



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

RSA No.3647 of 2023 (O&M)
Date of decision: 22.01.2025

Harsh Kumar (minor) and anotherAppellants

V/s

Smt. Krishna Nehra and othersRespondents

CORAM: HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Present: Mr. Abhinav Sood, Advocate, for the appellants.

VIKRAM AGGARWAL, J.

CM-13025-C-2023

Prayer in the present application filed under Section 5 of the Limitation Act, 1963 is for condonation of delay of 536 days in filing the appeal.

Heard.

For the reasons mentioned in the application, which is duly supported by an affidavit, the same is allowed and the delay of 536 days in filing the appeal is condoned.

RSA-3647-2023

Plaintiffs (minors through their father) are in appeal against the judgment and decree dated 14.09.2021 passed by the Court of learned Additional District Judge, Palwal, dismissing the appeal against the judgment and decree dated 17.02.2018 passed by the Court of learned Civil Judge (Jr. Divn.), Palwal, vide which the suit of the plaintiffs for declaration and permanent injunction was dismissed.

2. For the sake of convenience and clarity, parties shall be referred

as per their original status.



3. Plaintiffs filed a suit for declaration and permanent injunction to the effect that the registered sale deed dated 12.07.2013 executed by defendants No.2 and 3 in favour of defendant No.1 in respect of a residential house situated at Mohan Nagar, Ward No.3 within the Municipal Council Limits, Palwal, Tehsil and District Palwal (fully described in the plaint) (hereinafter referred to as the “suit property”) was illegal, null and void and not binding upon the rights of the plaintiffs. Plaintiffs No.1 and 2 (Harsh Kumar and Rohit Kumar) were the minor sons of plaintiff No.3 (Raju) and plaintiff No.3 was the son of defendant No.2 (Soorji wife of Boocha) and defendant No.3 (Boocha), meaning thereby plaintiffs No.1 and 2 were grandsons of defendants No.2 and 3 and plaintiff No.3 was the son of defendants No.2 and 3. Defendant No.1, in whose favour the sale deed had been executed was one Krishna Nehra. The basic stand that was taken was that defendant No.3 (Boocha) was *Karta* and manager of the Joint Hindu Family in 2006 and they were living with the plaintiffs. Plaintiff No.3 was the earning member and the suit property was purchased from the earning of plaintiff No.3 in the name of defendants No.2 and 3 vide registered sale deed dated 02.01.2006, meaning thereby the same was self acquired property of plaintiff No.3. However, by playing a fraud upon defendants No.2 and 3, defendant No.1 got a sale deed dated 12.07.2013 executed in her favour, thereby depriving the plaintiffs of the suit property. The sale deed depicted a sale consideration of Rs.10 lakhs for a plot, whereas, actually the suit property was a residential house in actual physical possession of the plaintiffs.

4. The suit was resisted by defendant No.1. It was averred that defendants No.2 and 3 had purchased the suit property from its previous



owner after selling out their previous house situated near Ambedkar Park, Sallagarh, Palwal and, therefore, was the self acquired property of defendants No.2 and 3. On account of a quarrel between defendants No.2 and 3 and their son (plaintiff No.3), they had sold the suit property to defendant No.1 and the entire sale consideration had been paid by defendant No.1. It was averred that since then, defendant No.1 was in actual physical possession as owner of the suit property and defendants No.2 and 3 had purchased another house at Village Tigaon from the funds received from the sale of the suit property. It was further averred that another suit titled as ***Rohit vs. Boocha*** had been filed before the Civil Court but the said fact had been concealed.

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

- “1. Whether the plaintiffs are entitled to the relief of decree for declaration as prayed for?OPP***
- 2. Whether the plaintiffs are entitled to decree for permanent injunction as prayed for?OPP***
- 3. Whether the present suit is not maintainable?OPD***
- 4. Relief.***

6. Parties led their respective evidence. The trial Court dismissed the suit filed by the plaintiffs and the appeal preferred by them against the said judgment and decree was also dismissed by the first Appellate Court leading to the filing of the present second appeal.

7. I have heard learned counsel for the appellants.

8. Learned counsel for the appellants submits that the Courts erred in dismissing the suit filed by the plaintiffs despite the fact that the plaintiffs were able to prove that the suit property had been alienated by defendants



construction upon the same had been raised by plaintiff No.3. Learned counsel has further contended that the husband of defendant No.1 was an Advocate and, therefore, he manipulated the execution of the sale deed and that even the witnesses were known to him and one witness was his Clerk, thereby proving that the sale deed had been fraudulently executed.

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

10. First of all, despite having pleaded in the plaint that the suit property had been purchased by plaintiff No.3 vide sale deed dated 02.01.2006, the said sale deed was not produced in evidence nor was any evidence worth its name led to prove that it was with his income that the plot had been purchased or the house had been constructed. Not only this, plaintiff No.3 (Raju) while appearing as PW1, stated that the suit property was purchased in 2005 and that his parents used to sell shoes and slippers on a pavement at Palwal Bus Stand. He also admitted that his wife had filed a complaint of assault and dowry harassment against his parents but the same had been compromised later on. He further admitted that he had a show down with his parents which led to a physical scuffle and on account of a push that his father (defendant No.3) received, his hip was fractured. In fact, he went to the extent of admitting that his parents were the owners in possession of the suit property. He also admitted in his cross-examination that he had filed a suit against his parents earlier also but no details of the same were either given in the plaint nor were any details given in the evidence.

11. Defendant No.2 (Soorji) stepped into the witness box as DW3 and stated that she and her husband had been staying separately from their



son (plaintiff No.3) for 16 years. She deposed about the behavior of her son. She stated in evidence that the suit property was purchased even prior to the birth of plaintiff No.3. She further deposed that the suit property was purchased by her husband from his own income. She categorically stated that the suit property was the self acquired property of defendants No.2 and 3 and that the ancestral property was in “Jewar”.

12. Apart from DW3 (Soorji), defendant No.3 (Boocha) also stepped into the witness box as DW4 and was quite bitter about the behavior of his son. He further admitted that he had received Rs.10 lakhs as sale consideration for the sale of the suit property and had used the entire sale consideration. It was also stated that after selling of the suit property, they were living at Village Tigaon.

13. The vendee-defendant No.1 (Krishna Nehra) also stepped into the witness box as DW6 and deposed about the sale deed having been executed on payment of Rs.10 lakhs. It has to be borne in mind that the sale deed (Ex.D1) was a registered document and, therefore, carried a presumption of correctness. Merely because witnesses were known to the vendee or that DW5 (Lachhi Ram) was a Clerk of the husband of defendant No.1 does not mean that the sale deed was executed fraudulently. It is well known that Advocates have loyal Clerks who are witness to many of their important transactions, including Wills. Even if that is ignored, both, defendants No.2 and 3 duly stepped into the witness box and stated about the inhuman behavior of their son and about the sale deed having been executed.

14. It is also to be borne in mind that a plea of fraud is not only to be pleaded but is to be proved by leading cogent evidence, which the plaintiffs miserably failed to do. Under the circumstances, both the Courts



rightly non-suited the plaintiffs. I do not find any reason whatsoever to interfere in the well reasoned findings of both the Courts.

15. In view of the above, finding no merit in the appeal, the same is dismissed.

(VIKRAM AGGARWAL)
JUDGE

January 22, 2025
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Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No