

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****118****RSA-1298-2020 (O&M)****Date of decision: 19.08.2025****Jatinder Kumar and others****...Appellant(s)****Vs.****Roshni Devi and another****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. Hitesh Pandit, Advocate for the appellants.

NIDHI GUPTA, J.**CM-3861-C-2020**

Prayer in this application filed under Section 151 CPC is for condonation of delay of 128 days in refiling the accompanying appeal.

2. Heard.

3. For the reasons mentioned in the application which is duly supported by an affidavit of Id. counsel for the applicant-appellants, the same is allowed and delay of 128 days in refiling the appeal is condoned.

CM-9893-C-2025

Prayer in the present application under Section 151 of CPC is for placing on record an application filed by the Applicant-Appellant in Civil Suit No. 102/2015 decided on 30.04.2016 for setting aside of the judgment and decree dated 30.04.2016 passed by the Ld. Court of Additional Civil Judge (Sr. Division) Rupnagar (Annexure A/1) and the copies of zimni orders (Annexure A/2 & A/3) passed in the aforesaid application.

2. Heard.



3. Application is allowed and the said documents are taken on record as Annexures A/1 to A/3, subject to all just exceptions. Registry is directed to tag the same at appropriate place.

RSA-1298-2020 (O&M)

Present Second Appeal has been filed by defendants No. 1, 2 and 3 against the concurrent judgments and decrees of the learned Courts below, whereby the suit of the plaintiff/respondent No.1, for declaration to the effect that plaintiff is owner in possession of suit land as described in head note of the plaint, has been decreed by both the Courts below.

2. Brief facts of the case are that the plaintiff has filed the present suit for declaration that she is owner in possession of land measuring 12 Kanal 3 Marla 4.5 Sarsahi out of total land measuring 24 Kanal 7 Marla comprised in Khewat no.3/3 Khatauni no.3 Khasra no.10//8 (8-13), 10//9/1 (1-12), Khewat no.48/47 Khatauni no.48 Khasra no.10//12/2 (3-10), 10//13 (8-0), Khewat no.15//5/1/2 (6-4) Khewat no.322/320 Khatauni no.347 Khasra no.15//5/2 (0-8) situated at village Dugri Hadbast no.346 Tehsil and Distt. Ropar (here-in-after called suit property) on the basis of sale deed dated 23.01.2013 by declaring sale deed dated 08.08.2012 Ex.DW2/A to be illegal null and void. Plaintiff also sought relief of joint possession and permanent injunction restraining the defendant no. 1 and 2 from alienating the suit property. It was pleaded in the plaint that defendants No. 1 and 2 are the sons of defendant No.3, and defendant No. 3 is daughter of defendant No.4/respondent No.2 herein. It was pleaded that during the lifetime of Sham Lal, defendants



No. 1 to 3 and husband of defendant No.3 namely Krishan Kant had started residing with Sham Lal. However, they turned greedy and wanted to usurp property of Sham Lal because of which relationship between them became strained. Sham Lal had even reported the matter of village Panchayat; whereafter the said defendants had left the house of Sham Lal and defendant No.4. Sham Lal, husband of defendant No.4 had expired on 12.10.2011. After inheritance from Sham Lal, suit property was possessed by defendant No.4. whereafter Mutation No. 815 was sanctioned in favour of defendants No. 3 and 4 on 3.1.2012. Defendant No.4 was also owner of the other lands in village Dugri. Plaintiff had purchased the suit property from defendant No.4 vide Sale Deed dated 23.01.2013 for a valuable sale consideration of Rs.30,85,000/-. Possession of suit property was also delivered to the plaintiff at the time of execution of Sale Deed. Since then, plaintiff is owner in possession of suit property. However, defendants No.1 and 2 had started proclaiming that they had Sale Deed dated 08.08.2012 Ex.DW2/A regarding suit property in their favour. The said Sale Deed was allegedly executed by defendant No.3 being Attorney of defendant No.4. It was case of the plaintiff that the said Sale Deed was a sham transaction within the family and had never been acted upon and was false and fraudulent being without consideration. In actual fact, defendant No.3 had no authority to execute the Sale Deed. It was pointed out that Power of Attorney was allegedly executed by defendant No.4 on 14.07.2011; whereas she had inherited the property on 12.10.2011 and Mutation No. 815 was sanctioned on 03.01.2012. As such, alleged Power of Attorney is



illegal, null and void; and plaintiff is bonafide purchaser of suit property for consideration. Plaintiff had further averred that she had purchased suit land after making inquiry and verifying the revenue record. The alleged Sale Deed set up by defendants No. 1 to 3 was not reflected in the revenue record. However, Defendants had flatly refused to admit ownership and possession of suit property of the plaintiff. As such, present suit was filed on 16.04.2013.

3. Upon appraisal of the pleadings, and oral and documentary evidence led by the parties, the learned trial Court had decreed the suit of the plaintiff vide judgment and decree dated 12.10.2017. The appeal filed by the appellant, was dismissed by the learned first Appellate Court vide judgment and decree dated 16.05.2019. Hence, the present second appeal by the appellant.

4. Learned counsel for the appellants/defendants No. 1 to 3 *inter alia* submits that impugned judgments and decrees have been passed by learned Courts below on the basis of a previous *exparte* judgment and decree dated 30.04.2016 (Ex.D1 and Ex.D2 respectively). It is submitted that against the said *exparte* judgment and decree, the appellants have filed an application under Order 9 Rule 13 CPC on 29.09.2020 which is pending. It is submitted that therefore the impugned judgments could not have been passed in view of the pendency of the appellants' application under Order 9 Rule 13 CPC for setting aside *exparte* decree.



5. It is further submitted that plaintiff has procured the alleged sale deed dated 23.01.2013 from defendant No.4. The plaintiff has allured defendant No.4 Parwati Devi, who is more than 80 years old and has got managed the sale deeds of her non-existing right in the suit property in her favour and that too by not paying even a single penny to defendant No.4 before the Sub Registrar. Moreover, plaintiff has herself not even appeared in the witness box to support her case. Only her husband Bal Krishan appeared as PW6; and in witness cross-examination, he has admitted that he did not know that defendants No.1 and 2 are owners of the suit property. He has even shown ignorance regarding sale of suit property by defendant No.4 in favour of defendants No.1 and 2. Even otherwise Sale Deed dated 08.08.2012 Ex.DW2/A being prior in time than the Sale Deed dated 23.01.2013 in favour of the plaintiff would hold greater weightage. Parwati Devi/defendant No.4 was owner of the suit property who had executed a valid Sale Deed dated 08.08.2012 Ex.DW2/A through her Power of Attorney dated 14.07.2011 Ex.DW2/B which Attorney has been executed by Parwati Devi as well as her husband Sham Lal in favour of their only daughter Reeta Rani/defendant No.3. It is submitted that however the learned Courts below have ignored these very valid facts. Thus, the impugned judgments and decrees have been passed on the basis of conjectures and surmises in ignorance of the oral and documentary evidence adduced on record by the appellants which has resulted in grave miscarriage of justice. It is accordingly prayed that



the present Second Appeal be allowed; and the impugned judgments and decrees of the learned Courts below be set aside.

6. No other argument is raised on behalf of the appellants. I have heard learned counsel for the appellant and perused the case file in detail. I find no merit whatsoever in submissions made on behalf of the appellants.

7. It is important to note that in the suit the defendant No.4 had appeared upon notice and had filed written statement in which she had categorically admitted that she had executed Sale Deed dated 23.01.2013 in favour of the plaintiff for sale consideration of Rs.30,85,000/-. Defendant No.4 had further averred that she had never executed Power of Attorney in favour of defendant No.3; and that relationship between defendants No. 1 to 3 and Sham Lal was not cordial. It was further averred that Sale deed dated 08.08.2012 executed by defendant No.3 in favour of defendants No.1 and 2 is a sham transaction. Even FIR was registered against defendants no. 1 to 3 for defrauding defendant No.4. Even the Power of Attorney is procured by defendant No.3 in a fraudulent manner. Defendant No.4 is an illiterate, old lady and contents of POA were not read over to her. It was pleaded that she came to know about fraud only when defendants No.1 to 3 started proclaiming about the alleged Sale Deed and Power of Attorney.

8. Even otherwise, plaintiff had proved the Sale Deeds dated 23.01.2013 Ex.P2 and Ex.P3 executed by defendant No.4 for consideration of Rs.30,85,000/- which was attested by witnesses Piara and Raj Pal.



Plaintiff had examined attesting witness Raj Pal/ PW3 who had proved Sale Deeds dated 23.01.2013 admitting the same were executed in his presence by defendant No.4 in favour of the plaintiff. This witness was not cross-examined by defendants No.1 to 3. Hence, deposition of PW3 remained unrebutted and unchallenged. The said Sale Deeds were also proved from the testimony of Deed Writer. Passing of sale consideration is also proved.

9. Furthermore, defendant No.4 had placed on record a judgment and decree dated 30.04.2016 Ex.D1 and Ex.D2 respectively passed by the learned Additional Civil Judge, Senior Division, Rupnagar in a suit for declaration filed by defendant No.4 against the appellants titled as "Parwati Devi and Jatinder Kumar and others". A perusal of the said judgment reveals that the Sale Deed dated 08.08.2012 allegedly executed by Reeta Rani/defendant no.3 on behalf of Parwati Devi in favour of Jatinder Kumar and Anil Kumar has been declared null, void having no effect on right of Parwati Devi vide the aforesaid judgment and decree dated 30.04.2016. Admittedly, no appeal has been filed against the said judgment and decree by the appellants. Therefore, the same has attained finality.

10. Furthermore, it is admitted fact on record that Parwati Devi was owner in possession of the suit property to the extent of half share. Sale of her share by Parwati Devi in favour of the plaintiff for valuable sale consideration through registered document Ex.P2 has also been proven on record. The remaining half share as per the pleadings, has been inherited



by Reeta Rani. Jamabandi for the year 2008-2009 Ex.P10 reflects this position. In view of the above facts, plaintiff being co-owner in suit property with defendant no.3 was correctly held entitled to joint possession of suit property alongwith co-sharer Reeta Rani.

11. 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.

12. Learned counsel for the appellants is unable to controvert or dispute the above said facts and findings.

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

14. Pending applications including caveat application, if any, stand disposed of.

19.08.2025

Divyanshi

**(NIDHI GUPTA)
JUDGE**

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No