

2024:PHHC:098504



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

110

**CM-11228-CWP-2024 in/and
CWP-14452-2024
Date of decision: 25.07.2024**

SURINDER SINGH

.....Petitioner

VERSUS

STATE OF PUNJAB AND OTHERS

.....Respondents

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present: - Mr. Rakesh Bhatia, Advocate
for the applicant-petitioner.

VINOD S. BHARDWAJ, J. (Oral)

CM-11228-CWP-2024

The present writ petition has been filed under Section 151 of the Code of Civil Procedure, 1908 for recalling of the order dated 01.07.2024 passed by this Court.

Learned Counsel appearing on behalf of the applicant-petitioner contends that due to inadvertence the factum of withdrawal of the application filed under Order 9 Rule 13 of the Code of Civil Procedure, 1908 was not in his knowledge and the same could not be apprised to the Court.

The writ petition was disposed of in view of the petitioner having already

**CM-11228-CWP-2024 in/and
CWP-14452-2024**

-2-

availed the alternative remedy by filing an application under Order 9 Rule 13 of the Code of Civil Procedure, 1908 before approaching the High Court under Article 226/227 of the Constitution of India.

For the reasons mentioned in the application, the same is allowed and the order dated 01.07.2024 is recalled for. The main writ petition is restored to its original number.

CWP-14452-2024

Challenge in the present writ petition is to the judgment and decree dated 05.06.2012 passed by the Civil Judge, (Junior Division), Ludhiana on the ground that the same having been obtained by way of fraud and misrepresentation.

2. Learned Counsel for the petitioner has vehemently argued that one Vipin Kumar-respondent No.4 had approached the petitioner for the sale of his property measuring 12-1/4 sq yards alongwith three storey building constructed thereon and situated in Prem Nagar, Ludhiana. The respondent No.4 had informed the petitioner that he had purchased the said property vide Vasika No. 4417 dated 10.06.2005 and mutation was sanctioned vide intkal No. 27134 in the jamabandi pertaining to the year 2004-05. He agreed to purchase the above said property for a sale consideration of Rs. 9,50,000/- and an agreement to sell was executed for sale of the property on 16.11.2009. A sum of Rs. 3,00,000/- was paid through cheque, as an advance payment. The sale deed was to be executed on 18.02.2010. Prior thereto, the vendor unfortunately expired on



**CM-11228-CWP-2024 in/and
CWP-14452-2024**

-3-

26.12.2009 leaving behind no legal heir. Vipin Kumar-Vendor had no children and had already divorced his wife as per the divorce decree dated 26.10.2005. The petitioner then approached the respondent No.2-Deputy Commissioner, Ludhiana that as there was no legal heir of Vipin Kumar, he may be permitted to deposit the remaining amount in the Government Treasury and get the sale deed registered. As no steps were taken, the petitioner approached this Court vide CWP-2486 of 2010 which came up for hearing on 18.02.2010. The said writ petition was disposed of by this Court with the following direction:-

“After hearing the learned Counsel for the petitioner and perusing the file, the present writ petition is disposed of with a direction to the concerned respondent to decide the representation (Annexure P-3) sent by the petitioner within a period of one month from the date of receipt of a certified copy of this order by passing speaking order.”

3. The Revenue Authorities had however entered the property in the revenue record in the name of Class-II heirs of Vipin Kumar and namely Sunil Kumar and Simple Rani and a Kursi Nama was also prepared. The said heirs of Vipin Kumar thereafter executed the sale deed pertaining to the above said land in favour of one Surinder Singh (petitioner herein) vide Vasika No. 19791 dated 18.03.2010 and possession was handed over to the petitioner pursuant to the letter issued by the Tehsildar to the Deputy Commissioner alongwith compliance report dated 12.03.2010. After a period of 05 years, the petitioner further sold the above said property to one



**CM-11228-CWP-2024 in/and
CWP-14452-2024**

-4-

Smt Gurmeet Kaur wife of Avtar Singh-respondent No.6 vide Vasika No. 16283 dated 26.02.2015 and possession thereof was also duly delivered.

4. He contends that one Gareesh Kumar Sharma-respondent No.5 came to the said property with Warrant of possession along with bailiff on 10.07.2017 and produced a sale deed allegedly executed in his favour. Then it came to the knowledge of the petitioner that there was a suit for specific performance filed by the above Gareesh Kumar-respondent No.5 against Vipin Kumar i.e. respondent No.4, on 28.04.2007, on the basis of an alleged agreement to sell dated 30.06.1999 for a sum of Rs. 2,00,000/-. A sum of Rs. 1,50,000/- was stated to have been paid in advance and the balance Rs. 50,000/- was to be paid at the time of execution of the sale. The above Civil Suit No. 142 dated 28.04.2007 was decreed ex-parte by the Civil Judge (Junior Division), Ludhiana vide judgment and decree dated 05.06.2012 and the plaintiff therein (Gareesh Kumar Sharma) was held entitled to the sale deed being executed in his favour in respect of the suit property on payment of the balance consideration.

5. It was also pointed out by the Counsel that the vendor Vipin Kumar had earlier transferred the property by way of gift deed in favour of his wife-Kavita Gupta vide Vasika No. 27392 dated 29.03.2000 and Gareesh Kumar had allegedly obtained extension of the agreement to sell from Vipin Kumar even though he was not owner of the said property. Gareesh Kumar thus had filed a Civil Suit No. 427 of 13.06.2000 for declaration to the effect that transfer of property in favour of Kavita Gupta be declared as null and

**CM-11228-CWP-2024 in/and
CWP-14452-2024**

-5-

void. The said Civil Suit was also decreed ex-parte against the Vendor Vipin Kumar and the transfer of property by Vipin Kumar in favour of his wife by way of a gift deed was held to be a sham transaction and declared as illegal, null and void vide judgment dated 29.04.2004. He also submits that Vipin Kumar was proceeded against ex-parte in Civil Suit No. 142 dated 28.04.2007 vide order dated 15.04.2009. An application for setting aside of the ex-parte order was moved by Vipin Kumar on 22.07.2009 to which reply was also filed by Gareesh Kumar on 11.09.2009. Vipin Kumar however died on 26.12.2009 and an application was filed under Order 22 Rule 4 read with Rule 10 A to Section 151 CPC for dismissal of the application. Factum of death of Vipin Kumar was to his knowledge and so stated in the application as well, but necessary steps to bring LRs were not taken and no permission was taken to proceed with the suit against a dead person. After obtaining the decree, Gareesh Kumar got the sale deed executed in his favour vide sale deed No. 19778 dated 16.02.2016 by relying on Jamabandi for the year 1994-95, which was more than 20 years old instead of the latest Jamabandi. He submits that since an ex-parte decree had been passed for specific performance in favour of Gareesh Kumar Sharma, the petitioner moved an application under Order 9 Rule 13 of the Code of Civil Procedure, 1908 for setting aside the ex-parte decree on the ground that the same had been obtained by fraud. It was, however, noticed that since the petitioner was not a party to the original proceedings, the application under Order 9 Rule 13 was not maintainable. Accordingly, the said application was withdrawn by order dated 24.01.2019 passed by Civil



**CM-11228-CWP-2024 in/and
CWP-14452-2024**

-6-

Judge (Junior Division), Ludhiana. The present writ petition has thus been filed by the petitioner raising a challenge to the ex-parte judgment and decree dated 05.06.2012 passed by the Civil Judge (Junior Division), Ludhiana in Civil Suit No. 142 dated 28.04.2007.

6. Counsel for the petitioner has emphatically relied upon the judgment passed by the Hon'ble Supreme Court in the matter "**A.V. Papayya and others versus Government of A.P. and Others**" reported as 2007 (2) R.C.R. (Civil) 431 wherein it was held that if any judgment or order is obtained by fraud it cannot be said to be a judgment or order in law. Fraud vitiates everything and such judgments or orders are required to be treated as nullity by every Court, superior or inferior. He submits that fraudulent act can be recalled by suo motu exercise of revisional jurisdiction as well. Reference is also made to judgment of the Delhi High Court in the matter of "**Naresh Kher versus S. Jagjit Singh and others**" passed in Execution F.A. 5/2019 decided on 03.02.2022.

7. I have heard learned Counsel appearing on behalf of the petitioner and have gone through the pleadings as well as documents available on record.

8. While not disputing the preposition of law as laid by the Hon'ble Supreme Court in the matter of "**A.V. Papayya and others versus Government of A.P. and Others**" (supra), I am afraid that the contention of the Counsel for the petitioner is grossly misconceived. The said judgment has been rendered in the context where the judgment having been obtained



**CM-11228-CWP-2024 in/and
CWP-14452-2024**

-7-

by fraud is duly established. In the present case, it is only an allegation of the petitioner that such an ex-parte judgment and decree dated 05.06.2012 had been obtained by Girish Kumar by committing fraud. The reasons cited by him are yet to be tested in a Court of law. This High Court at this stage is not equipped to accept the contention raised by the Counsel for the petitioner and to absolutely treat the said judgment and decree passed by the Civil Judge (Junior Division), Ludhiana as a judgment having been obtained by fraud. The same would involve disputed questions of fact that cannot be gone into by this Court at this juncture.

9. The petitioner has a remedy to filing a Civil Suit for seeking a declaration of his rights and against the said judgment and decree not being biding on the rights. The same is a specific remedy available to him under the Specific Relief Act, 1963. Further, this Court is cognizant of the fact that the application under Order 9 Rule 13 was withdrawn by the petitioner vide order dated 24.01.2019. The petitioner has approached this Court by way of challenging the judgment and decree dated 05.06.2012 on 29.05.2024. Thus, despite the petitioner being conscious of the said judgment and the decree having been passed on the date on which the application under Order 9 Rule 13 was made, he waited for more than 05 years in filing this writ petition. I would not like to go further into the reasons for delay as that would again be a question of fact. The present writ petition is accordingly dismissed on account of raising disputed questions of fact and availability of alternative remedy. The petitioner may, if so advised, and subject to all



**CM-11228-CWP-2024 in/and
CWP-14452-2024**

legally tenable objections, take recourse to his appropriate remedy in accordance with law, if so available.

**(VINOD S. BHARDWAJ)
JUDGE**

JULY 25, 2024
Vishal Sharma

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No