



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

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**RSA-3589-2016 (O&M)
Date of decision : 04.03.2025**

Suksham Khurana

..... Appellant

versus

Jaspal Singh and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Vijay Kumar Jindal, Senior Advocate with
Mr. Vrishank Suri, Advocate and
Mr. Ankit Singla, Advocate
for the appellant.

Mr. Aashish Chopra, Senior Advocate with
Mr. Gagandeep Singh, Advocate and
Mr. Bhupinder Ghai, Advocate
for respondent No.1.

PANKAJ JAIN, J. (ORAL)

1. Defendant No.4 is in appeal.
2. Plaintiff filed suit for possession by way of specific performance of agreement to sell dated 20.08.2003, whereby defendant No.1 agreed to sell the suit property in his favour for a sale consideration of Rs.7,08,000/- and agreed to execute the sale deed in favour of the plaintiff within a period of 60 days of the execution of the agreement to sell. Plaintiff further sought declaration to the effect that the document of title executed by defendant No.1 qua the suit land in favour of defendant No.2 to 4 is illegal, null and void and is not



binding on the rights of the plaintiff and defendants be restrained from alienating the suit property further on the strength of sale deed bearing No.9867 dated 30.11.2004.

3. As per the plaint, defendant No.1 was a GPA holder qua the suit property. She agreed to sell the same in favour of the plaintiff executing agreement to sell dated 20.08.2003 and received earnest money of Rs.55,000/-. Plaintiff pleaded that the requisite permission for transfer of the suit property was obtained by defendant No.1 from HUDA on 02.01.2004. Defendant No.1 however requested the plaintiff to wait for some more time for execution of the sale deed in his favour. The plaintiff acceded to her request. Later on, application dated 09.12.2004 was moved by the plaintiff, as he came to know that defendant No.1 wanted to alienate the suit property to some third person. Plaintiff claims that he always remained ready and willing to perform his part of the contract. The plaintiff filed the present suit.

4. At the time of filing of the written statement, defendant No.1 disclosed that she had already sold the suit property to defendant No.2 to 4 vide registered sale deed No.9867 dated 30.11.2004. Defendant No.2 to 4 are none, but the daughters of defendant No.1.

5. Suit was contested by the defendants. Defendant No.1 admitted execution of the agreement to sell in favour of the plaintiff and also admitted receipt of Rs.55,000/- as earnest money. Defendant No.1 however claimed that she was granted permission to sell the suit property to the plaintiff on 01.01.2004. Sale deed was to be executed



within 60 days thereof. Plaintiff not being in possession of the requisite funds, was neither ready and willing to perform his part of the contract. Being in the need of money, defendant No.1 was constrained to sell the suit property to her daughters vide sale deed dated 30.11.2004.

6. Defendant No.2 filed separate written statement. She pleaded being a bonafide purchaser. Defendant No.3 and 4 filed separate written statement, but pleaded on the lines of defendant No.2 raising plea of being bonafide purchasers.

7. While deciding issue No.1 to 4 and 6, Court of the first instance found that the execution of the agreement and receipt of earnest money being not in dispute and the conduct of the defendant in executing sale deed dated 30.11.2004 in favour of her own daughters shows that the defendant failed to perform her part of the contract despite the plaintiff being ready and willing. Trial Court thus, decreed the suit filed by the plaintiff.

8. Two separate appeals were preferred by defendants. One by defendant No.1 through her LRs. The other was preferred by defendant No.2 to 4. Lower Appellate Court affirmed the findings recorded by the Court of the first instance holding that as per the agreement to sell admittedly executed between parties, the sale deed was executed within 60 days. For execution of sale deed, Smt. Magu-defendant No.1 was required to obtain requisite permissions/ clearance from HUDA. The same was obtained by her only on 02.01.2004 vide



Ex.PW-1/2. She never intimated respondent-plaintiff. Thus, time being not the essence of the contract, Smt. Magu executed affidavit Ex.PW-1/3 in favour of the plaintiff. Plaintiff proved his readiness and willingness to perform his part. Ex.PW-1/5 and Ex.PW-1/6 showing sanction of home loan from two banks goes on to show that he was in possession of the requisite amount and was in possession to honour his commitment. Lower Appellate Court further disbelieved the plea raised by appellant i.e. defendant No.4 of being a bonafide purchaser. The Lower Appellate Court took cognizance of close relationship between defendant No.1 and defendant No.2 to 4 and held that plea of being bonafide purchaser was not available to them.

9. LRs of Defendant No.1 preferred RSA No.5265 of 2012 before this Court. The same was dismissed vide order dated 22.04.2016 observing as under:-

“xx xx xx

I have heard the learned counsel for the parties and appraised the paper book and of the view that there is no substance in the plea of Mr. Adarsh Jain, for the reason that the ratio decidendi culled out by the judgment rendered in **Ramesh Chand's** case (supra) and **Hemanta Mondal's** case (supra), where the Court granting discretionary relief under Section 20 of the 1963 Act was primary on the ground that in one of the case, the area was not clear and another case, the plaintiff had not taken any steps for redeeming the mortgaged land, as per the terms and conditions of the agreement. However, in this present case, no terms and conditions had been imposed upon the plaintiff except it was mentioned that the sale deed would be executed within 60 days after getting formalities.



It is matter of record that NOC was granted on 02.01.2004 after 60 days and therefore, the period of 60 days would be redundant as rightly noticed by both the Courts below. The additional evidence sought to be placed on record was within the knowledge of the appellant-defendant. No explanation has come forth to place on record the same, rightly so, the lower Appellate Court has dismissed the application and I am of the view that in case, additional evidence is allowed, it would tantamount to de novo trial, for the reason that the plaintiff was not in the need of money as attempt had been made to thwart the claim of the respondent-plaintiff by selling the land in favour of her daughter during the currency of the agreement to sell.

Keeping in view the aforementioned facts and circumstances of the case, I do not find any illegality and perversity in the judgment and decree of both the Courts below which are based upon the appreciation of oral and documentary evidence. The substantial questions of law as noticed above are answered in favour of the respondents-plaintiffs and against the appellant-defendant. Accordingly, the judgment and decree of both the Courts below are affirmed.”

10. The aforesaid judgment was impugned by defendant No.1 before Supreme Court by filing SLP No.24380 of 2016. The same stands dismissed for non-prosecution vide order dated 22.01.2018. Instant appeal was filed on 23.07.2016 i.e. after 03 months of the dismissal of the earlier RSA filed by LR of defendant No.1 with the delay of 1719 days.

11. On 30.08.2019, this Court passed the following order:-

“CM-10952-C of 2019

Through this application under Order I Rule 10 read with Section 151 of the Code of Civil Procedure, applicant-appellant has sought deletion of name of respondent No.2(ii) Anil Kumar from



the array of parties.

Heard.

For the reasons mentioned in the application, same is allowed. Name of respondent No.2(ii) Anil Kumar is ordered to be deleted from the array of parties. Amended memo of parties filed along with application is taken on record. Be tagged at appropriate place.

CM-5543-C of 2019 & RSA No.3589 of 2016 (O&M)

Through instant application under Section 151 of the Code of Civil Procedure, applicant-respondent No.1 has prayed for recalling orders dated 31.08.2016 and 20.02.2017 passed in CM No.11457-C of 2016 and CM No.1648-C of 2017, respectively, whereby Executing Court was directed to defer the hearing of execution petition beyond the date fixed before this Court.

Learned counsel for the applicant submits that another appeal bearing RSA No.5265 of 2012 filed by co-appellants (respondents No.2(i & ii herein) against the impugned judgment and decrees has already been dismissed on merits by a Co-ordinate Bench of this Court vide judgment dated 22.04.2016. Therefore, instant appeal has mala fide been filed with dis-honest intention after dismissal of the appeal of co-appellants two months' thereafter and, thus, has not maintainable.

Learned counsel for the appellant seeks time to verify above fact.

Adjourned to 3.09.2019 for consideration.”

12. Senior counsel for the appellant does not dispute that the impugned judgment and decree passed by this Court stands upheld in RSA No.5265 of 2012 preferred by the LRs of defendant No.1. SLP also stands dismissed for non-prosecution.

13. In view of above, this Court has no other option, but to dismiss the present appeal in terms of the judgment dated 22.04.2026 passed by this Court in RSA No.5265 of 2012.



14. In view of above, the present regular second appeal is ordered to be dismissed.

15. Since the main case has been decided, pending miscellaneous application, if any, shall also stands disposed off.

(PANKAJ JAIN)
JUDGE

04.03.2025
Dinesh

Whether speaking/reasoned	Yes
Whether Reportable :	No