

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

**RA-RS No.15 of 2022 in
RSA No.2582 of 2018**

Date of decision: 9th May, 2022

Jagjit Singh

... Applicant

Versus

Shashi Bala & others

... Respondent

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Vivek Aggarwal, Advocate
for the applicant/respondent No.1.

FATEH DEEP SINGH, J.

This Court had vide judgment dated 22.12.2021 disposed off RSA bearing No.2582 of 2018 titled 'Jagjit Singh vs. Shashi Bala & others', the operative part of which is reproduced herein below to lay emphasis:-

“In the case before this Court, a peculiar situation arises that over the same very property a registered sale deed has come about in favour of appellant while an agreement to sell is claimed by the opposite side and thus, in such a situation the Court can resort to the provisions of Chapter VI Sections 73 and 74 of the Indian Contract Act, 1872 and award appropriate damages/compensation as the party in whose favour agreement to sell is claimed to have been executed has suffered such a breach and therefore such a breach can be adequately compensated by damages for this breach of contract. Since in the present case, certainly the seller was entitled to ensure that there is concluded contract but it is not executed, certainly it would

be in the interest of the parties to award damages which the learned Court below has failed to consider and the liquidated damages can be awarded at such a failure to get the sale deed executed. The situation before this Court clearly demands that to assuage the feelings of wrong done to the parties must be compensated adequately. In fact one of the co-sharers had entered into an agreement to sell while the other had straightaway sold off the property and thereby both of them have deceitfully put the buyers/prospective buyers to a disadvantage and made undue gains to which they were not entitled to. More so, at this belated stage it would not be in the interest of the parties to reopen the matter as by virtue of the sale deed, appellant has come to be owner in possession of the disputed property and as long as the sale deed is not challenged and holds good and the possession is not restored, both of which have never been challenged, no fruitful purpose would be subserved. This Court is dismayed over the fact that the Courts below have lost sight of the fact that a specific plea of revocation of the power of attorney has been pleaded regarding which no issue has been framed. Even the claim of the property being coparcenary, joint, unpartitioned and undivided property has not been taken care of by the Courts below. It would be too preposterous for reopening the claim of the parties and rather after almost 17 years, would be highly unjustified and rather would complicate the matter and put them to more inconvenience and disadvantageous position. The learned first appellate Court in the impugned findings and how it could hold that the appellant should execute the sale deed in favour of prospective buyers who have executed the agreement to sell, has certainly run into an error and needs

to be set aside. Furthermore, without revoking the sale deed dated 09.12.2005 in favour of appellant Jagjit Singh, how could a Court hold it so, is anybody's guess. Thus, in the light of what has been detailed and discussed above, grant of reasonable compensation by way of return of the earnest money with interest and damages to be made and assessed by the executing Court needs to be granted to the plaintiffs who have filed a suit for specific performance of the agreement to sell dated 10.03.2005 and on the other hand appellant who has come to be the owner in possession of the property subject matter of dispute would remain so. In the light of the same, present appeal stands allowed in those terms."

The present review application has been filed by the desolate respondent Shashi Bala in terms of Order 47 Rule 1 read with Section 151 CPC for review of the judgment dated 22.12.2021.

Heard Mr. Vivek Aggarwal, Advocate for the applicant/ respondent and perused the records of the case.

The primary reason for this review is that though the agreement to sell dated 10.03.2005 in favour of Shashi Bala, Nirupama Garg and Sandeep Kumar Garg was duly proved and though an unregistered document has been accepted even by the first appellate Court and under the said agreement possession of the suit property was not delivered to the buyer, the applicant in this case, and that such a document does not require registration. It is further contended that there has been a wrong application of the law in the light of observations of this Court that none of the parties ever happened to challenge the sale

deed in favour of then applicant Jagjit Singh and no issue has been framed by the trial Court and that the agreement to sell dated 10.03.2005 was first in point of time and that the trial Court has not framed issues and the same could be agitated by the appellant Jagjit Singh and further that the sale deed dated 09.12.2005 in favour of Jagjit Singh is subsequent to the agreement to sell dated 10.03.2005 which was never considered by the Court and thus, sought review of the order.

Appreciating the submissions, the case for specific performance of the agreement on the basis of agreement to sell dated 10.03.2005 in favour of review applicant ceased to have any effect and bearing when prior thereto a registered sale deed dated 19.12.2005 was there and which sale was never challenged at any point of time and how or by what means the applicant could seek specific performance of the agreement to sell dated 10.03.2005 is a preposterous proposition. The Court having regard to the claim of the applicant that the owners of the property had secured money from the applicant as well and as a deceptive act had sold off the property and without challenge to this sale deed nothing tangible would have accrued to the applicant in whose favour agreement to sell had come about. Since agreement to sell and that too an un-registered one does not confer any valid and legal authority over and above the registered sale deed and therefore, to the mind of this Court the review applicant could not derive any benefits out of a litigation in which the said sale deed was not put to challenge. The buyer by virtue of the sale deed which is a registered document, has come to be the owner and

in possession of the property, leaves nothing for the applicant to lay claim to the same.

The very provisions of Order 47 Rule 1 CPC provides that such a provision can only be resorted to where such a judgment and order has been made by a Court which did not have the jurisdiction to even try the suit in exercise of inherent powers and that it is upon discovery of new and important piece of evidence or matter when there exists an error apparent on the face of record, could seek such a relief. Since none of the situations contemplated by Order 47 Rule 1 CPC exists in the case before this Court and there apparently being no error or mistake apparent on the record, does not bring about any sufficient reasons to take cognizance of the application. The same being hopelessly without any merit stands dismissed in limine.

(FATEH DEEP SINGH)
JUDGE

May 9, 2022

rps

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