

RA-RS-22-2021 in
RSA-2364-2017 and
other connected case

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

1. RA-RS-22-2021 in
RSA-2364-2017
Date of decision: 02.02.2022

INDERJIT SINGH AND ANR.

..Review applicants

Versus

MUKHBAIN SINGH (DECEASED) THROUGH LRS AND ANR.

..Respondents

2. RA-RS-1-2022 in
RSA-1064-2017

HARPREET SINGH

..Review applicant

Versus

MUKHBAIN SINGH (DECEASED) THROUGH LRS AND ORS.

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Amar Vivek Aggarwal, Advocate
with Ms. Neha, Advocate
for review-applicant (in RA-RS-22-2021 in RSA-2364-2017)

Mr. Amit Jain, Senior Advocate with
Mr. Santosh Kumar Sharma, Advocate
for review applicant (in RA-RS-1-2022 in RSA-1064-2017).

ANIL KSHETARPAL, J.

By this order, two review applications filed by the respective appellants in two different Regular Second Appeals arising from a common judgment passed by the trial Court, First Appellate Court and Second appellate court shall stand disposed of. The learned counsel representing the parties are *ad idem* that both these review petitions can conveniently be disposed of by a common order.

While upholding the concurrent judgments passed by the Courts below, two Regular Second Appeals were dismissed on 03.08.2018. The review applicant Inderjit Singh and Sarabjit Singh filed SLP (Civil) Diary

No.21925 of 2019, which was disposed of by the Supreme Court on 12.07.2019, with the following order:-

“Learned senior counsel appearing for the petitioners seeks liberty to withdraw this petition with liberty to file review petition before the High court and seek money said to have been paid by the purchaser as sale consideration in view of the law laid down by this Court in 2015 (5) SCC 233.

Permission sought for is granted.

The special leave petition is dismissed as withdrawn with the afore-mentioned liberty.

In case the petitioners fail before the High Court, liberty is reserved to them to move this Court once over again challenging the main order as well as the order passed in the Review Petition.

Pending application stands disposed of.”

Although, these review applications have been filed along with the applications for seeking condonation of delay of 338 days and 632 days respectively in filing the review petitions, however, keeping in view the order passed by the Supreme Court, the matter has been heard on merits.

Some facts are required to be noticed.

Late Sh. Mukhbain Singh (the plaintiff in the suit) was cousin of Bhagwant Singh. Harpreet Singh (defendant No.3) is Bhagwant Singh's son. Inderjit Singh (defendant No.1) is brother-in-law of Harpreet Singh, whereas, Sarabjit Singh is son of Inderjit Singh. In other words, Harpreet Singh's sister is married to Inderjit Singh and Sarabjit Singh is Harpreet Singh's sister son.

Late Sh. Mukhbain Singh was owner of 82 bighas and 2 biswas of agricultural land situated in revenue state of Hadaitpura, Tehsil Rajpura, District Patiala. Late Sh. Mukhbain Singh was resident of New Delhi. He was in litigation with his tenants. He expressed difficulty to Bhagwant Singh, who was residing in Rajpura. On the suggestion of Bhagwant Singh, late Sh.

Mukhbain Singh executed power of attorney in favour of defendant No.3

(Harpreet Singh son of Bhagwant Singh). Thereafter, Harpreet Singh started looking after the cases pending before the Court. After some time, late Sh. Mukhbain Singh came to know that Harpreet Singh has become greedy and he wants to usurp his property. Late Sh. Mukhbain Singh executed a cancellation deed of the General Power of Attorney on 27.07.2006. It is claimed that on the same day, late Sh. Mukhbain Singh alongwith Wirsal met defendant No.3 and his father and intimated about the cancellation of the General Power of Attorney. Late Sh. Mukhbain Singh also sent a registered notice to Harpreet Singh regarding the cancellation. Defendant No.3, however, executed a registered sale deed in favour of his own brother-in-law Inderjit Singh and nephew Sarabjit Singh with respect to the entire land of late Sh. Mukhbain Singh on the basis of a power of attorney on 08.08.2006, which was registered on 09.08.2006. Late Sh. Mukhbain Singh filed a suit claiming that the same deed be declared illegal, null and void.

The suit was defended jointly by defendant No.1 and 2 (Inderjit Singh and Sarabjit Singh, respectively) whereas defendant No.3 (Harpreet Singh) defended it separately. Both the Courts decreed the suit which has been affirmed by this Court.

It may be noted here that certain facts are not disputed. Late Sh. Mukhbain Singh in his replication has taken a stand that Harpreet Singh as his attorney had entered into an agreement to sell on 16.03.2005, to sell the land at the rate of Rs.3,70,000/- per acre in favour of Surjit Singh of Ludhiana and Rattan Lal of Chandigarh. As per the agreement to sell, he received Rs.10,00,000/-, whereas, Harpreet Singh admits receipt of Rs.3,00,000/- only. The aforesaid agreement was initially denied by Harpreet Singh, however, while appearing as DW-3, he admitted the execution of the

agreement to sell dated 16.03.2005.

Defendants No.1 and 2 (Inderjit Singh and Sarabjit Singh) claims to be bonafide purchaser of the property. As per their stand, Harpreet Singh as General Power of Attorney entered into an agreement to sell the land on 17.06.2005, in favour of Sanjeev @ Sandeep Rai, Vikas Arora, Navin Arora and Sumeet Bakshi. The land is alleged to have been agreed to be sold at the rate of Rs.1,40,000/- per acre on receipt of Rs.10,00,000/- as the earnest money. It is claimed that the aforesaid Sanjeev @ Sandeep Rai etc. on receipt of the amount further entered into an agreement to sell on 12.01.2006, in favour of Inderjit Singh and Sarabjit Singh (defendant No.1 and 2) who are brother-in-law and nephew of Harpreet Singh.

Both the Courts have found that Harpreet Singh was in knowledge of the cancellation of the General Power of Attorney on 27.07.2006.

The learned Senior counsel appearing for the review applicant contends that late Sh. Mukhbain Singh received amount of Rs.11,94,583/- from Harpreet Singh. He submits that once the sale deed has been cancelled, the aforesaid amount is liable to be refunded to the appellants. He while drawing the attention of the Court to the order passed by the Supreme Court contends that the Court should allow the review application.

This Court has considered the argument of the learned counsels and with their able assistance, examined the paperbook.

In the considered view of the Court, the review application is liable to be dismissed on the following grounds:-

1. The review applicants did not file any counter claim to the suit seeking recovery of the amount. Before the Courts below,

the review applicants neither took up this plea nor got an issue framed. When the arguments in the Regular Second Appeal were heard, the learned Senior Counsel representing the appellants did not draw the attention of the Court in this regard.

2. There is absence of categoric admission of late Sh. Mukhbain Singh with regard to receipt of money from Inderjit Singh or Sarabjit Singh. The admission is only with regard to the fact that an agreement to sell was executed by Harpreet Singh as attorney of late Sh. Mukhbain Singh in favour of Surjit Singh of Ludhiana and Rattan Singh of Chandigarh, and on the basis of the agreement to sell some amount was received. There is no evidence that the aforesaid amount was either paid by Harpreet Singh, Inderjit Singh or Sarabjit Singh. There is also no evidence that Harpreet Singh, Inderjit Singh or Sarabjit Singh had paid the amount to Surjit Singh and Rattan Lal.

3. This Court has carefully read the judgment passed by the Supreme Court in *Rathnavathi and another Vs. Kavita Ganashamdas (2015) 5 SCC 223*. The Supreme Court, while deciding an appeal arising from suit for specific performance of the agreement to sell which resulted in cancellation of the sale deed in favour of a subsequent purchaser, ordered refund of the amount to the subsequent purchaser, while directing the subsequent purchaser to join in execution the sale deed. In view the aforesaid, the aforesaid judgment has no application.

4. The review applicants do not deserve any sympathy. They

tried to usurp the property of their uncle by deceit.

Sh. Amar Vivek Aggarwal, Advocate, has tried to impress upon the Court that in a case where the sale deed has been set aside, late Sh. Mukhbain Singh has no right to retain the benefit received. As already noticed, this point has never been taken before the three Courts. This argument is being taken up for the first time before the Hon'ble Supreme Court and thereafter, in the review application. As already noticed, there is no clarity as to whether the Harpreet Singh returned the amount received as earnest money from Surjit Singh & Rattan Lal.

Keeping in view the aforesaid facts, the review application is disposed of with liberty to the review applicants to file a suit for recovery of the amount, if maintainable in accordance with law, after proving that they had made the payment to Surjit Singh of Ludhiana and Rattan Lal of Chandigarh.

With these observations, no ground to review the judgment is made out.

The matter is already been adjudicated on merits, therefore, the applications for condoning the delay in refiling are allowed, whereas, no further order is required to be passed for condonation of delay.

Dismissed.

All the pending miscellaneous applications, if any, are also disposed of.

02nd February, 2022

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**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned

: Yes/No

Whether reportable

: Yes/No