IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.983 of 1988
Date of Decision:09.01.2020

Waryam Singh Lambardar through his legal heirs and representatives

... Appellant

versus

Gurbax Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present:- Mr. Rahul Sharma, Advocate,
for the appellant.

Mr. Aasdeep Singh, Advocate,
for respondents no.2 to 6.

Amol Rattan Singh, J.

This second appeal has been filed by the plaintiff in a suit instituted by him seeking possession of the suit property by specific performance of an agreement stated to have been entered into by him and the first respondent herein, i.e. Gurbax Singh, on 10.04.1981, with the suit having been initially decreed in his favour by the learned trial court. However, the appeal filed by the respondent-defendant was partly accepted by the first appellate court, to the extent that the appellant-plaintiffs' prayer for possession of the suit land was dismissed, with him instead having been granted a decree for recovery of Rs.5600/- with costs, and interest @ 12% per annum, running from the date of the agreement till the recovery was made.

2. In his suit, the appellant had contended that the respondent-defendant had agreed to sell him land measuring 7 kanals and 13 marlas, falling in *khasra* no.17R/8/1, situated at village Pale Nangal, Tehsil Batala,

District Gurdaspur (the said *khasra* number later having been re-numbered as 17R/8/1 Min Charda-8/1 Min Charda-8/2 Min *Lehnda*), with the said agreement also stating that the trees standing on the land would be also sold to the appellant. The consideration was stated to have been settled at Rs.21,000/- per acre (the suit land being 7 marlas short of an acre).

Thus, it was contended that the total sale price came to be Rs.20,082/-, of which Rs.5600/- was paid by way of earnest money, by the appellant to the respondent.

As per the appellant, the sale deed was to be executed on 20 *Har Samat 2038* (as per the Bikrami Calendar, with the respondents' written statement showing that date to be 3.7.1981).

It was further stated to have been agreed upon that in case of a default committed by the respondent-defendant, he would be liable to refund the earnest money alongwith equal amount of damages; and if the default was committed by the appellant-plaintiff, the earnest money paid by him would stand forfeited.

The appellant, in his plaint, further contended that he had been always ready and willing to perform his part of the contract, whereas the respondent-defendant had not done so.

It was the appellant-plaintiffs' averment that on the date fixed for the execution of the sale deed, he had gone to the Tehsil office at Dera Baba Nanak, “with the requisite cash”, but the respondent had refused to execute the sale deed, demanding an additional amount of Rs.4800/-.

Thereafter, the plaintiff (Waryam Singh) having died, his legal heirs had been impleaded in the suit, on the basis of a Will dated 17.06.1982, contended to have been executed by Waryam Singh, one of such legal

representatives being his minor son, who was impleaded through his mother, Sarabjit Kaur.

3. The defendant (respondent herein) having filed a written statement, did not deny the execution of the agreement dated 10.04.1981 but submitted that the land had been agreed to be sold for a total sale consideration of Rs.21,000/- and not @ Rs.21,000/- per acre; and that the plaintiff had got entered a wrong entry to that effect, in collusion with the scribe and marginal witnesses.

It was further alleged by the respondent-defendant that on the date fixed for execution and registration of the sale deed, i.e. 03.07.1981, the appellant did not turn up to perform his part of the contract, and consequently he (the defendant) served a notice upon him to do so within 7 days, to which no reply was received; and therefore, the appellant having failed to perform his part of the contract as he could not arrange for the balance sale consideration, it was contended the suit was not maintainable, which also was stated to have been filed after limitation to do so had expired.

The usual allegations of court fee not being proper, and lack of jurisdiction, were also made.

4. A replication having been filed by the appellant herein, the following issues were framed by the learned trial court:-

> "1. Whether the defendant executed the agreement in dispute in favour of the plaintiff? OPP
> 2. Whether the plaintiff has been ready and willing to perform his part of the contract? OPP
> 3. Whether the plaintiff is estopped by his act and conduct to file the present suit? OPD
> 4. Whether the suit is not maintainable in the present form? OPD

5. Whether the suit is properly valued for the purpose of court fee and jurisdiction? OPP
6. Whether the plaintiff is entitled to any alternative relief? OPP
7. Relief."

5. By way of evidence, the plaintiffs' LRs examined an official from the office of the Joint Tehsildar, Dera Baba Nanak, and the Reader of the Naib Tehsildar (as PWs1 and 3 respectively), as also one of the LRs of the original plaintiff Waryam Singh, i.e. Bachan Singh (as PW4), deed writer Barkat Ram (as PW5) and one Gopal Singh, Lambardar of the village (as PW2).

The respondent-defendant examined himself as DW3, one Amarbir Singh Bajwa, Advocate, Batala, as DW1 and one Lakha Singh as DW2.

6. Upon appraising the evidence, the learned trial court came to the conclusion that with the agreement, Ex.P1, not being denied to have been entered into, and the stand of the respondent-defendant only being that actually the sale consideration was Rs.21,000/- and not Rs.21,000/- per acre, (with the suit land being slightly less than one acre) and the defendant not denying having signed the document after admitting its contents to be true, the sale consideration was (therefore proved to have been) settled at Rs.21,000/- per acre (with the total sale price therefore coming to Rs.20,082/-).

On that finding, the first issue was decided in favour of the appellant plaintiff.

6-A. On the next issue, of whether the appellant had always been ready and willing to perform his part of the contract, the trial court (Sub Judge 1st Class, Batala) recorded a finding that one of the LRs (son) of plaintiff Waryam Singh, had deposed as PW4 that on the date that the sale deed was to

be executed and registered, he and his father had both reached the office of the Tehsildar, alongwith the balance sale consideration, and had filed an application for getting their presence marked in the office.

That testimony was accepted to be correct by the trial court, on the ground that Ex.P2 was a document that proved the presence of the plaintiff in the office of the Sub-Registrar on 09.07.1981.

Though the said document was objected to by the defendant, the objection was overruled on the ground that it was not pressed by the counsel for the defendant at the time of arguments.

It was further recorded by the learned Sub-Judge that even the statement (Ex.PW4/A), of Gurbax Singh, i.e. the defendant, showed that he too was present on 09.07.1981 in the office of the Naib Tehsildar and had made a statement to the effect that he was ready to execute and register the sale deed, if Waryam Singh paid further, a sum of Rs.4800/-.

This statement was also found to have been objected to, with the said objection again rejected by that court, on the ground that “it was not given a finger touch by the Ld. Counsel for the defendant at the time of arguments”.

7. Reliance by the defendant on the notice issued by him to the plaintiff, dated 03.07.1981 (Ex.D1), was not given credence to by the trial court, on the ground that in his testimony, defendant Gurbax Singh had in fact admitted that on the day that the sale deed was to be executed and registered, both he and Waryam Singh had reached the Tehsil office. On the other hand, the notice, Ex.D1, stated that Waryam Singh had not come to the Tehsil office to get the sale deed registered.

Hence, it was held that the notice was only issued to create a

defence in favour of the defendant, to the effect that though he was willing to execute the sale deed, the plaintiff was not.

8. Other than the above, the trial court also recorded a finding that the defendant in his cross-examination had also stated that he was "not ready and willing to execute and register the sale deed for sale consideration of Rs.21,000/-".

Hence, it was held that it was actually the defendant who was not willing to perform his part of the contract, he having sought a higher price of Rs.4800/- from the plaintiff, than the amount already settled, as given in the agreement.

9. Issue no.2 thus having been also decided in favour of the plaintiff, issues no.3 and 4 were recorded to have not been pressed and were also decided against the defendant, with issue no.5, on court fee and jurisdiction, also 'not opposed'. Yet, it was held that the court fee of Rs.1900/- was correctly affixed, the value of the suit property being Rs.20,082/- and as regards the alternate relief sought by the plaintiff, the value in that context being only Rs.11,200/-.

10. Hence, holding the plaintiff to be entitled to the decree of possession by way of specific performance of the agreement, the 6th issue (of an alternative relief) was found to be "redundant".

Accordingly the suit of the plaintiff was decreed in his favour subject to him depositing the balance sale consideration within a period of 2 months from the date of the judgment, failing which the suit would be deemed to have been dismissed.

11. That judgment and decree having been challenged before the learned 1st appellate court, that court (the Additional District Judge,

Gurdaspur), after appraising the evidence, first held that as regards the sale consideration described in the agreement Ex.P1, as also the testimony of the deed writer PW5, and the attesting witness to the deed, PW2, it was very obvious that such consideration was @ Rs.21,000/- per acre and not for a total amount of Rs.21,000/- and therefore, with the agreement otherwise not disputed, the first issue was again decided in favour of the plaintiff.

However, even having decided so, subsequently, while deciding issue no.2, it is seen that the 1st appellate court has given a finding on there still being a dispute as to the settled price.

(Reference paragraphs 8 and 9 of that judgment).

12. As regards the second issue, on whether the plaintiff had been ready and willing to perform his part of the contract, the lower appellate court found that PW2 Gopal Singh (Lambardar and attesting witness), in his examination-in-chief, had deposed that it was the defendant (appellant before that court) who did not execute the sale deed; but in cross-examination, he had stated that the plaintiff had gone to the Tehsil office on the date fixed for execution of the deed but he did not know if he (plaintiff) had made any application to the Joint Sub-Registrar to mark his presence there.

This witness was also found to have deposed that he had not gone there on that date.

On the other hand, the stand of the plaintiff in his plaint, as also the stand of PW4 Bachan Singh (son of the plaintiff), was found to be that the defendant was asking for more money on the day of the sale and that his father (Waryam Singh) made an application before the Sub-Registrar, from which it would appear that Gopal Singh 'did not appear' when the parties appeared before the Sub-Registrar, and therefore, the statement of Gopal

Singh, to the effect that the defendant had committed the breach, as he sought an additional amount of Rs.4800/-, could not be believed.

13. The lower appellate court however also recorded that DW2, Lakha Singh, had deposed that on the date of the sale both the plaintiff and the defendant had gone to the office of the Sub-Registrar, and as a matter of fact it was the plaintiff who asked for extension of time, as he did not possess the money, whereas the defendant was not prepared to execute the sale deed without the payment of the sale price.

Thereafter that court referred to the notice issued by the defendant through his counsel (Ex.D1), wherein it was stated that the defendant remained present in the office of the Sub-Registrar on that date (03.07.1981) from 9:00 am but that the plaintiff did not arrive there, from which it was obvious that he (plaintiff) did not have the money to pay the defendant.

This was also (somehow) found to have been so as per the testimony of defendant Gurbax Singh as DW3 (respondent herein).

14. Importantly, it was noticed that the plaintiff had not produced the original application said to have been made before the Joint Sub-Registrar, to prove that he possessed the money, and only a certified copy of the statement recorded by the Naib Tehsildar was exhibited as Ex.P2 before the trial court, with the statement of Gurbax Singh, dated 09.07.1981, also exhibited as Ex.PW4/A to the same effect.

It was further recorded by the first appellate court that one Virender Singh, Registration Clerk in the office of the Joint Sub-Registrar, had also been summoned as PW to bring the original statements, certified copies of which were exhibited as Exs.P2 and PW4/A, as the defendant had

objected to them during the course of examination of evidence.

Yet, it was further held by that court that the trial court had simply rejected the objection on the ground that it was not pressed during the course of arguments, which observation of that court was disputed before the first appellate court by counsel for the defendant, stating that once they had been objected to at the time of the evidence being produced, no concession could have been recorded at the time of arguments.

15. That contention on behalf of the respondent-defendant (appellant before the first appellate court), was accepted by the 1st appellate court, further observing that if the two documents, Exs.P2 and PW4/A, were read, it would appear that two applications were made, one by defendant Gurbax Singh and one by plaintiff Waryam Singh, on 07.07.1981, with their statements recorded by the Naib Tehsildar on 09.07.1981.

Whereas plaintiff Waryam Singh had stated that he had come to the office to get the sale deed executed "from Gurbax Singh" and had also issued a notice twice to Gurbax Singh, who was not agreeable to execute the sale deed, the application made by the respondent-defendant (Ex.PW4/A), showed that the village Panchayat had brought about a settlement between the parties, vide which the plaintiff, Waryam Singh, was to pay Rs.4800/- in advance to defendant Gurbax Singh, "without any writing", after which he would execute the sale deed on expenses being paid by Waryam Singh.

It was further recorded by the first appellate court that from Ex.PW4/A it could also be seen that the defendant was to withdraw his suit seeking partition of land and that he had also issued a notice to the plaintiff earlier, with him being present in the office of the Sub-Registrar on "20 Haar" (03.07.1981) also.

16. Observing as above, it was held by the lower appellate court that there seemed to have been a genuine dispute between the parties with regard to the actual sale price and plaintiff Waryam Singh was to pay Rs.4800/- in addition to the settle sale price.

It was next observed that there was no evidence led that the prevailing rate of land in the village was Rs.21,000/- per acre only, and that it is common knowledge that “these days” the prices of land had shot up tremendously, and that after abolition of the 'Pre-emption Act' there was a tendency to write less sale price in the agreement/sale deed, in order to avoid expenses on stamp and registration, whereas the actual sale price was more.

Thereafter it was held by that court, that if the two documents (Exs.P2 and PW4/A) are not to be read together for want of formal proof, then there was no evidence that Waryam Singh actually went to the office of the Joint Sub-Registrar on the date that the sale deed was to be executed, and that the evidence of his son and LR (Bachan Singh PW4), could not be accepted, because his presence had also not been proved before the Sub-Registrar.

17. On the aforesaid reasoning, it was held that it could not be said that a “fault was committed” by the defendant, or that plaintiff Waryam singh was not to be blamed in any way.

Hence, the finding of the trial court on issue no.2 (whether the plaintiff had been ready and willing to perform his part of the contract), was reversed by the first appellate court.

18. Having held as above, on issue no.6, pertaining to whether the plaintiff was entitled to any alternative relief, it was held by the lower appellate court that he would be at least entitled to refund of earnest money alongwith interest thereupon @ 12% per annum.

19. Holding as above, the appeal of the defendant (respondent herein) was accepted to the extent that the plaintiff was entitled to recovery of the earnest money of Rs.5600/- paid alongwith the aforesaid interest, running from the date of payment, i.e. 10.04.1981, till the payment was actually made.

20. Thus this 2nd appeal came to be filed by the LRs of the plaintiff, and was admitted to regular hearing on the first date that it had come up for hearing (03.06.1988), with the following order passed:-

> "The agreement in question, mentioning the price of the land at Rs.21,000/- per acre is not disputed. The finding that some amount was to be paid in addition to the writing is not supported by any evidence. It is only a surmise, according to the learned counsel for the appellant.
>
> Admitted."

Thereafter it remained pending for all these years with either the applications for early hearing dismissed, or even if they were allowed at subsequent stages, with the turn of the case never actually having come up for effective hearing till 2019.

In the year 1993, on an application having been filed by the appellant seeking a restraint on alienation of the suit property, that was allowed, with such alienation ordered to be stayed during the pendency of the appeal, vide an order passed on October 11, 1993.

In the year 2014, an application bearing CM no.4443-C-2014 was filed, seeking that the applicants (purchasers of the suit property, vide a sale deed of 1986), be impleaded as respondents, with that application allowed on December 11, 2014, and respondents no.2 to 6 impleaded in the appeal.

21. Though at the time when the appeal was filed, in the year 1988, no questions of law had actually been framed in the grounds of appeal, a

perusal those 'grounds' as also of the judgments of the learned courts below, would reveal that the substantial questions of law that arise in this appeal, are to the following effect:-

i) Whether it would not be perverse for the lower appellate court, after recording a finding concurrent to that of the trial court, that as per the admitted agreement of sale, the consideration for the sale of the property stood settled at Rs.21,000/- per acre, to thereafter hold, without any written agreement to that effect, that the said consideration amount was revised, on the payment of which the sale deed was to be executed?

ii) Whether the lower appellate court correctly came to the conclusion, or not, that it was the present appellant-plaintiff, who was not ready and willing to perform his part of the contract?

iii) Whether that court could have, simply on the basis of alleged 'practice', held that to avoid stamp duty/Government charges etc., any oral agreement reached before a Panchayat could be relied upon, to hold that the consideration amount had actually been agreed as a higher amount to be paid, or whether any such oral agreement, even if entered into, could in any case have been given effect to, even in terms of Sections 23 and 24 of the Indian Contract Act, 1872?

iv) Whether respondents no.2 to 6 herein, who claim to be *bonafide* purchasers of the suit property, can be held to be so, in terms of Sections 48 and 52 of the Transfer of Property Act, 1882, and if so, the consequences thereof?

22. Before this court, Mr. Rahul Sharma, learned counsel appearing for the appellants (plaintiffs), has essentially raised arguments qua the findings of the learned Additional District Judge on issue no.2, i.e. as to whether the appellant-plaintiff was ready and willing to perform his part of the contract.

His first argument was that the reasoning of that court, to the effect that there appeared to be a genuine dispute between the parties with regard to the sale price, leading to a settlement being made before the Panchayat of the village, is a wholly unsustainable finding recorded, because that very court, on issue no.1, had already held that the price settled as per the sale deed, Ex.P1, was Rs.21,000/- per acre.

Mr. Sharma next argued that the observation by that court that it was common practice between the parties to not write the correct amount in the sale deed/agreement, was again a finding wholly on surmises and conjectures, which is also again contrary to the finding on issue no.1 (that the sale price was actually at Rs.21,000/- per acre).

The third argument raised by Mr. Sharma, was that the finding of the lower appellate court that there was no 'legal proof' with regard to the plaintiff being present before the Sub-Registrar on the date fixed for the execution of the sale deed, is contrary to the statement of the respondent-defendant himself, in his testimony as DW3, with him having admitted that both he and the plaintiff had actually appeared before the Sub-Registrar.

23. Mr. Sharma further submitted that the added respondents in this appeal, i.e. those who claim to be *bonafide* purchasers of the suit property from respondent no.1, even if they are *bonafide* purchasers not knowing of the litigation (though they actually had due knowledge of the litigation pending since the year 1984), are still not entitled to retain the land if this court comes to the conclusion that the appellant plaintiff is entitled to a decree of specific performance qua respondent no.1. His contention therefore is in terms of Sections 48 and 52 of the Transfer of Property Act, on the ground that the principle of *lis pendens* would apply qua any property sold while litigation

qua the property remains pending.

In support of the aforesaid argument, Mr. Sharma relied upon a judgment of a co-ordinate Bench of this court in **Inderjeet Wadhwa v. Jagjit and another** 2005 (2) RCR (Civil) 316, wherein it was held, after relying upon a large number of judgments of this court as also of different High Courts and one of the Supreme Court in **Dhanna Singh v. Baljinder Kaur** AIR 1997 SC 3720, that a subsequent purchaser does not have an independent right to the suit property, he having stepped into the shoes of the prospective vendee/defendant, and any decree passed against the defendant would be binding even upon the subsequent purchaser.

24. *Per contra*, Mr. Aashdeep Singh, learned counsel appearing for respondents no.2 to 6, had submitted that they (respondents no.2 to 6), had purchased the suit property on 03.06.1986, having absolutely no knowledge of the litigation between the appellant and respondent no.1, and in fact had been impleaded as respondents in the present appeal vide an order dated 11.12.2014, only because of that.

He pointed to paragraph 4 of the application filed by the said respondents, under Order 1 Rule 10 CPC, to submit that they had stated therein that they had no knowledge of the litigation.

25. In rebuttal, Mr. Sharma, learned counsel for the appellants, submitted that it was nowhere stated in the said application as to when respondents no.2 to 6 came into the knowledge of this appeal pending qua the suit property, and therefore, simply an averment to the effect that they had no knowledge of the litigation, is a wholly wrong averment made, to try and justify their stand of being bonafide purchasers.

He reiterated that in any case a decree binding upon the original

defendant would also be bind[ing upon a subsequent purchaser, in terms of the judgment of this court in *Inderjeet Wadhwas'* case and of the Supreme Court in *Dhanna Singhs'* case (both supra).

26. On a query made by this court as to why, 37 years after the agreement of sale had been entered into, this court would reverse the decree issued by the first appellate court, by which only refund of earnest money alongwith interest @ 12% per annum had been ordered, Mr. Sharma relied upon a judgment of a Division Bench of the Delhi High Court in **V.N. Verma v. Veena Mahajan**, Law Finder Doc Id # 384251.

He further submitted that with the plaintiff (actually his LRs) having pursued the appeal diligently, as would be obvious from the order passed by this court on 06.09.1991, the pendency of this appeal for the past 31 years, for no fault of his, should not be held against him.

(It is to be noticed that vide the said order the appellants' application for early hearing had been dismissed, while granting them permission to withdraw the sale consideration ("if so advised"), as had been deposited by them pursuant to the decree issued by the trial court).

27. Having considered the matter, first, it needs to be observed that it is rather strange that once the lower appellate court had held on issue no.1, that as per the agreement entered into between the parties, the sale price settled therein was in fact Rs.21,000/- per acre, (therefore amounting to Rs.20,082/-, for the suit land measuring 7 kanals 13 marlas), thereafter, while deciding issue no.2, that court went on to hold that an additional amount of Rs.4800/- was settled between the parties, to be paid before the registration of the sale deed.

In fact it has not been stated even by learned counsel for the

respondents, that in the written statement filed by the first respondent (defendant), the aforesaid averment had actually been made, the contention therein, in that context, only being that the price settled was a total of Rs.21,000/- and not Rs.21,000/- per acre. Though the document relied upon by the appellant plaintiff as the application made by the respondent before the Tehsildar on 09.07.1981 (Ex.PW4/A), also states to that effect, the said document was objected to and doubted by the respondent-defendant himself, as recorded by both the courts below.

(In any case, the said document purports to be a statement of the respondent-defendant shown to be recorded before the Naib Tehsildar, with no signatures shown, of plaintiff Waryam Singh).

28. Be that as it may, I do not see how it helps the respondent to contend, in terms of what has been held by the lower appellate court in that context, because if Rs.4800/- was demanded, without any written agreement thereto and such amount was to be paid other than by way of a written agreement so as to avoid stamp duty (as has been in fact observed by that court to be a "normal practice"), any such oral contract defeating any statutory provision for payment of stamp duty or registration charges, would be a contract that cannot be enforced even in terms of Sections 23 and 24 of the Indian Contract Act, 1872, which read as follows:-

> "**23. What consideration and objects are lawful, and what not.**—The consideration or object of an agreement is lawful, unless—
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> it is forbidden by law; or
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> is of such a nature that, if permitted, it would defeat the provisions of any law; or
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> is fraudulent; or
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> involves or implies, injury to the person or property of another; or
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> the Court regards it as immoral, or opposed to public policy.
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> In each of these cases, the consideration or object of an agreement is

> said to be unlawful. Every agreement of which the object or consideration is unlawful is void.
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> **24. Agreements void, if considerations and objects unlawful in part.-** If any part of a single consideration for one or more objects, or any one or any part of any one of several considerations for a single object, is unlawful, the agreement is void."

29. Thus, other than the unsustainability of the aforesaid legally unsustainable reasoning given by the lower appellate court, it could also not be denied that even in the written statement filed by respondent no.1 (the defendant in the suit), he had not stated anything with regard to any extra amount of Rs.4800/- having been settled to be paid by the plaintiff at any subsequent date after the agreement was entered into, his only contention in paragraph 3 of the written statement being that the amount settled was not Rs.21,000/- per acre, but a total amount of Rs.21,000/-. In other words, according to his written statement, the dispute would amount to be one only to the extent of Rs.918/-, and not Rs.4800/-. Hence, with a totally contradictory stand having been taken by him in his testimony (as per the learned lower appellate court), obviously the finding of that court is unsustainable on that factual ground also.

Hence, that finding of the lower appellate court is found to be unsustainable and is consequently set aside.

30. Coming then to the other limb of issue no.2, to the effect that whether the appellant-plaintiff was actually present before the Sub-Registrar to execute the sale deed, alongwith the remaining sale consideration.

In that context, as already noticed, the date fixed in the agreement of sale, Ex.P1, was admittedly 20 *Haar* 2038. Learned counsel for the parties have not denied that the said date was fixed as 03.07.1981 even as per the written statement filed by respondent no.1 (defendant), though his allegation

was that the plaintiff did not turn up to execute the deed on that date, with him (defendant Gurbax Singh) having served him a notice (Ex.D1) on that very date, to which he did not reply.

However, it is also not denied that in his cross-examination as DW3, respondent no.1 Gurbax Singh admitted that he and the plaintiff had both gone to the office of the Sub-Registrar for registration of the sale deed but that the appellant-plaintiff had not got the registration done till 5:00 p.m.

[In fact, this appeal had been put up for rehearing upon on a doubt having crept up in my mind upon dictation of the initial part of the judgment, as to whether the date fixed for execution of the sale deed was 03.07.1981 or 09.07.1981.

Eventually, learned counsel for the respondent, very fairly, did not deny that in his testimony as DW3, the defendant did not deny that at least on 09.07.1981 both he and the plaintiff (Waryam Singh), had gone to the Registrars' office, but the sale deed had not been executed because the full sale price was not paid.]

31. Hence, it would be very obvious that the full price as was not paid (according to respondent no.1), was the additional amount allegedly orally settled between him and the plaintiff, i.e. Rs.4800/-, even though no documentary evidence to that effect was produced; with him also not having taken that plea in his written statement, and in any case it having already been held hereinabove that any such agreement, simply to avoid payment of additional stamp duty etc., was unsustainable in law.

Hence, with the plaintiff and the defendant both having admittedly gone to the Registrars' office for execution of the sale deed on 09.07.1981, even if that is a date subsequent to 03.07.1981 as settled in the

agreement, that would make no difference because the defendant in his written statement itself stated that he had granted 7 days more time to the plaintiff to execute the sale deed.

Consequently, the finding of the lower appellate on issue no.2, i.e. as regards the plaintiff not having been willing to fulfill his part of the contract, is also set aside and the finding of the trial court on that issue, restored.

32. Therefore, as regards questions no.(i) & (iii) framed in paragraph 21 hereinabove, it is held that the lower appellate court wholly erred and in fact perversely so, in holding that simply to avoid stamp duty and other legally due charges, a higher amount of consideration could have been agreed upon to be paid, other than what was agreed to as per the agreement of sale dated 10.04.1981; and that too in the absence of any written agreement showing a revision of the agreed sale price, with not even any member of the Panchayat shown to have been examined to prove any such oral agreement.

33. Coming to question no.(ii) framed as a question of law, again it is held that in the face of the testimony of respondent no.1 (defendant) himself, to the effect that both he and the plaintiff were present before the Registrar but that the sale deed was not executed, it cannot be held that the appellant-plaintiff in any manner resiled from performance of his part of the contract, with even learned counsel for the respondents before this court having very fairly eventually admitted, as again noticed earlier, that as a matter of fact appearance before the Sub-Registrar, of both parties, could not actually be denied.

34. Coming then to the question of the rights of respondents no.2 to 6, as subsequent purchasers of the suit property during the pendency of the *lis*.

In terms of the judgment cited by learned counsel for the appellant, he submitted that it would be very obvious that even a bonafide purchase cannot but suffer the consequences of a decree issued against the original defendant, though in that case (*Inderjeet Wadhwa*, supra), the plaintiff was a vendee by way of a sale deed executed.

That would also flow from a reading of both, Sections 48 and 52 of the Transfer of Property Act, 1882, which read as follows:-

> "**48. Priority of rights created by transfer**.- Where a person purports to create by transfer at different times rights in or over the same immoveable property, and such rights cannot all exist or be exercised to their full extent together, each later created right shall, in the absence of a special contract or reservation binding the earlier transferees, be subject to the rights previously created.
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> xxxxx xxxxx xxxxx
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> **52. Transfer of property pending suit relating thereto.-** During the pendency in any Court having authority [[within the limits of India excluding the State of Jammu and Kashmir] or established beyond such limits] by the Central Government of any suit or proceedings which is not collusive and in which any right to immoveable property is directly and specifically in question, the property cannot be transferred or otherwise dealt with by any party to the suit or proceedings so as to affect the rights of any other party thereto under any decree or order which may be made therein, except under the authority of the Court and on such terms as it may impose."

35. First, it is to be noticed that in terms of Section 48 of the Transfer of Property Act, 1882, where a person creates, by transfer, a right at different times, in the same property in favour of different persons, the person to whom it was first transferred would have a first right over any subsequent rights created subsequently in favour of other person.

In the present case, of course, the property was never actually

transferred by way any sale deed to the defendant-respondent no.1, with only an agreement of sale having been executed admittedly in his favour and with the matter thereafter having gone into litigation right since the suit was filed by the appellant-plaintiff on 16.07.1984, with that suit having been completely decreed in his favour by the trial court vide its judgment and decree dated 01.08.1986, though with that decree essentially reversed (as regards specific performance of the contract) by the lower appellate court vide its judgment and decree dated January 16, 1988.

A perusal of the application filed by respondents no.2 to 6 seeking impleadment before this court (CM no.4443-C-2014), on 01.04.2014, reveals that respondent no.2, Pritam Singh, is stated to have purchased the suit property vide a sale deed executed on 03.06.1986, i.e. obviously about 5 months after the decree issued in favour of the plaintiff by the trial court. (Respondents no.3 to 6 are seen to be the sons of respondent no.2).

It further needs to be noticed that a copy of the sale deed dated 03.06.1986, showing therein a payment of Rs.9500/- by way of sale consideration, has been annexed with the application as Annexure R-3, but with no application filed under the provisions of Rule 27 of Order 41 of the CPC, seeking to lead any additional evidence to prove execution of the said sale deed.

That being so, in fact there would be no reason to not allow this appeal, as regards the 1st respondent-defendant in any case, i.e. Gurbax Singh.

36. However, the question that next arises is, as to whether, with more than 38 years having gone by from the date that the agreement was entered into and in terms of what has been contended before this court, to the effect that respondents no.2 to 6 purchased the property in the year 1986 with

the factum of the purchase by the respondents in the year 1986 not specifically denied, (though, again, with no such sale deed having been led by way of even additional evidence by the said respondents), would it be appropriate to enforce a decree of specific performance, thereby obviously evicting the said respondents from the suit land after almost 4 decades?

Section 20 of the Specific Relief Act, 1963 (before its amendment w.e.f. 01.08.2018), reads as follows:-

> "**20. Discretion as to decreeing specific performance**.—(1) The jurisdiction to decree specific performance is discretionary, and the court is not bound to grant such relief merely because it is lawful to do so; but the discretion of the court is not arbitrary but sound and reasonable, guided by judicial principles and capable of correction by a court of appeal.
>
> (2) The following are cases in which the court may properly exercise discretion not to decree specific performance:—
>
> (a) where the terms of the contract or the conduct of the parties at the time of entering into the contract or the other circumstances under which the contract was entered into are such that the contract, though not voidable, gives the plaintiff an unfair advantage over the defendant; or
>
> (b) where the performance of the contract would involve some hardship on the defendant which he did not foresee, whereas its non-performance would involve no such hardship on the plaintiff; or
>
> (c) where the defendant entered into the contract under circumstances which though not rendering the contract voidable, makes it inequitable to enforce specific performance.
>
> Explanation 1.—Mere inadequacy of consideration, or the mere fact that the contract is onerous to the defendant or improvident in its nature, shall not be deemed to constitute an unfair advantage within the meaning of clause (a) or hardship within the meaning of clause (b).
>
> Explanation 2.— The question whether the performance of a contract would involve hardship on the defendant within the meaning of clause (b) shall, except in cases where the hardship has resulted from any act of the plaintiff subsequent to the contract, be determined with reference to the circumstances existing at the time of the contract.
>
> (3) The court may properly exercise discretion to decree specific performance in any case where the plaintiff has done substantial acts or

suffered losses in consequence of a contract capable of specific performance.

(4) The court shall not refuse to any party specific performance of a contract merely on the ground that the contract is not enforceable at the instance of the party."

37. In this context, a judgment of the Supreme Court, in **Satya Jain v. Anis Ahmed Rushdie** JT 2012 (12) SC 30, can be referred to, wherein their Lordships, in effect, held that whether or not a plaintiff should be held entitled to a decree of specific performance after a long efflux of time (over 40 years in that case also), would need to be determined after balancing equities in the facts of each case, also keeping in mind as to whether the plaintiff was in any manner responsible for the delay that has occurred, including their participation in the litigation.

Their Lordships referred to Section 20 of the Act of 1963 to hold that the discretion vested (in the court) by that provision, "cannot be entrapped within any precise expression of language and the contours thereof will always depend on the facts and circumstances of each case".

While holding that the ultimate guiding test would be the principles of fairness and reasonableness in the particular circumstances of a case, reference was also made to various earlier judgments on the issue.

(Reference paragraphs 27 to 29 of the judgment in Satya Jains' case, Law Finder DocId # 405034).

38. In the context of the present case, it obviously has to be observed that after the judgment of the first appellate court was delivered on January 16, 1988, the present appeal was filed on 14.04.1988 and, as already noticed, was admitted to regular hearing on the very first date that it came up before this court (on 13.06.1988).

A perusal of the case file, as also the order sheet, reveals that the

appellant has been thereafter time and again filing applications seeking an early date of hearing, the first of which was dismissed on 06.09.1991, with such applications having been filed from time to time thereafter, with also an application under Order 39 Rules 1 & 2 having been filed in the year 1993, which was allowed on October 11, 1993.

Therefore, obviously, the appellants (LRs of the original plaintiff) have been diligent in pursuing the litigation through out and therefore cannot be faulted for the pendency of the appeal for more than 31 long years.

Further, the bone of contention is a piece of land less than 1 acre and therefore, in my opinion, even if it is to be eventually accepted (without any additional evidence having been led before this court), that respondent no.2 purchased the said property, after the decree of the trial court was issued in favour of the plaintiff, equity would still stand in favour of the appellants.

39. It needs to be further stated here that respondents no.2 to 6 are shown to be residents of the same village, i.e. Pala Nangal, where the suit land is situate. Hence, it is very difficult to believe that at the time when they purchased the suit property in 1986 (even if the sale deed as has not been exhibited by way of evidence, were to be accepted at face value), that they did not know of the suit land being in litigation at least since the year 1984 when the suit was instituted, with the decree also having been issued qua the suit property 5 months before the date of sale.

No agreement of sale, prior to any such purchase, has been even attempted to be led by way of evidence before this court, or before the first appellate court, and consequently I would not hold respondent no.2 to even be a *bonafide* purchaser of the said land.

Yet, even if it were to be accepted for any reason, despite no evidence having been led to that effect, that they were not aware of the litigation since the year 1986 till 2014 when they got themselves impleaded as respondents before this court, equity, in my opinion, would still weigh in favour of the plaintiff and his descendants, i.e. the present appellants in this appeal, they having diligently pursued their right uptill even the present time before this court.

Consequently, even the discretion conferred upon any court in terms of Section 20 of the Specific Relief Act, would not be exercised in favour of the respondent-defendants, simply on account of the appeal of the appellants having remained pending, for absolutely no fault of theirs, for more than 31 years in this court.

40. Therefore, that question of law is also answered as above, with the appeal therefore allowed and the judgment and decree passed by the lower appellate court set aside, and that of the learned trial court restored, subject to the appellant-plaintiffs now paying to respondents no.2 to 6, what is shown to be the sale consideration in the unexehibited document (i.e. the sale deed dated 03.06.1986), alongwith interest @ 9% per annum, running from that date till the date of payment thereof, within a period of four months from today, failing which the appeal would be deemed to have been dismissed.

The parties are left to bear their own costs.

January 9, 2020 **(AMOL RATTAN SINGH)**
dinesh/nitin **JUDGE**

1.Whether speaking/reasoned? Yes
2. Whether reportable? Yes