



RSA-2690-2022 (O&M)

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

(107)

RSA-2690-2022 (O&M)

Date of decision:- 14.02.2025

Prakash

...Appellant

Versus

Om Prakash and others

...Respondents

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

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

...

SUVIR SEHGAL, J. (Oral)

1. Appellant-plaintiff has filed the instant second appeal for modification of the judgments and decrees passed by the Courts below, whereby his suit has been partly decreed. Along with the appeal, he has filed an applications for condonation of delay of 647 days, in re-filing, and 482 days, in the filing of the appeal.

2. Pleaded case of the plaintiff is that the suit property, i.e., a plot in Sector 55, Faridabad, was originally allotted by HUDA to defendant No.3, who sold it, to the plaintiff vide agreement dated 09.12.2005, for a consideration of Rs.3 lacs. Suit property was transferred in the name of the plaintiff, who

deposited the extension fee and re-allotment letter dated 11.03.2006, was issued



in his favour. Possession of the property was handed over to him on 09.11.2006. Plaintiff claims to have sold the property to defendants No.4 and 5, vide registered sale deed dated 24.01.2007. With an intention to grab the property, defendant No.3, falsely implicated the plaintiff in an FIR and also moved an application before HUDA for cancellation of the transfer. HUDA issued a notice dated 28.08.2008 to the plaintiff and by virtue of Memo No.40012, dated 29.08.2008, cancelled the transfer letter. Challenging the cancellation, plaintiff filed a suit for declaration and for permanent injunction restraining the defendants from alienating the suit property or from creating any third party interest. Upon notice, suit was contested by the defendants. In their written statement, HUDA - defendants No.1, 2 and 6, admitted that the suit property was originally allotted in the name of Om Prakash, who sold it, and a conveyance deed was executed in favour of the plaintiff. It was further submitted that on an application given by the plaintiff, provisional permission to transfer in favour of defendants No.4 and 5, was given vide Memo dated 11.01.2007. Sale deed dated 24.01.2007, executed by the plaintiff in favour of defendants No.3 and 4, was submitted before HUDA and the transfer process was going on when an application was submitted by Om Parkash, for taking action against the plaintiff, alleging that plaintiff had committed a forgery. It was further submitted that CWP-10215- 2008, was filed by the plaintiff challenging the cancellation of transfer, which was dismissed. A separate written statement was filed by Om Prakash, defendant No.3, claiming to be the owner of the property and denying the execution of the sale deed. He averred



against him. Reference was also made to the FSL report, to take a stand that signatures on the sale deed do not match the signatures of the answering defendant. In their separate response, defendants No.4 and 5, claimed to have purchased the property vide sale deed dated 24.01.2007, for a consideration of Rs.9.50 lacs, from the plaintiff. They took a plea that the possession of the property was handed over to them and they applied for transfer to HUDA. Claiming to be bona fide purchasers, they submitted that a suit for recovery has been filed by them against the plaintiff, which is pending.

3. On the basis of pleadings of the parties, Trial Court framed issues and after contest, suit was partially accepted. A decree dated 21.04.2015, was passed to the extent that as Memos dated 28.08.2008 and 29.08.2008, have been passed in violation of the principles of natural justice and are set aside. Liberty was granted to HUDA to conduct a proper inquiry after giving opportunity to the plaintiff to present his case and pass a fresh order. Plaintiff and defendant No.3 filed separate appeals, which were dismissed by the learned Additional District Judge, Faridabad, by a common judgment dated 09.03.2017, resulting in the institution of the present appeal by the plaintiff.

4. Counsel for the appellant-plaintiff has argued that besides the sale deed, Om Prakash had executed an affidavit and an indemnity bond and upon deposit of the extension fee, suit property was re-allotted in the name of the appellant, who sold it further. Asserting that as the appellant-plaintiff became the absolute owner of the suit property, counsel contends that findings recorded by the Trial Court regarding ownership deserve to be reversed.



5. I have heard counsel for the appellant and considered his submission, besides examining the paper book with his able assistance.

6. There is no dispute about the fact that Om Prakash was the original allottee of the suit property and on completion of necessary formalities, HUDA issued a re-allotment letter in favour of the appellant. Om Prakash alleged that the appellant had forged the sale deed and other documents and he had lodged a criminal case against the appellant in which he has been convicted. On the basis of the complaints submitted by Om Prakash, HUDA issued a notice to the plaintiff on 28.08.2008, and cancelled the allotment on 29.08.2008. A perusal of notice dated 28.08.2008, shows that HUDA called upon the appellant to appear before it on the same day at 3:00 PM, after traveling a distance of about 300 kms, and on the failure of the appellant to appear, HUDA passed the cancellation order on the very next day. It is evident that the appellant did not get a reasonable opportunity to present his case. There has been a clear breach of the principles of natural justice. An order which entails adverse consequences has to be passed after giving sufficient opportunity to the affected party to present his version, which has been denied. While partly decreeing the suit of the appellant, Trial Court has directed HUDA to decide the matter afresh after adhering to the principles of natural justice. It is also a matter of record that a similar appeal bearing RSA-4453-2017, filed by Om Prakash, had been dismissed by this Court by judgment dated 16.11.2018. This court, therefore, does not find any infirmity in the judgments passed by the Courts below, which are affirmed.



- 7. Appeal being bereft of merit is dismissed with no order as to cost.
- 8. As the main case has been decided, no separate order is required to be passed on the pending applications, which are disposed off.

(SUVIR SEHGAL)
JUDGE

14.02.2025
Pardeep

Whether Speaking/Reasoned	Yes
Whether Reportable	Yes