



IN THE HIGH Court OF PUNJAB AND HARYANA AT CHANDIGARH

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RSA-2717-2022 (O&M)

Date of decision: 24.02.2025

Parveen Kumar

...Appellant(s)

Vs.

Balaji Education Society Kalayat and others

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Ajay Kumar, Advocate for the appellant.

NIDHI GUPTA, J.
CM-9415-C-2022

Prayer in this application filed under Section 151 CPC is for condonation of delay of 51 days in refiling the accompanying appeal.

Heard.

For the reasons mentioned in the application which is supported by an affidavit of the applicant/appellant, the same is allowed and delay of 51 days in refiling the accompanying appeal is condoned.

RSA-2717-2022 (O&M)

The present second appeal has been filed by the plaintiff against the concurrent judgments and decrees of the learned Courts below, whereby the suit of the appellant/plaintiff for Permanent Injunction, has been dismissed by both the Courts below.



2. The parties shall hereinafter be referred to as per their status before the learned trial Court i.e. the appellant is the 'plaintiff'; and the respondents are the 'defendants'.

3. Brief facts of the case are that the plaintiff filed present civil suit seeking a decree for permanent injunction restraining the respondent no.2/defendant no.2 from alienating the suit property detailed in para no.6 of the plaint of which the respondent no.1/defendant no.1-Society is stated to be the owner, in favour of respondents no.3 to 6 or in favour of any other person on the basis of illegal agreement to sell dated 11.02.2008. It was the pleaded case of the plaintiff that the defendant No.1 is a registered society bearing No. 236 of 1994-1995 registered under the Societies Registration Act. The plaintiff is a cashier member of the defendant No.1/Society. All properties acquired by defendant No.1/Society are to vest in the General Committee; and income and property of defendant No.1/Society are to be applied for the promotion of the aims and objects of the defendant No.1. Vide registered sale deed No. 1332/1 dated 16.01.2004, the defendant No.1/Society had purchased land measuring 22 Kanals 12 Marlas to run a school through defendant No.2/Secretary of the Society. In the said sale deed, the owner of the land was wrongly mentioned as Ashwani Kumar/defendant No.2, whereas the owner is defendant No.1/Society. The defendant No.2 has now become dishonest and in utter disregard of the aims and objects of the defendant No.1/Society in collusion with defendants No.6 and 7 with a view to grab property of defendant No.1/Society has entered into a written Agreement to Sell the suit property



illegally on 11.02.2008 with defendants No. 3 to 6 and has received a sum of Rs.20 lacs as earnest money from defendants No. 3 to 6. The plaintiff had tried to contact the defendants and requested them to cancel the said illegal agreement and to refrain them from alienating the suit land in any manner. However, they were adamant and finally refused to listen to the plaintiff and perform defendants on 15.04.2010. Hence, the present suit.

4. Upon notice, defendants No.1 and 2 appeared and filed written statement resisting the suit on various grounds including stating that the plaintiff had failed to affix sufficient ad valorem Court fee upon the plaint; that defendant No.1 has nothing to do with the suit property; that the suit property was purchased by defendant No.2 from his own income and sources and defendant No.2 is absolute owner in possession of the suit property since 16.01.2004 from the date of purchase. Thus, it was correctly mentioned in the sale deed that defendant No.2 is owner of the suit property.

5. Separate written statement was filed by defendants No. 3 to 6 stating that plaintiff had failed to disclose the true and material facts and has filed the present suit in collusion with his real brother-defendant No.2 just to grab the money of defendants No. 3 to 6 and to harass them. It was pointed out that defendant No.2 had entered into an Agreement to Sell dated 11.02.2008 for a total sale consideration of Rs. 95 lacs of which Rs.20 lacs was paid as earnest money on 11.02.2008 itself. Thereafter further sum of Rs. 20 lacs was paid to defendant No.2 on 13.03.2008; that defendant No. 2 has every right, title and interest in the suit land, and



therefore he can alienate the suit land being owner. It was also pointed out that the defendants No. 3 to 6 had filed a suit for specific performance against defendant No.2; that the possession of the suit property was delivered to defendants No. 3 to 6 by defendant No.2 at the time of Agreement to Sell dated 11.02.2008; and that the plaintiff and defendant No.1 had no concern with the suit property.

6. On the basis of the pleadings of the parties, following issues were framed on 31.05.2013:-

1-Whether the plaintiff is entitled to a decree for permanent injunction, as prayed for?OPP.

2-Whether the suit of the plaintiff is not maintainable?OPD?

3-Whether the plaintiff has no locus standi to file the present suit? OPD

4-Whether the Civil court has no jurisdiction to entertain and try the present suit?OPD

5-Whether the plaintiff has suppressed the true and material facts from the court? OPD

6-Whether the plaintiff is estopped by his own act and conduct to fil the present suit? OPD

7-Whether the suit of plaintiff is barred under provision of CPC? OPD

8-Relief.

7. Upon appraisal of the pleadings and the evidence led by the parties, the Id. trial Court decided issue No. 1 against the plaintiff; issues No. 2 and 3 were decided in favour of the defendants; and issues No. 4 to 7 were decided against the defendants as the defendants had failed to lead any evidence to prove these issues; and vide judgment and decree dated



14.09.2015, the suit of the plaintiff was dismissed. The appeal filed by the appellant/plaintiff against the said judgment and decree dated 14.09.2015 was dismissed by the learned Additional District Judge, Kaithal vide judgment and decree dated 26.11.2021. Hence, the present second appeal.

8. Learned counsel for the appellant/plaintiff assails the impugned judgments and decrees of the learned Courts below by submitting that defendant No.2 had sold the suit property which is in the ownership of defendant No.1/Society. It is submitted that as per the Memorandum of Association (Ex.PC), the property vests in the Society and therefore, defendant No.2 had no authority to sell the same as the suit property is owned by defendant No.1/Society. In the sale deed, the owner of the suit property has been wrongly mentioned as defendant No.2; whereas the owner is defendant No.1/Society. This fact is clear from the further recital in the sale deed to the effect that possession of the purchased land was handed over by vendor to defendant No.1 through its Secretary/defendant No.2. This fact is also clear from the testimonies of PW-6 Nirmal Senior Manager and PW7 Prem Chand as noted in the judgment of the Appellate Court. PW6 Nirmal Senior Manager deposed that *"in the name of the respondent no.1 loan is pending and the loan application dated 03.03.2004 is on file whose photocopy of Ex.PW A/5 and loan was sanctioned after considering the Lawyer's certificate which is Ex. PW A/8. The PW-7 namely Prem Chand (Father of the Appellant and respondent no.2) testified that suit land was purchased by defendant no.1, however, the defendant no.2 being secretary appeared before the sub*



registrar on behalf of the society and funds were donated by Prem Chand vide cheque Ex.PW A/29 and Ex.PW A/30.”

9. Hence, present suit for permanent injunction was filed seeking injunction restraining defendant No.2 from alienating the suit property detailed and described in the plaint in favour of defendants No. 3 to 6 or any other person. It is submitted that plaintiff was merely pleading that he had filed the suit for protecting the rights of the defendant No.1 in his capacity as cashier/office bearer of the Society. It is accordingly prayed that the present appeal be allowed; and impugned judgments and decrees be set aside.

10. No other argument is raised on behalf of the appellant/plaintiff.

11. I have heard learned counsel and perused the case file in detail.

12. At the very outset, it may be pointed out that the present appellant/plaintiff had previously filed a suit No. 134 of 2008 titled as ‘Balaji Education Society vs. Ashwani’ seeking the same relief as in the present civil suit. In the said Suit No. 134 of 2008, the plaintiff's application for temporary injunction had been dismissed on 11.06.2009 on the ground that there was no resolution in favour of the plaintiff to file the said suit. The plaintiff's appeal against the same was dismissed on 07.04.2010. Thereafter suit itself was dismissed in default vide order dated 10.05.2011. Now again the plaintiff has filed the present suit for permanent injunction with same prayer, and against the same parties as in the previous suit. However, this



time the suit has been filed in individual capacity as plaintiff has failed to get a resolution in his favour with the above noted allegations. However in individual capacity, the plaintiff is neither owner of suit property nor is in possession of the suit property. Defendants No. 7 to 15 are also members of the Society but they have failed to appear before the Court to contest or to support the plaintiff. Therefore, it has been correctly held by the learned trial Court that the plaintiff had absolutely no locus standi to file the present suit, as any suit pertaining to defendant No.1 /society has to be legally filed by the properly authorised person.

13. It has also come on record that defendants No. 3 to 6 had also filed Civil Suit No. 196 of 2009 for specific performance of the Agreement to Sell dated 11.02.2008 executed by defendant No.2 qua the suit property. The said suit was decreed in favour of defendant No.3 Inderjeet etc. vide judgment and decree dated 23.12.2004. Against the same, defendant No.2 Ashwani Kumar had filed a Civil Appeal wherein a compromise had taken place between them and ultimately the said appeal was dismissed as withdrawn being compromised on 26.02.2020. Accordingly, the learned counsel representing defendants No. 3 to 6 had made a statement at the Bar before the learned Appellate Court that the sale deed qua the suit property had already been executed in their favour by defendant No.2. As such, the present suit of the plaintiff has been rendered infructuous.

14. Learned counsel for the appellant is unable to dispute or controvert the above said facts.



15. Accordingly, present regular second appeal is hereby **dismissed.**

16. Pending applications, if any, stand disposed of.

24.02.2025

Divyanshi

(NIDHI GUPTA)
JUDGE

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