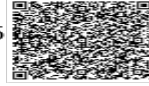
**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****129****RSA-314-2023 (O&M)****Date of decision: 19.01.2026****Mohan Dei (now deceased) through LRs
and another****...Appellant(s)****Vs.****Kulwant Singh and another****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA****Present:- Mr. Anmol Partap Singh Mann, Advocate
for the appellants.*************NIDHI GUPTA, J.****CM-1160-C-2023**

Prayer in the first Application under Order 41 Rule 27 r/w
Section 151 CPC is for additional evidence of concerned/competent
official from Security Press Nasik, Maharashtra with respect to the date of
printing of stamp paper containing agreement to sell dated 10.07.2001 i.e.
Ex. D1, alongwith the connected record.

2. It is pertinent to note that during the course of trial of the
suit before the learned Civil Judge, an application was moved by the
appellants for sending the original of the purported agreement to sell
dated 10.07.2001 between the defendants to the Security Press, Nasik for
getting a report regarding the date of issuance of the said stamp paper.
The said application was dismissed on 09.09.2011. Whereafter, the
appellants moved this Court vide Civil Revision No. 5913 of 2011, which



also came to be dismissed on 04.07.2012. Against the said order of dismissal, the appellants moved to Hon'ble Supreme Court by filing SLP (C) No. 6981 of 2011, which came to be dismissed vide order dated 05.04.2013 but with liberty as follows: -

"We do not see any reason to interfere with the impugned order passed by the High Court. The special leave petition is dismissed.

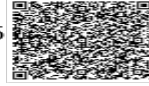
However, the petitioners shall be at liberty to raise the objections with regard to the authenticity of the agreement dated 10.07.2001 at the appropriate time before the Trial Court."

3. Thus, in view of the fact that the previous application of the applicant/appellant for leading same/similar additional evidence in respect of the agreement to sell dated 10.07.2001, stands dismissed right up to the Hon'ble Supreme Court as such, present application is not maintainable and accordingly stands **dismissed**.

RSA-314-2023 (O&M)

Plaintiffs are in Second Appeal against the concurrent judgments and decrees of the learned Courts below; whereby suit filed by the appellants for possession by way of specific performance of the Agreement to Sell dated 10.08.2001; or suit for recovery of Rs.12 lakhs alongwith interest, has been partly decreed by both the Courts below for alternative relief of recovery of principal amount of Rs.6 lakhs from defendant No.1 alongwith 12% interest.

2. It is *inter alia* submitted by learned counsel for the appellant/plaintiffs that defendant No.1 was owner of suit land as

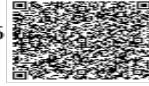


described in the plaint. Defendant No.1 had entered into Agreement to Sell dated 10.08.2001 with the plaintiff No.1 and her deceased husband, namely, Buta Mal @ Rs.11,70,000/- per acre. Plaintiffs had paid a sum of Rs.6 lakhs by way of earnest money. Target date for execution of Sale deed was set for 16.08.2002, which was ultimately extended to 31.12.2002.

3. Learned counsel submits that the appellants had duly proved the execution of the Agreement dated 10.08.2001. The suit of the appellants has been partly decreed only for refund of earnest money on the ground that defendant No.1 had produced an Agreement dated 10.07.2001 allegedly executed by him in favour of defendant No.2 as per which, defendant No.1 had sold the suit land in favour of defendant No.2. It is submitted that accordingly, as the Agreement in favour of defendant No.2 was prior in time to that of the appellants, suit of the appellants was partly decreed only for refund of earnest money.

4. Learned counsel submits that learned Courts below could not have denied grant of specific performance to the appellants as they failed to appreciate that the alleged Agreement dated 10.07.2001 is a sham document created subsequently by the defendants only in order to defeat the rights of the appellants.

5. It is submitted by learned counsel that the learned Subordinate Courts have erred in ignoring the testimony of appellant No. 2 Dharam Paul Grover s/o Buta Mal as PW-4, wherein, he specifically proved that the purported agreement between defendant No. 1 and defendant No. 2 was a sham document, created subsequently in order to



defeat the rights of the appellants. The said witness specifically stated that there was a prolonged litigation between defendants, which were pending on 10.07.2001 and therefore, there was no possibility of the parties entering into an agreement to sell on the said date. Further, the said agreement dated 10.07.2001 was never referred to, produced or relied upon in any litigation between the defendants. Therefore, it is evident that the purported agreement to sell dated 10.07.2001 on the basis of which sale deed dated 07.02.2003 was executed, was a sham document; and therefore, the learned Subordinate Courts ought to have decreed the suit by directing the specific performance of the agreement of the appellants/plaintiffs dated 10.08.2001 itself.

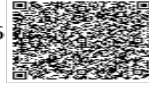
6. Ld. counsel further submits that PW-5 Balkar Singh who was examined by the plaintiffs in rebuttal evidence, also duly proved that there was a prolonged litigation between the defendant No. 1 Kulwant Singh and defendant No. 2 Devinder Singh Bhullar, which came upto this Court and the same was only compromised in the year 2003. Therefore, there was no question of the parties entering into an agreement to sell on 10.07.2001.

7. It is further submitted that PW-6 Satwinder Singh HRC, DC Office, Kapurthala also proved various letters vide which action was recommended by the authorities against Babrik Adiya, Stamp Vendor, Tehsil Complex at Kapurthala, who purportedly sold the stamp papers to defendant No. 1 Kulwant Singh on 09.07.2001 for the execution of the agreement to sell dated 10.07.2001. In fact, the said stamp paper was



purchased at the time of execution of the sale deed itself from the said stamp vendor, who indulged in corrupt practices of selling old stamp papers for a premium. The stamp vendor was examined as DW-5 and various discrepancies in his maintaining the relevant record were exposed during the cross-examination of the said witness.

8. It is lastly submitted that defendant No.2-Devinder Singh Bhullar, has stepped into a witness box as DW1 and had given a lame deposition by way of an Affidavit only to wriggle out that defendants had been in a hard-fought litigation against each other at the time of execution of purported Agreement to Sell dated 10.07.2001. It is contended that therefore, there was no question for the said defendants having entered into Agreement to Sell at that time as they were already embroiled in litigation with each other. It is reiterated that learned Courts below have failed to appreciate that the alleged Agreement to Sell dated 10.07.2001 between the defendants was a fabricated and ante timed Agreement so as to defeat the rights of the appellant. Accordingly, appellant had registered an FIR No. 95 dated 27.05.2003 under Sections 420/406 IPC at Police Station Bholath against the defendants and Kulwant Kaur wife of Kulwant Singh; in which defendant No.1 Kulwant Singh was convicted under Section 420 IPC and sentenced to undergo 2 years rigorous imprisonment by the learned Chief Judicial Magistrate, Kapurthala vide judgment dated 04.04.2012. Appeal against the said conviction was also dismissed by learned Additional Sessions Judge on 28.11.2012; and now the CRR No. 1984 of 2014 is pending against the same before this Court.



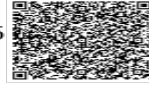
9. It is accordingly prayed that the present Appeal be allowed; and the impugned judgments and decrees of the Courts below be set aside.

10. No other argument is raised by learned counsel for the appellants. I have heard Id. counsel and perused the case filed in detail. I find no merit in the submissions advanced on behalf of the appellants.

11. Perusal of the record shows that the appellants had duly proved execution of the Agreement dated 10.08.2001 Ex.P1 by examining PW1 and PW2/ marginal witnesses of the said Agreement. Appellants had also proved Endorsement Ex.P2 and Ex.P3 by examining PW1 and PW2, who were witnesses of the said endorsement as well. Although defendants had cross-examined the plaintiffs' witnesses at length, however, defendants were unable to glean any contradiction with regard to execution of the Agreement dated 10.08.2001 and/or payment of advance price. Accordingly, Agreement dated 10.08.2001 came to be proved.

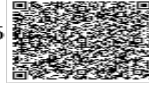
12. Defendants were also unable to prove their allegation that the said Agreement dated 10.08.2001 was a forged and fabricated document as no Handwriting Expert was examined by them. No criminal complaint was shown to be lodged by the defendants. Thus, except for the bald statement, there is no evidence to show that Agreement dated 10.08.2001 was a forged and fabricated document.

13. However, notwithstanding the above facts and findings, it has also come on record that in pursuance to the Agreement dated



10.07.2001 executed by defendant No.1 in favour of defendant No.2, defendant No.1 has executed a Sale Deed dated 07.02.2003 Ex.D2 in favour of defendant No.1 for total sale consideration of Rs.26,50,125/-. The said documents were duly proved by the defendants by examining Kirpal Singh DW2, who was marginal witness to the Agreement dated 10.07.2001; DW3 Ashok Kumar Monga, who was Scribe of Sale Deed Ex.D2; DW4 Sukhwinder Kaur, who was marginal witnesses to the Sale Deed dated 07.02.2003 Ex.D2. Therefore, defendant No.2 being bonafide purchaser of the suit property was protected under the Transfer of Property Act. Learned Courts below have duly recorded that it is not the case of the plaintiffs that defendant No.2 had any prior knowledge of the Agreement dated 10.08.2001 entered into between defendant No.1 and the plaintiffs. Thus, the Courts below have correctly held that rights of defendant No.2, being bonafide purchaser is protected under the Transfer of Property Act. Accordingly, learned Trial Court had granted alternative relief of recovery of earnest money of Rs.6 lakhs alongwith interest @ 12% p.a. Claim of the appellants that the Agreement to Sell dated 10.07.2001 is ante dated, remained unproved.

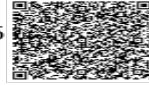
14. As regards plea of the appellants that Agreement dated 10.08.2001 was in respect of 26K 12M of land; whereas vide the impugned Agreement to Sell dated 10.07.2001, defendant No.1 has sold only 19K 2M to defendant No.2; and, therefore, defendant No.1 is liable to get Sale Deed registered in respect of the remaining 7K 10M of land in favour of the appellants, the said plea is also liable to be rejected as,



during the course of arguments, this Court had put to learned counsel for the appellants that in terms of Hon'ble Supreme Court judgment passed in **Civil Appeal No. 8653 of 2013 titled as Satya Jain(D) and others vs. Anis Ahmed Rushdie (D) through LR's and others**, the appellants shall be liable to pay market price of the suit property as on the date of the present order. On telephonic instructions, learned counsel for the appellants has informed that appellants are not willing to pay market price for 7K 10M of land.

15. Even otherwise, present Second appeal is liable to be dismissed on the short ground that this Court in Regular Second Appeal has limited jurisdiction to interfere in the concurrent findings of facts returned by the learned Courts below. The Hon'ble Supreme Court in ***M/s. Shivali Enterprises v. Godawari (Deceased) (SC): Law Finder Doc Id # 2034559*** has held that no matter howsoever incorrect or grossly erroneous the concurrent findings of the learned courts below may be, this Court in the Second Appeal can interfere in the concurrent findings only where there is an error in law or procedure. In the present case, no such error in law and procedure has been made out by learned counsel for the appellants.

16. As regards the application filed by appellant for additional evidence, it is evident from the record that the appellant has repeatedly sought to agitate the same issue at different stages, although in different garbs. Initially, an application for sending the Agreement to Sell Ex.D1 dated 10.07.2001 to the Security Printing Press, Nasik for determination of



month and year of the same, was filed before the Trial Court, which came to be dismissed on 09.09.2011. Aggrieved thereof, the appellants preferred a Civil Revision No. 5913 of 2011, which was also dismissed on 04.07.2012. Thereafter, the appellants approached the Hon'ble Supreme Court by way of SLP(C) 6981 of 2011, which too was dismissed on 05.04.2013.

17. Subsequently, another application was filed before the learned Lower Appellate Court; for sending Agreement to Sell dated 10.07.2001 Ex.D1 to Security Printing Press for determination of month and year of printing the stamp paper, However, the said application was dismissed along with the appeal vide order dated 12.07.2022. Taking into account the fact that admittedly, similar previous application filed by the appellants had been dismissed upto the Hon'ble Supreme Court vide order dated 05.04.2013.

18. Yet again, another application for additional evidence of concerned/competent official from Security Press Nasik, Maharashtra with respect to date of printing of stamp paper containing Agreement to Sell dated 10.07.2001 Ex.D1, has been filed before this Court. The contention raised in the present application that the earlier application was not decided, is factually incorrect and contrary to the record. The present application is a clear misuse of the process of law, inasmuch as the issue sought to be raised has already been adjudicated up to the Hon'ble Supreme Court. Re-agitating the same matter under the guise of

successive proceedings is impermissible and amounts to an abuse of the judicial process, which cannot be countenanced.

19. Learned counsel for the appellants is unable to dispute or controvert the above said factual and legal position.

20. In view of the above, no ground is made out to interfere in the concurrent judgments and decrees, and findings of fact of the learned Courts below. The present Regular Second Appeal is hereby **dismissed**.

21. Pending applications, if any, stand disposed of.

19.01.2026

Divyanshi

(NIDHI GUPTA)
JUDGE

Whether speaking/reasoned:Yes/No

Whether reportable:Yes/No