



2025:PHHC:113595

RSA-3717-2023(O&M)

2025:PHHC:113595



127

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-3717-2023 (O&M)
Reserved on 27.05.2025
Pronounced on : 25.08.2025

Bhola Ram (deceased) thr. LRs

....Appellants/Plaintiffs

Versus

Saroj & ors.

....Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present:- Mr. Shailendra Jain, Sr. Advocate with
Mr. Munish Kumar, Advocate and
Mr. Rahul, Advocate for the appellants.

Mr. Alok Jain, Advocate
for respondents No.1 & 2/caveator.

PANKAJ JAIN, J.

1 LRs of plaintiff are in second appeal. For convenience parties hereinafter are referred to by their original position in the suit, i.e. the appellant as plaintiff and respondents as defendants.

2 Plaintiff filed suit seeking decree of specific performance qua agreement to sell dated 25.03.2011 executed in his favour by defendant No.1 Hazari @ Lakhinath. As per plaintiff defendant No.1 agreed to sell suit land measuring 46K-17M in his favour for a sum of Rs.43,92,187/-. Further challenge is to the release deed bearing document No.507 dated 19.04.2011 executed by defendant No.1 in favour of his daughters, defendants No.2 & 3.

3 As per the plaintiff, defendant No.1 agreed to sell suit land measuring 46K-17M in favour of deceased-plaintiff Bhola Ram for a total sale consideration of Rs.43,92,187/-. At the time of execution of the written



agreement to sell, plaintiff paid entire amount of Rs.43,00,000/- as earnest money to defendant No.1 who agreed to execute the sale deed in favour of the plaintiff on or before 30.05.2011. Plaintiff claims that he always remained ready and willing to perform his part of the contract, but defendant No.1 in connivance with defendants No.2 & 3 executed a release deed No.507 dated 19.04.2011 relinquishing his rights in the suit land. Release deed has been executed with intent to defeat the rights of the plaintiff.

4 After the plaintiff came to know of the release deed, a legal notice was served on defendant No.1 calling him to perform his part of contract. Defendant No.1 instead of performing his part, left the village and started living in Ganga Naagar, Rajasthan under the name of Lakhinath. Plaintiff seeks decree of specific performance.

5 Defendant No.1 filed written statement wherein he admitted execution of agreement to sell dated 25.03.2011 and receipt of Rs.43,00,000/-. He however claimed that the said amount was handed over by him to his daughters i.e. defendants No.2 & 3. He however claimed that defendants No.2 & 3 and their husbands threatened to kill him and got release deed dated 19.04.2011 executed by him under force.

6 Defendants No.2 & 3 filed separate written statement disputing the agreement to sell to be forged and fabricated and supported release deed in their favour.

7 On the basis of the pleadings, the Court of the First Instance framed following issues :-

“1. Whether the plaintiff is entitled to specific performance? OPP



2. Whether plaintiff is entitled to decree of declaration to the release deed no.507 are illegal, null and void are liable to be set aside? OPP

3. Whether the present suit is not maintainable in the present form? OPD

4. Whether plaintiff has no locus standi and no cause of action to file present suit? OPD

5. Whether the agreement to sell dated 25.3.2011 is illegal, null and void and a result of fraud? OPD

6. Relief.”

8 On the basis of the admission made by defendant No.1, the Court of the First Instance found that since execution of agreement to sell and receipt of earnest money stands admitted, the plaintiff is entitled to the main relief of specific performance. The Court of First Instance found that defendants No.2 & 3 having failed to lead any cogent evidence to prove that the agreement to sell dated 25.03.2011 Ex.PW3/B was result of fraud and misrepresentation, their defence cannot be accepted.

9 Dissatisfied defendants preferred appeal. Learned Lower Appellate Court found that the defence of defendants No.2 & 3 was more plausible and the same weighed more heavily with the Court as compared to admission made by defendant No.1. As per defendants No.2 & 3, plaintiff is none else but brother-in-law of defendant No.1. Defendant No.1 had no male issue and his brothers and nephews repeatedly tried to deprive his daughters i.e. defendants No.2 & 3 of the property. Earlier, Sombir-Nephew of defendant No.1 got WILL executed from defendant No.1 in his favour playing fraud qua suit property in the year 2004. When this fact came to the knowledge of defendant No.1, he executed registered lease deed dated 19.04.2011 in favour



of defendants No.2 & 3. After execution of a registered lease deed in favour of daughters, brothers of defendant No.1 namely Rohtash, Mahender and Phul Singh colluded with their brother-in-law-plaintiff -Bhola Ram. They procured ante-dated disputed agreement to sell dated 25.03.2011 pressurizing defendant No.1-Hazari @ Lakhinath and filed admitted written statement on his behalf misusing blank signed papers of Hazari @ Lakhinath.

10 The Lower Appellate Court accordingly held that admission on part of defendant No.1 qua execution of agreement to sell and receipt of earnest money is inconsequential. While analyzing the other evidence on record Lower Appellate Court found that the plaintiff failed to prove execution of agreement to sell. Agreement to sell was executed on papers bearing adhesive stamps. As per plaintiff the same was purchased from Rajbir Singh Tada, Stamp vendor. He appeared as PW2. Register was withheld from the Court. The Stamp vendor only produced attested copy of one page Ex.P4. There was no entry regarding the purpose for which the stamp paper was purchased. Lower Appellate Court further found that Ex.P4 shows blank spaces left after entry No.3871/166 and entry No.3872/166 which was fatal to the case of the plaintiff.

11 Lower Appellate Court further found that PW3-Vijay Singh son of the plaintiff is one of the attesting witnesses to Agreement to Sell. He failed to disclose the name of the scribe. He admitted that defendant No.1-Hazari @ Lakhinath did not sign in his presence. Lower Appellate Court further relied upon the testimony of PW4B-Jeevan, Namberdar. He admitted that at the time disputed agreement to sell was executed at the house of plaintiff only Rs.20/- was given to defendant No.1-Hazari @ Lakhinath. Even PW4 Shish Ram



Notary Public, Loharu who attested the disputed agreement to sell on identification of PW4B-Jeevan, Namberdar also admitted that no earnest money was paid in his presence. Learned Lower Appellate Court accordingly reversed the findings recorded by the Trial Court and dismissed the suit filed by the plaintiff seeking decree of specific performance.

12 Learned senior counsel appearing for the plaintiff submits that the learned Lower Appellate Court erred in reversing the findings recorded by the Court of the First Instance. It is a case wherein the executant of the agreement to sell, defendant No.1, admitted not only execution of the agreement to sell, but also receipt of earnest money. He further submits that Suman, DW1, admitted in her cross examination that she made a complaint dated 30.06.2011 to the police regarding fabrication of the agreement to sell, but the same was later withdrawn when defendant No.1 came to know of the same. He thus submits that once the executant has admitted agreement to sell and the receipt of earnest money, the Court of the First Instance rightly granted decree of specific performance in favour of the plaintiff and the Lower Appellate Court ought not have reversed the same.

13 *Per contra*, Mr. Alok Jain, Advocate for respondents No.1 & 2/caveator submits that it is a case wherein plaintiff along with other relatives of defendant No.1 made an attempt to rob the daughters of defendant No.1 viz. defendants No.2 & 3 of their right to property by forging and fabricating an agreement to sell which was without consideration. He submits that an ante-dated agreement to sell was prepared by plaintiff with the aid of brothers of defendant No.1 by influencing defendant No.1 to annul the release deed executed by defendant No.1 in favour of his daughters- defendants No.2 & 3.



14 I have heard learned counsel for the parties and have gone through the records of the case.

15 From the records, it is discernible that defendant No.1 left his property and became hermit about 25-30 years ago. Plaintiff claims agreement to sell executed in his favour by defendant No.1. Defendant No.1 has supported the case of plaintiff. Learned senior counsel has relied upon admission made by defendant No.1. Admissions made in *lis* are governed by Section 58 of the Indian Evidence Act, 1872 (for short 'the 1872 Act') which reads as under :-

Section 58. Facts admitted need not be proved.

No fact need be proved in any proceeding which the parties thereto or their agents agree to admit at the hearing, or which, before the hearing, they agree to admit by any writing under their hands, or which by any rule of pleading in force at the time they are deemed to have admitted by their pleadings:

Provided that the Court may, in its discretion, require the facts admitted to be proved otherwise than by such admissions."

16 Supreme Court in the case of **Arjun Khiamal Makhijani V. Jamnadas C. Tuliani, (1989) 4 SCC 612** observed as under :-

"16. In so far as the submission that the landlord was bound by his admission in the pleading is concerned, it is true that such an admission being a judicial admission under Section 58 of the Evidence Act stands on a higher footing than evidentiary admissions as held by this Court in Nagin- das Ramdas v. Dalpatram Ichharam, [1974] 1 SCC page 242 but on the facts of the instant case to which reference shall be shortly made, it is the proviso to Section 58 which comes into play and the rights of the parties had to be determined de hors the said admission. The said proviso contemplates that the Court may in its discretion require the facts admitted to be proved otherwise than by such admissions."



17 The same view was reiterated in ***Balraj Taneja Vs. Sunil Madan, (1999) 8 SCC 396*** observing as under :-

25. *Thus, in spite of admission of a fact having been made by a party to the suit, the Court may still require the plaintiff to prove the fact which has been admitted by the defendant. This is also in consonance with the provisions of Section 58 of the Evidence Act which provides as under :*

"58. Facts admitted need not be proved - No fact need be proved in any proceeding which the parties thereto or their agents agree to admit at the hearing, or which, before the hearing, they agree to admit by any writing under their hands, or which by any rule of pleading in force at the time they are deemed to have admitted by their pleadings:

Provided that the Court may, in its discretion, require the facts admitted to be proved otherwise than by such admissions."

26. *The Proviso to this Section specifically gives a discretion to the Court to require the facts admitted to be proved otherwise than by such admission. The Proviso corresponds to the Proviso to Rule 5(1) Order 8 CPC.*

27. *In view of the above, it is clear that the Court, at no stage, can act blindly or mechanically. While enabling the Court to pronounce judgment in a situation where no Written Statement is filed by the defendant, the Court has also been given the discretion to pass such order as it may think fit as an alternative. This is also the position under Order 8 Rule 10 CPC where the Court can either pronounce judgment against the defendant or pass such order as it may think fit.*

28. *Having regard to the provisions of Order 12 Rule 6; Order 5 Rule 8, specially Proviso thereto; as also Section 58 of the Evidence Act, this Court in Razia Begum's case (supra) observed as under :*

"In this connection, our attention was called to the provisions of R.6 of O.12 of the Code of Civil Procedure, which lays down that, upon such admissions as have been made by the Prince in this case, the Court would give judgment for the plaintiff. These



provisions have got to be read along with R.5 of O.8 of the Code with particular reference to the proviso which is in these terms:

"Provided that the Court may in its discretion require any fact so admitted to be proved otherwise than by such admission".

The proviso quoted above, is identical with the proviso to S. 58 of the Evidence Act, which lays down that facts admitted need not be proved. Reading all these provisions together, it is manifest that the Court is not bound to grant the declarations prayed for, even though the facts alleged in the plaint, may have been admitted."

18 Supreme Court in the case of **Jagdish Prasad Patel V. Shivnath (2019) 6 SCC 82** upheld the discretion of the Court, as contemplated under proviso to Section 58 of the 1872 Act observing as under :-

"15. Section 58 of the Evidence Act, no doubt, postulates that the things admitted need not be proved. However, proviso to Section 58 of the Evidence Act gives full discretion to the court to require the facts admitted to be proved otherwise than by such admission."

19 The same view was reiterated in **Bhagwat Sharan V. Purushottam, (2020) 6 SCC 387** observing as under :-

22. In Nagubai Ammal and Ors. vs. B. Shama Rao (Nagubai Ammal V. B.Shama Rao, 1956 SCR 451: AIR 1956 SC 593) which is the locus classicus on the subject it was held as follows:-

"18. An admission is not conclusive as to the truth of the matters stated therein. It is only a piece of evidence, the weight to be attached to which must depend on the circumstances under which it is made. It can be shown to be erroneous or untrue, so long as the person to whom it was made has not acted upon it to his detriment, when it might become conclusive by way of estoppel."

xxx xxx xxx

[This view has been consistently followed by this Court in a large number of cases including Bharat Singh vs. Bhagirathi



1966 SCR (1) 606; Uttam Singh Duggal and Co. Ltd. vs. United Bank of India and Ors. (2000) 7 SCC 120; Himani Alloys Ltd. vs. Tata Steel Ltd. (2011) 15 SCC 273.”

Thus even though admission is a cogent piece of evidence but the same may not be treated as conclusive. Court may require party to prove his case dehors admission made by opposite party.

20 In the present case the indifference of defendant No.1 to the worldly acquisitions is evident from the fact that he renounced the world and became a hermit. As per frame of the suit the plaintiff not only seeks specific performance of agreement to sell but also seeks annulment of release deed executed by defendant No.1 in favour of defendants No.2 & 3. Thus defendants No.2 & 3 are within their right to contest the claim of the plaintiff. Mere admission on behalf of defendant No.1 cannot be treated as conclusive. Onus lies upon plaintiff to prove valid execution of agreement to sell propounded by him. He also needs to prove payment of earnest money.

21 An agreement to sell has been propounded by the plaintiff which is not on regular stamp paper, but is on a plain paper bearing adhesive stamp. Rajbir Singh Tada, Stamp Vendor who appeared as PW2, withheld register from the Court and produced only one page Ex.P4 containing entry *qua* sale of stamp paper in question. From the record produced, purpose for purchase of the stamp paper in issue cannot be ascertained. In terms of the Stamp Rules, Stamp vendor is required to enter in his register, the purpose for which the stamp paper is being purchased. Coming on to the attesting witnesses, learned Senior counsel appearing for the plaintiff does not dispute that neither of them proved that the earnest money was paid in their presence. Rather each of them



2025:PHHC:113595

RSA-3717-2023(O&M)

2025:PHHC:113595



admitted that no earnest money was paid in his presence. PW3 and PW4B further admitted that at the time defendant No.1 signed the agreement to sell, none of them were present. Thus agreement to sell could not be proved in terms of Section 68 of the 1872 Act.

22 During the course of arguments, learned Senior counsel appearing for the plaintiff was put a specific query regarding any evidence adduced qua source of earnest money of Rs.43,00,000/- claimed to have been paid by the plaintiff to defendant No.1 on 26.05.2025. To this, he sought adjournment. The matter was adjourned to 27.05.2025. On 27.05.2025 he fairly admitted that as per record there is no evidence to prove the source of Rs.43,00,000/- .

23 In view of above, this Court finds that once the attesting witnesses admit that no money was paid in their presence and there is no evidence on record to prove that the plaintiff was in possession of huge cash amount of Rs.43,00,000/-, the plaintiff failed to discharge onus to prove due execution of agreement to sell and payment of earnest money. Admission made by defendant No.1 thus has been rightly ignored by Lower Appellate Court to dismiss the suit reversing findings recorded by Trial Court.

24 In view of above, this Court finds no merit in the present appeal and the same is ordered to be dismissed.

25.08.2025

Pooja Sharma-I

Whether speaking/reasoned:
Whether reportable:

(PANKAJ JAIN)
JUDGE

Yes/No
Yes/No