



RSA-3632-2014 (O&M)

RSA-3672-2014 (O&M)

Sr.No.215 (2 cases)

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

Decided on : 07.04.2025

1) RSA No.3632 of 2014 (O&M)

Yashwant

...Appellant

Versus

Dharam Pal

...Respondents

2) RSA No.3672 of 2014 (O&M)

Yashwant

...Appellant

Versus

Mahender Singh and another

...Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present:- Mr. Arihant Jain, Advocate and
Mr. Varun Jain, Advocate
for the appellant in both cases.

Mr. Adarsh Jain, Advocate and
Ms. Amandeep Kaur, Advocate
for respondent No.1 (RSA-3672-2014).

None for respondent-Dharam Pal.



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PANKAJ JAIN, J. (ORAL)

CM No.8437-C-2014 in RSA-3632-2014

This is an application for condonation of delay of 30 days in re-filing the appeal.

For the reasons stated in application, this Court is satisfied that the applicant/appellant has shown sufficient cause to condone delay in re-filing the appeal. Application stands allowed. Delay of 30 days in re-filing the appeal is condoned.

CM No.8500-C-2014 in RSA-3672-2014

This is an application for condonation of delay of 35 days in re-filing the appeal.

For the reasons stated in application, this Court is satisfied that the applicant/appellant has shown sufficient cause to condone delay in re-filing the appeal. Application stands allowed. Delay of 35 days in re-filing the appeal is condoned.

Main Cases

By way of instant judgement, I intend to dispose off above-captioned two regular second appeals. These two appeals arise out of two different suits, relating to the same suit land.

2. Plaintiff(s) in both the suits claim Agreement to Sell in their favour executed by defendant-Dharam Pal. Title of Dharampal is not under dispute. The appeal bearing RSA No.3632 of 2014 arises out of Civil Suit

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No. RBT 672/1 of 2005, instituted by Yashwant on 23.12.2005. Suit filed by the plaintiff-Yashwant has been dismissed by both the courts below.

2.1. The appeal bearing RSA No.3672 of 2014 arises out of Civil Suit No.597/1 of 2006, instituted by Mahender Singh -the contesting respondent. Suit filed by Mahender Singh stands decreed by the Court of the first instance. The said findings stand affirmed by the lower Appellate Court.

2.2. Appellant-Yashwant filed suit seeking decree of permanent injunction against respondent-Dharam Pal restraining him from alienating the suit property. He further pleaded that in case Dharam Pal is able to alienate the suit property during the pendency of the suit, a decree of declaration may be issued declaring such transaction with regard to suit land and any portion thereof as illegal, null and void, ineffective, void ab-initio and not binding on the rights of plaintiff-Yashwant. He further pleaded that Agreement to Sell be directed to be executed in favour of plaintiff-Yashwant and against the defendant-Dharam Pal.

2.3. As per the contents of the plaint, Dharam Pal is owner to the extent of 160/1138 in the total land measuring 56 Kanals 18 Marlas which comes to 8 Kanals. Defendant -Dharam Pal entered into an agreement to sell of the suit land with the plaintiff-Yashwant on 12.05.2005, for a total sale consideration of Rs.3,50,000/-. Earnest money of Rs.1 lakh was paid by the plaintiff-Yashwant to Dharam Pal on the date of execution of agreement to sell. The parties agreed to get the sale deed executed on or before April 15,

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2006. The agreement to sell got registered. Plaintiff-Yashwant claims that it being public holiday on April 14, 2006 and April 15, 2006, the office of Sub Registrar was closed. Plaintiff appeared before the Sub Registrar on April 17, 2006. Defendant-Dharam Pal failed to appear and has now turned dishonest, and is not willing to perform his part. However, the plaintiff claimed to have always remained ready and willing to perform his part of contract and prays that he be granted decree of specific performance.

2.4. Suit was contested by defendant-Dharam Pal. In his written statement, Dharam Pal pleaded that he is already facing suit for specific performance *qua* the same suit land, filed at the behest of plaintiff-Mahender Singh. On merits, defendant-Dharam Pal denied execution of agreement to sell in favour of plaintiff-Yashwant. He claimed of having availed a loan of Rs.1,00,00/- from the plaintiff-Yashwant on May 12, 2005. He claimed that the same was returned as the dispute arose regarding rate of interest. Defendant Dharam Pal further accepted execution of agreement to sell in favour of Mahender Singh, son of Sh. Nanak @ Nandu, *qua* same suit land for a consideration of Rs.2 lakhs per acre. Defendant further claimed that said agreement to sell, was in the knowledge of the plaintiff-Yashwant.

2.5. The Court of the first instance held that plaintiff-Mahender Singh successfully proved execution of agreement to sell and readiness and willingness. The plaintiff-Yashwant has been non-suited holding that the agreement to sell propounded by him dated May 12, 2005 is later in time as

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compare to agreement to sell, Exhibit D3, executed by defendant Dharampal in favour of Mahender Singh dated 17th November, 2004. Court of the first instance further held that suit filed by Mahender Singh already stands decreed by judgement dated March 17, 2011. It was further held that Mahender Singh was a necessary party in the present *lis*. Plaintiff-Yashwant having failed to implead Mahender Singh in the suit, despite being necessary party, the suit was bad for non-joinder of necessary party as well. The findings have been affirmed by the lower Appellate Court.

3. Learned Counsel appearing for the appellant has challenged the findings of the courts below submitting that the courts below erred in reading the evidence on record. Appellant has been non-suited, despite their being registered agreement to sell in his favour. Mr. Jain submits that Mahender Singh, the purchaser, is none other but brother-in-law of appellant-Yashwant. This goes on to prove that the suit filed by Mahender Singh against Yashwant is nothing but is an elusive litigation to defeat the rights of the appellant. He refers to the statement of Mahender Singh in the present suit, while appearing as DW2. He draws attention of the court to the admission made by Mahender Singh in his testimony that he was present at the time when Dharam Pal executed an agreement to sell in favour of Yashwant but still opted not to disclose about agreement to sell in his favour. He thus submits that both the courts below erred in dismissing the suit filed by plaintiff-Yashwant and erroneously decreed the suit filed by Mahender Singh.



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4. *Per contra*, Mr. Adarsh Jain, counsel for respondent No.1- Mahender Singh submits that pure findings of fact have been recorded by the courts below, which need not be interfered in the second appeal. It has been contended that courts below have rightly decreed the suit filed by Mahender Singh as agreement to sell in favour of Mahender Singh is prior in time. Mr Adarsh Jain submits that despite knowing that Mahender Singh has filed the suit, claiming specific performance of agreement to sell *qua* same suit land, the plaintiff failed to implead Mahender Singh as party to the present *lis* and therefore the courts below has rightly dismissed the suit filed by Yashwant.

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

6. Facts are not much in dispute. The only point that arises for the consideration of this court is: *“Whether the courts below erred in non-suiting the plaintiff-Yashwant for the agreement to sell propounded by Mahender Singh, which is earlier in time to the one propounded by the plaintiff/appellant and for non-joinder of necessary parties”*. Admittedly, in the present case, there is no previous contract between Yashwant and Mahender Singh. Similarly, no relief has been claimed by the plaintiff against Mahinder Singh. At the most, Mahender Singh can be said to be a proper party, but he cannot be labelled as necessary party. Trite it is that the suit can be held to be bad for



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which amended Section 100 to make it more restrictive so that a second appeal could only be filed if there was a substantial question of law involved in the matter. The question this Court posed before itself was whether Section 41 stood repealed by virtue of Section 97(1) of the Code of Civil Procedure (Amendment) Act, 1976, which reads as under :

“97. Repeal and savings.—(1) Any amendment made, or any provision inserted in the principal Act by a State Legislature or a High Court before the commencement of this Act shall, except insofar as such amendment or provision is consistent with the provisions of the principal Act as amended by this Act, stand repealed.”

This Court concluded that Section 41 of the Punjab Courts Act was repealed because it would amount to an amendment made or provision inserted in the principal Act by a State Legislature. This Court further held that, in any event, Section 41 of the Punjab Courts Act being a law made by the Legislature of a State is repugnant to a later law made by Parliament, namely, Section 97(1) of the Code of Civil Procedure (Amendment) Act, 1976, and that therefore, by virtue of the operation of Article 254 of the Constitution of India, the said provision is in any case overridden. In arriving at the aforesaid two conclusions, this Court held [Kulwant Kaur v. Gurdial Singh Mann, (2001) 4 SCC 262.

“27. Now we proceed to examine Section 97(1) of the Amendment Act and the amendment of Section 100 CPC by the said 1976 Act. Through this amendment, right to second appeal stands further restricted only to lie where, ‘the case involves a substantial question of law’. This introduction definitely is in conflict with Section 41 of the Punjab Act which was in pari materia with unamended Section 100 CPC. Thus, so long there was no specific provision to the contrary in this Code, Section 4 CPC



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saved special or local law. But after it comes in conflict, Section 4 CPC would not save, on the contrary its language implied would make such special or local law inapplicable. We may examine now the submission for the respondent based on the language of Section 100(1) CPC even after the said amendment. The reliance is on the following words:

‘100. Second appeal.—(1) Save as otherwise expressly provided ... by any other law for the time being in force....’ These words existed even prior to the amendment and are unaffected by the amendment. Thus, so far it could legitimately be submitted that, reading this part of the section in isolation it saves the local law. But this has to be read with Section 97(1) of the Amendment Act, which reads:

‘97. Repeal and savings.—(1) Any amendment made, or any provision inserted in the principal Act by a State Legislature or a High Court before the commencement of this Act shall, except insofar as such amendment or provision is consistent with the provisions of the principal Act as amended by this Act, stand repealed.’ (Noticed again for convenience.)

28. Thus, language of Section 97(1) of the Amendment Act clearly spells out that any local law which can be termed to be inconsistent perishes, but if it is not so, the local law would continue to occupy its field.

29. Since Section 41 of the Punjab Act is expressly in conflict with the amending law viz. Section 100 as amended, it would be deemed to have been repealed. Thus, we have no hesitation to hold that the law declared by the Full Bench of the High Court in Ganpat [Ganpat v. Ram Devi, AIR 1978 P&H 137] cannot be sustained and is thus overruled.”

25. We are afraid that this judgment in Kulwant Kaur case [Kulwant Kaur v. Gurdial Singh Mann, (2001) 4 SCC 262] does not state the law correctly on both propositions. First and foremost, when Section 97(1) of the Code of Civil Procedure (Amendment) Act, 1976 speaks of any amendment made or any



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provision inserted in the principal Act by virtue of a State Legislature or a High Court, the said section refers only to amendments made and/or provisions inserted in the Code of Civil Procedure itself and not elsewhere. This is clear from the expression “principal Act” occurring in Section 97(1). What Section 97(1) really does is to state that where a State Legislature makes an amendment in the Code of Civil Procedure, which amendment will apply only within the four corners of the State, being made under Schedule VII List III Entry 13 to the Constitution of India, such amendment shall stand repealed if it is inconsistent with the provisions of the principal Act as amended by the Parliamentary enactment contained in the 1976 Amendment to the Code of Civil Procedure. This is further made clear by the reference in Section 97(1) to a High Court. The expression “any provision inserted in the principal Act” by a High Court has reference to Section 122 of the Code of Civil Procedure by which High Courts may make rules regulating their own procedure, and the procedure of civil courts subject to their superintendence, and may by such rules annul, alter, or add to any of the rules contained in the First Schedule to the Code of Civil Procedure.

26. Thus, Kulwant Kaur [Kulwant Kaur v. Gurdial Singh Mann, (2001) 4 SCC 262] decision on the application of Section 97(1) of the Code of Civil Procedure (Amendment) Act, is not correct in law.

27. Even the reference to Article 254 of the Constitution was not correctly made by this Court in the said decision in Kulwant Kaur case [Kulwant Kaur v. Gurdial Singh Mann, (2001) 4 SCC 262] . Section 41 of the Punjab Courts Act is of 1918 vintage.



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Obviously, therefore, it is not a law made by the Legislature of a State after the Constitution of India has come into force. It is a law made by a Provincial Legislature under Section 80-A of the Government of India Act, 1915, which law was continued, being a law in force in British India, immediately before the commencement of the Government of India Act, 1935, by Section 292 thereof. In turn, after the Constitution of India came into force and, by Article 395, repealed the Government of India Act, 1935, the Punjab Courts Act was continued being a law in force in the territory of India immediately before the commencement of the Constitution of India by virtue of Article 372(1) of the Constitution of India. This being the case, Article 254 of the Constitution of India would have no application to such a law for the simple reason that it is not a law made by the Legislature of a State but is an existing law continued by virtue of Article 372 of the Constitution of India. If at all, it is Article 372(1) alone that would apply to such law which is to continue in force until altered or repealed or amended by a competent legislature or other competent authority. We have already found that since Section 97(1) of the Code of Civil Procedure (Amendment) Act, 1976 has no application to Section 41 of the Punjab Courts Act, it would necessarily continue as a law in force. Shri Viswanathan's reliance upon this authority, therefore, does not lead his argument any further.

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8. Misreading of evidence by Courts of facts breeds question of law. The Courts below ought to have read the evidence of Mahender Singh in



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its correct perspective in the light of the fact and circumstances of the case. Mahender Singh, while appearing as DW2 admitted that he was present at the time Dharam Pal executed agreement to sell in favour of Yashwant. He admitted, that he did not disclose the fact of there being prior agreement *qua* the same land in his favour executed by Dharam Pal. Those admissions by DW2 are enough to demolish the entire case of Mahender Singh. This leads to the inference that *lis* filed at his behest against Dharam Pal was nothing, but a play designed by Dharam Pal and Mahender Singh acting in cahoots to defeat the right of the plaintiff/appellant. Therefore, this Court finds it that appellant has made out a case calling for interference at the hands of this Court. Vital evidence stands ignored by Courts below.

9. In the considered opinion of this court, the Courts below ought to have taken more analytic view instead of reading the pleadings and the evidence in a pedantic manner. Plaintiff having successfully proved execution of the agreement to sell, payment of earnest money, and his readiness and willingness to perform his part of the agreement to sell, he ought not have been non-suited relying upon agreement to sell propounded by Mahender Singh, in the light of the statement made by none else, but Mahender Singh himself to the effect that he did not disclose to the plaintiff about agreement to sell in his favour by Dharam Pal, despite being present while Dharam Pal executed agreement to sell in favour of plaintiff.



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10. In view of above, the judgement and decree passed by the Courts below in Civil Suit No.RBT 672/1 of 2005 cannot be sustained. The same are hereby set side.

11. Both the appeals are allowed. Suit filed by Mahender Singh is ordered to be dismissed and consequently the judgments and decrees passed by the Courts below in Civil Suit No. 597/1 of 2006 are hereby dismissed. Suit filed by plaintiff/appellant is ordered to be decreed. Plaintiff-Yashwant is held entitled to decree of specific performance of agreement to sell dated May 12, 2005. He is directed to deposit the balance sale consideration on or before June 15, 2025. Defendant – Dharam Pal is ordered to execute the agreement to sell in favour of appellant/Yashwant on or before June 30, 2025.

12. Pending application(s), if any, shall also stand disposed off.

13. Photocopy of this order be placed on file of the connected case.

**(PANKAJ JAIN)
JUDGE**

April 07, 2025

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Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No