



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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RSA-284-2022 (O&M)
Reserved on : 14.01.2026
Pronounced on : 11.03.2026
Uploaded on : 11.03.2026

Whether only operative part of the judgment is pronounced? No
Whether full judgment is pronounced? Yes

Kiran Kumar and another Appellants

versus

Raj Rani and others Respondents

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Anurag Chopra, Advocate and
Mr. Harmeet Singh, Advocate
for the appellants.

PANKAJ JAIN, J.

1. Defendants are in appeal, aggrieved of concurrent judgment and decree passed by the Courts below whereby the suit filed by the plaintiffs stands decreed.
2. Plaintiffs filed suit seeking decree of declaration to the effect that decree dated 22.04.2008 passed by Civil Judge (Junior Division), Fazilka in Civil Suit No. 250 titled as “Kiran Kumar etc. vs. Smt. Shakuntala Devi” is illegal, null and void, as the same was result of collusion between defendant No.1 and 2 and defendant No.4. Plaintiffs further sought decree of declaration to the effect that sale deed executed in favour of defendant No.1 and 2 was illegal, null and void and sought



decree of permanent injunction seeking restrain against the defendants from interfering in their peaceful possession.

3. As per plaintiffs, suit property in form of a shop measuring 10'x40' bearing Municipal No.1753 was purchased by them from defendant No.4 by way of sale deed dated 24.02.2006 for a valuable consideration and thus, they are owner in possession thereof. As per plaintiffs, defendant No.4 was the owner of the shop bearing Municipal No.1750. The same was mortgaged by defendant No.4 in favour of husband of plaintiff No.1 by way of registered mortgage deed dated 07.09.1999 for Rs.56,000/-. On receipt of the mortgage amount, mortgagor handed over possession of the mortgaged property to the mortgagee Krishan Lal. Shakuntala Devi exchanged property bearing No.1750 with property bearing No.1753 which was earlier owned by Surinder Mohan, i.e. father of defendant No.6. As per the exchange, Krishan Lal was put in possession of property No. 1753. Possession of property bearing No. 1750 was handed over to Surinder Mohan. Defendant No.4 entered into an agreement to sell qua half share of the property bearing MC No.1753 with Surinder Mohan, i.e. qua area measuring 10'x20' on 29.12.2000 for an amount of Rs.2,50,000/-. Rs.1,20,000/- was received by defendant No.4 as earnest money. Defendant No.5 and Surinder Mohan sold their rights under the said agreement to the plaintiffs vide writing dated 12.03.2001. Defendant No.4 agreed to execute the sale deed in favour of the plaintiffs. Parties agreed to get the sale deed executed on or before 11.11.2002. Defendant No.4 entered into an agreement to sell dated 16.12.2002 qua whole shop in favour of the plaintiffs for a total sale consideration of Rs.4,80,000/-



after adjusting the mortgage amount of Rs.56,000/- and Rs.1,20,000/- received from defendant No.5 and Surinder Mohan on 29.12.2000. Further an amount of Rs.1,04,000/- was paid by plaintiffs to defendant No.4 on 16.12.2002, i.e. at the time of execution of agreement to sale in favour of the plaintiffs. The parties again agreed to get the sale deed executed on or before 31.03.2004. The same was further extended to 31.03.2005 vide writing dated 31.03.2004. On 31.03.2005, the same was again extended to 28.02.2006 after receiving Rs.50,000/- on 31.03.2004 and again after receiving Rs.50,000/- on 31.03.2005. As per plaintiffs, defendant No.4 executed registered sale deed qua property bearing MC No.1753 measuring 10'x40' on 24.02.2006 in favour of the plaintiffs.

4. In view of aforesaid facts, plaintiffs claim to be in possession of the suit property continuously from 16.12.2002 being mortgagee with possession followed by sale deed in his favour. Defendant No.1 and 2 filed suit for specific performance against defendant No.4 claiming agreement to sell dated 27.01.2003. Defendant No.4 was proceeded ex-parte. The suit was decreed vide judgment and decree dated 22.04.2008 in favour of defendant No.1 and 2. In execution, defendant No.1 and 2 got sale deed dated 27.07.2009 executed in their favour. After defendant No.1 and 2 approached Municipal Council, Fazilka for getting the property mutated in their favour, plaintiffs were called by Municipal Council, Fazilka vide memo No.1478 dated 24.09.2009. The plaintiffs confronted defendant No.4 regarding agreement to sell propounded by defendant No.1 and 2, she denied having executed the same. Plaintiffs thus, claimed ownership on the basis of sale deed in their favour being prior in time pleading that



defendant No.1 and 2 were well aware of agreement executed by defendant No.4 in favour of the plaintiffs. They are in established possession of the suit property. Defendant No.1 and 2 on the strength of ex-parte judgment and decree passed against defendant No.4 want to dislodge the claim of the plaintiffs over the suit property.

5. Suit was contested by defendant No.1 and 2. They claimed that the present suit was nothing, but an act of collusion between plaintiffs and defendant No.4 to wriggle out of the judgment and decree dated 22.04.2008 by Court of competent jurisdiction in the civil suit titled as "*Prem Kumar vs. Shakuntala Devi*". Plaintiffs had full knowledge of agreement to sell executed by defendant No.4 in favour of defendant No.1 and 2 and the *lis* pertaining thereto. Plaintiffs as well as defendant No.4 opted to watch the proceedings from the fence and have now prepared false documents in connivance with each other. As per defendant No.1 and 2, they are bonafide purchasers of the suit property for a valuable consideration and without any notice of agreement to sell dated 16.12.2002 propounded by plaintiffs. They further claimed that the sale deed dated 24.02.2006 executed by defendant No.4 in favour of the plaintiffs is hit by *lis pendence* having being executed during the pendency of civil suit bearing No.250-1 of 25.05.2004.

6. Defendant No.4 filed written statement claiming that she was never served in the civil suit titled as "*Kiran Kumar etc. vs. Smt. Shakuntala Devi*". She admitted the facts pleaded by the plaintiffs. Defendant No.5 and 6 in their joint written statement admitted the claim of the plaintiffs, but prayed for dismissal of the suit.

7. Suit filed by the plaintiffs was put to trial by the Court of



First Instance framing following issues:-

- “1. Whether the plaintiffs are entitled to the suit for declaration as prayed for? OPP*
- 2. Whether the plaintiffs are entitled to the suit for permanent injunction as prayed for? OPP*
- 3. Whether the plaintiffs have no cause of action and locus standi to file the present suit ? OPD.*
- 4. Whether the plaintiffs are estopped by their own act and conduct from filing the present suit? OPD*
- 5. Whether the claim of the plaintiff is bared by limitation? OPD*
- 6. Whether the defendants are bonafide purchaser of the suit land? OPD*
- 7. Relief.”*

8. While deciding issue No.1 and 2, the Court of First Instance found that the plaintiffs successfully proved mortgage deed dated 07.09.1999 Ex.P7/P19. From the mortgage deed, it is evident that the possession of the property was delivered by defendant No.4 to Krishan Lal s/o Chiman Lal mortgagee with possession. Exchange deed dated 29.12.2000 Ex.P15/P20 stands proved. On the basis of the same, the parties exchanged their possession vide writing Ex.P11. Krishan Lal son of Chiman Lal-the mortgagee came into possession of the property bearing No.1753 vide Ex.P-11. Plaintiffs claimed that Shakuntala Devi-defendant No.4 executed agreement to sell dated 29.12.2000 Ex.P-8 in favour of Surinder Mohan and Vinod Kumar, agreeing to sell half portion of suit property bearing Municipal No.1753 for a consideration of Rs.2,50,000/- on receipt of Rs.1,20,000/- as earnest money. Surinder Mohan and Vinod Kumar assigned their rights in the property under agreement dated 29.12.2000 in favour of plaintiffs vide writing dated 12.03.2001, which has been proved on record as Ex.P3. On 24.02.2006



sale deed Ex.P13 was executed by Shakuntala Devi in favour of both the plaintiffs on receipt of balance sale consideration. Defendants No.1 and 2 filed civil suit claiming agreement to sell dated 27.01.2003 executed in their favour by defendant No.4. Even though, defendant No.1 and 2 knew that the suit property is in possession of plaintiffs, yet they opted not to implead the plaintiffs as defendants in the said suit. The Court of First Instance accordingly decreed the suit filed by the plaintiffs.

9. In appeal preferred by defendant No.1 and 2, the Lower Appellate Court has affirmed the findings recorded by the Court of First Instance.

10. Learned counsel for the appellants asserts that the Courts below erred in holding that the sale deed executed in favour of the plaintiffs by defendant No.4 is not hit by *lis pendence*. He submits that the suit was instituted in 2004 by defendant No.1 and 2 seeking decree of specific performance against defendant No.4. During the pendency of the said suit, defendant No.4 executed sale deed in favour of plaintiffs in 2006. Thus, the sale deed in favour of the plaintiffs being hit by *lis pendence*, the Court should not have upheld the same. In order to hammer forth his contentions, he relies upon ***Har Narain (Dead) by LRs vs. Mam Chand (Dead) by LRs and others*** reported as **2010(13) SCC 128**.

11. In the considered opinion of this Court, the fate of the *lis* does not depend upon the question whether sale deed dated 24.02.2006 Ex.P13 executed by defendant No.4 in favour of plaintiffs is hit by *lis pendence* or not?

Rather the same hinges upon as to which of the parties, i.e.



plaintiffs or defendant No.1 and 2 can claim priority of right to get the sale deed executed from defendant No.4. Plaintiffs have propounded agreement of sale dated 29.12.2000/16.12.2002 executed by defendant No.4 in their favour. As per the facts discernible from the record, defendant No.4 pursuant to the said agreement to sell executed sale deed in their favour on 24.02.2006. Defendant No.1 and 2 claimed agreement to sell dated 27.01.2003 in their favour qua the same property executed in their favour by defendant No.4. It is matter of record that defendant No.1 and 2 filed suit for specific performance against defendant No.4. She was proceeded ex-parte. The suit was decreed in favour of defendant No.1 and 2 vide judgment and decree dated 22.04.2008. In execution thereof, sale deed was executed through Court in favour of defendant No.1 and 2 on 27.07.2009.

12. Section 19 of the Specific Relief Act governs the situation where rival parties claim right to get the sale deed executed in their favour and the same reads as under:-

“19. Relief against parties and persons claiming under them by subsequent title.—

Except as otherwise provided by this Chapter, specific performance of a contract may be enforced against—

- (a) either party thereto;
- (b) any other person claiming under him by a title arising subsequently to the contract, except a transferee for value who has paid his money in good faith and without notice of the original contract;
- (c) any person claiming under a title which, though prior to the contract and known to the plaintiff, might have been displaced by the defendant;
- (d) when a company has entered into a contract and subsequently becomes amalgamated with another company, the new company which arises out of the amalgamation;



(e) when the promoters of a company have, before its incorporation, entered into a contract for the purpose of the company and such contract is warranted by the terms of the incorporation, the company:

Provided that the company has accepted the contract and communicated such acceptance to the other party to the contract.”

13. Agreement to sell in favour of the plaintiffs is prior in time.

Thus, defendant No.1 and 2 can succeed in their claim to get the sale deed executed in preference to the rights of the plaintiffs, if they are able to show that they are bonafide purchasers for consideration. Since sale deed was executed in favour of defendant No.1 and 2 through Court on deposit of the balance consideration, defendant No.1 and 2 are purchasers for consideration.

14. However, defendant No.1 and 2 do not deny that the property is in possession of plaintiffs since 2000. There is no evidence on record that before entering into agreement to sell with defendant No.4, defendant No.1 and 2 made any inquiry from the plaintiffs who were in possession of the property in dispute.

15. In view thereof, this Court finds that the plaintiffs having proved their agreement to sell prior in time and defendant No.1 and 2 having failed to prove that they are purchasers without notice and that they were diligent to conduct enquiry, the Courts below have rightly decreed the suit filed by the plaintiffs.

16. As a sequel of discussion held hereinabove, this Court finds no merit in the present appeal, the same is ordered to be dismissed. Judgment and decree passed by the Courts below are upheld, though for different reasons.



18. Since the main case has been decided, pending miscellaneous application, if any, shall also stands disposed off.

(PANKAJ JAIN)
JUDGE

11.03.2026
Dinesh

Whether speaking/reasoned :	Yes
Whether Reportable :	No