

RSA-198-2023 (O&M)
ESA-16-2025 (O&M)
ESA-17-2025 (O&M)

-1-

2025.PHHC:056413



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

**Reserved on: 25.04.2025
Pronounced on: 30.04.2025**

1. RSA-198-2023 (O&M)

Smt. Bimla Devi ...Appellant

Vs.

Suresh Kumar and others ...Respondents

2. ESA-16-2025 (O&M)

Smt. Bimla Devi ...Appellant

Vs.

Suresh Kumar and others ...Respondents

3. ESA-17-2025 (O&M)

Smt. Bimla Devi ...Appellant

Vs.

Suresh Kumar and others ...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Rakesh Nehra, Sr. Advocate with
Mr. Ankit Yadav, Advocate
for the appellants.

Mr. Ashok Singla, Advocate
Mr. Aakash Singla, Advocate
Mr. Sanchit Punia, Advocate
for respondents No. 1 to 5.



ANIL KSHETARPAL, J.

I Brief Facts of the Case:-

1. With the consent of learned counsel representing the parties, three connected cases, namely, RSA-198-2023, ESA-16-2025 and ESA-17-2025 shall stand disposed of by this common order.

2. In RSA-198-2023, the plaintiffs assail the correctness of concurrent findings of fact arrived at by the Courts below while dismissing their suit for grant of decree of declaration that they are not bound by judgment and decree dated 16.05.2011, which in appeal was affirmed vide judgment dated 11.04.2013 with a consequential relief of permanent injunction restraining defendants No. 1 to 5 from proceeding with the execution of the decree in their favour.

3. In these three appeals, relevant facts, in brief, are required to be noticed in order to comprehend the issues involved in these appeals.

4. Sh. Om Parkash and Sh. Nathu Ram were owners of the suit land. They entered into an agreement to sell in favour of Sh. Suresh Kumar, Sh. Balram, Sh. Rajbir and Sh. Vijay Kumar with respect to 40 kanals land on 20.10.2003, however, Sh. Om Parkash and Sh. Nathu Ram failed to honour the agreement to sell forcing Sh. Suresh Kumar etc. to file suit for specific performance of agreement to sell on 23.07.2004, which was decreed on 16.05.2011 and affirmed in appeal on 11.04.2013. Thereafter, Sh. Suresh Kumar etc. filed the execution petition, in which, the objections filed by the



appellants were dismissed by both the Courts below. Hence, the Execution Second Appeals No. 16 and 17 of 2025 have been filed by the objector.

5. In RSA-198-2023, suit was filed by the appellants, namely, Smt. Bimla Devi and her husband Sh. Ram Partap claiming that Sh. Om Parkash and Sh. Nathu Ram executed an agreement to sell in their favour on 25.04.2003 with respect to 47 kanals 09 marlas land on receipt of earnest money of Rs.1,76,000/- out of total sale consideration of Rs. 4,74,500/-. The sale deed was agreed to be executed on 26.04.2004 on payment of remaining sale consideration, however, by mutual agreement the period was extended to 21.04.2005, however, the sale deed was executed by Sh. Om Parkash and Sh. Nathu Ram in favour of Smt. Bimla Devi-appellant No.1 on 02.08.2004 after receipt of Rs.5,34,000/-. The appellants claim that Sh. Om Parkash and Sh. Nathu Ram are closely related with Sh. Suresh Kumar etc. Hence, they colluded in order to defraud them. On the other hand, it is case of Sh. Suresh Kumar etc. that in fact, Smt. Bimla Devi is a purchaser governed by rule of *lis pendens* and Sh. Om Parkash and Sh. Nathu Ram have colluded with Sh. Ram Partap in order to cheat them.

6. Admittedly, the suit for specific performance was filed by Sh. Suresh Kumar on 23.07.2004, whereas, the sale deed was registered in favour of Smt. Bimla Devi on 02.08.2004. Hence, the sale in favour of Smt. Bimla Devi is governed by rule of *lis pendens*.



II **Arguments addressed:-**

7. Heard the learned counsel representing the parties at length and with their able assistance perused the paper-book alongwith the requisitioned record.

8. Learned senior counsel representing the appellants in regular second appeal while highlighting that Sh. Om Parkash, Sh. Nathu Ram and Sh. Daya Nand (father of Sh. Suresh Kumar etc.) are cousins, submits that they have been defrauded by defendants No. 1 to 5 in collusion with defendants No 6 and 7, namely, Sh. Om Parkash and Sh. Nathu Ram. He submits that when Sh. Om Parkash and Sh. Nathu Ram filed a written statement in the suit filed by Sh. Suresh Kumar etc., the agreement to sell in their favour was not disclosed. Sh. Om Parkash and Sh. Nathu Ram did not seriously contest the suit filed by Sh. Suresh Kumar, hence, there was collusion. It is further contended that Smt. Bimla Devi was not impleaded as a party in the suit, though, the sale deed dated 02.08.2004, in favour of Smt. Bimla Devi was known to Sh. Suresh Kumar etc. Moreover, Sh. Suresh Kumar etc. also filed a suit for grant of permanent injunction with regard to passage against Smt. Bimla Devi and Sh. Ram Partap in which sale deed in favour of Smt. Bimla Devi and Sh. Ram Partap was produced.

9. *Per contra*, learned counsel representing the respondent, namely, Sh Suresh Kumar etc. submits that there was no collusion between Sh. Om Parkash and Sh. Nathu Ram on the one hand and Sh. Suresh Kumar etc. on the other hand because on 08.09.2004, a police complaint was lodged, which



resulted in registration of FIR and arrest/detention of Sh. Om Parkash and Sh. Nathu Ram, Smt. Bimla Devi, Sh. Ram Partap, Sh. Prema Ram in the prison. In the aforesaid complaint and FIR the pendency of the suit for specific performance was disclosed but Smt. Bimla Devi never filed any application for impleadment. Sh. Ram Partap applied for bail on 19.09.2004, wherein, he never made any averment with regard to the agreement to sell dated 25.04.2003 in his favour. He further submits that Sh. Om Parkash, Sh. Nathu Ram and Sh. Ram Partap are members of the same gang and they were represented by a common counsel in the criminal case. Smt. Bimla Devi and Sh. Ram Partap have also filed a suit through the same counsel. Hence, collusion between Sh. Om Parkash and Sh. Nathu Ram on one hand and Smt. Bimla Devi and Sh. Ram Partap on the other hand is proved. It is further contended that in this suit Sh. Om Parkash and Sh. Nathu Ram have been impleaded as *proforma* defendants No. 6 and 7 and the appellants never lodged any complaint against Sh. Om Parkash and Sh. Nathu Ram. It is further submitted that when Sh. Om Parkash and Sh. Nathu Ram filed a written statement in the present suit, they supported the appellants. It is submitted that the agreement to sell dated 25.04.2003 is pre-dated because the sale deed dated 02.08.2004 does not make any reference to the agreement to sell dated 25.04.2003. While highlighting the register of the Scribe Ex. D-2, it is submitted that Sh. Ram Partap is proved to be known to the family of Sh. Om Parkash and Sh. Nathu Ram for the last 7-8 years before the execution of the agreement to sell because there was a regular



transaction between the family of Sh. Om Parkash, Sh. Nathu Ram and Sh. Ram Partap as reflected in Scribe's register Ex. D-2 to D-4, D-6 to D-10, DA.

III Analysis and Discussion:-

10. This Court has considered the submissions made by the learned counsel representing the parties.

11. It would be noted here that though in the plaint, the appellants have claimed that the judgment and decree passed on 16.05.2011, which in appeal was affirmed on 11.04.2013 was collusive, however, they never pressed this aspect before the Courts below. However, the appellants have made assertions, hence, this Court permitted the appellant(s) to address arguments. The appellants are claiming collusion between Sh. Om Parkash and Sh. Nathu Ram on the one hand and Sh. Suresh Kumar etc. on the other hand because they are related to each other. On the other hand, Sh. Suresh Kumar etc. have led concrete evidence which proves that there was no collusion, which would be evident from the following events:-

- I. The sale deed dated 02.08.2004, is with respect to 47 kanals 09 marlas land on payment of total sale consideration of Rs.5,34,000/-. There is no reference to the agreement to sell dated 25.04.2003 or payment of earnest money of Rs. 1,76,000/- at that point of time. As per the agreement to sell dated 25.04.2003, the total sale consideration is Rs.4,74,500/-, whereas, at the time of the sale deed the amount of Rs. 5,34,000/- was paid.



- II. On 08.04.2004, Sh. Suresh Kumar etc. lodged a complaint against Sh. Om Parkash, Sh. Nathu Ram, Smt. Bimla Devi and Sh. Ram Partap, which resulted in FIR No. 285 dated 10.09.2004. If there had been collusion, Sh. Suresh Kumar would not have lodged a police complaint, which resulted in registration of the FIR. Though, Sh. Om Parkash and Sh. Nathu Ram were acquitted but they had to face criminal trial and remained in jail.
- III. All the accused, namely, Sh. Om Parkash and Sh. Nathu Ram, Smt. Bimla Devi and Sh. Ram Partap and Sh. Prema Ram were represented by a common counsel.
- IV. Smt. Bimla Devi and Sh. Ram Partap knew about the pendency of the suit because in the complaint as well as FIR, the next date of hearing in the Civil suit was disclosed. They never filed any application for impleadment in the pending suit filed by Sh. Suresh Kumar etc. with regard to the suit property.
- V. While applying for bail, Sh. Ram Partap never disclosed the agreement to sell dated 25.04.2003.
- VI. Most important document is the register of the Scribe Ex. D1 to DA. It is evident that Sh. Ram Partap has been entering into an agreement to sell from 25.05.1998 with either Sh. Kanshi Ram or Sh. Om Parkash or Sh. Nathu



Ram. At one stage, Sh. Ram Partap @ Partap entered into an agreement to sell his 19 kanals 02 marlas land in favour of Sh. Om Parkash. This will be evident from entries No. 262, 263, 269, 291, 300, 352, 393. Moreover, it is proved from the register that Sh. Ram Partap has been regularly entering into agreement to sell or some kind of immovable property transactions as is evident from entries No. 261, 268, 366, 379, 380 and 394.

VII. Moreover, Sh. Om Parkash and Sh. Nathu Ram while filing the written statement in the present suit supported Sh. Ram Partap and Smt. Bimla Devi.

VIII. The appellants never lodged any complaint against Sh. Om Parkash and Sh. Nathu Ram.

IX. From reading of the statement of DW-1-Sh. Suresh Kumar, it becomes evident that the family of Sh. Om Parkash and Sh. Nathu Ram on the one hand and Sh. Suresh Kumar on the other hand was not having good terms. The dispute between Sh. Kanshi Ram and Sh. Phoola Ram, predecessor-in-interest of Sh. Suresh Kumar, landed in the Police Station on more than one occasion. The relationship of Sh. Om Parkash and Sh. Nathu Ram on the one hand and Sh. Daya Nand (the father of the plaintiff) was also not good. They were not on speaking terms. In fact, it is evident that Sh.



Kanshi Ram and his two sons, Sh. Om Parkash and Sh. Nathu Ram have sold their majority of land, whereas, the family of Sh. Suresh Kumar has not sold any part of their share of land.

12. Thus, it is evident that the Courts have not committed any error in dismissing the plaintiff's suit.

13. In execution second appeals No. 16 and 17, the same appellants assail the concurrent orders passed by the Executing Court, which in appeal have been affirmed by the First Appellate Court while dismissing their objections.

IV Decision:-

14. In view of the forgoing discussion, there is no substance in these regular and execution second appeals, hence, all the three appeals are dismissed.

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

**(ANIL KSHETARPAL)
JUDGE**

30.04.2025.
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Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No