IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA No.2282 of 2024 (O&M)
Reserved on:-13.05.2026
Pronounced on:- 20.07.2026
Uploaded on:- 20.07.2026

Jai Parkash and others

…..Appellants.

Versus

Smt. Anju and others

.....Respondents.

CORAM: HON'BLE MR. JUSTICE VIKRAM AGGARWAL

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Argued by: Mr. Aashish Chopra, Senior Advocate with
Ms. Rupa Pathania, Advocate, and
Ms. Nitika Sharma, Advocate
for the appellants.

Mr. Ashish Aggarwal, Senior Advocate with
Mr. Karanvir Hooda, Advocate
for respondent No.1.

Ms. Anjali Singh, Advocate for
Mr. Rajesh Gaur, Advocate
for respondent No.4-HUDA.

Mr. Lekh Raj Sharma, Advocate;
Mr. Abhishek Sharma; Advocate
Mrs. Kritika Sagar Sharma, Advocate and
Mr. Kabir Gautam, Advocate
for respondent No.5.

VIKRAM AGGARWAL, J.

This is plaintiff's appeal filed against the judgment and decree dated 02.01.2024 passed by the Court of Additional District Judge, Gurugram, dismissing the appeal filed against the judgment and decree dated 24.09.2019 passed by the Court of Civil Judge (Junior Division), Gurugram, vide which the suit of the plaintiff for declaration with consequential relief of permanent injunction was dismissed.

2. For the sake of convenience and clarity, parties shall be referred to as per their original status.

3. The plaintiff (Bhoop Singh) (now represented by his legal representatives Jai Parkash and others) instituted a suit for declaration that the mutation sanctioned on the basis of registered sale deed bearing Vasika No.10629, dated 28.07.2008 be declared as null and void. Consequential relief of permanent injunction restraining defendants No.1 (Smt. Anju) from interfering in or taking forcible possession of the suit land and restraining defendants No.2 to 4 from issuing any commercial-residential license qua the suit land was also sought.

3.1. It was claimed that the plaintiff was owner in possession of land measuring 124 kanals (fully described in the plaint) situated within the revenue estate of Village Dhorka, Tehsil and District Gurugram (hereinafter referred to as the "suit land"). Defendant No.1 was stated to have approached the plaintiff to purchase the suit land. It was ultimately agreed to be sold for a total sale consideration of Rs.31 crores. Sale deed qua the same was executed and registered vide Vasika No.10629 dated 28.07.2008. Rs.3.10 crores was paid at that time out of which Rs.50 lakhs was paid in cash and Rs.2.6 crores was paid by way of two different cheques. The balance sale consideration of Rs.27.90 crores was paid vide five post dated cheques bearing Nos.850246 to 850250 of Rs.5.58 crores each and were dated 27.01.2009.

3.2. It was averred that the sale deed had a condition that in case the five post dated cheques were dishonoured, the sale deed would automatically stand cancelled.

3.3. On presentation of the cheques, the plaintiff was stunned and surprised on receiving bank Memo dated 29.01.2009 indicating that the payment had been stopped by the drawer. Upon this, the plaintiff approached defendant No.1 with a request to get the cheques cleared, but she kept on putting off the matter on one pretext or the other.

3.4. A complaint under Section 138 of the Negotiable Instruments Act, 1881 (for short the "NI Act") was instituted by the plaintiff. The case was posted for payment as well as for compromise, but defendant No.1 did not make the payment. It was averred that the intention of defendant No.1 did not seem to be clear and *bona fide*.

3.5. Mutation was got sanctioned on the strength of the sale deed. Defendant No.1 then applied for change of land use with the office of the co-defendants. It was averred that no title had passed or could have passed till the sale consideration was paid. It was averred that the plaintiff had been running behind defendant No.1 after 27.01.2009, but defendant No.1 had been avoiding the matter by playing fraud.

3.6. It was averred that it had come to the knowledge of the plaintiff that defendant No.1 had started negotiations to alienate the suit land on the basis of the mutation and had started negotiations to this effect. Under the circumstances, the suit was instituted.

4. The suit was opposed by the defendants. In the written statement filed by defendant No.1, certain preliminary objections were raised as regards maintainability, cause of action, *estoppel*, the suit being bad for mis-joinder and non-joinder of necessary party, *locus standi* etc. It was also averred that the plaintiff was required to pay *ad valorem* Court fee on the sale consideration stated in the sale deed as he was the executant of the sale deed and had sought cancellation of the same. It was also averred that a suit for declaration and injunction was not maintainable, where an efficacious remedy for recovery was available. It was averred that the suit for declaration and injunction had been intentionally filed with a view to save Court fee.

4.1. It was averred that after the payment of Rs.3.10 crores at the time of execution of the sale deed, it had been agreed that the balance sale consideration could be paid through five post dated cheques or by getting 28% of the developed share in the suit land and the plaintiff had agreed to take 28% of the developed share. However, it came to the notice of defendant No.1 that some litigation was pending in the Civil Court, Gurugram with regard to the suit land and a *status quo* order had been passed as regards alienation and possession. It also came to the notice of defendant No.1 that the plaintiff had already executed an MOU with some other person in respect of the suit land and had, therefore, concealed material facts from defendant No.1.

4.2. It was further averred that defendant No.1, therefore, instituted a complaint against the plaintiff in the office of DCP (West), Gurugram, after which a compromise was arrived at between the parties on 13.08.2008. It was agreed that the plaintiff would refund the amount of Rs.3.10 crores to defendant No.1 and proceedings for cancellation of the sale deed dated 28.07.2008 would be initiated. However, soon thereafter, defendant No.1 came to know that the litigation in respect of the suit land was frivolous and had been initiated just with a view to entangle the suit land in litigation. The plaintiff, therefore, approached defendant No.1 and informed that the suit land was not subject to any litigation as the same was frivolous and he lured defendant No.1 to develop the suit land and to give 28% developed share to him in the proposed IT park instead of the balance sale consideration. Keeping faith on the assurance, the defendant again agreed to the proposal made by the plaintiff believing the same to be just and genuine and, therefore, again a compromise was entered into on 16.10.2008 and plaintiff again received Rs.3.10 crores, which he had earlier refunded to defendant No.1. This payment was received by cheque No.386361 dated 15.10.2008 for Rs.2.60 crores and Rs.50 lakhs was paid in cash. The plaintiff then encashed the said cheque and used the said amount. It was averred that all these facts had been concealed while filing the suit.

4.3. On merits also, a similar stand was taken. It was averred that the intention of the plaintiff was dishonest as on one hand, he had challenged the sale deed and had prayed for its cancellation and on the other hand, had filed complaints under section 138 of the NI Act, thereby admitting the sale deed to be valid and on the third front, had agreed to get

28% of the developed share in the IT park instead of the balance sale consideration.

4.4. An amended written statement was also filed in which certain additional averments were made stating that the complaint filed under the NI Act had been dismissed on 15.05.2012 by the Court of Judicial Magistrate 1st Class, Gurugram and appeal filed against the same (CRM-A564-MA-2012) was also dismissed by the High Court of Punjab and Haryana on 25.03.2016.

4.5. Defendant No.3 (District Town Planner, Gurugram) filed its separate written statement in which, the basic stand taken was that the dispute was between the plaintiff and defendant No.1. It was averred that defendant No.1, in collaboration with one M/s Landmark Apartments Pvt. Ltd. had submitted an application dated 24.03.2010 for setting up a group housing colony over an area measuring 15.5 acres which included the suit land as well. It was averred that after examination of documents and collaboration agreement, letter of intent was issued on 31.12.2012 to defendant No.1 for setting up a group housing colony in accordance with the provisions of the Haryana Development and Regulation of Urban Areas Act, 1975 (hereinafter referred to as the "1975 Act").

4.6. Defendant No.4 (Haryana Urban Development Authority, Gurugram) filed its separate written statement raising certain preliminary objections regarding maintainability, the plaintiff having conceived true and material facts from the Court, the suit being barred under the provisions of Section 50 of the HUDA Act as per which, Civil Court had got no jurisdiction, *estoppel*, the suit being barred for non-joinder and mis-joinder of necessary parties, cause of action etc.

4.7. On merits, all averments were denied for want of knowledge.

5. Replications were filed to the written statements denying the averments made in the same and reiterating the contents of the plaint.

6. From the pleadings of the parties, following issues were framed by the trial Court:-

"1. Whether the plaintiff is entitled to a decree for declaration with consequential relief of permanent injunction as prayed for? OPP

2. Whether the suit of the plaintiff is not maintainable? OPD

3. Whether plaintiff has concealed the true and material facts from this court? OPD

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

5. Whether the plaintiff is estopped from filing the suit by their own act, conduct, acquiescence, latches, omission and commission?

6. Relief."

7. Parties led their respective evidence. The trial Court dismissed the suit filed by the plaintiff and the appeal against the judgment and decree of the trial Court was also dismissed by the first Appellate Court, leading to the filing of the present second appeal by the plaintiff.

8. Learned counsel for the parties were heard.

9. Sh. Aashish Chopra, learned Senior Counsel representing the appellant and Sh. Lekh Raj Sharma, learned counsel representing

respondent No.5 (Jagdish son of Bhoop Singh), who was one of the plaintiffs, but is not an appellant in the present appeal, submitted that both Courts had erred in dismissing the suit and subsequently the appeal filed by the plaintiff.

9.1. Sh. Aashish Chopra, learned Senior Counsel referred to the entire oral and documentary evidence led on the record of the case, starting from the sale deed dated 28.07.2008 (Ex.P2 and Ex.PW2/6), the compromise dated 13.08.2008 (Ex.DA), the compromise dated 16.10.2008 (Ex.DB), the communications between defendant No.1 and the Town and Country Planning Department, the judgment of the trial Court in Section 138 of the NI Act proceedings, as also that of the High Court in the appeal filed by the plaintiff and submitted that there had been a gross misreading of the terms and conditions of the first compromise dated 13.08.2008.

9.2. While referring first to the sale deed (Ex.P2), it was submitted that it was the option of the plaintiff to either present the cheques for payment or to accept 28% of the developed area and that there was a clause in the sale deed that in case the cheques were dishonoured, the sale deed would be deemed to have been cancelled. It was argued that once the cheques had been presented and had been dishonoured, the sale deed stood cancelled and, therefore, defendant No.1 could not have proceeded qua obtaining the licence etc.

9.3. It was submitted that in so far as the compromise dated 13.08.2008 is concerned, it clearly laid down that the plaintiff would be entitled to 28% of the developed area in the cyber park and not 28% area in a residential or a group housing colony. It was argued that defendant No.1 deliberately got a licence for a group housing colony and, therefore, the plaintiff was not bound to take 28% of the developed area of the same.

9.4. Learned Senior Counsel referred to the cross-examination of the defendant and submitted that a bare perusal of her cross-examination would make it clear that the defendant No.1 had acted unfairly.

9.5. Reliance was placed upon the provision of Section 31 of the Specific Relief Act, 1963 (hereinafter referred to as the “1963 Act"), to submit that in view of the specific clause in the sale deed, no cancellation of the sale deed was required to be claimed in the suit.

9.6. Learned Senior Counsel submitted that both Courts had misread the terms and conditions of the first compromise and had erroneously held that the plaintiff was not willing to take 28% of the developed area, whereas the condition was that the plaintiff would be entitled to 28% of developed area in an IT park and not in a group housing colony and it was, therefore, contended that the impugned judgments and decrees are not sustainable.

9.7. In support of his contentions, learned Senior Counsel placed reliance upon the judgments of the Hon’ble Supreme Court in the cases of ***Kaliaperumal Versus Rajagopal and another, (2009) 4 Supreme Court Cases 193; Kewal Krishan Versus Rajesh Kumar and others, (2022) 18 Supreme Court Cases 489; Sk. Golam Lalchand Versus Nandu Lal Shaw alias Nand Lal Keshri alias Nandu Lal Bayes and others, 2024 SCC OnLine SC 2456; Hussain Ahmed Choudhary and others Versus***

Habibur Rahman (dead) through LRs and others, 2025 INSC 553; Janak Dulari Devi and another Versus Kapildeo Rai and another, (2011) 6 Supreme Court Cases 555 and the judgment of a co-ordinate Bench of this Court in the case of ***Chander Bhan Versus Abhey Ram (deceased) through his LRs and another, 2026 SCC OnLine P&H 2433***.

10. *Per contra*, Sh. Ashish Aggarwal, learned Senior Counsel representing defendant No.1, urged with equal vehemence that there is no illegality in the impugned judgments and decrees warranting interference in second appeal.

10.1. Initiating arguments, it was submitted by learned Senior Counsel that there could never ever be a deemed cancellation of a registered sale deed and the only remedy with the plaintiff would be to file a suit for recovery.

10.2. It was submitted that the plaintiff had not approached the Court with clean hands, for absolutely no mention of the two compromises having been entered into between the parties was made in the plaint.

10.3. It was submitted that with a view to save Court fee, neither cancellation of the sale deed was sought in the plaint nor was possession of the suit land sought. It was argued that when an application under Order 7 Rule 11 CPC was moved by defendant No.1, a statement was given by the plaintiffs that they were not praying for possession nor were they seeking cancellation of the sale deed and were only seeking a declaration as regards the mutation.

10.4. It was submitted that the plaintiff has now filed a fresh suit seeking cancellation of the sale deed dated 28.07.2008, which is pending adjudication before the Civil Court at Gurugram. It was submitted that the sale deed was executed and got registered on 28.07.2008 and post dated cheques were issued for 27.01.2009, i.e. 6 months after the execution of the sale deed and the mutation was sanctioned on 29.07.2008. It was argued that the period 6 months had been provided for in the sale deed because the plaintiff had agreed for taking 28% share in the developed area.

10.5. It was argued that after the execution of the sale deed, it came to the knowledge of defendant No.1 that the plaintiff had executed a collaboration agreement on 01.12.2006 with one company by the name of Mangalam for a group housing society and the said company had also instituted a suit against the plaintiff on 28.04.2007, i.e. much before the execution of the sale deed between the parties. Reference was made to the said plaint. In the said case, an order of *status quo* was passed and ultimately, the suit was dismissed in 2016.

10.6. It was argued that a police complaint was submitted by the defendant No.1 after which a compromise was arrived at between the parties as per which, a sum of Rs. 3.1 crores was to be returned by the plaintiff to the defendant No.1 and sale deed was to be cancelled. The same was also done, but subsequently, a second compromise was arrived at on 16.10.2008 in which, again a sum of Rs.3.10 crores was paid to the plaintiff and it was agreed that the plaintiff would take 28% of the developed area of the IT park.

10.7. It was submitted that the defendant No.1 had duly applied for the grant of licence for an IT park, but had to subsequently amend the same for a group housing society because of technical reasons.

10.8. It was averred that the fact of the matter is that the plaintiff had a change of heart as a result of which, the cheques were presented, but on account of the compromise having been arrived at between the parties, the payment had been stopped by defendant No.1. It was submitted that the complaint filed under Section 138 of the NI Act was dismissed and in appeal, the defendant No.1 gave an offer to pay the amount, but the same was declined by the plaintiff.

10.9. It was submitted that when the plaintiff presented the cheques for payment, the application for grant of licence for a cyber park was pending and it was only on 19.05.2010 (Ex.PW2/23) that the request was made for grant of a licence for a group housing society meaning thereby that the stand taken by the plaintiff that he had decided to present the cheques because the defendant No.1 was not willing to give 28% of the developed share in an IT park is false.

10.10. It was submitted that 28% of the developed area in the group housing society is still preserved for the plaintiff, but it is the plaintiff who has become greedy and is not accepting the same.

10.11. It was also submitted by learned Senior Counsel that though no reference had been made to the two compromises arrived at between the parties in the plaint, the same were duly referred in the complaint moved under section 138 of the NI Act. It was submitted that the plaintiff had been playing hide and seek only with a view to involve the suit land in litigation and for the said purpose, the second suit had been instituted.

10.12. It was also submitted that when the suit was instituted, an application under Order 39 Rules 1 and 2 CPC had been moved by the plaintiff and vide order dated 31.05.2011, the Court had directed defendant No.1 to protect 28% of the developed area for the plaintiff which it has complied with in letter and spirit. It was also submitted that no appeal was filed against the said decision by the plaintiff.

10.13. Reference was also made to the order dated 02.02.2017 vide which the application moved under Order 7 Rule 11 CPC by defendant No.1 was dismissed wherein, it was duly mentioned that the plaintiff was not challenging the sale date and was only challenging the mutation. Reference was also made to the findings of the trial Court in the present case wherein, it was observed that the plaintiff had admitted that he was not challenging the sale deed.

10.14. It was argued that both Courts rightly held that since only mutation had been challenged, the jurisdiction of the Civil Court was barred in terms of the provisions of Section 158 of the Punjab Land Revenue Act, 1887. It was argued that the primary prayer should have been to assail the sale deed as the mutations are only for physical purposes.

10.15. Reference was made to the provisions of Sections 54 and 55(4) of the Transfer of Property Act, 1882 (for short the "1882 Act") to submit that the covenant in the sale deed as regards deemed cancellation would be a void covenant.

10.16. Reference was also made to the provisions of Section 34 of the 1963 Act to submit that a mere suit for declaration without seeking the relief for possession was not maintainable.

10.17. In support of his contentions, learned Senior counsel placed reliance upon the judgments of the Hon'ble Supreme Court in the cases of ***Sheikh Abedin Versus Iqbal Ahmed and another [Petition(s) for Special Leave to Appeal (C) No(s).19868/2022, decided on 07.05.2026); Vidhyadhar Versus Mankikrao and another, 1999 A.I.R. (SC) 1441; Dahiben Versus Arvindbhai Kalyanji Bhanusali (Gajra)(D) Thr Lr & others, 2020 AIR (SC) 3310; Thota Ganga Laxmi Versus Government of Andhra Pradesh, 2010(15) SCC 207; Satya Pal Anand Versus State of M.P. & Ors., 2016(10) SCC 767; M/s. Tomorrowland Limited Versus Housing and Urban Development Corporation Limited and Another, 2025 AIR Supreme Court 1262; Gian Kaur Versus Raghubir Singh, 2011 AIR SC(Civil) 855***; the judgment of Allahabad High Court in the case of ***Smt. Gunjan Agrawal Versus Ashish Kumar Gauram & Another, 2026(2) BCR 1*** and the judgment of Karnataka High Court in the case of ***Sri R Nandeesh and ors. Versus Sri S N Sreerama Reddy and ors., 2025(4) Kar. L.R. 156***.

11. In rebuttal, learned Senior Counsel for the plaintiff submitted that no stand had been taken in the written statement that there was some change in the planning or there was some technical reason as a result of which, an application was moved for a group housing society.

11.1. It was also argued that it was for the plaintiff to exercise the option of presenting the post dated cheques or to accepting 28% of the developed area till the date of presentation of the cheques.

11.2. It was also argued that the compromise was to be read as a whole and not in isolation.

11.3. It was argued that the provisions of Sections 54 and 55 of the 1882 Act would not be applicable as the same apply only in the absence of a contract to the contrary.

11.4. It was also argued that possession of the suit land had never been delivered to defendant No.1. Reference was made to clause 8 of the compromise wherein, it had been noticed that possession would be delivered on award of a licence.

11.5. It was argued that the change from IT park to group housing was done unilaterally by defendant No.1 and, therefore, it amounted to a violation.

12. I have considered the submissions made by learned counsel for the parties and have perused the record.

13. As regards the scope of second appeal, it is now a settled proposition of law that in Punjab and Haryana, second appeals preferred are to be treated as appeals under Section 41 of the Punjab Courts Act, 1918 and not under Section 100 CPC. Reference in this regard can be made to the judgment of the Supreme Court in the case of ***Pankajakshi (Dead) through LRs and others Versus Chandrika and others, (2016)6 SCC 157***, followed by the judgments in the cases of ***Kirodi (since deceased) through his LR Versus Ram Parkash and others, (2019) 11 SCC 317*** and ***Satender and others Versus Saroj and others, 2022(12) Scale 92***. Relying upon the law laid down in the aforesaid judgments, no substantial question of law is

required to be framed.

14. Gurugram and in fact, the whole of the National Capital Region witnessed unprecedented increase in prices of land consequent to development of the said area. Whereas on one hand, this led to growth, progress, financial gains etc., on the other hand, it also led to disputes between land owners and developers. Collaboration agreements were executed and many of them could not be honoured on account of the lapse of one party or the other. The instant case is also an example of the kind where the land owner alienated his land to a specific person, who, in turn, executed a collaboration agreement with a developer whereafter, the land owner and the purchaser of the land fell out with each other and then started a spate of litigation. In some cases, it has been observed that on account of increase in the prices, the land owners backed out from agreements whereas in other case, developers did the same and duped not only the investors but also the land owners.

15. Now this Court proceeds to examine as to who was at fault in the present case. Both Courts have found the plaintiff to be at fault. Having examined the matter in its entirety, this Court does not find any illegality in the findings recorded by both Courts warranting interference in second appeal.

16. Certain facts are admitted. The plaintiff was owner of the suit land measuring 124 Kanals. Sale deed dated 28.07.2008 (Ex.P2) was executed by the plaintiff in favour of defendant No.1 and was registered. The total sale consideration was Rs.31 crores. Rs.50 Lakhs was paid in

cash and Rs.2.6 crores was paid by way of two different cheques. The balance sale consideration of Rs.27.90 crores was paid by five post dated cheques dated 27.01.2009. The sale deed (Ex.P2) also had a stipulation that possession had been delivered to the vendee. There was also a stipulation that in case the post dated cheques were not encashed in time, the registry would be deemed to have been cancelled without any legal proceedings nor any legal proceedings would be carried out for the same. It was further stipulated that in case the vendor, on his own, did not get the cheques encashed, he would be entitled to 28% share after development of the suit land and that the development would be done by the vendee and a company.

16.1. The stipulations in the sale deed were not normal stipulations. Out of the total sale consideration of Rs.31 crores, only Rs.3.10 crores was paid initially and post dated cheques of a period six months after the execution of the sale deed were given with a stipulation that in case the vendor did not present the cheques himself, he would be entitled to 28% share in the developed land. It somewhere shows the intention of the parties that the same was to give a share of 28% to the vendor as a result of which, post dated cheques were given and in case there was some disagreement, there was a security for the vendor in the form of post dated cheques. Otherwise, it would be little unnatural for a vendor to execute a sale deed of his valuable land without having received the complete sale consideration.

17. Now we move ahead of 28.07.2008 when the sale deed was

executed. It is the specific case of defendant No.1 that there was some litigation pending as a result of which a police complaint was filed by defendant No.1 pursuant to which a compromise (Ex.DA) was arrived at between the parties on 13.08.2008 as per which the plaintiff returned the sale consideration of Rs.3.10 crores by way of two demand drafts and it was agreed that the sale deed would be got cancelled.

17.1. However, subsequently, another compromise (Ex.DB) was arrived at on 16.10.2008 as per which it was agreed that the plaintiff would be given 28% of the development area in the IT park to be developed by defendant No.1 in collaboration with a developer. A sum of Rs.3.10 crores was again paid to defendant No.1 by way of two cheques. It was also agreed between the parties that the five post dated cheques would be returned. It was also agreed that the sale deed was valid and subsisting.

18. The plaintiff, in the considered opinion of this Court, did not file the suit in question with clean intentions and concealed vital facts as no mention of the police complaint or the two compromises having been arrived at was made in the plaint. In the written statement, detailed averments were made as regards the same to which no concrete denial was made. Not only this, these compromises were admitted in the proceedings under Section 138 of the NI Act. A party who does not approach the Court with clean hands does not deserve any relief and in fact, the litigation initiated by it can be thrown out only on this ground.

18.1. At this stage, this Court has no hesitation in holding and is of the firm opinion that the plaintiff instituted the suit only with an intention to entangle the property in some litigation. It is because of this reason, neither was a declaration sought for cancellation of the sale deed nor was the relief of possession prayed for. This, apparently and presumably, was done with a view to avoid the payment of *ad valorem* Court fee. During the course of arguments, it has been pointed out that another suit has now been instituted by the plaintiff seeking cancellation of the sale deed and in that also, *ad valorem* Court fee has not been paid. This clearly exposes the intentions of the plaintiff.

19. During the course of arguments, reliance was placed upon a number of judgments and various statutory provisions. Though, this Court shall briefly discuss those aspects as well, having examined the matter in its entirety, this Court is of the opinion that the plaintiff deserves to be non-suited only on account of various concealments that were made by him. Especially in second appeal, this Court would not enter into reopening of all issues.

20. The complaint filed by the plaintiff under Section 138 of the NI Act was dismissed vide judgment dated 15.05.2012 (Ex.D4). The said complaint was instituted on 05.03.2009. Once this complaint was instituted, the plaintiff cannot contend that the sale deed stood cancelled because if the cancellation was automatic, he could have initiated proceedings qua the same instead of initiating proceedings qua dishonour of cheques. It would be relevant to notice here that the compromises dated 13.08.2008 and 16.10.2008 were also produced on record in the said proceedings despite which no mention of the same was made in the plaint.

It would also be relevant to notice here that in terms of the compromise dated 16.10.2008, the plaintiff was supposed to return the post dated cheques, which was not done and instead, the plaintiff presented the cheques to the bank.

21. The appeal against the said decision was also dismissed by a co-ordinate Bench of this Court vide judgment dated 27.04.2016. In the said judgment, it was noticed that one M/s Mangalam Multiplex Private Limited had filed a suit against the plaintiff and others for declaration and permanent injunction qua the suit land meaning thereby that the suit land was a subject matter of litigation when the sale deed was executed. Reference was also made to the complaints filed by defendant No.1 against the plaintiff and the subsequent compromises. It was also noticed that during the pendency of the appeal, defendant No.1 had offered payment of the entire sale consideration as per the cheques, but the same was refused by the plaintiff.

21.1. It would also be relevant to mention here that during the course of arguments, in order to test the *bonafides* of both sides, this Court asked learned Senior counsel for the plaintiff as to whether the plaintiff was willing to take the balance sale consideration. The same was refused on account of increase in prices. It was then pointed out to this Court that in a writ petition, defendant No.1 and the developer had been directed to pay Rs.100 crores to the plaintiff which had also not been paid. When the Court asked learned Senior counsel representing defendant No.1 as to whether defendant No.1 was willing to pay the said amount, the answer was in the affirmative and when the same question was put to learned Senior counsel for the plaintiff as to whether the plaintiff was willing to accept the same, the answer was in the negative again on the ground that 28% share in the IT park would come to much more.

22. Now coming to the issue as to whether defendant No.1 was at fault in obtaining a licence for a group housing society instead of an IT park, having examined the matter, this Court finds that defendant No.1 was not at fault. It had duly applied on 30.07.2008 for the grant of licence for a cyber park (Ex.DW2/1). There are various other communications on record between the officers of the Town and Country Planning Department and defendant No.1 qua the same. On 24.03.2010, an application was submitted for the grant of a licence for the group housing society. This itself does not show that there was some ill intention of defendant No.1. During the course of arguments, it was stated that 28% share in the group housing society is still intact. In fact, when the suit was instituted along with an application under Order 39 Rules 1 and 2 CPC, the same was decided by the trial Court vide order dated 31.05.2011 and defendant No.1 was restrained from alienating 28% area of the suit land during the pendency of the suit. No appeal was initially filed against the said decision and subsequently, the appeal filed against the said decision by the plaintiff was dismissed on the ground of limitation.

23. From all of the above, it emerges that the plaintiff was taking two different stands. On the one hand, he was wanting a 28% share in the IT park and on the other hand, he was presenting the cheques. The stand

taken by the plaintiff that defendant No.1 intentionally moved the application for a group housing society as a result of which, the plaintiff did not want to accept the same, is found to be a false and a frivolous stand. As noticed, defendant No.1 had moved an application on 30.07.2008 for the grant of a licence for cyber park. At best, in August 2009, a letter was written that the applications for grant of licence for a commercial colony and for a group housing colony should be clubbed and accordingly, applied on 24.03.2010 for obtaining licence for a group housing society. Both these things took place after the cheques had already been presented on 27.01.2009. In any case, when the cheques were presented, the application for grant of a licence for a cyber park was pending and the subsequent applications were given much after the presentation of the cheques. This stand of the plaintiff, therefore, falls on its face. Under the circumstances, the Courts did not commit any illegality in not granting declaration prayed for by the plaintiff.

24. No injunction could have been granted to the defendants for not granting the licence as the same had already been granted and accordingly, the said relief was also rightly declined.

25. The Courts also did not err in holding that if the only challenge was to the mutation, the same could have been laid before the revenue authorities in terms of the provisions of Section 158 of the Punjab Land Revenue Act, 1887, the jurisdiction of the Civil Court might as well be barred.

26. Sufficient evidence came before the Courts especially before

the first Appellate Court by way of documents produced in additional evidence that defendant No.1 was in possession of the suit land. There was a recital also to this effect in the sale deed itself. Even otherwise, it is a matter of common knowledge that if the land was to be developed in collaboration with some developer, possession must have been handed over. No doubt, in sale deeds, such recitals are made and some times, possession is not delivered, but here, after having examined the entire oral and documentary evidence, both Courts came to the conclusion that the possession was with defendant No.1. Under the circumstances, the plaintiff should have sought the relief of possession also and a mere suit for declaration would not be maintainable as per the provisions of Section 34 of the 1963 Act.

27. Now coming to the issue of deemed cancellation of the sale deed which was duly provided for in the sale deed itself, in the considered opinion of this Court, there would be no deemed cancellation in view of the peculiar facts and circumstances noticed in the preceding paragraphs. Still further, it is well settled that even if some amount of the sale consideration or the balance sale consideration is not paid, a sale deed would not become invalid on account of the provisions of Section 54 of the 1882 Act. Reference in this regard can be made to the judgment of the Apex Court in the case of ***Vidhyadhar Versus Mankikrao and another's case (supra)*** wherein it was held by the Apex Court as under:-

> "***38. There is a catena of decisions of various High Courts in which it has been held that even if the whole of the price***

is not paid, the transaction of sale will take effect and the title would pass under that transaction. To cite only a few, in Gayatri Prasad v. Board of Revenue, 1973 All LJ 412, it was held that non-payment of a portion of the sale price would not effect validity of sale. It was observed that part payment of consideration by vendee itself proved the intention to pay the remaining amount of sale price. To the same effect is the decision of the Madhya Pradesh High Court in Sukaloo v. Punau, ILR (1960) MP 614.

39. The real test is the intention of the parties. In order to constitute a "sale", the parties must intend to transfer the ownership of the property and they must also intend that the price would be paid either in praesenti or in futuro. The intention is to be gathered from the recital in the sale deed, conduct of the parties and the evidence of record.

x x x x x

44. In view of the above, the High Court was wholly in error in coming to the conclusion that there was no sale as only a sum of Rs.500/- was paid to defendant No.2 and the balance amount of Rs.4,500/- was not paid. Since the title in the property had already passed, even if the balance amount of sale price was not paid, the sale would not become invalid. The property sold would stand transferred to the buyer subject to the statutory charge for the unpaid part of the sale price."

28. A similar view was taken by the Apex Court in the case of ***Dahiben Versus Arvindbhai Kalyanji Bhanusali (Gajra)(D) Thr Lr & others' case (supra)*** wherein it has been held that even if the entire sale consideration had not been paid, it could not be a ground for cancellation of the sale deed and that the plaintiffs had many other remedies in law for

recovery of the balance sale consideration.

29. Various other High Courts have taken a similar view in this regard. Reference can be made to the judgment of the Allahabad High Court in the case of ***Smt. Gunjan Agrawal Versus Ashish Kumar Gauram & Another's case (supra)*** and the judgment of Karnataka High Court in the case of ***Sri R Nandeesh and ors. Versus Sri S N Sreerama Reddy and others' case (supra)***.

30. An argument was raised by learned Senior counsel representing the plaintiff that both Courts have erroneously misread the terms and conditions of the second compromise and have referred to as 28% of the developed area whereas it was actually 28% of the developed area of the IT park. This aspect has been dealt with in the preceding paragraphs and there is no requirement of repeating the same.

31. The argument that in terms of the provision of Section 55 of the 1882 Act, the sale deed would automatically stand cancelled, is also devoid of merit for the reasons given in the preceding paragraphs.

32. An argument was also raised that both Ex.DA and Ex.DB were unregistered documents and could not, therefore, vary the terms and conditions of the registered sale deed. No doubt, the said documents were unregistered, but they were in the nature of a settlement and did not vary the terms and conditions of the sale deed. Only certain decisions were taken pursuant to the sale deed having been executed and that too with mutual consent. The plaintiff having been a party to the said compromises cannot now raise this argument.

33. I have examined the judgments relied upon by both sides. For the reasons mentioned in the preceding paragraphs, the judgments relied upon by learned Senior counsel for the plaintiff would not come to the aid of the plaintiff. Since a number of judgments have been relied upon, this Court does not feel the necessity to refer to each judgment separately.

34. In view of the aforementioned facts and circumstances, this Court is of the considered opinion that there is no illegality in the impugned judgments and decrees warranting inference in second appeal.

35. Consequently, the instant appeal is found to be devoid of merit and is accordingly dismissed.

Pending application(s), if any, shall also stand disposed of.

(VIKRAM AGGARWAL)
JUDGE

July 20, 2026
vcgarg/Yag Dutt

Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No