

**C.M.No.11799-C of 2016 in/and  
RSA No.5500 of 2014 (O&M)**

**{1}**

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

**C.M.No.11799-C of 2016 in/and  
RSA No.5500 of 2014 (O&M)  
Date of decision:29.11.2016**

Gurdev Singh

... Appellant

Vs.

Jagdeep Singh and another

... Respondents

**CORAM: HON'BLE MR. JUSTICE AMIT RAWAL**

Present:- Mr. Anand Chhibbar, Senior Advocate with  
Mr. Vaibhav Sahni, Advocate  
for the applicant/appellant.

**AMIT RAWAL J.**

**C.M.No.15965-C-2016**

The application is allowed, subject to all just exceptions. The documents sale deed (Annexure A-1) and Registered Mutation (Annexure A-2) along with their vernaculars are taken on record.

**C.M.No.11799-C of 2016 in/and  
RSA No.5500 of 2014 (O&M)**

The present Regular Second Appeal was allowed by this Court vide order dated 09.12.2015. Thereafter, the respondents approached the Hon'ble Supreme Court by filing Civil Appeal No.5405 of 2016 (arising out of SLP (Civil) No.9596 of 2016), which was allowed and the matter has been remanded back to this Court.

There is no representation on behalf of the respondents despite

service through dasti notices. Accordingly, I proceed to decide the appeal on merits.

The appellant-plaintiff is aggrieved of the judgment and decree of the lower Appellate Court, whereby judgment and decree of the trial Court decreeing the suit granting the specific relief in respect of agreement to sell dated 02.01.2006, has been set aside.

Mr. Anand Chhibbar, learned Senior Counsel assisted by Mr. Vaibhav Sahni, learned counsel appearing on behalf of appellant-plaintiff submits, that the trial Court earlier had decreed the suit. However, the lower Appellate Court remanded back the matter by framing issue No.4-A as to whether defendant No.2 had purchased the property during the currency of the agreement to sell being bona fide purchaser or not. The trial Court on the basis of the evidence brought on record found that the witness to the sale deed dated 27.03.2006 entered into by the vendor-defendant No.1 in favour of defendant No.2-respondent No.1 herein were none else but the neighbourer of the vendor and they were members of one family and, therefore, it cannot be believed that the aforementioned witnesses including the vendor did not pass the information with regard to the execution of agreement to sell dated 02.01.2006 while selling the land to defendant No.2 on 27.03.2006. He further submits that agreement to sell in respect of land measuring 48 kanals was entered into on 02.01.2006 with respondent No.2-defendant No.1 against the total sale consideration of ₹9,25,000/- whereby earnest money of ₹5,25,000/- was paid. The agreement to sell,

aforementioned, has been proved through the testimony of both the attesting witnesses and not only this, even readiness and willingness has also been proved inasmuch as that on acquiring the knowledge of the alleged breach, the suit was filed on 30.03.2006 much before the stipulated date because the vendor/defendant No.1 (respondent No.2) had sold the land, agreed to be sold to the respondent No.1-defendant No.2, vide sale deed dated 27.03.2006. He further submits that the defendant No.2 cannot take the aid of provision of Section 41 of the Transfer of Property Act as they had the knowledge of the agreement to sell and rightly finding on issue No.4-A was rendered in favour of plaintiff. However, the lower Appellate Court being the last Court of fact and law did not discuss the evidence on record and in the most erroneous and perverse manner reversed the findings.

The case set up by the respondents before the Courts below was that subsequent vendees not only have a right to challenge the readiness and willingness but has also been able to prove that he did not have the knowledge of the agreement to sell despite reasonable enquiry from the revenue record, nothing was found qua execution of the agreement to sell. The plaintiff has not been able to prove the ingredients of Section 16(c) of the Specific Relief Act as the ready cash was not shown at the time of filing of the suit, much less, during the pendency of the suit.

I have heard learned counsel for the appellant and appraised the paper book and case law cited at bar and of the opinion that appeal deserves to be allowed for the following reasons:-

Sukhdev Singh and Balkaur Singh, admittedly are the neighbors of the vendor who had been cultivating their land. They are also the witness to the sale deed dated 27.03.2006 executed by Vendor-defendant No.1 in favour of respondent No.1 herein-defendant No.2. It would be apt to reproduce the finding of trial Court vis-a-vis on issue No.4-A:-

*“32. Admittedly, the suit land was subsequently sold to defendant No.2 vide registered sale deed bearing No.6581 dated 27.3.2006, the fact which defendant No.1 has admitted in her written statement and, therefore, the moot question is whether defendant No.2 is the bona fide purchaser of the suit property or not. The defendant No.2 has examined the Scribe Varinder Kumar, who has admitted that on the asking of the parties, he scribed the sale deed which is mentioned in his register at Sr. No.246 dated 27.3.2006. Further, the defendant has himself stepped into the witness box as DW-3 and has also examined Shri Sukhdev Singh and Balkaur Singh, attesting witnesses of the sale deed. Now, it was contended by the learned counsel for the plaintiff that from the evidence brought on record as well as from the pleadings of defendant No.2, it is clear that he knew the plaintiff personally, therefore, plea of bonafide purchaser with consideration without notice is not available to the defendant No.2. The defendant No.2 in his*

*written statement has taken the plea that the plaintiff has no source of income to pay the consideration mentioned in the agreement to sell and he is in the habit of preparing false agreements to sell. From this fact, it is proved that defendant No.2 was having knowledge of the agreement to sell which has been relied upon by the plaintiff, as a person who has personal knowledge regarding the antecedents of a person will take such a plea because if defendant No.2 did not knew about the plaintiff then how he took such a plea, no such explanation is forthcoming on record. Further, defendant No.2 has failed to bring on record any evidence to show that the plaintiff is in the habit of purchasing the suit property which could have easily proved by leading documentary evidence qua the agreement being entered into by the plaintiff with the other persons qua other land. Further, in the evidence of DW-5 Balkaur Singh, it has come on record that they cultivate the land adjoining to the land of the defendant No.1 and further they took it on contract and, therefore, from this fact, inference is liable to be drawn that the defendant No.2 had knowledge of the agreement to sell because Balkaur Singh and the other attesting witness Sukhdev Singh and Major Singh, who has been examined in additional evidence are related to each other though defendant No.2 Jagdeep Singh has denied his relationship with Sukhdev Singh*

*but the other witness have admitted their relations. The defendant No.2 Jagdeep Singh and all the witnesses are connected with each other as they belong to one family and the sale deed was executed in undue haste because from the testimony of Balkaur Singh, it is clear that he was present in the Court from where he was called as Major Singh had to go for some work. Major Singh has been examined who has supported this contention but the relationship of the parties is clear that they belong to one family and the family members are cultivating this land on the contract, therefore, plea that the defendant No.2 could not have knowledge of the agreement to sell as he belongs to other village is not acceptable.”*

The lower Appellate Court in paragraph No.30 and 36 gave the reasons to arrive at findings that defendant No.2 did not have the knowledge of the agreement to sell.

Even in paragraph No.33, it has been observed that the defendant No.2-respondent No.1 inspected the revenue record & found that there was no reflection of the agreement to sell. I am of the view that it is not essential that every agreement to sell had to be entered in the revenue record but the surrounding circumstances had also to be seen. The total sale consideration in respect of agreement to sell dated 02.01.2006 was ₹9,25,000/- whereas the property purchased by the defendant No.2 was for ₹9,05,000/-, in my view, it was distressed sale and put cloud on the right of the

appellant-plaintiff. Since, the lower Appellate Court has not given any valid reasons in setting aside the findings of the trial Court vis-a-vis attesting witnesses to the sale deed being neighbor of the vendor, I am of the view that lower Appellate Court failed to discharge the obligation as envisaged under Section 96 of Code of Civil Procedure.

No doubt, this Court, on earlier occasions had been framing the substantial questions of law while deciding the appeals but in view of the ratio decidendi culled out by five learned Judges of the Hon'ble Supreme Court in **Pankajakshi (dead) through LRs and others Vs. Chandrika and others AIR 2016 SC 1213**, wherein the proposition arose as to whether in view of the provisions of Section 97(1) CPC, provisions of Section 41 of the Punjab Courts Act, 1918 would apply or the appeal i.e. RSA would be filed under Section 100 of Code of Civil Procedure so there is need to frame the substantial questions of law or not. The Constitutional Bench of Hon'ble Supreme Court held that the decision in **Kulwant Kaur and others Vs. Gurdial Singh Mann (dead) by LRs and others 2001(4) SCC 262** on applicability of Section 97(1) of CPC is not a correct law, in essence, the provisions of Section 41 of the Punjab Courts Act, 1918 had been restored back.

For the sake of brevity, the relevant portion of the judgment of five learned Judges of the Hon'ble Supreme Court in Pankajakshi 's case (supra) reads thus:-

*“Since Section 41 of the Punjab Act is expressly in*

*conflict with the amending law, viz., Section 100 as amended, it would be deemed to have been repealed. Thus we have no hesitation to hold that the law declared by the Full Bench of the High Court in the case of **Ganpat [AIR 1978 P&H 137 : 80 Punj LR 1 (FB)]** cannot be sustained and is thus overruled." [at paras 27 - 29]"*

*"27. Even the reference to Article 254 of the Constitution was not correctly made by this Court in the said decision. Section 41 of the Punjab Courts Act is of 1918 vintage. Obviously, therefore, it is not a law made by the Legislature of a State after the Constitution of India has come into force. It is a law made by a Provincial Legislature under Section 80A of the Government of India Act, 1915, which law was continued, being a law in force in British India, immediately before the commencement of the Government of India Act, 1935, by Section 292 thereof. In turn, after the Constitution of India came into force and, by Article 395, repealed the Government of India Act, 1935, the Punjab Courts Act was continued being a law in force in the territory of India immediately before the commencement of the Constitution of India by virtue of Article 372(1) of the Constitution of India. This being the case, Article 254 of the Constitution of India would have no application to such a law for the simple reason that it is not a law made by the Legislature of a State but is an existing law continued by*

*virtue of Article 372 of the Constitution of India. If at all, it is Article 372(1) alone that would apply to such law which is to continue in force until altered or repealed or amended by a competent Legislature or other competent authority. We have already found that since Section 97(1) of the Code of Civil Procedure (Amendment) Act, 1976 has no application to Section 41 of the Punjab Courts Act, it would necessarily continue as a law in force.”*

Therefore, I do not intend to frame the substantial questions of law while deciding the appeal aforementioned.

Keeping in view the aforementioned facts, questions of law as referred above are answered in favour of appellant-plaintiff and against the respondent No.1-defendant No.2.

Accordingly, the judgment and decree of the lower Appellate Court is set aside and that of the trial Court is restored.

Appeal stands allowed.

It is made clear that respondent No.1/defendant No.2 shall be at liberty to seek the vindication of his grievance against defendant No.1 in accordance with law.

(AMIT RAWAL)  
JUDGE

November 29, 2016  
savita

|                           |        |
|---------------------------|--------|
| Whether Speaking/Reasoned | Yes/No |
| Whether Reportable        | Yes/No |