

111-1 IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

1.RSA-208-2010(O&M)

Smt. Poonam Mahajan

....Appellant

Versus

Sh.Naresh Kumar and others

..Respondents

2.RSA-1548-2010(O&M)

Manjt Singh and another

....Appellants

Versus

Mukesh Kumar Mahajan and another

..Respondents

3.CR-1610-2017(O&M)

Sh.Ranjit Singh and another

....Petitioners

Versus

Mukesh Kumar Mahajan

..Respondent

4.CR-2409-2017(O&M)

Sh.Ranjit Singh

....Petitioner

Versus

Mukesh Kumar Mahajan

..Respondent

5.CR-2416-2017(O&M)

Sh.Manjit Singh

....Petitioner

Versus

Mukesh Kumar Mahajan

..Respondent

Date of decision: 17.08.2022

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Sumeet Mahajan, Sr. Advocate with
Mr. Amit Kohar, Advocate for the appellant
in RSA-208-2010

Mr.Puneet Jindal, Sr. Advocate with
Mr. Kunal Mittal, Advocate for the
appellant in RSA-1548-2010
for petitioner in CR-1610, 2409 and 2416 of 2017
and for respondent no.5 in RSA-208-2010

Mr. Hitesh Verma, Advocate for
respondent no.1 in RSA-1548-2010

Mr. Arun Abrol, Advocate for respondent-Mukesh Kumar
Mahajan in CR-2416, 2409 and 1610 of 2017

ANIL KSHETARPAL, J (Oral)

CM-5444-C-2022 in RSA-208-2010

1. Allowed as prayed for, subject to all the just exceptions.

Legal representatives of deceased respondent no.5-Sh. Sh.Manjit Singh,
as mentioned in para 1 of the application, are permitted to be brought on
record, for the purpose of defending the present appeal.

2. Amended memo of parties is taken on record.

Main cases

3. By this order, five cases i.e RSA-208-2010, RSA-1548-
2010, CR-1610-2017, CR-2416-2017 and CR-2409-2017 shall stand
disposed of.

4. The above five cases, are not only interconnected but also
represented by the common counsels.

5. Some facts are required to be noticed. Sh.Sh.Naresh Kumar son of Sh.Kuldeep Raj was owner of the property. He is alleged to have entered into two different agreements to sell in favour of Smt. Poonam Mahajan (appellant No. 1 in RSA 208 of 2010) and Sh.Mukesh Kumar Mahajan (respondent No. 1 in Rs 1548 of 2010). In the suit filed by Smt. Poonam Mahajan both the courts have held that the agreement to sell in her favour executed by Sh.Naresh Kumar on 22nd December, 1999 is proved. However, the court after noticing that Sh.Naresh Kumar sold the property by way of a registered sale deed in favour of defendant No. 2-Late Shri Gurcharan Singh Bedi refused to grant decree for specific performance of the agreement to sell on the ground that the plaintiff has failed to prove her readiness and willingness to perform her part of contract and defendant No. 2 was a bonafide purchaser. The alleged agreement to sell in favour of Sh.Mukesh Kumar Mahajan is dated 12th February, 2000, allegedly executed by Sh.Naresh Kumar with regard to the same property. The suit filed by Sh.Mukesh Kumar Mahajan for decree for possession by way of specific performance of the agreement to sell dated 12th February, 2000 was decreed for alternative relief by the trial court that is refund of the earnest money alongwith interest. However, the First Appellate Court has granted decree for possession by way of specific performance of the agreement to sell.

6. The three revision petitions filed are dependent upon the result of these two regular second appeals.

7. Heard the learned counsel representing the parties at length and with their able assistance perused the judgements passed by the

courts below alongwith the record, which was requisitioned. In RSA No. 208 of 2010, the First Appellate Court has just mentioned one sentence in its judgment that defendant No. 2 is proved to be bonafide purchaser. There is absolutely no discussion by the First Appellate Court on this aspect of the matter. Defendant No.2 claims to be the bonafide purchaser. Section 19 of the Specific Relief Act, 1963 protects defendant No. 2 only if he proves that he is a bonafide purchaser for the valuable consideration without notice of the previous agreement to sell in favour of Smt. Poonam Mahajan. The findings of both the courts below with regard to the plaintiff's readiness and willingness are also not up to the mark.

8. Keeping in view the aforesaid facts, the learned counsel representing Smt. Poonam Mahajan and defendant No. 2 (late Sh.Gurcharan Singh Bedi) are ad idem that the judgements passed by both the courts below be set aside while directing the trial court to decide the matter afresh.

9. In RSA-1548-2010 filed by Sh.Manjit Singh and Sh.Ranjit Singh sons of late Sh.Gurcharan Singh Bedi, learned senior counsel representing the appellants has no objection if the judgements passed by both the courts below are also set aside while requesting the trial court to reddecide the matter. However learned counsel representing the plaintiff Sh.Mukesh Kumr Mahajan (respondent herein) submits that this Court should finally decide the case itself.

10. It may be noted here that Mukesh Kumar Mahajan claims a subsequent agreement to sell in his favour from Sh.Naresh Kumar. The

result of the suit filed by Sh.Mukesh Kumar Mahajan is dependent on the result of the first suit filed by Smt. Poonam Mahajan. Hence, RSA No. 1548 of 2010 is also required to be remitted back to the trial court.

11. It has been noticed that Sh.Mukesh Kumar Mahajan is not defendant in the first suit filed by Smt. Poonam Mahajan. Sh.Mukesh Kumar Mahajan is a necessary party. Hence, Sh.Mukesh Kumar Mahajan is impleaded as defendant No. 3.

12. Learned counsel representing the parties are ad idem that the decision on the revision petitions is dependant upon the decision in the suit that is filed by Smt. Poonam Mahajan. Hence, the impugned orders challenged in the revision petitions are also set aside. The entire matter is remitted back to the trial court for decision afresh. Learned counsel representing the parties admitted that the evidence already led by the parties shall be considered. They shall also be granted additional opportunity to lead further evidence, if desired. It may be noted here for record that late Shri Gurcharan Singh Bedi (defendant No. 2 in both the suits) was ex-parte in the suit filed by Sh.Mukesh Kumar Mahajan. Learned counsel representing the appellants contends that late Sh. Gurcharan Singh Bedi has been wrongly proceeded ex parte as there was neither any service of notice nor the notice was published in a proper newspaper.

13. Once the matter is being remitted back, the party can join the proceedings. The parties through their counsels are directed to appear before the trial court on 15th September, 2022. It has been brought to the notice of the court that proceedings filed by Shri Mukesh Kumar

Mahajan against late Sh.Gurcharan Singh Bedi through his L.Rs are pending before the court of Rent Controller. The District & Sessions Judge is requested to transfer the aforesaid proceedings before the same Presiding Judge, where the other two suits are pending. The District & Sessions Judge is also requested to club all these proceedings before one Presiding Judge. Let the trial court makes sincere endeavours for deciding all the matters within a period of 9 months, from today.

14. Disposed of.

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

17.08.2022

rekha

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No