated at Village

Agwar Gujran in favour of defendant No.2 and a collusive order dated 17.03.2005 setting aside aforesaid two mutations was obtained by them to defeat the right of the plaintiff for specific performance of agreement dated 11.12.2004. As per the stand of the plaintiff, the oral exchange between defendants was valid and defendant No.1 was owner of the suit land on the basis thereof, therefore the plaintiff was entitled to specific performance of agreement to sell dated 11.12.2004; in alternative to get damages to the tune of Rs.1,88,75,000/-, because the plaintiff intended to carve out a posh colony after purchasing the suit land and would have earned a profit to the tune of more than Rs.10 lacs per acre. According to the plaintiff, in case, the Court came to the conclusion that defendant No.2 was owner of the suit land, in that case, the plaintiff was entitled to specific performance of agreement dated 27.10.2004 executed by defendant No.2 through her attorney Parvinder Singh and in that eventuality, the plaintiff was entitled to recover amount of Rs.18,50,000/- from defendant No.1 along with interest. Another relief in alternative was claimed, which has been mentioned above.

4. On getting notice, the defendants appeared and filed separate written statements, contesting the suit. In the written statement filed by defendant No.1, she had taken up various legal objections besides taking a stand that the plaintiff could not seek specific performance of agreement dated 11.12.2004 because the same stood frustrated due to the fact that the exchange effected between defendants was set aside by Collector, Jagraon and defendant No.1 was no longer owner of the suit property. Further, she was ready to return the amount of Rs.19 lacs received by her from the

plaintiff. According to the defendant No.1 agreement to sell dated 27.10.2004 was a forged and fabricated document, which was not executed by Parvinder Singh; there was no occasion for the plaintiff to enter into any agreement to sell dated 27.10.2004 with defendant No.2 through her attorney Parvinder Singh, who was son of defendant No.1. Defendant No.1 denied that she in collusion with defendant No.2 had obtained orders from the revenue authorities so as to cause prejudice to the rights of the plaintiff.

5. In the written statement filed by defendant No.2, she had also taken various legal objections submitting that the alleged agreement to sell dated 27.10.2004 was forged and fabricated by the plaintiff after filing of this civil suit in connivance with Parvinder Singh in order to usurp the land of defendant No.2; that there was no privity of contract between the plaintiff and defendant No.2; that defendant No.1 tried to defraud defendant No.2 in collusion with her son Parvinder Singh, who was appointed as attorney by defendant No.2, vide power of attorney dated 16.04.2002. According to the defendant No.2, defendant No.1 and Parvinder Singh falsely prepared the agreement of exchange dated 06.10.2004 showing exchange of land measuring 43K-11M of defendant No.1 with the suit land measuring 151K-2M of land of defendant No.2, situated at Village Galib Kalan; on coming to know about it, defendant No.2 filed an appeal against sanctioning of mutation, which was allowed by Collector, Jagraon; the defendant No.1 had no locus standi to enter into any agreement with the plaintiff with regard to the land owned by defendant No.2. In the end, such defendant also prayed for dismissal of

the suit.

6. Plaintiff filed replications to the written statements submitted by both the defendants, denying the allegations therein, whereas, reiterating the averments in the plaint.

7. On pleadings of the parties, the following issues were framed:-

1. Whether order dated 17.03.2005 passed by Collector, Jagraon setting aside mutation No.1960 of Village Galib Kalan-II and mutation No.14703 of Village Galib Kalan-I, is illegal and hit by principle of lis-pendence, estoppel and is liable to be ignored being collusive and sham as alleged? OPP.
2. Whether defendant No.1 entered into an agreement dated 11.12.2004 with plaintiff? OPP.
3. Whether plaintiff is entitled to specific performance of agreement to sell dated 11.12.2004? OPP
4. If issue No.3 is not proved, whether plaintiff is entitled to alternative relief of recovery of earnest money or of damages as claimed? OPP.
5. Whether defendant No.2 entered into an agreement of sale dated 27.10.2004 through her Attorney Parvinder Singh as alleged? OPP.
6. Whether plaintiff is entitled to specific performance of agreement to sell dated 27.10.2004 as alleged? OPP.
7. If issue No.6 is not proved, whether plaintiff is entitled to recovery of earnest money and damages with interest as

claimed? OPP.

8. Whether plaintiff has always been ready and willing to perform and is still ready and willing to perform his part of agreements of sale dated 11.12.2004 and 27.10.2004? OPP.

9. Whether suit of the plaintiff is barred by principle of constructive res-judicata? OPD.

10. Whether plaintiff has no locus standi to file present suit? OPD.

11. Whether suit is bad for mis-joinder of parties and non joinder of cause of action? OPD.

12. Whether plaintiff is estopped by his act and conduct to file the present suit? OPD

13. Whether plaintiff has got no locus standi to challenge the order dated 17.03.2005 passed by Collector, Jagraon? OPD.

14. Whether the suit is collusive between plaintiff and defendant No.1 along with her son as alleged? OPD-2.

15. Whether suit is barred Under Order 2 Rule 6 and 7 as alleged? OPD-2.

8. The parties were afforded opportunities to lead evidence.

9. On conclusion of trial, after hearing arguments, learned Court of Addl. Civil Judge (Sr. Divn.) Jagraon, vide judgment and decree dated 09.10.2015, decreed the suit with costs observing that if defendant No.1 failed to execute the sale deed in favour of the plaintiff then the plaintiff shall be entitled to get the sale deed executed and registered through agency of the Court.

10. Both the defendants felt aggrieved by the said judgment and decree and preferred separate appeals before District Judge, Ludhiana, which were assigned to Addl. District Judge, Ludhiana, who vide judgment and decree dated 13.02.2017, dismissed both the appeals.

11. Still feeling dissatisfied, the defendants had approached this Court by way of filing separate Regular Second Appeals, notices of which were given to the respondents, however, only respondent No.1, who was the plaintiff had put in appearance through counsel to offer a contest.

12. After hearing arguments, vide judgment dated 10.12.2019, both the appeals were dismissed.

13. Thereafter, the present application for review has been filed by appellant Soma Jassal.

14. *Iner alia* in the application, it is contended that during the course of arguments of appeal, it was specifically pointed out by the counsel for the appellant that alleged transaction exchange was never acted upon and that appellant never came in possession of the land originally owned by Smt.Pritam Kaur and further that defendant No.2 continues to be owner in possession of the suit land measuring 151 Kanals 13 marlas situated in village Galib Kalan-1 and Galib Kalan-II, Tehsil Jagraon, District Ludhiana and consequently there was no exchange of their respective lands and in order to substantiate the argument, counsel for the applicant/appellant had referred to jamabandi for the year 2009-10 Ex.D7 of village Agwar Gujran, Tehsil Jagraon, District Ludhiana besides placing reliance upon khasra girdawari from 2005 to 2010 Ex.D8 showing Pritam Kaur to be owner in possession of her own land situated in the

village throughout from 2005 to 2010 as well as khasra girdawari for year 2010 to 2015 of village Agwar Gujran, Tehsil Jagraon, District Ludhiana showing Pritam Kaur to be owner in possession of her own land. Thus, from the documents Ex.D6 to Ex.D9, it was proved that in pursuance of alleged oral exchange between defendant No.1 and defendant No.2, being appellant possession of respective lands allegedly exchanged between defendant No.1 and defendant No.2 never took place. He has further referred to cross-examination of plaintiff Dhilpreet Singh in that regard admitting that Pritam Kaur is not currently in a state to deliver physical possession of disputed land to the plaintiff. Furthermore, during the course of arguments, counsel for the appellant had pointed out that a fraud was played upon defendant No.1 as neither any earnest money nor any sale consideration had been received by defendant No.2, therefore, agreement to sell dated 11.12.2004 could not be specifically enforced. It was further pointed out that entire earnest money of Rs.19 lakhs allegedly paid by plaintiff to defendant No.1 had already been deposited by defendant No.1 in the Court with permission of the Court as defendant No.1 was not in position to execute the sale deed for want of possession and ownership of the suit land, which continued to vest in defendant No.2 and this aspect has not been considered in the impugned judgment and decree. It has further been submitted that judgment referred to by learned counsel for the appellant titled **Tara Singh (since deceased) through LRs and others Versus Kehar Singh and others** has not been referred. It has further been contended that State of Punjab had issued a notification dated 7.7.1989/10.8.1989 by which it has extended the provision of Section 118

said Act to the urban area of the State of Punjab with effect from date of publication of the said notification and action of the State Government in extending Section 118 only to the urban area not to rural area is completely arbitrary and has no nexus with the object sought to be achieved, therefore, a declaration is liable to be issued that the abovesaid notification is violative of Article 14 of the Constitution of India and that deemed to cover the entire State of Punjab and not merely urban areas of the State. This notification was earlier not known to the appellant, therefore, could not be placed on record.

15. Along with the review application, an application bearing CM-1168-C-2020 under Order 41 Rule 27 read with Section 151 of CPC seeking permission to place on record, the notification by way of additional evidence has been filed.

16. Both the applications are being vehemently opposed on behalf of the respondents.

17. I have heard learned counsel for the parties besides going through the record.

18. Firstly taking up CM-1168-C-2020. Order 41 Rule 27 CPC deals with leading of additional evidence in Appellate Court. For ready reference, the provisions are reproduced as under:

27. Production of additional evidence in Appellate Court.

(1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court. But if—

(a) the court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or

(aa) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or

(b) the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause, the Appellate Court may allow such evidence or document to be produced, or witness to be examined.

(2) Whenever additional evidence is allowed to be produced, by an Appellate Court, the court shall record the reason for its admission.

19. Next it is to be seen whether additional evidence can be adduced in an application for review, the answer has to be in negative. Learned counsel appearing for the respondents has referred to judgment **State of Rajasthan Versus Mst.Dhanni and others, 1993 AIR(Rajasthan) 67** wherein a Division Bench of Rajasthan High Court had categorically observed that leading of fresh evidence under Order 41, Rule 27 CPC is not permissible in review proceedings and if there is no mistake apparent on the face of the record review of judgment on the basis of new evidence will be illegal and without jurisdiction.

20. In another judgment **Anisetti Bhagyavathi Versus Andaluri Satyanarayana and others, 1992 AIR (Andhra Pradesh) 304**, it had also been so held. For ready reference, the relevant paras No.12 and 13 are being reproduced as under:

*12. In **Balai Chandra V. Shewdhari Jadav, AIR 1978 Supreme Court 1062** the Supreme Court considered the question whether the High Court of Calcutta was right in taking additional evidence under*

Order 41, Rule 27 after allowing amendment of the pleadings in an appeal under C1.15 of the Letters Patent. Their Lordships observed that the Court hearing the second appeal after granting amendment could not take over the function of the trial Court or the first appellate Court and undertake appreciation of evidence and record findings of facts and that was not the function envisaged by the Code of the Court hearing second appeal under S. 100, CPC and that was crystal clear from the provision contained in S.103 which defines the power of the High Court to determine a question of fact while hearing second appeal. It has been further pointed out that that power (under S.103, CPC) is limited to evidence on record which again is sufficient to determine an issue of fact necessary for the disposal of the appeal and which has not been determined by the lower appellate Court or which has been wrongly determined by such Court. In view of the judgment of the Supreme Court in Balai Chandra's case (AIR 1978 Supreme Court 1062) (supra) in our view, the view taken by Chandra Reddy, J. (as he then was) in Venku Reddi's case (AIR 1956 Andh. Pra 250(supra) is no longer good law.

13. Thus, from the above discussion it is clear that the High Court while hearing second appeal cannot go into the question of fact. Therefore, the application for admitting additional evidence in a review petition in second appeal, whether such evidence was within the knowledge of the party seeking production of the same, or could not have been produced with due diligence at the time the decree

was passed in second appeal cannot be entertained. O.42, CPC which says that the provisions of O.41 would apply to second appeal, has qualified the same by adding the expression “as far as may be”. Therefore, the contention that in view of the provisions of order 41, Rule 27, CPC, additional evidence has to be permitted in second appeal, cannot be accepted.

21. It may be mentioned here that the notification on which the applicant is relying upon is dated 10.8.1989. The civil suit in this case was instituted on 20.6.2005, that means the notification was in existence at the time when the civil suit was filed and on notice defendants had put in appearance. There is nothing on record to show that applicant could not have come to know about the notification issued by the State Government despite due diligence and then to rely upon it during her evidence. As a matter of fact, the applicant is not relying upon this notification and rather wants to challenge it being arbitrary as it has not been made applicable to rural areas also. This cannot be done in the review proceedings. For that the applicant has to initiate separate proceedings. It is very strange that the applicant wants to rely upon a notification validity of which she herself is challenging. Therefore, the application is absolutely without merit and stands dismissed accordingly.

22. Now coming to main review application i.e. **RA-RS-3-2020**. The relevant provision relating to review of the order is Section 114 and Order 47 Rule 1 CPC. This has been dealt with at length by the Apex Court in judgment referred to by learned counsel for the respondent i.e.

Kamlesh Verma Versus Mayawati and others, 2013(4) RCR(Civil) 75. It

was observed as under:

*A. Civil Procedure Code, Section 114 – Civil Procedure Code,
Order 47 Rule 1 – Review of judgment – Application for review on
ground that there was error in judgment – Held :-*

*(i) An error which is not self-evident and has to be detected by a
process of reasoning can hardly be said to be an error
apparent on the face of the record justifying the Court to
exercise its power of review.*

*(ii) The mere possibility of two views on the subject is not a
ground for review.*

*(iii) Review is not re-hearing of an original matter – The power
of review cannot be confused with appellate power which
enables a superior Court to correct all errors committed by a
subordinate Court. 1997(4) RCR(Civil) 458, 2000(3)
RCR(Civil) 252, 2006(3) RCR(Civil) 601, relied.*

23. The case of the applicant does not fall within any of the eventualities. The grouse of the counsel that he had referred to various documents and oral depositions, which have not been discussed is misplaced. While passing the judgment, all the relevant facts and circumstances of the case, the evidence adduced by the parties and law on the subject were taken into consideration. The Court is not required to refer to each and every document placed on file by the parties or the oral witnesses examined. Only relevant evidence is to be seen and taken into consideration. Similarly the Court is to keep in view the documents during

the arguments advanced by the counsel touching the merits of the case and not the ones, which have little relevance to the controversy in question. It has to be kept into view that the trial Court had decreed the suit, the First Appellate Court had dismissed the appeal. Nothing was found wrong by this Court with the concurrent findings recorded by the Courts below. The Courts below had come to the conclusion that order dated 17.3.2005 of Collector, Jagraon, setting aside mutation No.1960 of Galib Kalan-II and mutation No.14703 of Galib Kalan-I was illegal, collusive and liable to be ignored and agreement dated 11.12.2004 executed by defendant No.1 in favour of plaintiff deserves to be enforced. Action of Parvinder Singh being attorney of defendant No.2 in effecting exchange of suit land was found to be bona fide and not in collusion with the plaintiff.

24. This Court did not find anything wrong with the judgments passed by the Courts below. All the relevant arguments advanced by the counsel for the parties and evidence referred to by them as well as the judgments cited were taken into consideration. For ready reference, the concluding para of judgment passed by this Court is being reproduced as under:

I find that the judgments passed by the Courts below are quite detailed, well reasoned and do not suffer from any illegality or infirmity. The concurrent findings recorded by the Courts below do not deserve to be upset. No substantial question of law arises in these cases. The case law cited by the learned counsel for the appellant(s) are not applicable due to different facts and

circumstances and the context in which such observations had been made. The appeals are found to be without merit and are dismissed accordingly.

25. As a matter of fact the applicant/appellant wants to reopen the controversy without any justifiable reason taking all sort of pleas, which are not sustainable and are untenable without any element of merit. If aggrieved by the judgment passed by this Court, the proper remedy for the appellant was to approach the Apex Court and not by moving application for review when there is no occasion to do so.

26. The application is totally misconceived and stands dismissed accordingly.

28.07.2022
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No