

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

RSA-3403-2023 (O&M)
Reserved on:21.10.2024
Pronounced on: 28.10.2024

PARDEEP KUMAR

. . . .APPELLANT

VS.

NIRANJAN SINGH AND ANOTHER

. . . . RESPONDENTS

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Mr. G.C. Shahpuri, Advocate, for the appellant.

DEEPAK GUPTA, J.**CM-12182-C-2023**

This is an application under Section 5 of the Limitation Act to condone the delay of 47 days in filing the appeal.

For the reasons mentioned in the application, supported by the affidavit of the appellant, the same is allowed and the delay of 47 days in filing the appeal is hereby condoned.

RSA-3403-2023 (O&M)

Civil Suit N: 98 of 2012 [CS/4532/2013] for possession by way of specific performance filed by plaintiff-Niranjan Singh (*respondent No.1 herein*) against defendant No.1-Baljeet Kaur (*respondent No.2 herein*) and Pardeep Kumar (*appellant herein*) was decreed by the trial Court of Ld. Civil Judge (Jr. Divn.), Yamuna Nagar at Jagadhari on 21.09.2016. Civil Appeal No.149 of 2017 filed by Defendant No.2-appellant-Pardeep Kumar was dismissed by Id. Additional District Judge, Yamuna Nagar vide judgment dated 30.05.2023. Against these concurrent findings, defendant No.2-Pardeep Kumar has approached this Court by way of present Regular Second Appeal.

2. Trial Court record was called and the same has been perused. In order to avoid confusion, parties shall be referred as per their status before the trial Court.

3.1 As per the pleaded case of the plaintiff, defendant No.1-Smt. Baljeet Kaur executed an agreement to sell dated 20.05.2010 (Ex.P2) in his favour regarding suit property for consideration of ₹3 lakh. Vide a separate receipt of the even date Ex.P3, an amount of ₹2,50,000/- was received as earnest money by defendant No.1. Target date for execution of the sale deed was fixed as 17.02.2011, which with the consent of both the parties, was firstly extended to 15.12.2011 vide Ex.P5 and then further extended to 15.03.2012 vide Ex.P6. Plaintiff remained present in the office of Sub Registrar on 15.03.2012 as had been earlier consented to between both the parties, but defendant No.1 failed to turn up, forcing the plaintiff to serve a registered legal notice dated 30.03.2012 Ex.P8 on defendant No.1 and asking her to execute the sale deed on 25.04.2012. Plaintiff again appeared in the office of Sub Registrar on 25.04.2012, but defendant No.1 failed to turn up. However, from the reply dated 23.4.2012 of defendant N: 1 to the legal notice, it was found that prior to filing the suit, she had already executed a registered sale deed dated 22.02.2012 in favour of defendant No.2. Contending that he (plaintiff-Niranjan Singh) had already been ready and willing and still ready and willing to perform his contract, he filed the suit on 04.06.2012 seeking specific performance of contract.

3.2 Both the defendants put in appearance through their common counsel Sh. Yashpal. Written statement was filed by defendant No.1 only, in which he denied the execution of the agreement to sell and the receipt. According to the stand taken by him, she had taken loan of ₹1 lakh from the plaintiff and had agreed to return the same along with interest @ 3.5% per annum. On the pretext of getting executed the security documents, her signatures were taken by the plaintiff on some blank papers. Later on, defendant No.1 continued to pay interest and plaintiff used to take her signatures on the blank papers on the pretext of receipt regarding payment of interest. As per defendant No.1, she had paid an amount of ₹1,20,000/-

including principal and interest to the plaintiff in the presence of Dalmir Singh and Jatinder Singh and the blank papers on which her signatures were taken, were misused by the plaintiff. She prayed for dismissal of the suit.

3.3 Necessary issues were framed. Evidence produced by both the parties were taken on record.

3.4 Herein itself, it is pertinent to note that defendant No.2-Pardeep Kumar (*appellant herein*) neither filed any written statement nor appeared in the witness box.

3.5 The trial Court came to the conclusion that agreement to sell (Ex.P2) dated 20.05.2010 was duly proved on record. Payment of earnest money of ₹2,50,000/- was also proved. It was also found that plaintiff was already ready and willing to perform his part of contract and that it is defendant No.1, who had defaulted by not performing her part of contract, as she did not appear before the Sub Registrar office either on the target date of 15.03.2012 and on the later date of 24.04.2012 as mentioned in the legal notice dated 30.03.2012, which was duly served upon her. As it was found that prior to filing the suit, defendant No.1 had already executed registered sale deed dated 22.02.2012 in favour of defendant No.2, therefore, defendant No.2 was directed to join defendant No.1 in executing the sale deed in favour of the plaintiff pursuant to the agreement to sell dated 20.03.2010. Suit for specific performance was accordingly decreed by the trial Court on 21.09.2016.

3.6 All the findings as returned by the trial Court, have been affirmed by the First Appellate Court vide judgment dated 30.05.2023 in the appeal filed only by defendant N: 2.

4. It is important to note that defendant No.1 did not assail the findings of the trial Court by filing any appeal before the First Appellate Court or before this Court. It is defendant No.2-pardeep Kumar, who had filed the first appeal and then has not approached this Court by filing the present Regular Second Appeal.

5. Two fold submissions have been made by Id. counsel for the appellant. His first contention is that the appellant is a bona fide purchaser of the suit property for value and therefore, his sale deed dated 22.02.2012 being prior to filing of the suit is protected and therefore, suit for specific performance should not have been decreed. The second contention raised by Id. counsel is that sale deed dated 22.02.2012 in his favour was not sought to be cancelled by the plaintiff nor any issue relating to the same was framed and as such, both the Courts below have erred in decreeing the suit. Id. counsel has referred to ***B. Vijaya Bharathi Vs. P. Savitri and others, 2017 AIR (Supreme Court) 3934.***

6. After considering submissions of Id. counsel for the appellant and perusing the trial Court record, this Court does not find any merit in the present appeal.

7. Agreement to sell dated 20.05.2010 (Ex.P2) and receipt (Ex.P3) of the even date are well proved on record not only by the testimony of plaintiff-Niranjan Singh, who appeared in the witness box as PW4 but further supported by the testimony of PW1-Sunder Lal - Stamp Vendor, PW2-Shiv Charan - the deed writer and PW3 - Sahib Singh, one of the attesting witnesses to these documents. Entry in the stamp vendor register as Ex.P1 was duly proved on record to be signed by defendant No.1. Even defendant No.1 did not deny her signature on Ex.P1 and Ex.P2, though she claimed that these signatures were obtained on blank papers on the pretext of granting her loan. The said theory put forth by defendant No.1 has been disbelieved by both the Courts below. After appraising the evidence on record, this Court has no hesitation in affirming the concurrent findings of the Courts below in this regard to the effect that agreement Ex.P2 and receipt Ex.P.3 were duly proved on record and that it was not a loan transaction.

8. Further, it was duly proved on record that target date for execution of the sale deed was earlier extended from 17.02.2011 to 15.12.2011 by way of Ex.P5 and then further extended to 15.03.2012 vide Ex.P6. Writings were duly executed in this regard on the back of agreement Ex.P2, which are also proved on record. As defendant No.1 failed to appear

before the office of Sub Registrar on 15.03.2012, though plaintiff remained present as evident from affidavit Ex.P7, he was compelled to send a registered legal notice Ex.P8 to defendant No.1 asking her to appear in the office of Sub Registrar on 24.04.2012, but still she did not appear on that date, though plaintiff remained present as evident from affidavit Ex.P11. Immediately thereafter, suit for specific performance was promptly filed by the plaintiff on 04.06.2012. It is also the case of the plaintiff that he came to know from the reply to the legal notice sent by defendant No.1 that she had already executed sale deed No.12571 dated 22.02.2012 in favour of defendant No.2 for consideration of ₹6 lakh. It is, thus, apparent that prior to the date fixed in the agreement to sell by way of extension, defendant No.1 for double the sale consideration sold the suit property to defendant No.2.

9. The above circumstances clearly indicate the readiness and willingness on the part of the plaintiff to get the sale deed executed & registered in his favour and it is defendant No.1, who defaulted and under greed, executed the sale deed in favour of defendant No.2 during the subsistence of the agreement to sell in favour of the plaintiff. Again, there is a concurrent finding of facts of the Courts below in this regard and there is no reason for this Court to interfere in the same.

10. Coming to the contentions raised by Id. counsel for the appellant, his plea of bona fide purchaser for value is not liable to be considered, having regard to the fact that this plea is beyond pleadings. As noticed earlier that defendant No.2 neither filed any written statement nor appeared in the witness box. Thus, in the absence of any pleading regarding defendant No.2 being the bona fide purchaser for value, there was absolutely no evidence before the trial Court to return any such finding in favour of the appellant-defendant No.2, as has been rightly noticed by both the Courts below.

11. The contention of Id. counsel for the appellant is that though he was not a party to the agreement to sell, he can still take the plea of being bona fide purchaser, and the readiness and willingness on the part of plaintiff and defendant No.1. He placed reliance upon ***B. Vijaya Bharathi (Supra)***. In

that case before Hon'ble Supreme Court, the agreement to sell was executed on 21.02.1992. On 13.03.1992 a General Power of attorney was executed by defendant No.1-owner in favour of the husband of the plaintiff. However, before the target date, defendant No.1 executed a sale deed dated 12.05.1992 in favour of defendant No.2. Defendant No.2 further sold the suit property on 05.07.1993 to defendant No.3. On 13.04.1994, suit was filed for specific performance by the plaintiff. It was in these facts and circumstances that Hon'ble Supreme Court held that there was no bar for the subsequent vendee to plead readiness and willingness on the part of the plaintiff in suit for specific performance on the ground that such a plea is personal only between the original vendee and the vendor and that there is no question of the plea being available to one defendant and not to another. Hon'ble Supreme Court also held that the fact that defendant may not be the *bona fide* purchaser, would not come in his way of stating that such suit must be dismissed at the threshold because of lack of readiness and willingness of the plaintiff, which is a basic condition for grant of specific performance.

12. I am afraid that the aforesaid authority relied by the Id. counsel is not applicable to the facts of the present case. As has been noticed earlier that prior to the date agreed between the parties for execution of the sale deed, defendant No.1 had already sold the suit property in favour of defendant No.2 by way of sale deed dated 22.02.2012 regarding which plaintiff came to know after getting reply to the legal notice dated 30.03.2012 from defendant No.1 and immediately thereafter he filed a suit for specific performance on 04.06.2012. These circumstances clearly indicate that plaintiff has already been ready and willing to perform his part of contract. As such, authority cited by Id. counsel for the appellant is not helpful to advance the case of the appellant.

13. The contention of Id. counsel for the appellant that defendant No.2-appellant could not be directed to join defendant No.1 in executing the sale deed in favour of the plaintiff and that no relief for specific performance against him could have been granted is also without any merit. Section 19 of the Specific Relief Act provides about the persons against whom the suit for

specific performance can be filled. The relevant portion of Section 19 reads as under: -

‘19. Relief against parties and persons claiming under them by subsequent title.—Except as otherwise provided by this Chapter, specific performance of a contract may be enforced against—

(a) either party thereto;

(b) any other person claiming under him by a title arising subsequently to the contract, except a transferee for value who has paid his money in good faith and without notice of the original contract;

(c) to [e) xxxxxxxxxxxxxx *[not relevant]*’

14. The above provision makes it clear that if a conveyance deed has been executed during the subsistence of the agreement to sell, suit against such a vendee can be filed for seeking relief of specific performance. As such, the Courts below did not commit any error in this regard.

15. Coming to the last plea raised by counsel for the appellant that plaintiff did not seek cancellation of the sale deed dated 22.02.2012 in favour of defendant No.2 and that there was no issue in this regard, again it has no merit.

16. First of all, as noticed earlier that defendant No.2 having not filed the written statement, there was no occasion for the trial Court to frame any such issue. Besides, by joining defendant No.2 in the suit and to seek relief of specific performance against both the defendants, it was sufficient for the plaintiff to seek the necessary declaration to the effect that sale deed as executed by defendant No.1 in favour of defendant No.2 was not binding upon him.

17. In ***Shamsudheen Vs. Hassankutty and others, 2022 (1) CivCC 111***, it has been held by Kerala High Court as under: -

“11. In ***Kotrabassappaya v. Chenvirappaya and another [(1898) ILR 23 Bom. 375]***, dealing with section 39 of the Specific Relief Act, 1877 (which is now Section 31 of the 1963 Act), a Division Bench of the Bombay High Court

interpreted the provision as enabling only the person, who has parted with the property under an instrument is entitled to maintain an action for cancellation of the deed. In **Iyyappa v. Ramalakshamma [(1890) ILR 13 Mad 549]**, a Division Bench of the Madras High Court laid down that a suit for cancellation of an instrument is maintainable only by the person, who executed the document.

12. A Full Bench of the Madras High Court in **Muppudathi Pillai v. Krishnaswami Pillai and others [AIR 1960 Madras 1 (FB)]** considered the scope of sections 39 and 41 of the Specific Relief Act, 1877 (which are now Sections 31 and 33 of the 1963 Act) and held that the relief under Section 39 would be granted only in respect of an instrument likely to affect the title of the plaintiff and not of an instrument executed by a stranger to that title. The Full Bench of the Madras High Court noticed that when the instrument/document is not executed by the plaintiff, the same does not create a cloud upon the title of the true owner nor does it create apprehension that it may be a source of danger. Accordingly, a suit for cancellation of instrument by a person, who does not execute the document, will not lie presumably for the reason that when the document itself is not executed by the plaintiff, there is no necessity to have the document cancelled by a decree of Court, for it has no effect on the title of the plaintiff.

13. In **Debi Prasad v. Maika [AIR 1972 Allahabad 376]**, a learned Single Judge of the Allahabad High Court placing reliance on the Full Bench decision of the Madras High Court in Muppudathi Pillai (supra) held that cancellation of deed can be sought in a court only by a person, who has executed the document and who perceives that such document is void or voidable. So far as the plaintiff, who is not a party to the document, is concerned, it cannot be successfully maintained that a reasonable apprehension can be entertained by the plaintiff that if the document is left outstanding, it may cast a cloud upon his title or cause him serious injury because the cloud upon his title will not be removed merely by a decree for cancellation of the instrument.

14. In **Kamalakshi Amma v. Sangeetha [2012 (3) KLT 264]**, a learned Single Bench of this Court considered the Full Bench decision of the Madras

High Court in Muppudathi Pillai (supra) and held that a suit for cancellation of instrument by a person, who did not execute the document, would not lie. It was further held that the remedy of such person, if he thinks that the document may create a cloud on his own title is to seek a declaration of his own title or that the document does not affect his title. Thus, the difference between the two situations is glaring. In one case cancellation of deed can be sought in a court only by a person who executed the document and who perceives that such document is void or voidable. In the other case, even if a person is not a party to the document, he can maintain a suit for declaration as held in **Yanala Malleshwari v. Smt. Ananthula Sayamma [AIR 2007 AP 57]**.

15. In the case at hand, the plaintiff in this case was not a party to the prior decree. If the present plaintiff was not a party to the prior suit and decree, then it could not be contended that the second suit filed by him should be one to set aside or cancel the prior decree. In the case of a document executed by a person, if he wants any relief with reference to it on the ground of fraud, he must have the document cancelled or set aside before he can claim such relief, being himself a party to the same, but a person, who is not a party to any document, is not bound to have it set aside or cancelled in view of the legal precedent discussed here in above. To put it differently, the plaintiff not being a party to the document or decree, he cannot have it 'set aside'. All that he can seek for is a declaration that he is not affected in any way by that document. In the case of a decree, a decree will have full force and binding effect between the parties to the same until it is set aside by the persons, who are parties to the same. However, the persons, who are not parties to the decree, can only sue for a declaration in respect of their rights in relation to the decree. Thus, it is clear that whenever a party to a prior decree wants relief to the effect that he is no longer bound by the prior decree, he should ask for setting aside the prior decree. For the present case, admittedly, the partition decree in the prior case covers a larger extent of property including the property of the plaintiff allegedly owned and possessed by him. In a case where others are also parties to the prior decree and they, in no way, claim the rights under the present plaintiff, then, the prior decree would be binding so far as others are

concerned. Hence, the element of fraud as alleged by the plaintiff absolutely lacks in relation to the prior decree.”

18. Applying the legal position as above, plaintiff not being the executant to the sale deed dated 22.02.2012 as executed by defendant No.1 in favour of defendant No.2, it was not required for the plaintiff to seek the cancellation thereof.

19. On account of entire discussion as above, this Court does not find any illegality or perversity in the judgments of the Courts below. The findings of facts as recorded by the Courts below are concurrent in nature. This Court does not find any reason to interfere in the same as these are based upon proper appreciation of evidence. No other question of arises. Finding no merit in the appeal, the same is hereby dismissed.

28.10.2024
Vivek

(DEEPAK GUPTA)
JUDGE

	Whether speaking/reasoned?	Yes
	Whether reportable?	No