

**IN THE COURT OF H.S. DAHIYA, ADDL. DISTRICT JUDGE,
MEWAT.**

I.

CIS No. 625/2013
Civil Appeal No.: 347 of 2013.
Date of Institution: 22.3.2013.
Date of Decision: 16.3.2015

Aash Mohammad Son of Shadi, Resident of Village Ghasera, Tahsil Nuh, District Mewat, at present Nagpur Maharashtra, at present Village Ghasera.

..... Appellant/Defendant No.1.

VERSUS

1. Smt. Maksoodan Wife of Aash Mohammad Son of Sultan, R/o Village Ghasera, Tahsil Nuh, District Mewat.

2. Yunus Son of Parmal Son of Ishab, Resident of Village Ghasera, Tahsil Nuh,

3. Aash Mohammad @ Aashudin Son of Chander Khan R/o Village Ghasera, Tahsil Nuh, Distt. Mewat.

..... Respondents.

Present: Sh. Tayyub Hussain, Counsel for Appellant.
Sh. B.S. Rao, Counsel for Respondent No.1.
Sh. K. L. Sharma, Counsel for Respondent No.2.
Sh. Abdul Rehman, Counsel for Respondent No.3.

AND

II.

CIS No. 694 of 2013.
Civil Appeal No.: 473 of 2013.
Date of Institution: 1.4.2013.
Date of Decision: 16.3.2015

Yunus Son of Parmal, Resident of Village Ghasera, Tahsil Nuh, Distt. Mewat.

..... Appellant/Plaintiff.

VERSUS

1. Aash Mohammad Son of Shadi, Resident of Nagpur Maharashtra, at present Village Ghasera, Tahsil Nuh, Distt. Mewat.

2. Aash Mohammad @ Aashudin Son of Chander Khan

3. Smt. Maksoodan Wife of Aash Mohammad Son of Sultan, R/o Village Ghasera, Tahsil Nuh, District Mewat.

..... Respondents/Defendants.

Present: Sh. K. L. Sharma, Counsel for Appellant.
Respondents No.1 & 2 already ex-parte.
Sh. B. S. Rao, Counsel for Respondent No.3.

***Civil Appeal against the Judgment and Decree dated
28.2.2013 passed by the Court of Sh. Lokesh Gupta,
the then Ld. Addl. Civil Judge (Junior Division), Nuh.***

JUDGMENT:

This judgment will dispose off two appeals clubbed vide order dated 16.3.2015.

2. The first appeal titled 'Aash Mohd Vs. Maqsoodan & Ors' bearing appeal No.625 of 2013 has been filed by the appellant/defendant No.1-Aash Mohammad (hereinafter referred to as the defendant) and another appeal titled as 'Yunus Vs. Aash Mohammad & Ors' bearing appeal No.473 of 2013 has been filed by the appellant/plaintiff (hereinafter referred to as the plaintiff), against the judgment and decree dated 28.2.2013 passed by the then Learned Addl. Civil Judge (Senior Division), Nuh, vide which the suit filed by plaintiff, for specific performance of the contract was dismissed.

3. In brief, the facts of this case, so far as the same are relevant for the disposal of this appeal, are as under:-

The plaintiff had filed a suit for specific performance of contract on the averments that the defendant entered into an agreement of sale dated 3.12.2005 in respect of the agricultural land bearing Khewat/Khata No.114/191, Rect No.19, Killa No.7/1 (5-7), 8/1(1-7),

8/2(2-16) total measuring 9 Kanal 10 Marla to the extent of 1/2 share measuring 4 Kanal 15 Marla, situated within the revenue estate of village Sugarpur, Tahsil Nuh, Distt. Mewat (hereinafter referred to as the suit land), for a sale consideration of Rs.3,20,000/-. The defendant No.2 delivered the possession of the suit land at the time of entering into agreement to sell dated 3.12.2005. The plaintiff being in possession of suit land was entitled to get the entry of cultivation corrected in his favour. Defendant No.1 received entire sale consideration of Rs.3,20,000/- at the time of execution of said agreement and receipt. He agreed to get the sale deed registered in favour of the plaintiff. The plaintiff issued legal notice dated 29.1.2007 and got his presence marked, but defendant No.1 did not come present and the plaintiff got attested the affidavit of presence on 7.2.2007. The plaintiff was ready and willing to perform his part of contract, but defendants threatened to alienate the suit land and to dispossess the plaintiff. The defendant No.1 is alleged to have alienated the suit land in favour of Smt. Maksoodan wife of Aash Mohd resident of village Ghasera, vide registered sale deed No.1401 dated 20.6.2006, and mutation No.1220 dated 7.7.2006 has also been sanctioned. Hence, the suit with the prayer for declaring the same as null and void.

4. Notice of the suit was given to defendants. Defendants No.1 & 2 appeared and filed written statement taking various preliminary objections regarding locus-standi; collusion and bonafide purchaser. It has been asserted that the suit is collusive between the plaintiff and defendants No.1 & 2. On merits, it has been averred that defendant No.1 entered into an agreement to sell dated 21.2.2005 to

sell the suit land for a sale consideration of Rs.3,54,000/- out of which an amount of Rs.41,000/- was received by defendant No.1 from the defendant No.3 on 21.2.2005 as earnest money and part payment and balance sale consideration of Rs.3,15,000/- was paid by defendant No.3 to defendant No.1 at the time of execution and registration of the sale deed No.1401 dated 10.6.2006 and mutation No.1220 has also been sanctioned in favour of defendant No.3 and defendant No.3 is in actual cultivating possession of the suit land and is bonafide purchaser for valuable consideration without any notice and knowledge of alleged agreement to sell in favour of the plaintiff. Remaining averments were denied and dismissal of the suit was prayed for.

5. On the pleadings of the parties following issues were framed by learned lower Court :-

1. Whether the plaintiff is entitled to seek the relief of specific performance of contract in compliance of agreement dated 3.12.2005?OPP.
2. Whether the suit of the plaintiff is not maintainable? OPD.
3. Whether the plaintiff has no locus standi to file the present suit? OPD.
4. Whether the defendant No.3 is bonafide purchaser and protected u/s 41 of the Transfer of Property Act? OPD
5. Whether the plaintiff is estopped from filing the present suit by his own act and conduct etc?OPD
6. Whether the suit is based upon false and frivolous as well as ante dated agreement to sell?OPD
7. Whether the plaintiff has not come to the Court with clean hands?OPD
8. Whether the plaint is liable to be rejected as the same is not in conformity with the provisions of CPC?OPD
9. Relief.

6. Both the parties led their evidence, oral as well as documentary, in support of their respective claims.

7. After having heard the rival contentions advanced by learned counsel for both the parties and going through the case file, the learned lower Court decided issue No.1 & 2 against the plaintiff, while issue No.3 & 8 were decided in favour of plaintiff and ultimately, the suit filed by the plaintiff was dismissed vide impugned judgment and decree as mentioned above.

8. Feeling dis-satisfied with the impugned judgment and decree, the defendant No.1-Aash Mohammad as well as plaintiff-Yusuf have preferred the present appeals.

9. I have heard the learned counsel for both the parties and have gone through the case file carefully.

10. In appeal titled as **"Yunus Vs. Aash Mohammad & Ors"** learned counsel for the plaintiff submitted that plaintiff has proved the agreement to sell dated 3.12.2005 Ex-P1 and receipt of even date Ex-P2 by examination of plaintiff as PW1 and evidence of the attesting witness Fateh Mohd as PW2 and Rehmu as PW3 along with scribe Sh.Om Parkash Advocate as PW5 and another witness Dharambir as PW5 and Aash Mohammad defendant No.2 as PW6, and Ranjeet Singh as PW7. He submitted that other documents in the form of documentary evidence are the affidavit of presence as Ex-P3, postal receipts along with legal notice Ex-P4 & Ex-P5, Fard Jamabandi, Khasra Girdawari, mutation No.1220, restoration application along with its order of other case from Ex-P6 to Ex-P8 and Ex-PX Ex-PY respectively, were proved in favour of the plaintiff. However, DWs

could not prove Power of Attorney Ex-D1, agreement to sell dated 21.2.2005 Ex-D2, receipt dated 21.2.2015 Ex-D3, sale deed No.1987 dated 22.1.2012, and sale deed No.6 dated 2.4.2002 DW1/2 in any manner. It was further submitted that the DWs also admitted the above said documents Ex-D1 to Ex-D13 to be fraudulent and bogus. The DWs also admitted the possession of the plaintiff, in the cross-examination. Moreover, the contesting defendant No.3 was also not produced in the witness box which was mandatory according to law of Hon'ble Supreme Court.

11. The documents Ex-D2 and Ex-D3 were blurred and damaged fraudulently so far as the thumb impressions of executant defendant No.1 was concerned. No explanation with regard to the above said act of damaging the thumb impression was given in the evidence as well as in the pleadings. Learned lower Court has clearly observed and given findings about Ex-D2 and Ex-D3 in para No.36 of its judgment that the same are fraudulent and bogus one and also were tampered and suggesting the thumb impression qua defendant No.1 to be tampered and damaged.

12. It was further submitted that learned lower Court has held that the alleged agreement and receipts were prepared fraudulently by defendant No.3 being in collusion with other person in the back date and it was not proved by defendant No.3. It was fraudulent attempt to defeat the agreement of the plaintiff which is legal and valid in favour of the plaintiff. The defendant No.3 or any person in the world including officer of the lower Court could not question about the financial capacity of the plaintiff. The fraudulent documents Ex-D2

and Ex-D3 were not mentioned in the bogus sale deed dated 20.6.2006, because the same were not in possession of the defendant No.3 and accordingly the same were not enclosed with the written statement and the same were produced for the first time at the time of the defendant No.3. It was further submitted that defendant No.3 clearly admitted the possession of the plaintiff over the suit land. The defendant No.1 has clearly admitted the plaintiff to be as owner in possession over the suit land on the basis of agreement to sell dated 3.12.2005 Ex-P1 and receipt dated 3.12.2005 Ex-P2, while filing the appeal against the said judgment and decree dated 28.2.2013 passed by learned lower Court.

13. In appeal titled as "**Aash Mohammad Vs. Maksoodan**" Sh. Tayyub Hussain, learned counsel for the appellant/defendant No.1 Aash Mohammad has contended that he recently came to know on 14.3.2013 when he came to meet his brother Deen Mohammad in village Ghasera, Tahsil Nuh, where the respondent No.1/defendant No.3 along with her husband declared that they defeated Yunus son of Parmal and appellant in the case titled as Yunus Vs. Aash Mohammad, in which they prepared the bogus agreement dated 21.2.2005 and prepared fraudulent sale deed on his behalf dated 20.6.2006. However, it is a matter of fact that defendant No.1 executed agreement to sell dated 3.12.2005 and its receipt Ex-P1 and Ex-P2 in favour of plaintiff Yunus son of Parmal. He submitted that defendant admits the above said Yunus to be full fledged owner in possession of the suit land on the basis of agreement dated 3.12.2005 and its receipt Ex-P1 and Ex-P2, who is still owner in possession of the suit land. However, no

summon came to him and publication never came to him on his address at Nagpur and appellant is also an illiterate person. It was further submitted that appellant never executed agreement dated 21.2.2005 and its receipts Ex-D2 and Ex-D3 and never put his thumb impressions upon the same. Both the above said documents Ex-D2 and Ex-D3 are forged and bogus documents. He never got registered the sale deed dated 20.6.2006 Ex-D4 in favour of defendant No.3 Smt. Maksoodan at any point of time. The defendant No.1 had come in Tahsil compound for the purpose of KCC loan and defendant No.3 Maksoodan and her husband might have succeeded in preparing the alleged bogus, fraudulent and forged sale deed dated 20.6.2006 in their favour under the aforesaid fraudulent circumstances. However, the defendant No.1 never took any sale consideration from defendant No.3, on the basis of alleged documents Ex-D2 to Ex-D4 in any manner. It was prayed that appeal may kindly be accepted and ex-parte judgment and decree may kindly be set aside.

14. On the other hand, learned counsel for defendant No.3 submitted that so far as defendant No.1 is concerned, he has colluded with the plaintiff and this fact is further proved by the fact that defendant No.1 has also filed the appeal praying that the appeal be accepted, whereas no relief was granted against defendant No.1. Therefore, it was submitted that appeal filed by defendant No.1 is not maintainable, because he has failed to prove any grievance by the impugned judgment and decree. Learned counsel for defendant No.3 submitted that learned trial Court has rightly dismissed the suit of the plaintiff because the agreement to sell and receipt dated 3.12.2005 Ex-

P1 and Ex-P2 are ante dated just to defeat the legal rights of defendant No.2 over the suit land. It has been submitted that though it has been claimed in the suit that on the date of execution of agreement to sell Ex-P1 on 3.12.2005 whole sale consideration of Rs.3,20,000/- was paid by the defendant to the plaintiff and possession of the suit land was also delivered to the plaintiff. But when whole sale consideration has been paid by the vendee and possession has also been delivered by the vendor to the vendee, nothing remained to be done and therefore, there was no reason not to execute the sale deed in favour of the plaintiff on the date of agreement to sell itself or withing a week or so. Therefore, this fact by itself proves that agreement to sell Ex-P1 and receipt Ex-P2 were forged and prepared ante dated just to cause loss to the defendant No.3 who is bonafide purchaser. It was also submitted that since as per the pleaded case of the plaintiff whole sale consideration was paid at the time of agreement to sell Ex-P1 dated 3.12.2005 to defendant No.1 and defendant No.2 delivered the possession of the suit land to the plaintiff and therefore, same requires compulsory registration in view of the provisions of Section 53-A of Transfer of Property Act,1882 read with Section 17 (1) (a) of the Registration Act,1908. It was submitted that since agreement to sell dated 3.12.2005 Ex-P1 was not registered and therefore, it cannot be read in evidence under Section 35 of Indian Stamp Act,1899.

15. The contention of learned counsel for defendant No.3 carries weight because till date the plaintiff is claiming possession over the suit land since the date of execution of agreement to sell dated 3.12.2005 Ex-P1. However, defendant has proved on record the

Jamabandi for the year 2007-2008 which shows that Smt. Maksoodan is owner as well as in possession of the suit land. Khasra Girdawari of the year 2012 Ex-D13 also shows the same position that it is defendant No.3 who is owner in possession of the suit land. Had the plaintiff been in possession of the suit land from the date of aforesaid agreement to sell Ex-P1, at least Khasra Girdawari should have been continued in his name and if it was not in his name he could have got it corrected by moving an application to the revenue authorities, but nothing of the sort has been done on this case. Therefore, claim of the plaintiff that he is in possession of the suit land since the date of agreement to sell, is not legally tenable and this fact proves that agreement to sell Ex-P1 and receipt dated 3.12.2005 Ex-P2 have been prepared ante-dated just to defeat the right of defendant No.3 in whose favour defendant No.2 had already executed the sale deed of the suit land on 20.6.2006 vide Ex-D4.

16. The fact that agreement to sell Ex-P1 and Ex-P2 has been prepared ante dated has been proved by the fact that the plaintiff as well as defendant Aash Mohammad are resident of village Ghasera. However, agreement to sell Ex-P1 shows that stamp paper was purchased from Palwal and it was also got scribed at Palwal from Om Parkash Saini Advocate. No reason has been given as to why the aforesaid agreement to sell Ex-P1 and receipt Ex-P2 was scribed at Palwal despite the fact that both vendor and vendee are residents of Tahsil Nuh. Yunus, in his cross-examination, has also admitted that village Sugarpur where the suit land is situated falls in Tahsil Nuh, but he got the agreement to sell scribed at Palwal. He admitted that there

are many document writers in Nuh, but self stated that there are also many at Palwal. However, he stated that since the vendor was resident of Palwal, therefore, it was got scribed at Palwal. However, he stated that it was not mentioned in the agreement that Aash Mohammad is resident of Palwal, but it was got written at Ghasera. No evidence has been lead on the file by the plaintiff or defendant No.1 that vendor was resident of Palwal or has any connection with Palwal.

17. Our Hon'ble High Court in case titled as **Haroon Vs. Ismail & Ors RSA No.4063 of 2011 (O&M)**, has observed that the alleged agreement is neither registered nor scribed by a regular deed writer. Land in dispute is situated within the revenue estate of village Godhula, Tahsil Punhana, therefore, in the ordinary course, the agreement should have been scribed either at village Godhula or in the Tahsil Office. But in the present case, the stamp paper was purchased from village Tauru, whereas the agreement was executed at Nuh. No proper explanation is coming forth as to why defendant No.3 entered into a transaction while deviating from the normal course, when he was to part with such a huge amount. Why it was not got recorded from the deed writer and presented before the Sub-Registrar for its registration. It was further observed that thus, the inference would be drawn that the agreement was manipulated later on by defendant No.3 in connivance with defendant No.1 with an intention to protect the subsequent sale made by defendant No.1 in favour of defendant No.3 and to grab the money paid by the plaintiff to defendant No.1. In the case in hand, the circumstances are like this only, as discussed above.

18. Of course, our Hon'ble High Court in case titled as

Nirmal Singh Vs. Mangal Singh & Ors 2002 (2) PLR 46 (P&H),

has observed that when agreement to sell was not scribed by a professional scribe, rather it was typed by some typist and no stamp vendor was produced who could state about the date when this stamp was sold, hence, onus was not discharged and he could discharge this onus by producing the typist who typed out this agreement and he could produce the stamp vendor who sold the stamp on which the agreement alleged was scribed.

However, there is no dispute about the fact that the onus can be discharged by producing the typist who typed out the agreement and the stamp vendor who sold the stamp on which the agreement was scribed. But in the case in hand, the circumstances are different. Both vendor and vendee are residents of the same village having no connection with Palwal. Stamp for agreement Ex-P1 and Ex-P2 was purchased from Palwal. It was scribed by Advocate at Palwal who was not regular scribe. Therefore, in that view of the matter, the aforesaid agreement to sell Ex-P1 and receipt seems to be ante dated.

Moreover, it is the pleaded case of the plaintiff that whole sale consideration was paid and possession of the suit land was delivered to the plaintiff by the vendor on the date of agreement to sell dated 3.12.2005 Ex-P1.

19. Section 53-A of Transfer of Property Act, 1882, reads as under:-

53-A. Part performance.—Where any person contracts to transfer for consideration any immovable property by writing signed by him or on his behalf from which the terms

necessary to constitute the transfer can be ascertained with reasonable certainty,

and the transferee has, in part performance of the contract, taken possession of the property or any part thereof, or the transferee, being already in possession, continues in possession in part performance of the contract and has done some act in furtherance of the contract,

and the transferee has performed or is willing to perform his part of the contract,

then, notwithstanding that [* * *] where there is an instrument of transfer, that the transfer has not been completed in the manner prescribed therefor by the law for the time being in force, the transferor or any person claiming under him shall be debarred from enforcing against the transferee and persons claiming under him any right in respect of the property of which the transferee has taken or continued in possession, other than a right expressly provided by the terms of the contract:

Provided that nothing in this section shall affect the rights of a transferee for consideration who has no notice of the contract or of the part performance thereof.

20. Section 17 (1) (a) of the Registration Act, 1908, reads as under:-

17. Documents of which registration is compulsory.—(1)

The following documents shall be registered, if the property to which they relate is situate in a district in which, and if they have been executed on or after the date on which, Act XVI of 1864, or the Indian Registration Act, 1866, or the Indian Registration Act, 1871, or the Indian Registration Act, 1877, or this Act came or comes into force, namely,—

(a) instruments of gift of immovable property;

(b).....

(1-A) The documents containing contracts to transfer for consideration, any immovable property for the purpose of section 53-A of the Transfer of Property Act, 1882, shall be registered if they have been executed on or after the commencement of the Registration and Other Related Laws (Amendment) Act, 2001, and if such documents are not registered on or after such commencement then, they shall have no effect for the purposes of the said section 53-A.

21. Hon'ble Delhi High Court in case titled as **Ajit Singh Vs. Vinod Kumar & Ors 2014 (2) Civil Court Cases 554 (Delhi) (DB)**

has observed that if a document of the type mentioned in Section 53-A

of Transfer of Property Act, 1882, is not registered, the transferee will not be able to take benefit of the provisions of Section 53-A. It has been further observed that it does not mean that such a document does not require to be compulsorily registered.

22. Further reference in this regard can be made to the case titled as **Avinash Kumar Chauhan Vs. Vijay Krishna Mishra 2009 (1) RCR (Civil) 615 (SC)**.

23. Since in the case in hand, the agreement to sell is an unregistered document, therefore, the same is not admissible in evidence. Therefore, in this view of the matter, the impugned judgment and decree cannot be set-aside.

24. The defendant No.1 Aash Mohammad has also prayed that the impugned judgment be set-aside and appeal be accepted. He has prayed that Maksoodan and her husband might have succeeded in preparing the alleged bogus, fraudulent and forged sale deed dated 20.6.2006 in their favour in the above said fraudulent situation i.e. when he had come in Tahsil premises for the purpose of KCC loan. However, till date, the defendant No.1 has not filed any suit for declaration that the aforesaid sale deed has been obtained by them with fraud, therefore, the same be declared illegal, null and void. Had it been so, he must have filed a suit for declaration that the aforesaid sale deed is false. She must have contested the aforesaid suit in which he is already ex-parte. Therefore, filing this appeal by defendant No.1 itself shows that he has colluded with the plaintiff for extraneous consideration and factually he cannot be said to be aggrieved with the judgment and decree because no relief has been granted against him.

25. No other contention was raised.

26. In view of the above discussion, both the appeals are hereby dismissed with costs. Decree-sheet be drawn accordingly and file be consigned to record room after due compliance. Lower Court record be sent back along with copy of judgment. Copy of this judgment be also place on the connected file.

Announced in open Court.

(H.S. Dahiya)
Additional District Judge,
Mewat. 16.3.2015.

Note: All the pages of this judgment have been
duly checked and signed by me.

(H.S. Dahiya)
Additional District Judge,
Mewat. 16.3.2015.

Present: Sh. Sh. Tayyub Hussain, Counsel for Appellant.
Sh. B.S. Rao, Counsel for Respondent No.1.
Sh. K. L. Sharma, Counsel for Respondent No.2.
Sh. Abdul Rehman, Counsel for Respondent No.3.

Learned counsel for both the parties jointly requested at bar to consolidate Civil Appeal No.625 of 2013 titled as Aash Mohd Vs. Kamsoodan, and Civil Appeal No.473 of 2013 titled as Yunus Vs. Aash Mohd. It is stated since both the civil appeals arise out of one and the same judgment dated 28.2.2013 passed by learned lower Court, accordingly these civil appeals are sought to be consolidated in order to avoid passing of conflicting judgments. In the interest of Justice, lest a conflicting judgment is passed by way of two separate judgments, it is imperative in the interest of Justice to consolidate both the aforesaid Civil Appeals which are pending for today in this Court, it is hereby ordered to be consolidated in this main Civil appeal No.625 dated 22.3.2013 titled as Aash Mohd Vs. Maksoodan & Ors. Henceforth, proceeding will be initiated in the main petition titled as Aash Mohd Vs. Maksoodan.

Arguments heard. To come up 16.3.2015, for orders.

(H.S. Dahiya)
ADJ/Mewat. 13.3.2015

Present: Sh. Sh. Tayyub Hussain, Counsel for Appellant.
Sh. B.S. Rao, Counsel for Respondent No.1.
Sh. K. L. Sharma, Counsel for Respondent No.2.
Sh. Abdul Rehman, Counsel for Respondent No.3.

Judgment pronounced. Vide my common judgment of even date, both the appeals bearing No.625 of 2013 titled Aash Mohammad Vs. Maksoodan & Ors, and appeal No.473 of 2013 titled as Yunus Vs. Aash Mohd, have been dismissed with costs. Decree-sheet be drawn accordingly and file be consigned to record room after due compliance. Lower Court record be sent back along with copy of judgment. Copy of this judgment be also place on the connected file.

Announced in open Court.

(H. S. Dahiya)
Additional District Judge,
Mewat. 16.3.2015

Present: Sh. Sh. Tayyub Hussain, Counsel for Appellant.
Sh. B.S. Rao, Counsel for Respondent No.1.

Sh. K. L. Sharma, Counsel for Respondent No.2.
Sh. Abdul Rehman, Counsel for Respondent No.3.

This appeal has been consolidated with main case bearing Civil Appeal No.625 of 2013 titled as Aash Mohd Vs. Maksoodan.

Arguments on the application for additional evidence heard. Vide my separate detailed order of even date, the application for additional evidence, has been dismissed.

Arguments on appeal heard. To come up after lunch for orders.

(H.S. Dahiya)
ADJ/Mewat. 16.3.2015

Present: Sh. Sh. Tayyub Hussain, Counsel for Appellant.
Sh. B.S. Rao, Counsel for Respondent No.1.
Sh. K. L. Sharma, Counsel for Respondent No.2.
Sh. Abdul Rehman, Counsel for Respondent No.3.

Vide my common judgment of even date, passed in Civil Appeal No.625 of 2013 titled as Aash Mohammad Vs. Maksoodan etc, this appeal has been dismissed with costs. Decree-sheet be drawn accordingly and file be consigned to record room after due compliance.

Announced in open Court.

(H. S. Dahiya)
Additional District Judge,
Mewat. 16.3.2015

Present: Sh. Sh. K.L.Sharma, Counsel for Applicant-Yunus.
Sh. B.S. Rao, Counsel for Respondent-Smt.Maksoodan.

ORDER:

This order shall dispose of an application for additional evidence file by applicant-Yunus.

2. It is averred that the defendant/respondent Smt. Maksoodan did not appear in the witness box in the learned trial Court as she was the contesting defendant. However, defendant No.3 through her special Power of Attorney (here husband) appeared in the lower Court as PW5 and admitted the possession of appellant/plaintiff over the suit land. It was further averred that learned trial Court has held that the alleged agreement and alleged receipt Ex-D2 and Ex-D3 were totally damaged and blurred fraudulently and the same could not be taken into as evidence in favour of defendant No.3 and were also held to be bogus and not proved in favour of defendant No.3. Moreover, the scribe/Advocate from Gurgaon about agreement Ex-D2 and Ex-D3 has made contradictory statement that the same were not got typed by him. The fraudulent picture of defendant No.3 and her husband along with her witnesses regarding the alleged sale deed dated 20.6.2006 can be proved only by this fact that the said sale deed is bearing the photographs of one Sher Mohd son of Chhatar Khan R/o Village Devla Nangli, Tahsil Nuh, as attesting witness of the same, but in fact some other person namely Jamil Son of Chhatar Khan put his thumb impression upon this alleged bogus sale deed dated 20.6.2006. Defendant Aash Mohd Son of Shadi has also filed appeal wherein all the above said fraudulent ats on behalf of defendant No.3 have been narrated. He has filed a criminal complaint under Section 420, 467 of

IPC against defendant No.3 and her husband and alleged witnesses of her documents have also given statement as witnesses in the Court, by which all the documents of defendant No.3 are proved to be bogus and fraudulent. It was submitted that above said documents have been obtained during the pendency of appeal. Therefore, aforesaid evidence are necessary to be adduced in favour of appellant by way of additional evidence.

3. On notice, learned counsel for the respondents No.3 filed reply contesting the application on the ground that application is false and frivolous and is misconceived and is not maintainable at all. The Appellant and Aash Mohammad the vendor are colluding with each other since prior to filing the suit against which the present appeal has been preferred. They have been illegally creating documents to produce false and frivolous evidence to illegally defeat the rights of the purchaser. They have been fabricating and manufacturing false and fictitious documents simply to hard and injure the answering respondent. Their collusion is evident by the fact that Ash Mohd vendor against whom the suit of Yunus plaintiff has been dismissed has preferred separate appeal against the judgment and decree dated 28.2.2013. It was, therefore, prayed that the application be dismissed.

4. I have heard both the learned counsel for the parties and have gone through the case file very carefully.

5. Learned counsel for the plaintiff has also relied upon the case titled as **Ram Niwas Vs. Kalu Ram & Anr 2012 (4) RCR (Civil) 56 (P&H)**, wherein our Hon'ble High Court has observed that if the Court finds that the documents sought to be produced in

additional evidence are relevant to decide the real issue in controversy and further the Court feels that interest of justice requires that the documents may be received and the kind of documents are such, the authenticity of which cannot be disputed, the same be allowed to be produced in additional evidence. However, the aforesaid documents are not relevant to decide the present controversy because in the case in hand, the point for determination is as to whether the plaintiff has been able to prove the execution of agreement to sell Ex-P1 and receipt Ex-P2, before the agreement to sell set up by defendant No.3 or as to whether the agreement to sell Ex-P1 and receipt Ex-P2 are forged and ante dated to defeat the rights of defendant No.3. As already discussed above, the aforesaid agreement to sell Ex-P1 and receipt Ex-P2 are prima facie ante dated and therefore, production of the aforesaid documents would not help the Court in deciding the present controversy.

6. Apart from it, the impugned sale deed in favour of defendant No.3 cannot be set-aside because no evidence has been brought on the file by the plaintiff to prove that defendant No.3 had notice regarding execution of agreement to sell Ex-P1 and receipt Ex-P2 by defendant No.2 in favour of the plaintiff. Moreover, the aforesaid agreement to sell is not registered. The sale deed in favour of defendant No.3 is a registered document containing the averments that he has purchased the suit property after paying sale consideration. Therefore, defendant No.3 is also bonafide purchaser of the suit land for consideration.

7. Hence, in view of the above discussion, the application

being devoid of merits, is dismissed.

(H.S. Dahiya)
MACT, Mewat.
16.3.2015.