

2025:PHHC:021615



2025:PHHC:021618



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

**Reserved on: February 04, 2025  
Pronounced on: February 14, 2025**

**(i)** **RSA No.6062 of 2018 (O&M)**  
**Satish** **. . . . Appellant**

**Vs.**

**Kanwar Bhan (deceased) through his LRs** **. . . . Respondent**

**\* \* \* \***

**(ii)** **COCP No.1645 of 2021 (O&M)**  
**Satish** **. . . . Appellant**

**Vs.**

**Bimla and another** **. . . . Respondents**

**\* \* \* \***

**CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA**

**Present:-** Mr. Nitin Jain and Ms. Vanshika Sharma, Advocates  
for the appellant in RSA No.6062 of 2018; and  
for the petitioner in COCP No.1645 of 2021.

Mr. Sanjeev Sharma, Legal Aid Counsel for the respondents.

Mr. Satyam Tandon, *Amicus Curiae*  
for respondents in COCP-1645-2021.

**DEEPAK GUPTA, J.**

This order shall dispose of the two cases mentioned above,  
arising out of the same matter between the same parties.

2. Although arguments in these matters were heard along with RSA  
N: 2191-2017 titled 'Ramesh etc. vs Smt. Laxmi etc.', but it is noticed by this  
court that suit property involved in RSA 6062-2018 & RSA 2191-2017 are  
different. Even the issue involved in the two appeals is different. Not only

this, appellant of RSA 6062-2018 namely Satish is neither a party to the other appeal nor he has any concern with the subject matter of property involved in RSA 2191-2017. As such, RSA 2191-2017 is being disposed of separately.

3. Present regular second appeal is directed by the plaintiff of the suit against the judgment & decree dated 31.05.2018 of the First Appellate Court of learned Addl. District Judge, Sonapat, affirming the judgment & decree dated 30.11.2016 of the trial Court, whereby suit filed by the plaintiff (*appellant herein*) seeking decree for possession of the suit property by way of specific performance of an agreement to sell, was partly decreed by ordering refunding of the earnest money, but declining the relief of specific performance.

4. Trial Court record was called. The same has been perused. In order to avoid confusion, the parties shall be referred as per their status before the trial Court.

5.1 Defendant No.1 – Kanwar Bhan (*now respondent through his LRs*) was owner of the suit property, i.e. a house measuring 300 sq. yards, the plot underneath of which was purchased by him by virtue of a registered sale deed No.3438 dated 27.10.1976.

5.2 According to plaintiff Satish, said Kanwar Bhan agreed to sell the suit property to him (plaintiff) vide an agreement to sell dated 14.07.2000 for total sale consideration of ₹3,60,000/-. Entire sale consideration was paid and the possession was delivered to him. Vendor – Kanwar Bhan was required to pay all the outstanding dues and obtain the necessary NOC and inform the vendee-plaintiff. No target date was fixed for execution of the sale deed. It was pleaded further by the plaintiff that he was always ready and willing to perform his part of contract and still ready and willing to do so. He requested defendant – Kanwar Bhan many times to obtain the NOC from the concerned departments; and that he was ready to pay the necessary expenses for getting the sale deed executed and registered in his favour, but the defendant avoided to do so.

5.3 It was pleaded further that the plaintiff came to know that defendant Kanwar Bhan had suffered two consent decrees both dated 18.12.2008 in Civil Suit No.867 and 868 both instituted on 15.09.2008 in favour of his two daughters, namely Bimla Devi and Smt. Laxmi (impleaded in the suit as defendants N: 2 & 3 – *respondents N: 1 (iii) & (iv) herein*) regarding ½ share each of the suit property, to wriggle out of the agreement to sell and those decrees were got registered on 12.01.2009. These judgments & decrees are alleged by the plaintiff to be null, illegal and void and not binding on his rights. He requested the defendant N: 1 many time to execute the sale deed in his favour in performance of the agreement to sell and further requested him to obtain the NOC from the concerned department and to treat the decrees dated 18.12.2008 registered on 12.01.2009 to be not creating any title in favour of defendant Nos.2 and 3, i.e. Bimla Devi and Smt. Laxmi, but they avoided his request.

5.4 Plaintiff pleaded further that with the intervention of the respectables, a compromise dated 04.08.2010 was executed between plaintiff and defendant No.1, wherein said defendant agreed to execute the sale deed in his favour up to 15.09.2010 after obtaining NOC from the concerned department. However, defendant avoided to do so. Plaintiff then served a legal notice and as defendant still did not execute the sale deed, he appeared in the office of Sub Registrar on 30.09.2010 along with all the necessary expenses for getting the sale deed executed and registered in his favour, but defendant did not turn up.

5.5 With all the aforesaid averments, plaintiff prayed for decree of possession by way of specific performance of agreement to sell dated 14.07.2000 in respect of the house in question. He further prayed for decree of declaration that Civil Court decrees dated 18.12.2008 got registered on 12.01.2009 passed in Civil Suit No.867 of 2008, and 868 of 2008 in favour of defendant Nos.2 and 3, i.e. Bimla Devi and Smt. Laxmi, were null, illegal and void and were not binding on his rights in any manner.

6.1 Defendant No.1 – Kanwar Bhan filed written statement and admitted the execution of the agreement dated 14.07.2000, but claimed that total sale consideration was ₹5,60,000/-, out of which he had been paid ₹3,60,000/- and that the plaintiff had agreed to pay the balance amount of ₹2,00,000/-. He denied that the possession was delivered to the plaintiff. He further pleaded that he requested the plaintiff many times to get the sale deed executed and registered on making payment of balance consideration of ₹2,00,000/-, but plaintiff showed no interest in the sale and ultimately, the agreement was rescinded in the year 2006. Defendant N: 1 also pleaded that the plaintiff was estopped to file the present suit by his own act and conduct.

6.2 Regarding the two consent decrees favouring defendant Nos.2 and 3 – Bimla Devi and Smt. Laxmi, i.e. his two daughters, it was claimed by defendant No.1 that these were result of fraud, collusion and misrepresentation, as by taking advantage of his old age and health issues, these defendants acting in fiduciary capacity by playing fraud, obtained the said consent decrees and that he (defendant N: 1) had already challenged the same by filing two separate civil suits. He prayed for dismissal of the suit.

7. Defendant Nos.2 and 3, Bimla Devi and Smt. Laxmi, i.e. daughters of Kanwar Bhan, in their joint written statement, claimed that suit property had fallen to their share in a family settlement and consequently, separate decrees in their favour were passed in the Lok Adalat and the same were got registered by Kanwar Bhan. They further pleaded that due to temperamental differences, Kanwar Bhan challenged both the judgment & decrees dated 18.12.2008 by filing Civil Suit No.187 of 2009 titled “Kanwar Bhan v. Laxmi Devi”, which was dismissed on 21.05.2010; and another Civil Suit titled “Kanwar Bhan v. Bimla”, which was also dismissed. It was further pleaded by these defendants that after the outcome of civil suit titled “Kanwar Bhan v. Laxmi Devi”, defendant No.1 – Kanwar Bhan in connivance with the plaintiff, Katar Singh, Advocate and his son Ramesh has prepared forged and factitious agreement to sell with back date with malafide intention to grab the suit property. The said fabrication finds corroboration

from the fact that the compromise dated 4.8.2010 was later on prepared in connivance with one Suresh s/o Mool Chand. With this stand, both these defendants prayed for dismissal of the suit.

8.1 During pendency of the suit, defendant N: 1 Kanwar Bhan expired. His legal representatives – 2 sons namely, Ramesh & Ashok; and 3 daughters namely, Bimla, Laxmi & Anju, were brought on record. Thus, LRs of deceased defendant N: 1 includes contesting defendant Nos.2 and 3,

8.2 Necessary issues were framed. Evidence led by both the parties was taken on record.

8.3 Trial Court came to the conclusion that agreement to sell dated 14.7.2000 Ex.P1 was duly proved for consideration of ₹3,60,000/- and that the stand of defendant No.1 to the effect that sale consideration was ₹5,60,000/-, was not proved. It was further held by the trial Court that no cogent evidence was produced by any of the parties regarding the subsequent compromise dated 04.08.2010 Ex.P4. The trial Court also found that the suit had been filed after more than 10 years from the date of execution of the agreement to sell and that plaintiff never appeared to be ready and willing to perform his part of contract. As such, declining the relief for specific performance, the trial Court partly decreed the suit on 30.11.2016 by ordering defendant No.1 (*through his LRs*) to refund the earnest money of ₹3,60,000/- along with interest. Since it was found that consent decrees had been suffered by Kanwar Bhan in favour of his daughters Bimla Devi and Smt. Laxmi; and the suit filed by Kanwar Bhan against those consent decreed had already been dismissed, therefore, these LRs, i.e. Bimla Devi and Smt. Laxmi, were directed to refund the earnest money of ₹3,60,000/- to the plaintiff out of the estate of Kanwar Bhan.

9.1 Both the parties went in appeal against the above-said judgment and decree dated 30.11.2016 of the trial Court. While plaintiff challenged the decree of the trial Court by claiming that he was entitled for the relief of

specific performance; defendant Nos.2 and 3, i.e. Bimla Devi & Smt. Laxmi prayed for dismissing the suit in *toto*.

9.2 Both the appeals were heard together by the First Appellate Court and the same were dismissed by a common judgment dated 31.05.2018, which has led to the filing of present regular second appeal by plaintiff of the case – Satish.

10.1 It is vehemently contended by learned counsel for the appellant that execution of the agreement to sell dated 14.07.2000 was duly admitted by defendant No.1 – Kanwar Bhan in his written statement filed during his life time. It is further submitted that the claim of said defendant No.1 that total sale consideration was of ₹5,60,000/- and not ₹3,60,000/-, is not proved from the record because as per the agreement to sell (Ex.P1) and receipt Ex.P2, total sale consideration was agreed to be ₹3,60,000/-. It is pointed out that there is concurrent finding of both the Courts below in this regard. It is argued further that as per the agreement (Ex.P1), possession of the suit property was delivered to the plaintiff and thus, the only part to be performed on behalf of the plaintiff was to pay the necessary expenses for stamp & registration charges, for which he was always ready, but as per the agreement, it was the duty of the defendant-vendor – Kanwar Bhan to obtain necessary NOC and inform the plaintiff in this regard. Learned counsel argues that no target date was fixed for execution of the agreement and despite requesting the defendant many times, defendant failed to obtain necessary NOC and get the sale deed executed and registered in favour of the plaintiff.

10.2 Learned counsel contends further that during the subsistence of the agreement to sell, defendant N: 1 had suffered the consent decrees dated 18.12.2008 in favour of his two daughters regarding ½ share each of the suit property and that these decrees are not binding upon him. It is argued that the findings of the Courts below to the effect that the plaintiff has no right to challenge these decrees, is not sustainable, as it is the plaintiff, who is affected by those decrees, which had been suffered by

defendant – Kanwar Bhan during the subsistence of the agreement to sell in favour of the plaintiff.

10.3 With these submissions, learned counsel has prayed for setting aside the judgments of the Courts below, whereby the relief for specific performance has been declined to him. Prayer is made for decreeing the suit for specific performance, by allowing this appeal.

11. Refuting the aforesaid contentions, it is argued by learned counsel for the contesting respondents-defendants, i.e. Bimla Devi and Smt. Laxmi that timing of filing the suit is very important to be noticed. The suit had been filed on 13.10.2010, i.e. after more than 10 years from the date of alleged execution of the agreement to sell (Ex.P1). It is argued that pursuant to the family settlement effected between defendant No.1, i.e. father Kanwar Bhan, and daughters Bimla Devi & Smt. Laxmi, the suit property had fallen to their share and consequent thereto, consent decrees were passed in their favour as suffered by Kanwar Bhan and both these decrees were got registered by Kanwar Bhan himself before the Sub Registrar, Sonapat. At that time, plaintiff Satish did not have any right or title in the suit property, as agreement to sell in itself does not create any title in favour of prospective vendee.

12. It is argued further that it is on account of temperamental differences that Kanwar Bhan challenged both the consent decrees by filing two separate civil suits, but both of them have been dismissed. Learned counsel has specifically pointed out that civil suit titled “Kanwar Bhan v. Laxmi” was dismissed on 21.05.2010 and it is only thereafter that the subsequent compromise dated 04.08.2010 (Ex.P4) has been fabricated by the plaintiff in connivance with Kanwar Bhan and one Suresh. It is argued that it is only thereafter that present suit has been filed on 13.10.2010 in collusion with defendant No.1 – Kanwar Bhan and the sons of said Kanwar Bhan, i.e. brothers of respondents - Bimla Devi and Smt. Laxmi, to deprive these defendants of the suit property. With these submissions, prayer is made for dismissal of the appeal.

13. Vide an order dated 24.01.2020, this Court had directed the parties to maintain status quo qua the property in dispute. Matter was also referred for mediation vide order dated 19.01.2023 but it appears that mediation proceedings did not fructify.

14 The plaintiff – appellant brought COCP No.1645 of 2021 under Section 10 read with Section 12 of the Contempt of Court Act for initiating proceedings against the respondents by alleging that despite status quo order dated 24.01.2020, which was directed to be continued from time to time, the respondents were raising construction over the suit property, as was evident from photographs (Annexures P-4).

15. Opposing the aforesaid contempt petition, it is contended by the respondents that in the appeal as well as in the application bearing CM No.16929-C-2018 in RSA-6062-2018, the only prayer made by the appellant was to restrain the respondents from alienating, transferring, creating any encumbrance and/or changing the nature of the suit property during the pendency of the appeal and that status quo was accordingly granted by this Court. It is contended that as there was no specific order qua construction/repair work by this Court and as the respondents were only repairing their property, since the roof had collapsed due to rain and were not raising any new construction, therefore, petition deserved to be dismissed, as making repairs does not amount to contempt.

16. This Court has considered submissions of both the sides and has appraised the entire record carefully.

17. The entire basis of the plaintiff's claim is agreement to sell dated 14.07.2000 (Ex.P1) regarding which both the Courts below have given concurrent finding to the effect that the same has been proved. However, on perusal of the entire evidence on record, this Court finds that both the Courts below have miserably failed to notice the timing of bringing the suit and behind the scene activities of plaintiff – Satish in connivance and collusion with defendant Kanwar Bhan and his son Ramesh, in fabricating this

agreement to sell in an attempt to deprive defendants Bimla Devi and Smt. Laxmi of their property, which had been given to them by Kanwar Bhan by suffering decrees on 18.12.2008 and which were got registered by Kanwar Bhan himself on 12.01.2009.

18. Perusal of agreement to sell (Ex.P1) and receipt (Ex.P2) would reveal that these are purported to be executed between plaintiff Satish and defendant Kanwar Bhan and witnessed by Katar Singh, Advocate and Ramesh S/o Kanwar Bhan. Ex.P1 is purported to be typed on a stamp paper, but no date is mentioned on the stamp paper regarding its purchase.

19. To prove the afore said agreement to sell, plaintiff – Satish appeared in the witness box as PW1 and further examined Katar Singh, Advocate as PW2. Though, both of them deposed about its execution, but none of them is able to disclose, as to who had purchased the stamp paper for the said agreement to sell (Ex.P1) and from whom it was purchased and on which date. Both of them concede that except the digit 14, nothing else is visible on the stamp paper to show the date of its purchase. None of them is able to depose that from whom it was purchased. No such stamp vendor has been examined.

20. Further, none of these witnesses are able to tell, as to who had drafted the agreement Ex.P1. Neither the name of the person, who had drafted the agreement, is mentioned on the agreement nor any of these witnesses was able to disclose his name. None of them is able to tell as to whether the draftsman, who had prepared this agreement, had got it entered in his register and whether it was notarized or not. In the later part of his cross-examination, PW2 – Katar Singh candidly admitted that as per him, the agreement was neither entered by the document writer in his register nor it was got notarized.

21. Still further, although it is mentioned in the agreement to sell (Ex.P1) that after receipt of the sale consideration of ₹3,60,000/-, the possession was handed over to the prospective vendee, i.e. plaintiff – Satish,

but both the witnesses admitted that the possession was not delivered. As per PW1 – plaintiff - Satish, it is Ramesh (son of Kanwar Bhan), who resides in the disputed house, though in the later part, he tried to improve by stating that possession was delivered to him. But in his cross-examination, PW1 - plaintiff admits that he resides in Chawla Colony.

22. PW2 Katar Singh pleads ignorance as to whether the possession of the house was delivered to the plaintiff or not. PW2 also admits that he knew Kanwar Bhan for the last 15-16 years prior to the date of agreement. He further admits that Satish, i.e. plaintiff also knew Kanwar Bhan, as he used to frequently come to his shop.

23. Case of the plaintiff regarding delivery of possession is further demolished by the testimony of DW3 – Ramesh, who being the attesting witness proves the execution of Ex.P1 and PW2, but stated in the cross-examination that his father Kanwar Bhan used to reside in the same house, regarding which the agreement to sell was executed, till his father expired. Kanwar Bhan had expired in December, 2013, which means that possession was not at all delivered to the plaintiff at the time of agreement to sell or later. PW1 plaintiff – Satish also admits during his cross-examination that he had come to the Court with Ramesh.

24. Not only above, plaintiff sought decree for possession of suit property by specific performance. In case, he had been actually delivered possession at the time of agreement to sell, he would have asked for symbolic possession and not actual possession. In case, still there was any doubt about delivery of possession, plaintiff himself removed it by pleading in the contempt petition that defendants - respondents were raising construction over the suit property, which further establishes that it is the contesting defendants, who are in possession of the suit property, which they got by way of the consent decrees suffered by their father – Kanwar Bhan in their favour

25. All the above circumstances clearly indicate that agreement to sell (Ex.P1) was prepared in the back date so as to deprive the defendants of their right in the suit property. As it appears that defendant – Kanwar Bhan gave a *sham* contest to the suit by pleading that sale consideration was ₹5,60,000/- and not ₹3,60,000/- just to show the Court that he was contesting the case against the plaintiff.

26. For the sake of arguments, let it be assumed that agreement to sell was actually executed considering the fact that defendant – Kanwar Bhan admitted so in his written statement. Still, evidence is absolutely lacking on record to prove the readiness and willingness on the part of the plaintiff. No doubt that no target date is mentioned in the agreement to sell for execution and registration of the sale deed, but as plaintiff claims that entire sale consideration had been paid to him, there was no reason for not getting the sale deed registered on the date of execution of the agreement to sell itself or within reasonable time thereafter.

27. As it is proved from the evidence on record, as discussed above that actual possession was never delivered to the plaintiff, there was absolutely no question for the plaintiff not to approach the Court for seeking specific performance of the contract within limitation period from the date of execution of the agreement, particularly when he had already paid the entire consideration to vendor Kanwar Bhan, as claimed by him. Plaintiff claims that defendant – Kanwar Bhan was required to obtain the necessary NOC and clear the dues and then to inform him. Again, this appears to be a ruse so as to extend the period of limitation. In case, plaintiff had paid entire sale consideration and as it is found that he was not delivered the possession of the suit property, he would have asked the defendant within reasonable time to execute the sale deed in his favour.

28. Plaintiff claims that he asked the defendant several times to obtain the NOC and get the sale deed executed and registered in his favour, but no date whatsoever is mentioned in the plaint or in his evidence as to on what dates, he approached the defendant – Kanwar Bhan for getting the NOC

and execute the sale deed in his favour. Still further, if non-obtaining of the NOC by defendant – Kanwar was a reason for not earlier approaching the Court, same was the position when the suit was filed in October, 2010.

29. Plaintiff claims that by way of a compromise (Ex.P4) executed on 04.08.2010, defendant agreed to obtain the necessary NOC and get the sale deed registered in his favour, but nothing has been placed on record that any NOC was obtained, but the plaintiff still filed the present suit. In case, defendant had not obtained the NOC, why he filed the suit, is not clear, as same was the position earlier.

30. Further, the timing of the filing of the suit is very important. Kanwar Bhan had suffered two decrees both dated 18.12.2008 in favour of his daughters, Bimla Devi and Smt. Laxmi regarding  $\frac{1}{2}$  share each of the suit property and got these decrees registered on 12.01.2009. Later on, said Kanwar Bhan challenged the decrees by filing separate suits. The suit titled “Kanwar Bhan v. Laxmi” was dismissed on 21.05.2010 and it is only thereafter that the purported compromise Ex.P4 dated 04.08.2010 was brought in existence and then the suit was filed on 13.10.2010. The other suit titled “Kanwar Bhan v. Bimla”, challenging the consent decree in favour of Bimla was also dismissed later on 23.7.2014. Evidently, frustrated by the dismissal of his suit titled “Kanwar Bhan v. Laxmi” on 21.5.2010, Kanwar Bhan & his son Ramesh colluded with plaintiff Satish in preparing a pre-dated agreement to sell dated 14.7.2000 in collusion with Katar Singh Advocate to deprive the defendants Bimla & Laxmi of the suit property.

31. One of the contentions raised by learned counsel for the appellant is that the Courts below have wrongly held that the plaintiff did not have the *locus standi* to challenge the decrees suffered by Kanwar Bhan in favour of his daughters. This Court concurs with the view taken by courts below in this regard. It is Kanwar Bhan, who was aggrieved by the consent decrees, in case these were got suffered by Bimla Devi and Smt. Laxmi in any fraudulent manner. It has already come on record that Kanwar Bhan had filed separate suits so as to challenge both these decrees, but both those suit

were dismissed. Even otherwise, it has been found that agreement to sell (Ex.P1) was just a *sham* document prepared by plaintiff – Satish in connivance and collusion with Kanwar Bhan and his son Ramesh so as to deprive Bimla Devi and Smt. Laxmi from their property, which they got by way of the consent decrees suffered by Kanwar Bhan in their favour.

32. Though, on account of the admission of defendant – Kanwar Bhan in his written statement regarding receipt of ₹3,60,000/-, it has been held by the Courts below that plaintiff is entitled to the said amount from the estate of the deceased Kanwar Bhan, but it has been wrongly held that the said amount is recoverable from Bimla Devi and Smt. Laxmi, who had got the suit property. These defendants had become owner of the suit property by virtue of the consent decree dated 18.12.2008 registered on 12.01.2009. When the suit for refund of earnest money was decreed by the trial Court, Kanwar Bhan was no longer the owner of the property in dispute. As such, it cannot be stated that at the time when the decree was passed or when Kanwar Bhan expired in December, 2013, Bimla Devi and Smt. Laxmi inherited the suit property from Kanwar Bhan. As such, plaintiff will be entitled to the refund of ₹3,60,000/- along with interest as ordered by the Courts below only from that estate left behind by Kanwar Bhan at the time of his death, which was in existence at the time of his death and is in the hands of any of his legal heirs. Defendants Bimla Devi and Smt. Laxmi, who had become owner of the suit property by way of the consent decrees in 2009, cannot be held responsible for refund of the earnest money, as they did not inherit the suit property on the death of Kanwar Bhan as noticed above.

33. On account of the entire discussion as above, this Court does not find any merit whatsoever in the appeal as filed by the plaintiff-appellant. The same is hereby dismissed.

34. As far as COCP is concerned, the whole basis of plaintiff's case since beginning was that he was in possession of the suit property as delivered to him at the time of agreement to sell (Ex.P1). It has been found from the discussion of evidence as above that the actual possession was

never delivered to the plaintiff. So much so, even in the suit, plaintiff had prayed for decree for possession by way of a specific performance. He did not ask for the symbolic possession, in case the possession had already been delivered to him. This in itself shows that the plaintiff was never in possession of the suit property. By pleading in the contempt petition that defendants were raising construction over the suit property, it further stands established that it is the contesting defendants - respondent, who are in possession of the suit property, which they got by way of the consent decrees suffered by their father – Kanwar Bhan in their favour.

35. Thus, this Court finds that plaintiff – appellant has not approached the Court with clean hands as his suit itself is based upon false suit. Therefore, this Court does not find it appropriate to exercise its discretion in initiating any contempt proceedings against the defendants - respondents simply because they did any repairs in the suit property.

36. Consequently, there is no merit in the contempt petition and as such, the same is hereby dismissed.

Pending applications, if any stand disposed of.

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

**February 14, 2025**  
*Sarita*

**(DEEPAK GUPTA)**  
**JUDGE**

|                            |        |
|----------------------------|--------|
| Whether speaking/reasoned? | Yes/No |
| Whether reportable?        | Yes/No |