

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

105

1. RSA-1815-2001 (O&M)
Date of decision: 05.02.2025

KULDIP SINGH AND ORS. ..Appellants

Versus

MADHU SUDAN AND ORS. ..Respondents

2. CR-5065-2007 (O&M)

KULDIP SINGH AND ORS. ..Petitioners

Versus

MADHU SUDAN AND ORS. ..Respondents

3. CR-5066-2007 (O&M)

KULDIP SINGH AND ORS. ..Petitioners

Versus

MADHU SUDAN AND ORS. ..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Vivek Suri, Advocate
Mr. Dushyant Godara, Advocate
for the appellants (in RSA-1815-2001).

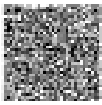
Mr. Gaurav Mohunta, Advocate
Mr. Satyendra Yadav, Advocate
Mr. Nishant Arora, Advocate
Mr. Pratyush Sood, Advocate
for respondents (in RSA-1815-2001).

Mr. K.S. Dadwal, Advocate
for the respondent in RSA-1815-2001
for respondent No.1 (in CR-5065 & 5066 of 2007).

ANIL KSHETARPAL, J(Oral)

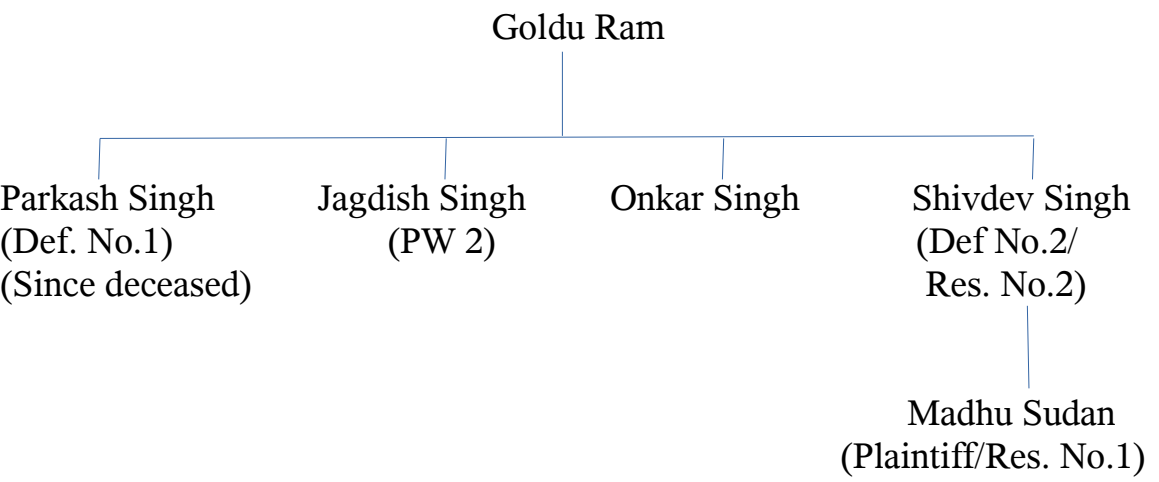
1. Factual background:-

1.1 Three connected cases i.e. one regular second appeal and two
civil revision petitions shall stand disposed of by this common order.

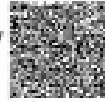


1.2 In regular second appeal, defendant assails the correctness of concurrent findings of fact arrived at by the Courts below while decreeing plaintiff’s suit for possession by way of specific performance of the agreement dated 15.04.1972.

1.3 To understand *inter se* relationship between the parties, a small family tree is drawn as under:-



1.4 Sh. Shivdev Singh was owner of 89 kanal and 7 marlas land located in village Kolian, Tehsil Gurdaspur. He transferred the property in favour of his brother Sh. Prakash Singh (predecessor in interest of the appellants) vide sale deed dated 11.12.1968 on payment of Rs.20,000/-, which is claimed to be ostensible. On 15.04.1972, an agreement of family settlement was executed between all the family members, which was in two parts. The first part was with respect to a plot located in Pathankot, whereas, in the second part Sh. Prakash Singh’s promised to re-convey the property in favour of Sh. Madhu Sudan, who was a minor at that time. In other words, Sh. Prakash Singh promised to re-convey the property, which was transferred in his favour by his brother from Sh. Shivdev Singh in favour of Sh. Madhu Sudan, his nephew when he attains the age of majority. Sh. Madhu Sudan was born on 15.11.1968. On 31.05.1989, Sh. Madhu Sudan filed the suit for



possession by way of specific performance of agreement dated 15.04.1972.

The defendant contested the suit denying execution of the agreement dated 15.04.1972.

2. Evidence produced by the parties:-

2.1 In order to prove agreement, the plaintiff examined Sh. Kanshi Ram, scribe, Sh. Tilak Raj, attesting witness and Sh. Jagdish Singh, his uncle [brother of Sh. Prakash Singh (defendant)]. Even Sh. Darshan Singh, attesting witness of the sale deed dated 11.12.1968 was examined. Sh. Madhu Sudan appeared as PW-4.

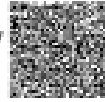
2.2 Upon appreciation of evidence, both the Courts decreed the plaintiff's suit.

3. Arguments put forth by the learned counsel for the parties:-

3.1 This Bench has heard the learned counsel representing the parties and with their able assistance perused the paperbook along with scanned copy of the lower Court record.

3.2 Learned counsel representing the appellant has made the following two submissions:-

- i. The agreement dated 15.04.1972 is without any consideration, hence, unenforceable in view of Section 25 of the Indian Contract Act, 1872 (in short '1872 Act').
- ii. The agreement dated 15.04.1972 was required to be registered and in absence thereof, it is not admissible in evidence.



4. **Analysis and Discussion:-**

4.1 This Court has considered the submissions of learned counsel representing the parties.

4.2 Section 25 of the 1872 Act, reads as under:-

“25. Agreement without consideration, void, unless it is in writing and registered, or is a promise to compensate for something done or is a promise to pay a debt barred by limitation law.—An agreement made without consideration is void, unless—

(1) it is expressed in writing and registered under the law for the time being in force for the registration of 1 [documents], and is made on account of natural love and affection between parties standing in a near relation to each other ; or unless

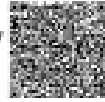
(2) it is a promise to compensate, wholly or in part, a person who has already voluntarily done something for the promisor, or something which the promisor was legally compellable to do; or unless;

(3) it is a promise, made in writing and signed by the person to be charged therewith, or by his agent generally or specially authorized in that behalf, to pay wholly or in part a debt of which the creditor might have enforced payment but for the law for the limitation of suits. In any of these cases, such an agreement is a contract.

Explanation 1.—Nothing in this section shall affect the validity, as between the donor and donee, of any gift actually made.

Explanation 2.—An agreement to which the consent of the promisor is freely given is not void merely because the consideration is inadequate; but the inadequacy of the consideration may be taken into account by the Court in determining the question whether the consent of the promisor was freely given.”

4.3 It is evident that there are three exceptions attached to applicability of Section 25 of the 1872 Act. The second part of the first exception provides that if an agreement is made on account of natural love and affection between the parties standing in a near relation to each other, then Section 25 will not be applicable. As is evident, the parties are closely related. Sh. Madhu Sudan is nephew of Sh. Prakash Singh, hence, the



argument of learned counsel for the appellant based on Section 25 has no substance.

4.4 Moreover, it is the case of the plaintiff that he is prepared to pay Rs.20,000/-, which was the amount of sale consideration in the sale deed dated 11.12.1968. Both the Courts have passed a conditional decree for specific performance of the agreement of payment of Rs.20,000/-. Failure to refer to the amount of consideration in the agreement dated 15.04.1972 will lose its significance particularly keeping in view the relation between the parties.

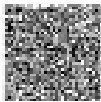
4.5 With respect to the effect of non-registration, it may be noted that agreement dated 15.04.1972, is only a promise to re-convey property in favour of Sh. Madhu Sudan on his attaining the majority. Such agreement does not require registration.

4.6 The attention of the Court has not been drawn to any provision, which requires registration of an agreement in the year 1972.

4.7 Two connected revision petitions are also listed.

4.8 CR-5065-2007 has been filed against dismissal of objections in the execution petition. The objections were filed by the judgment debtors. Those have been correctly dismissed by the Executing Court.

4.9 In CR-5066-2007, the Executing Court has assessed the mesne profits for continuous occupation of the property by the appellants. While entertaining the revision petition, the appellants were directed to pay the amount, however, they failed to pay the same. The stay order passed in favour of the appellants was also vacated on 25.09.2006. The order vacating the stay was assailed before the Supreme Court by the appellants, but failed.



5. Decision:-

17. Keeping in view the aforesaid facts, all the three cases i.e. one regular second appeal as well as two civil revision petitions are dismissed.

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

February 05th, 2025

(ANIL KSHETARPAL)
JUDGE

By

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