



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

117

RSA-1321-2020 (O&M)
Date of Decision: 11.09.2025

Manoj Kumar

...Appellant

V/s

Hawa Singh (since deceased) through LRs and others ...Respondents

CORAM : HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Present: Mr. Bhaskar Sorout, Advocate for
Mr. Keshav Pratap Singh, Advocate, for the appellant.

VIKRAM AGGARWAL, J (ORAL)**CM-3902-C-2020**

Prayer in the present application preferred under Section 151 CPC is for condonation of delay of 11 days in refiling the appeal.

Heard.

For the reasons mentioned in the application, which is duly supported by an affidavit, the same is allowed. The delay of 11 days in refiling the appeal is condoned.

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This is plaintiff's appeal against the judgment and decree dated 01.08.2019 passed by the Court of Addl. District Judge, Jhajjar, dismissing the appeal filed against the judgment and decree dated 03.02.2016 passed by the Court of Civil Judge (Sr. Divn.), Jhajjar, vide which the suit of the plaintiff for specific performance and declaration was dismissed.

2. For the sake of convenience and clarity, parties shall be referred to as per their original status.

3. The plaintiff (Manoj Kumar) instituted a suit for specific performance of agreement to sell dated 10.11.1995 against the defendants



(Hawa Singh and others). A decree for declaration that the sale deeds dated 31.01.1996 and 16.08.1996 and consent decree dated 20.02.1996 passed in Civil Suit No.117 of 1996 titled as ***Pradeep Vs. Hawa Singh***, were not binding on the rights of the plaintiff, was also sought.

3.1. The facts, as set out in the plaint, were that defendant No.1 (Hawa Singh) was owner of agricultural land to the extent of 1/36th share out of 285 kanals 05 marlas of land (fully described in the plaint) situated within the revenue estate of Village Jhajjar, Tehsil and District Jhajjar (hereinafter referred to as the “suit land”).

3.2 Defendant No.1 executed an agreement to sell with the plaintiff for the sale of the suit land for a total sale consideration of Rs.1,50,000/- on 10.11.1995. Possession was stated to have been delivered at the time of execution of agreement to sell. Sale deed was agreed to be executed within a period of one month on receipt of notice from the plaintiff.

3.3 It was averred that the plaintiff had always been ready and willing to perform his part of the contract but defendant No.1 kept on delaying.

3.4 Legal notice dated 22.03.1997 was issued by the plaintiff calling upon defendant No.1 to get the sale deed executed within a period of one month.

3.5 Defendant No.1, on the contrary, alienated the suit land to defendants No.2 to 5 vide registered sale deed dated 31.01.1996. At the same time, he transferred the suit land to defendant No.6 vide collusive decree dated 20.02.1996 and further vide registered sale deed dated 16.08.1996, he alienated the suit land to defendants No.7 and 9. It was claimed that all the aforesaid transfers were mere paper transactions and the plaintiff was not bound by the same.



3.6. Plaintiff instituted Civil Suit No.392 on 16.09.1998. As per the plaintiff, the defendants played a fraud upon him and got the suit dismissed as withdrawn on 14.12.1998, after having intoxicated the plaintiff. An application was moved for restoration of the said suit, but the same was dismissed on 27.11.2007. Appeal filed against the said order was also dismissed on 09.09.2009. Civil Revision No.679 of 2010 was filed by the plaintiff, but he withdrew the same on 02.02.2010 with liberty to institute a fresh suit.

3.7 Thereafter, he again contacted the defendants on 28.02.2010 and requested them to get the sale deed registered in terms of agreement to sell dated 10.11.1995, but to no avail. Under the circumstances, the suit was instituted.

4. Defendants No.1, 2 and 7 did not contest the suit and were, accordingly, proceeded against *ex parte*. The remaining defendants contested and opposed the suit. Defendants No.2 to 5 filed their written statement. The execution of the agreement to sell dated 10.11.1995 was admitted. However, transfer of possession was denied. It was averred that the plaintiff had entered into a compromise with defendant No.1, which was reduced into writing and upon statement of the plaintiff having been recorded, the suit was withdrawn. It was averred that the plaintiff had received refund of the earnest money as well. It was averred that under the circumstances, the plaintiff was left with no right, whatsoever.

4.2 The factum of Civil Suit No.392 dated 16.09.1998 having been instituted and withdrawn, was admitted. Filing of application for restoration, its dismissal, dismissal of appeal and filing of revision petition etc., was also admitted.

4.3 Defendants No.2 to 5 claimed to be *bona fide* purchasers of the



suit land for consideration.

4.4 Defendant No.6 filed a separate written statement wherein, execution of agreement to sell dated 10.11.1995 was denied and Civil Court decree dated 20.02.1996 was supported. All other averments were denied apart from raising certain preliminary objections.

4.5 Defendant No.8 also filed a separate written statement only supporting registered sale deed dated 16.08.1996. All other averments were denied. The factum of filing of the earlier suit, its withdrawal, an application for restoration, its dismissal, dismissal of appeal and filing of civil revision petition, was admitted.

4.6 Replication was filed, in which the contents of the written statements were denied and those made in the plaint were reiterated.

5. From the pleadings of the parties, the following issues were framed by the trial Court:-

- “1. Whether the plaintiff is entitled to a decree for specific performance of contract dated 10.11.1995?OPP***
 - 2. If issue No.1 is proved in favour of the plaintiff, whether the sale deed dated 31.01.1996, consent decree dated 20.02.1996 and sale deed dated 16.08.1996 are liable to be set aside?OPP***
 - 3. Whether the suit has been filed within limitation period?OPD***
 - 4. Whether the proper Court fee has been affixed on the plaint or not?OPD***
 - 5. Whether this Court has jurisdiction to try and entertain the present suit?OPD***
 - 6. Whether the plaintiff is stopped by his own act and conduct to file the present suit?OPD***
 - 7. Whether the suit of the plaintiff is not maintainable in the present form?OPD***
 - 8. Whether the plaintiff has no locus-standi to file the present suit?OPD***
 - 9. Whether the suit is barred by the principle of res-judicata?OPD***
- Relief.***

6. Parties led their respective evidence. The trial Court dismissed



the suit and the appeal filed by the plaintiff against that decision was also dismissed by the Court of Addl. District Judge, Jhajjar, leading to filing of the present regular second appeal.

7. I have heard learned counsel for the appellant.

8. Learned counsel for the appellant submits that both Courts have erred in dismissing the suit filed by the plaintiff. He submits that due opportunity had been granted by the High Court to the plaintiff to institute a fresh suit pursuant to which, the suit had been filed. Learned counsel also addressed arguments on merits.

9. I have considered the submissions made by learned counsel for the appellant, but find the same to be devoid of merit.

10. Before advertng to the merits of the case, it would be relevant to notice few essential facts. The plaintiff initially instituted Civil Suit No.392 on 16.09.1998 titled as ***Manoj Kumar Vs. Hawa Singh and others***, seeking the same relief i.e., suit for specific performance of agreement to sell dated 10.11.1995. However, the said suit was withdrawn on 14.12.1998 from the Court of Civil Judge (Jr. Divn.), Jhajjar, which passed the following order:-

“Present: Plaintiff in person with Sh. N.R. Verma, Adv.

The plaintiff made a statement that he does not want to proceed with the present case and he may be allowed to withdraw the present suit. His statement to this effect recorded. Keeping in view the statement made by the plaintiff, the present suit is dismissed as withdrawn. File be consigned to the record room.

***Announced
14.12.1998***

***sd/-
Civil Judge (Jr.Divn.)
Jhajjar. 14.12.98”***

10.1 A perusal of the aforesaid order shows that it was a simple withdrawal of the suit. There is absolutely no reference to any compromise having been arrived at. The order does refer to a statement having been made by the plaintiff but that statement, despite having been asked for repeatedly, has not been placed on record.



10.2 Be that as it may, the order does not make any reference to any compromise and it was a simple withdrawal.

10.3 Not only this, once this order was passed, vide which withdrawal of the suit was permitted, the plaintiff moved an application for restoration of the said suit. The application is annexed as Annexure A-1. No reference was made to any compromise even in the said application. It was averred that the applicant had been made to consume liquor and an affidavit was obtained from him under the influence of liquor and on 14.12.1998 also, he was taken to Court under the influence of liquor, where he was made to sign some papers. This application came to be dismissed on 21.11.2007. This order is available on the record of the trial Court, though, the same has not been annexed with the paper-book. This order shows that issues were framed and parties led their respective evidence. There, the plaintiff did take a stand that a compromise was arrived at. However, the trial Court found that the suit had been withdrawn by the plaintiff with his free will. Further, it was also found that the plaintiff had not been able to prove that the matter had been compromised.

10.4 Appeal against the said order was also dismissed vide order dated 09.09.2009 (Annexure A-3), though, it was essentially dismissed on the ground of maintainability. Under the circumstances, the plaintiff filed a revision petition bearing CR-679-2010, which was withdrawn by the plaintiff with liberty to file a civil suit. In the said petition, the following order was passed on 02.02.2010:-

“Learned counsel for the petitioner wishes to withdraw the present petition with liberty to file civil suit.

Dismissed as withdrawn with the aforesaid liberty.”

10.5 Order 23 CPC deals with withdrawal and adjustments of suits. As



laid down in Order 23 Rule 1(3), permission to withdraw with liberty to institute a fresh suit can be granted only in special circumstances. However, in normal circumstances, no fresh suit can be filed.

10.6 Coming to the liberty granted by the coordinate Bench, learned counsel has not been able to show that the said liberty was in respect of instituting a fresh suit on the same cause of action. What seems to have transpired is that upon the Bench not agreeing to intervene, the revision petition was withdrawn seeking liberty to file a fresh suit. Under the circumstances, it was open for the plaintiff to institute some fresh suit. What that suit could have been, is not for this Court to comment upon and it would be for the plaintiff or his counsel to decide, who withdrew the revision petition with an innocuous liberty. No Court can grant liberty to do an act, which is not permitted in law. Once, the plaintiff was agitating the withdrawal of his suit and was praying for restoration of the same, it cannot even be suggested that he was granted liberty to file a fresh suit on the same cause of action without disturbing the orders under challenge in the revision petition.

10.7 Accordingly, both Courts rightly held that the suit of the plaintiff was not maintainable.

11. Though, since the suit was not maintainable, the merits are not to be gone into, even on merits, the plaintiff has no case. As per the own case of the plaintiff, the agreement to sell was executed on 10.11.1995. The sale deed was agreed to be executed within a period of one month from the date of issuance of a notice. Notice was issued on 22.03.1997 i.e., almost 1 ½ years after the execution of the agreement to sell. In the meantime, the suit land had already been alienated. Even thereafter, he instituted the first suit on 16.09.1998 but the same was withdrawn by him on 14.12.1998. The second



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suit i.e., the present suit, was instituted on 03.03.2010, which was clearly barred by limitation. Though, it has not been argued before this Court, the plaintiff may intend to argue and claim the benefit of time for which he was pursuing his remedies. In the considered opinion of this Court, he cannot claim such benefit for the institution of a suit.

12. That being so, the instant appeal is devoid of merit and is accordingly dismissed in *limine*.

Pending application(s), if any, shall also stand disposed of.

(VIKRAM AGGARWAL)
JUDGE

September 11, 2025

vcgarg

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No