



RSA-4354-2017 (O&M)

**117/1 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH****RSA-4354-2017 (O&M)
Reserved on 09.02.2026
Pronounced on : 07.05.2026
Uploaded on : 08.05.2026***Whether only operative part of the judgment is pronounced?* *No**Whether full judgment is pronounced?* *Yes*

Urmila DeviAppellant

Versus

Kuldeep Verma & ors.Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present:- Mr. Ashwani Kumar Chopra, Senior Advocate with
Mr. Brahamjot Singh Nahar, Advocate
for the appellant.Mr. Inderjit Singh, Advocate
for respondents No.1 & 2.Mr. Rajiv Malhotra, Advocate
for respondent No.3.Mr. Anil Sharma, Advocate and
Ms. Shubreet Kaur, Advocate
for respondent No.4 (UT).

PANKAJ JAIN, J.

1 Plaintiff is in second appeal. For convenience, parties hereinafter are referred to by their original position in the suit, i.e. the appellant as plaintiff and respondents as defendants.

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2 This is an unfortunate dispute between mother and son. They are disputing over the ownership of a residential property bearing House No.3097, Sector 37-D, Chandigarh. Mother filed suit seeking decree of declaration to the effect that sale deed dated 01.02.2008 executed by defendant No.1 acting as attorney of defendant No.3 in favour of defendant No.2 his wife regard to the aforesaid property is illegal, null and void and an act of fraud and misrepresentation. She further challenged subsequent transfer deed executed by Chandigarh Administration in favour of defendant No.2. She also sought decree of declaration that she is in possession of house as owner thereof. As a consequential relief she sought decree of permanent injunction restraining defendant No.2 from alienating the suit property and also sought mandatory injunction against defendant No.1 to return all original documents i.e. agreement to sell dated 21.04.1992, GPA etc. to the plaintiff.

2.1 The property was initially allotted by defendant No.3-Usha Gupta on 23.09.1972 by defendant No.4. She agreed to sell the house in favour of plaintiff vide agreement to sell dated 21.04.1992. Plaintiff claims to have paid the entire sale consideration to defendant No.3. Plaintiff claims that defendant No.3 executed GPA in her favour and Special Power of Attorney (SPA) in favour of defendant No.1. Defendant No.1 approached plaintiff and received all original papers of the property in question on the pretext of getting the same transferred in favour of the plaintiff. He got property converted from a leasehold to freehold. Thereafter transferred the same by executing registered sale deed in favour of defendant No.2 acting as Special Power of Attorney of defendant No.3. Plaintiff thus claims that the act of defendant No.1 is a fraudulent act. She has been divested of her

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ownership by defendant No.1 acting as special power of attorney of defendant No.3 whereas agreement to sell was in her favour.

3 Suit was contested by defendants. Defendant No.1 & 2 in the written statement claimed that plaintiff is residing at first floor of house in question being mother as a licensee. Entire sale consideration was paid by defendant No.1 to defendant No.3 out of his hard-earned money. Since defendant No.1 is employed abroad, general power of attorney was executed in favour of defendant No.1 for making arrangements for convenience of execution of sale deed. Plaintiff and her daughters i.e. the sisters of defendant No.1 started creating problems for family. Defendant No.1 had to come back to India in January 2008 and got sale deed registered. Original documents of property in question always remained in possession of defendant No.1 as the sale consideration was paid by him and not by plaintiff.

4 In the written statement filed by defendant No.3, she admits execution of agreement to sell dated 21.04.1992 in favour of plaintiff and claims that the sale consideration was paid to her by plaintiff. Possession of house was delivered to plaintiff. She however admits that special power of attorney, WILL and affidavit was executed in favour of defendant No.1.

5 Defendant No.4 filed separate written statement reiterating the facts as per the documents. It was, however, claimed that in 2006 plaintiff applied for conversion of site from leasehold to freehold vide application dated 02.02.2006 in which she stated on oath that no agreement to sell was ever executed whereas in the present suit she claims to be owner on the basis of agreement to sell dated 21.04.1992.



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6 Suit filed by the plaintiff was put to trial framing following issues :-

- “1. Whether the plaintiff is entitled for declaration as prayed for? OPP*
- 2. Whether the plaintiff is entitled for permanent injunction as prayed for ? OPP*
- 3. Whether the plaintiff is entitled for mandatory injunction as prayed for? OPP*
- 4. Whether the present suit is not maintainable ? OPD*
- 5. Whether the plaintiff is estopped by her own act and conduct? OPD*
- 6. Whether the plaintiff is in possession of suit property only as a licensee ? OPD*
- 7. Whether the present suit is bad for want of service of notice u/s 80 CPC upon defendant ? OPD*
- 8. Whether the defendant no.3 executed a sale deed dated 1.2.2008 in favour of defendant no.2 ? OPD*
- 8A. Whether plaintiff executed an affidavit dated 19.2.1997 and if yes, its effect ? OPD*
- 9. Relief.”*

7 While deciding issues No.4 to 6, 8 & 8A the Court of First Instance found that agreement to sell Ex.D1 dated 21.04.1992 was executed by defendant No.3 in favour of father of defendant No.1 and husband of plaintiff. In lieu thereof defendant No.3 received an amount of Rs.7,60,000/- and executed receipt Ex.D2. Perusal of Ex.D2 reveals that the entire sale consideration was paid by defendant No.1. Defendant placed on record affidavits Ex.D3 to Ex.D8 dated 19.02.1997 executed by legal heirs of Harnam Chand Verma whereby all of them including plaintiff relinquished

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their interest in the house in dispute in favour of defendant No.1. Once all the legal heirs including plaintiff have relinquished their rights in the suit property in favour of defendant No.1, the plaintiff in the present suit cannot seek declaration claiming herself to be in possession as owner. The Court of First Instance further found that plaintiff had no independent source of income, thus, merely for the reason that defendant No.3 has admitted her case, the suit cannot be decreed. The Court of First Instance accordingly answered the material issues against the plaintiff and in favour of defendants No.1 & 2 and dismissed the suit.

8 In appeal preferred by the plaintiff the findings recorded by the Court of First Instance have been affirmed.

9 Learned senior counsel for the plaintiff has assailed the findings recorded by the Courts below. It has been contended that in view of the admitted position that defendant No.3 was the allottee of the property in question and executed agreement to sell, her admission assumes significance. She has admitted that the entire sale consideration was paid by the plaintiff yet Courts below non-suited the plaintiff. He submits that original owner of the property in question is being turned out of the house as a stranger and is being termed as a licensee. Mr. Chopra, Senior Advocate submits that the Courts below having ignored vital piece of admission made by defendant No.3, the impugned judgment and decree need to be set aside.

10 *Per contra*, Mr. Inderjit Sharma, Advocate for respondents No.1 & 2 would submit that Suit for Declaration filed by appellant-plaintiff on the basis of Agreement to Sell dated 21.04.1992 is not maintainable because an unregistered agreement to Sell does not create any right and the same is



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inadmissible in the evidence in view of Section 49 of Registration Act, 1908. Moreover, agreement to sell dated 21.04.1992 propounded by appellant-plaintiff was not proved. None of the marginal witnesses of the agreement to sell (Ex-P-1) was examined by appellant-plaintiff. No suit for specific performance was ever filed by appellant-plaintiff. Admission made by respondent No.3 regarding agreement to sell is not binding on respondents no. 1 and 2. Her right over the property already stands extinguished. As such, any admission made by vendor is not binding on the co-defendant no. 1 and 2 and the Courts below have rightly ignored the admission made by respondent no.3.

11 He further contends that although agreement to sell dated 21.04.1993 (Ex D-1) was not pleaded in the written statement by the respondent no.1 but the sale deed (Ex P-6) would reflect that there is a reference of agreement to sell dated 21.04.1993 in the sale deed as well as sale consideration of Rs.7,60,000/- which was paid by Respondent no. 1. Ex D-2 is a receipt regarding payment of Rs.4,15,000/- to the vendor paid on 11.04.1992 by respondent no. 1. The affidavits Ex D-3 to Ex. D-8 were given by all the family members including appellant, relinquishing their right on 19.02.1997 after the death of Harnam Chand Verma on 21.04.1993. Even written statement filed by the respondent/defendant no. 4 will show that no such agreement to sell dated 21.04.1992 was ever in existence in favour of appellant-plaintiff. Accordingly, findings recorded by the Courts below do not suffer from any infirmities and suit filed by the appellant-plaintiff for declaration for setting aside sale deed dt. 01.02.2008 and claiming possession



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over the suit property on the basis of agreement to sell (Ex P-1) is not maintainable and appeal is liable to be dismissed.

12 I have heard learned counsel for the parties and have carefully gone through records of the case.

13 Apart from the present suit, defendant No.1 filed suit against the plaintiff seeking decree of mandatory injunction praying that the defendant i.e. plaintiff in the present suit be directed to hand over the vacant possession of ground floor of House No.3097, Sector 37-D, Chandigarh. The suit filed by defendant No.1 was dismissed vide judgment and decree dated 24.12.2015 holding that the son failed to prove that mother was licensee and that the licence was terminated.

14 The appeal preferred by son against the said judgment and decree was also dismissed by the First Appellate Court vide judgment dated 24.10.2017.

15 Son preferred regular second appeal against the same. Both the appeals were tagged. Both the parties were called. Son withdrew his appeal.

16 Coming on to the present appeal, this Court finds that the admission made by defendant No.3 does not aid the cause of the plaintiff. As per receipt Ex.D2 the entire sale consideration was paid by defendant No.1. That apart, the original documents pertaining to the entire property are in possession of defendant No.1. Though the plaintiff pleaded that the documents were taken by defendant No.1 on the pretext of getting the property converted from leasehold to freehold but while stepping into the witness box she claimed that the documents were stolen from almirah. Thus, the case of the plaintiff suffers from inherent contradictions which demonstrate falsity of



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her case. As per Ex.D2, the consideration was paid by defendant No.1. He is also in possession of the original papers of the property in question. There are affidavits executed by all the legal heirs of Harnam Chand Verma in favour of plaintiff. All these facts go on to prove that the plaintiff cannot be held to be the owner of the property in question. Special Power of Attorney on the basis of which defendant No.1 executed sale deed in favour of defendant No.2 was admittedly executed by defendant No.3 the original allottee. Defendant No.3 has not raised any grievance qua sale deed executed by her agent. Thus, there is no reason to annul the same.

17 Having held so, this Court finds that though the present appeal deserves to be dismissed but the defendant No.1 and defendant No.2 shall remain bound by their stand taken by them while withdrawing RSA No.3009 of 2018. The present plaintiff shall not be dispossessed from the portion of the suit property in her possession during her lifetime.

18 With the aforesaid observations, the present appeal is disposed off.

19 Pending miscellaneous application, if any, also stands disposed off.

07.05.2026

Pooja Sharma-I

**(PANKAJ JAIN)
JUDGE**

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No