



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

123

RSA-3635-2023 (O&M)

Date of decision: 29.04.2025

Raghubir (since deceased) through his LRs

...Appellant(s)

Vs.

Balbir and others

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Munish Behl, Advocate for the appellant.

NIDHI GUPTA, J.

CM-12962-C-2023

Prayer in this application filed under Section 151 CPC is for condonation of delay of 195 days in refiling the accompanying appeal.

Heard.

For the reasons mentioned in the application, the same is allowed and the delay of 195 days in refiling the accompanying appeal is condoned.

CM-12963-C-2023

Prayer in this application filed under Section 5 of Limitation Act is for condonation of delay of 104 days in filing the accompanying appeal.

Heard.

For the reasons mentioned in the application, the same is allowed and the delay of 104 days in filing the accompanying appeal is condoned.

**RSA-3635-2023 (O&M)**

The plaintiff is in second appeal against the concurrent judgments and decrees of the learned Courts below, whereby the suit filed by the appellant seeking specific performance of Contract dated 11.12.2010, has been dismissed by both the Courts below.

2. Brief facts of the case as pleaded in the plaint are that a Contract dated 11.12.2010 Ex.P1 was entered into between the plaintiff and Halli @ Hurli/father of the defendants/respondents herein. The suit land measuring 6K 0M was sold to the plaintiff for a sale consideration of Rs.5,60,000/-. It was the case of the appellant/plaintiff that the entire sale consideration was paid by the plaintiff to Halli @ Hurli on 11.12.2010 itself. Subsequently, Halli died on 13.08.2012. The plaintiff approached the defendants/sons of Halli for executing the Sale Deed. However, the defendants denied execution of the Agreement to Sell dated 11.12.2010 by their father; and rather alleged that the said Agreement was a forged document. Accordingly, the plaintiff had filed the present suit for specific performance of the Contract on 02.12.2013.

3. On the basis of pleadings of the parties, following issues were framed vide order dated 14.07.2014:-

- “1. Whether the plaintiff is entitled for a decree of possession by way of specific performance of contract? OPP*
- 2. Whether the suit is not maintainable? OPD*
- 3. Whether plaintiff has no locus standi and cause of action to file the present petition? OPD*
- 4. Whether plaintiff has not come in the court with clean hand? OPD*



5. Relief.”

4. Vide judgment and decree dated 14.10.2016, the learned trial court dismissed the suit of the plaintiff. The appeal filed by the plaintiff was dismissed by the learned lower Appellate Court vide judgement and decree dated 7.9.2022. Hence, present second appeal by the plaintiff.

5. It is submitted by learned counsel for the plaintiff that the plaintiff had duly proved on record the Contract dated 11.12.2010 Ex.P1 and the receipt issued by Halli acknowledging payment of Rs.5,60,000/- Ex.P2, from the evidence of PW1 Govind Ram, who was one of the two attesting witnesses of the Agreement dated 11.12.2010. PW1 had deposed that both the documents i.e. Agreement to Sell and receipt Ex.P2 were got written from an Advocate on the asking of Halli and the same was read over by the said Advocate and on the same Halli, father of the defendants had appended his signatures. PW1 had also deposed that he and other witness Rajender had also signed the Agreement, and that the plaintiff had given an amount of Rs.5,60,000/- in cash to the deceased Halli. It is contended that even source of payment was proved by PW1 Govind Ram, who deposed that he brought Rs.2,75,000/- in cash which was further paid by the plaintiff to Halli. The remaining amount was available with the plaintiff already and was duly paid to Halli on the date of execution of Agreement.

6. It is submitted that PW3 stamp vendor had also deposed that he had signed Ex.P1 and the stamp paper was sold by him in respect of



which entry no. 56104 was made in his Register, which bears signature of vendor Halli. The second attesting witness has also filed his affidavit Ex.PW4/A deposing identically as PW1 Govind Ram. The agreement in question was also proved from the evidence of Scribe PW5. Even the thumb impressions of Halli on Agreement were not denied. It is submitted that accordingly when the execution of Agreement stands proven, suit of the plaintiff ought to have been decreed.

7. It is further submitted by learned counsel for the plaintiff that Halli was the real elder brother of the appellant. As such, no target date for execution of the Agreement was set between them; and it was mutually agreed between the plaintiff and Halli that Sale Deed would be executed as and when the plaintiff will ask Halli. However, after the execution of the Agreement, Halli remained ill for about a year and died in August 2012. Therefore, plaintiff had asked LRs of Halli to execute the Sale Deed. However, the learned trial Court did not take into consideration the above facts; and on the contrary, took adverse inference of suit having been filed after vendor has died and after a gap of more than 3 years. It is accordingly prayed that the present appeal be allowed; and the impugned judgments and decrees of learned Courts below be set aside.

8. No other argument is raised on behalf of the plaintiff.

9. I have heard learned counsel for the appellant/plaintiff and perused the case file in great detail.

10. I find no merit in the submissions advanced on behalf of the appellant/plaintiff. It has been admitted by the plaintiff that after



execution of Agreement dated 11.12.2010, payment of entire sale transaction was made to Halli there and then. It has also been admitted that at that time, the plaintiff and Halli were present in Tehsil office along with scribe and attesting witnesses. In these circumstances, it is inexplicable as to why sale deed was also not executed there and then. No explanation whatsoever has been given by the plaintiff as to why in the face of the above said facts, the Sale Deed was never executed? It is but right to question that if all the above said facts are correct then why the Sale Deed was not executed? Despite repeated questions, learned counsel for the plaintiff is unable to answer this query or give any specific answer to the same.

11. The above facts would make good the evidence of PW4 Rajinder/attesting witness to the Agreement in question, who has stated that he had submitted a sworn affidavit dated 11.2.2014/Ex.D4 before the Executing Magistrate, stating therein that the plaintiff had prepared the Agreement after the death of Halli. PW4 has further stated that no such Agreement to Sell dated 11.12.2010 had ever been executed by Halli in favour of the plaintiff; and nor did Halli ever receive sale consideration. This has not been explained by the plaintiff.

12. Even no explanation has been given by the plaintiff as to why was the suit filed only after the death of vendor Halli. It has also not been denied by learned counsel for the plaintiff that the plaintiff is a retired Deputy Superintendent of Police and is an educated person; whereas his brother Halli was utterly illiterate. From these factors and circumstances,



the learned Courts below have accordingly inferred that this indicates undue influence and fraud on the part of the plaintiff upon Halli. Moreover, there is nothing whatsoever on record to indicate or suggest that the plaintiff had ever demanded execution of Sale Deed from the vendor Halli or even from the present defendants.

13. It has been deposed by PW3 Stamp Vendor that Halli had bought the stamp paper from him in respect of which entry no. 56104 was made in his Register, which bears 'signature' of vendor Halli. However, it is the case of the plaintiff that Halli had affixed his 'thumb impression' on the Agreement in question. In his cross-examination, plaintiff has admitted that said stamp paper was purchased for executing affidavit; and that Halli had not affixed his thumb impression against entry no. 56104. Thus, stamp paper was not proven to have been purchased by Halli.

14. Even the alleged thumb impression of Halli on the Agreement is not proved. The plaintiff has not examined any fingerprint expert to prove that the Agreement bore the thumb impression of Halli. In view of the fact that the said Agreement was totally denied by the defendants, it was necessary for the plaintiff to prove that the same was executed by Halli by proving his thumb impression. Plaintiff has also failed to explain as to why the first page of the said Agreement did not have any thumb impression.

15. It has also come on record that the present suit was the third round of litigation between the parties as the plaintiff had previously filed a suit for permanent injunction against the present defendants in respect



of the suit land. Another suit was filed by the present defendants against the plaintiff which was also pending before the learned Civil Judge Junior Division, Palwal. This fact has been admitted by the plaintiff in his cross-examination as PW2. It has further been admitted by the plaintiff that in the above said two previous cases, he had not mentioned the alleged Agreement to Sell.

16. Learned trial Court had even held suit to be bad for non-joinder of necessary parties, the same being other legal heirs of Halli i.e. his wife and his two daughters. Although it needs to be stated that it had been admitted by the defendants that their mother and sisters had executed Relinquishment Deed No. 15410 dated 08.03.2013 in respect of the suit property in favour of the defendants and the mutation for the same was also sanctioned in their revenue record.

17. Relevant findings contained in paras 16 to 19 of the judgment and decree dated 07.09.2022 of Id. lower appellate Court, read as under: -

“16. It is settled law that the plaintiff has to stand on his own legs and he cannot take the benefit of weakness in the case of defendants. The plaintiff appeared in the witness box as PW-2 and tendered his affidavit Ex. PW2/A in his evidence. He has deposed that the late Halli had agreed to sell the suit property to him for a consideration of Rs. 5,60,000/- and had executed the agreement to sell Ex. P1 and receipt Ex. P2 after receiving the entire sale consideration. But he has not explained in his affidavit why the sale deed was not got executed by him if he had paid the entire sale consideration to late Halli. The defendants denied the execution of the alleged agreement to sell and therefore, it was the duty of the



plaintiff to prove the thumb impression of late Halli on the agreement to sell Ex. P1 by getting the thumb impression compared with his admitted thumb impression on any other document. However, plaintiff did not examine any handwriting expert for proving the thumb impression of late Halli on the agreement Ex. P1. The agreement Ex. P1 contains 2 pages and first page of the agreement has not been thumb marked by the alleged seller. The alleged agreement Ex. P1 is a typed document on a stamp paper of Rs. 20/- allegedly purchased by late Halli from Khushiram, Stamp Vendor. Plaintiff also examined Sh. Khushi Ram, Stamp Vendor as PW-3 and he stated that the stamp of agreement Ex. P1 was sold by him. He identified his endorsement Ex.PW3/A on the agreement Ex. P1. He has stated that the stamp was entered in his register at serial No. 56104 and signature of purchaser was obtained in his register. It apparently shows that late Halli did not append his thumb impression in the register of the stamp vendor. In the cross-examination, he has admitted that according to his record, this stamp paper was purchased for executing affidavit. He has also admitted that there is no thumb impression against the entry No. 56104. Therefore, it is not proved that the stamp paper of agreement Ex. P1 was purchased by late Halli

17. The agreement Ex. P1 shows that it was witnessed by one Rajender Singh and Govind Ram. However, fathers names and addresses of the witnesses are not mentioned on the agreement. The plaintiff examined PW-1 Govind Ram son of Khillanram and PW-4 Rajender Singh son of Amira, who deposed that the agreement Ex. P1 and receipt Ex. P2 were executed in their presence and they had signed the same as witnesses. During cross-examination, the affidavit Ex. D4 was shown to PW-4 Rajender Singh and he admitted his signature



on the same. The affidavit Ex. D4 shows that it was executed by PW-4 Rajender Singh on 11.02.2014 and was attested by Executing Magistrate, Palwal. In this affidavit, PW-4 Rajender Singh deposed that he had signed the agreement dated 11.12.2010 on the instruction of plaintiff Raghubir without reading the contents of the same. He also deposed that this agreement was prepared by plaintiff Raghubir after death of Sh. Halli. He deposed that at the time of signing the agreement he did not know that the agreement was prepared for transfer of suit land because he had not read the agreement and had signed the same on the faith of plaintiff. Therefore, testimony of PW-4 Rajender Singh is not relevant for proving the execution of the agreement Ex. P1 and receipt Ex. P2. Moreover, from the affidavit Ex. P4, it appears that the agreement Ex. P1 and receipt Ex. P2 were prepared after death of Sh. Halli.

18. Besides, the defendants have placed on record the copy of judgment Ex. D5 dated 29.01.2016. This judgment shows that the plaintiff had filed suit no. 418 dated 14.2.2013 for permanent injunction against the present defendants. It is admitted that late Halli had expired on 13.08.2012. Therefore, it is proved that the suit No. 418 dated 14.02.2013 was filed by the plaintiff against the defendants after death of father of defendants. Some part of the suit land bearing Rectangle No. 51, Kila No. 21 and 22 was also part of the suit land in the above suit No. 418. In that case, plaintiff did not disclose the execution of the agreement Ex. P1. The plaintiff has admitted in the cross-examination that he did not disclose the execution of the alleged agreement to sell Ex. P1 in previous suit. He has also admitted that the defendants had also filed another suit for partition of the suit land against him and he did not disclose the alleged agreement Ex. P1 in the written



statement filed by him in that suit. Therefore, the learned Trial Court has rightly held that the execution of the alleged agreement to sell Ex. P1 and receipt (wrongly typed as 'reply') Ex. P2 was not proved. Therefore, the finding of the Trial Court on issue no.1 is affirmed. 19. However, the finding of Trial Court in issue no.2 is not legal and set aside because the daughters and widow of late Halli were not necessary parties in the suit because they have transferred their share in the suit land in favour of defendants. Therefore, this issue is decided against the defendants."

18. Learned counsel for the appellant/plaintiff is unable to dispute or controvert the above said facts and findings on record.

19. In view of the discussion above, no ground is made out to interfere in the concurrent judgments and decrees of the learned Courts below. The present regular second appeal is hereby **dismissed**.

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

29.04.2025

Divyanshi

**(NIDHI GUPTA)
JUDGE**

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