



**IN THE HIGH COURT OF MADHYA PRADESH  
AT GWALIOR  
BEFORE**

**HON'BLE SHRI JUSTICE G. S. AHLUWALIA**

**ON THE 8<sup>th</sup> OF APRIL, 2025**

**SECOND APPEAL No. 2728 of 2024**

***SMT PREMBAI AND OTHERS***

*Versus*

***SURESH AND OTHERS***

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**Appearance:**

*Shri Naval Kumar Gupta – Senior Advocate with Shri Saket Sharma – Advocate for appellants.*

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**J U D G M E N T**

This Second Appeal, under Section 100 of CPC, has been filed against the judgment and decree dated 24.09.2024 passed by I District Judge, Shivpuri (M.P.) in RCA No.76/2022 by which judgment and decree dated 05.11.2022 passed by II Civil Judge, Junior Division Shivpuri, District Shivpuri (M.P.) in RCSA No.900028/2015 was set aside.

2. Appellants are the plaintiffs who have lost their case from the appellate court.

3. The facts necessary for disposal of this appeal, in short, are that original plaintiff, namely, late Ramjilal Hinwar, husband of appellant No.1 and father of appellants No.2 to 5, filed a suit for specific performance of contract. It is the case of plaintiff that late Parsadilal Ojha who was the father of defendants No.1 to 5



has expired on 13.06.2013 whereas his widow, namely, Smt. Narayani has expired on 27.10.2015. It is the case of plaintiff that defendants are in possession of the property in dispute being legal representatives of Parsadilal Ojha and Smt. Narayani. It is alleged that Parsadilal Ojha had executed an agreement to sell on 22.03.2011 thereby agreeing to alienate the property in dispute for consideration amount of Rs.Three Lacs. The aforesaid property was purchased by Parsadilal Ojha by registered sale deed dated 05.07.1989. The name of Parsadilal Ojha was also mutated in the revenue records. It was alleged that Parsadilal Ojha had put his signature along with plaintiff and plaintiff witnesses. The last date for executing the sale deed was fixed as 22.03.2012 but Parsadilal Ojha prayed for extension of time to execute the sale deed on the pretext that he could not obtain NOC from Municipal Council, Shivpuri. Accordingly, last date for execution of sale deed was fixed as 16.11.2012. The aforesaid note appended to the agreement to sell was signed by Parsadilal Ojha as well as plaintiff and his two witnesses. The plaintiff had verbally requested Parsadilal Ojha to execute the sale deed but he always avoided to do the same. On 16.11.2012, plaintiff had informed Parsadilal Ojha that he is ready to execute the sale deed on that day itself as his father Nathuram Hinwar has agreed to give an amount of Rs.2,50,000/- as well as stamp duty and other allied expenses. However, Parsadilal Ojha did not reach the office of Sub-Registrar for execution of sale deed, although plaintiff had remained present at office of sub-Registrar from 11 am to 05 pm. Accordingly, on 16.11.2012 plaintiff filed an application before the Sub-Registrar, Shivpuri. After returning back from the office of Sub-Registrar, plaintiff again made a request to Parsadilal to execute the sale deed but once again it was avoided by Parsadilal on the pretext that Municipal Council, Shivpuri has not granted NOC and he would execute the sale deed as soon as NOC is granted. It was alleged that thereafter Parsadilal Ojha expired on 13.06.2013 and defendants are in possession of the



property in dispute. When agreement to sell was shown to defendants then they assured that immediately after receiving NOC from Municipal Council, they will execute the sale deed, however, defendants are not ready to execute the sale deed whereas plaintiff was ready and willing to perform his part of contract. When plaintiff repeatedly requested defendants then Narayani informed that defendants No. 1 to 4 are going to purchase the property of Kamta Prajapati and immediately thereafter they would execute the sale deed but Narayani and defendants No.1 to 4 did not purchase the property of Kamta Prajapati and accordingly a notice was sent by plaintiff by registered post on 02.10.2015 but defendants and Narayani gave a wrong reply to the said notice. Narayani has also expired on 27.10.2015. Even on 06.11.2015 during *Trayodashi* rites of Narayani, plaintiff had requested the defendants to execute the sale deed but they have not executed the sale deed and accordingly suit was filed.

4. Defendants filed their written statement and denied execution of agreement to sell. It was specifically denied that Parsadilal had ever entered into an agreement to sell the property in dispute. They also specifically pleaded that when no agreement to sell was executed then there is no question of obtaining NOC from the Municipality. Even the note with regard to extension of time was denied.

5. The plaintiff expired during the pendency of suit & his legal representatives were brought on record.

6. The Trial Court, after framing issues and recording evidence, decreed the suit.

7. Being aggrieved by the judgment and decree passed by Trial Court, defendants preferred an appeal which has been allowed by the Appellate Court by impugned judgment and decree dated 24.09.2024 passed in RCA No.76/2022 and the suit filed by plaintiffs/appellants for specific performance of contract has been dismissed.



8. Challenging the judgment and decree passed by the court below, it is submitted by counsel for appellants that court below has wrongly exercised its power under Section 73 of Evidence Act to hold that signatures of Parsadilal on Page No.2 of agreement to sell are not original. It is submitted when defendants had never claimed that Parsadilal had not signed page no.2 of the agreement then aforesaid findings should not have been recorded specifically when no issue was framed in that regard. It is further submitted that once the original sale deed by which Parsadilal had purchased the property in dispute was handed over by Parsadilal to appellants, then it is clear that an agreement to sell was executed. It is further submitted that plaintiff was ready and willing to perform his part of contract and thus proposed the following substantial questions of law:

1. Whether the Ld. First Appellate committed error of law while reversing the judgment and decree passed by Ld. Trial Court?
2. Whether the judgment and decree passed by Ld. First Appellate is liable to be set aside as the same is based upon the evidence which was not admissible in evidence and contrary to law?
3. Whether the Ld. First Appellate erred in considering the evidence for which there was no foundation in the plaint and without pleadings, evidence has wrongly been considered by the Ld. First Appellate Court and the Ld. First Appellate Court exceeded its jurisdiction as provided under Section 96 CPC?
4. Whether the evidence without pleading can be considered by the Court the because of that the judgment and decree passed by Ld. First Appellate Court is vitiated and liable to be set aside?
5. Whether Ld. First Appellate Court committed error of law while ignoring the admission of DW/1 specially in para 10 to 13 hence, on this ground the judgment and decree passed by Ld. First Appellate Court is vitiated and liable to be set aside?
6. Whether the finding given by Ld. First Appellate Court with regard to readiness and willingness of the plaintiff is perverse and



contrary to the evidence liable to be set aside?

7. Whether the judgment and decree passed by Ld. First Appellate Court is based on conjectures and surmises liable to be set aside?

9. Heard learned counsel for appellants.

10. Issue No.1 which was framed by the Trial Court reads as under:

“क्या वादी और प्रतिवादीगण के पिता स्व० परसादी लाल ओझा के मध्य दिनांक 22.03.2011 को वादग्रस्त सम्पत्ति के विक्रय का अनुबंध संपादित हुआ था ?”

11. Thus, whether Parsadilal had signed the agreement is the main question of fact which is required to be decided by this Court while deciding the civil suit or appeal.

12. It is not out of place to mention here that defendants have never accepted the execution of agreement to sell and they have never admitted that agreement to sell contains signatures of their father Parsadilal. Under these circumstances, the Appellate Court was well within its rights to find out as to whether each and every page of so called agreement to sell contains signatures of Parsadilal or not. This Court has also gone through the signatures of Parsadilal and the original plaintiff on page No.2 of agreement Ex.P-10. Even the said document was shown to counsel for appellants. From naked eyes, it is clear that signatures are not original and it appears that they have been scanned because of brake in lines. Even counsel for appellants fairly conceded there are multiple brakes in signatures of both the parties giving a clear indication that they are not original. In exercise of power under Section 73 of Evidence Act, this Court can find out as to whether signatures are in original or they are scanned. The manner in which the signatures are at Page 2 of agreement, it is clear that Page No.2 does not contain original signatures of Parsadilal and even the original plaintiff. In fact, they appear to be



scanned with the help of computer. Therefore, this Court is of considered opinion that Appellate Court did not commit any mistake by holding that Page No.2 of agreement Ex.P-10 does not contain original signatures of Parsadilal. So far as extension of time to execute the sale deed is concerned, there is a note on the reverse side of Page No.1. The aforesaid note is also printed and it is not handwritten. The defendants had denied the signatures of Parsadilal even on this note also. Under these circumstances, the appellants should have got the signatures of Parsadilal, found on the disputed document i.e. agreement to sell Ex.P-10, compared with the admitted signatures of Parsadilal. But no such attempt was made. Furthermore, it is clear that appellant has prepared a forged document with the help of computer as Page No.2 of agreement to sell Ex.P-10 contains scanned signatures of Parsadilal. Furthermore, on Page 1 of agreement to sell Ex.P-10, the signatures of Parsadilal are at two places i.e. on the photograph and secondly at the bottom of document. The signature of Parsadilal which is partially on the photograph and partially on the page has been signed as परसदी whereas the signature which is at the bottom of Page No.1 mentions परसादो whereas Page No.2 which contains scanned signatures of Parsadi mentions परसादी. On the reverse side of Page No.1, signatures of Parsadilal are completely different because spellings are different and it has been signed as परसादा. Thus, it is clear that agreement to sell Ex.P-10 contains multiple signatures of Parsadilal which are in different pattern. There is another aspect of the matter. According to the plaintiff, agreement to sell was executed on 22.03.2011 and the last date for execution of sale deed was 22.03.2012. Since the defendants had specifically denied the execution of agreement to sell as well as extension note and had specifically stated that since no agreement to sell was executed therefore, there was no need to apply for NOC, thus, it was the duty of appellants to summon the documents from Municipal Council, Shivpuri to show that an application was



ever filed for obtaining NOC. Furthermore, Parsadilal has expired on 13.06.2013. Even if it is presumed that time was extended to execute the sale deed till 16.11.2012 then why no registered notice was ever issued to Parsadilal and later on to his widow Smt. Narayani during their lifetime, has not been explained. If the note appended to the agreement to sell Ex.P-10 is ignored, then it is clear that registered notice was sent by appellants after expiry of three years from the last date of execution of sale deed and if the note appended to the agreement to sell is considered according to which the last date for execution of sale deed was fixed as 16.11.2012, even then it is clear that appellant maintained silence up to 02.10.2015 when according to him he sent the registered notice for the first time for execution of sale-deed. Although the plaintiff had claimed that he was verbally requesting the defendants to execute the sale deed but in view of concocted agreement to sell, the said contention cannot be accepted. Why appellants waited for Parsadilal and Smt. Narayani to expire and why they did not take any action during their lifetime has not been explained. It is true that the suit was filed on 16.11.2015 and according to plaintiff, Dipawali holidays were from 09.11.2015 to 14.11.2015 and thereafter 15.11.2015 was Sunday, therefore, the suit was filed on 16.11.2015 but awaiting till the end of period of limitation without any action in writing also creates a doubt with regard to the correctness of agreement to sell. So far as readiness and willingness of appellants to get the sale deed executed is concerned, plaintiff in his plaint had claimed that his father Nathuram Hinwar is residing with him and he has agreed to pay the remaining consideration amount i.e. Rs.2,50,000/- as well as stamp duty and registration expenses etc. From the record, it appears that affidavit of Ramjilal Hinwar (plaintiff) under Order XVIII Rule 4 CPC was prepared on 24.10.2017 but from the order-sheet dated 24.10.2017 it is clear that the aforesaid affidavit was not filed because it is specifically mentioned that although the case is fixed for filing of affidavit of



plaintiff but plaintiff's witness is absent and affidavit has also not been filed and an application under Order VII Rule 14 CPC was filed. Even otherwise from order dated 18.01.2018 it is clear that while deciding application filed under Order VII Rule 14 CPC the Trial Court had specifically mentioned that affidavits of plaintiff witnesses have not been filed so far. Thereafter, it appears that affidavit of Ramjilal Hinwar (plaintiff) was filed on 08.02.2018 and the case was fixed for cross-examination of plaintiff witnesses. Thereafter, certain interlocutory applications were decided and on 19.07.2018 counsel for plaintiff prayed for time to keep the witnesses present for cross-examination. On 02.08.2018, Ramjilal Hinwar (plaintiff), Mahesh Kumar Pandey and Nathuram Hinwar were present but plaintiff himself filed an application under Section 35 of Indian Stamp Act and accordingly the case was adjourned for filing of reply and consideration of aforesaid application. By order dated 06.12.2018, application filed by plaintiff under Section 35 of Indian Stamp Act was rejected because it was observed that although there is a provision for impounding the document but there is no provision for sending the document for registration purposes. Thereafter, again, the case was fixed for cross-examination of the plaintiff witnesses on 03.10.2019 as interlocutory applications were decided in between, however, witnesses were not kept present and the case was adjourned at the request of plaintiff. Furthermore, another application under Section 35 and 38 of Indian Stamp Act was filed by plaintiff. Thereafter, the case was adjourned for arguments on the said application and later, on account of Covid-19 pandemic the case was adjourned. By order dated 04.01.2021, Trial Court directed the parties to argue on the application filed under Section 35 and 38 of Indian Stamp Act which was marked as IA. No.6. Thereafter, by order dated 24.02.2021 the application was rejected and the case was once again fixed for recording of evidence of plaintiff witnesses. An affidavit of one Jagdish Prasad Kushwaha was also filed by plaintiff





but the witnesses whose affidavits were already filed were not present for their cross-examination. Thereafter, the case was once again adjourned for various dates at the request of plaintiff and ultimately by order dated 19.07.2021, the plaintiff was directed to keep all his witnesses present for cross-examination. On 29.07.2021, a statement was made by counsel for plaintiff that plaintiff has expired and thus his legal representatives were brought on record. Therefore, it is clear that affidavit of plaintiff which was filed under Order XVIII Rule 4 CPC cannot be considered at all as his cross-examination was never deferred on the request of defendants and in fact plaintiff himself never appeared before the Trial Court.

13. Nathuram Hinwar (PW-3) who is the father of plaintiff had stated in paragraph 3 of his affidavit filed in the form of Order XVIII Rule 4 CPC that an amount of Rs.2,50,000/-, stamp duty, registration charges and allied charges were kept separately in State Bank of India, Gurudwara Chowk, Shivpuri. Thus, it was obligatory on the part of this witness to produce and prove the bank statement to show that he was in possession of the remaining consideration amount of Rs.2,50,000/- as well as stamp duty, registration charges and allied expenses. But no such document has been filed by Nathuram Hinwar (PW-3). In fact, even Keshav (PW-1) who is the son of original plaintiff Ramjilal has also not proved the bank statement of Nathuram Hinwar. Therefore, it is clear that plaintiff has also failed to prove that he was in possession of remaining consideration amount as well as stamp duty, registration charges and allied expenses.

14. Considering the fact that till 02.10.2015, the plaintiff had not sent any notice to Parsadi or to the legal representatives of Parsadi coupled with the fact that plaintiffs have failed to prove that they were in possession of remaining consideration amount as well as stamp duty, registration charges and allied expenses, this Court is of considered opinion that plaintiffs have failed to prove



that even otherwise they were ready and willing to perform their part of contract. Furthermore, plaintiff in his plaint had stated that on 16.11.2012 he had made an application to Sub-registrar, Shivpuri as he had waited for the entire day for execution of sale deed. Even the copy of the said application has not been filed. Thus, it is clear that the plaintiff has failed to prove that any agreement to sell was ever executed by Parsadilal for alienating the property and has also failed to prove that even otherwise he was ready and willing to perform his part of contract.

15. Merely because the plaintiff was in possession of original sale deed by which Parsadilal had purchased the property would not mean that the said sale deed was given by Parsadi at the time of execution of agreement to sell. In the agreement to sell, it is nowhere mentioned that original sale deed by which Parsadilal had purchased the land in dispute from one Balu S/o Shri Bihari Jatav is being handed over to original plaintiff Ramjilal Hinwar. Gaurishankar (DW-1) has specifically stated in paragraph 6 of his cross-examination onwards that the house of plaintiff Ramjilal is situated opposite to the house of defendants. Relationship of Ramjilal and his father was good. He has specifically admitted the suggestion given by plaintiffs in paragraph 8 of his cross-examination that both the families were on visiting terms and they were also attending marriages and no dispute had ever taken place between plaintiff and Parsadilal. Even both were in the habit of helping out each other. In paragraph 10, this witness has specifically stated that his father Parsadilal used to keep all his original documents with Nathuram Hinwar (PW-3) and the documents with regard to purchase of property in dispute were also kept with Nathuram Hinwar (PW-3) because at that time defendants were constructing the first floor of their house. Thus, it is clear that defendants have specifically proved the circumstances under which the original sale deed by which Parsadi had purchased the property in dispute is with the plaintiff.



16. Considering the totality of facts and circumstances of the case, this Court is of considered opinion that Appellate Court did not commit any error in reversing the judgment and decree passed by the Trial Court and dismissing the suit filed by Ramjilal Hinwar/plaintiff.

17. Since no substantial question of law arises in the present appeal, accordingly, judgment and decree dated 24.09.2024 passed by I District Judge, Shivpuri (M.P.) in RCA No.76/2022, is affirmed. Appeal fails and is hereby *dismissed*.

**(G.S. Ahluwalia)**  
**Judge**