IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No. 2256 of 1987 (O&M)
Date of Decision: 15.05.2015

Bachan Kaur through her LRs
Sadhu Singh and others

... Appellants

Versus

Kaka Singh and others ... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Amarjit Markan, Advocate,
for the appellants.

Mr. Sanjay Majithia, Sr. Advocate,
with Mr. Rajesh Kumar, Advocate,
for the respondents.

1. To be referred to the Reporters or not? Yes.
2. Whether the judgment should be reported in the Digest? Yes.

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RAJIV NARAIN RAINA, J.

1. The substantial questions of law which arise in this appeal on which the parties were heard are as follows:-

(i) Whether the agreements to sell dated June 02, 1980 Ex. PW-10/A and June 20, 1980 Ex.P-6 suffer from vagueness and uncertainty and are, therefore, void under section 29 of the Contract Act, 1872?

(ii) Whether the agreement dated June 02, 1980 is an agreement to sell immovable property with clear expression of intention of offer and acceptance by the parties clearly expressing their intention or whether the transaction was in continuation of mortgage and the agreement is or is not a clog on redemption with reference to section 60 of the Transfer of Property act, 1882?

(iii) Whether there has been an error of judgment in the appellate decree by misreading the evidence on record leading to recording of unsatisfactory findings on the major issues on which the case rested?

The parties agree that an opinion is demanded from court in second appeal on the above three questions of law which are substantial in nature arising from the evidence on record and the legal propositions involved.

2. This is defendant's second appeal. The plaintiffs' suit for possession by way of specific performance of agreement to sell the property in dispute was dismissed by the trial court. The decree has been reversed in first appeal. The suit has been decreed. Hence, the present appeal has been preferred.

3. The focal point of the litigation is the sale agreement dated June 02, 1980 which is an unregistered document produced by plaintiffs on record as Ex.PW-10/A. Plaintiffs claim there rights to suit property from it while the defendant #1 through her legal representatives stoutly refute the claim asserting to the contrary that there was no real intention to sell suit property and the document when read in the correct perspective was in continuation of mortgage deed/s existing between the parties. Much will depend on the construction of the exhibits terms and conditions in the background of a prior mortgage deed with respect to suit land in order to find out the real intention of the parties from the document which falls at page 104 of the lower court record and its relevant translated extract reads as follows:-

> *"...I am in need of more money for my business (karobaar). Therefore, I while making addition of Rs.10,000/- in mortgage amount in respect of the share of Harbhajan Singh, undertake that a sum of Rs.35750/- in respect of the share of Harbhajan Singh have been received by me at the house. I have entered into an agreement to sell this mortgaged land with Kaka Singh and Dev Singh aforesaid as per the following terms and conditions:-*
>
> *1. That the value of land has been fixed @ Rs.20,000/- per Killa.*
>
> *2. That sale deed would have to be got registered prior to 10.3.2037. The vendees shall bear the expenses of registration.*
>
> *3. All the remaining terms and conditions would remain the same like that of mortgage deed.*
>
> *4. If I fail to abide by the conditions of this agreement, I would pay a sum of Rs.20,000/- and the vendees would have the right to get the sale deed registered through the court.*
>
> *5. In case the vendees fail to get the sale deed registered as per the terms of Agreement to Sell prior to 10.3.1980 and would not pay the remaining amount that eventuality I would forfeit the said amount of Rs.10,000/- and sell the same (land) to some one else. Hence, this sale deed has been got scribed so that it may serve as an authority at the time of need.*
>
> *Dated: 2.6.1980 S. 12.3.1902 Monday"*
>
> *(underlined for emphasis)*

4. In order to understand the case better a few introductory facts are necessary to be narrated. Kaka Singh and Baldev Singh instituted a Civil Suit # 200 of 8.9.81 against Bachan Kaur and Gurmel Singh, wife and son of Joginder Singh. One Harbhajan Singh died unmarried and issueless. His estate was succeeded by his mother Bachan Kaur defendant # 1. Bachan Kaur died pending second appeal and her legal heirs were impleaded vide order dated January 18, 1993 passed in CM # 181-C of 1993. These were Sadhu Singh, Labh Kaur and Gurmail Kaur. Sadhu Singh also died pending appeal and yet another application under Order 22 Rule 3 CPC was filed for

impleading his LRs in CM # 1508-C of 2006. Widow Karamjit Kaur, her two minor sons and a daughter under the guardianship of Karamjit Kaur were impleaded in place of late Sadhu Singh vide order February 23, 2006. The operation of the appellate decree passed by the learned Additional District Judge (II), Sangrur dated May 19, 1987 was stayed by this court when the appeal was admitted on July 10, 1987. The operation of the stay order continues till presently.

5. Late Harbhajan Singh and Gurmel Singh were owners of 38 Kanals 8 Marlas of land in equal shares. Bachan Kaur wife of Joginder Singh was the mother of late Harbhajan Singh and Gurmail Singh were the defendants in the suit, with Bachan Kaur as Class I inheritor of Harbhajan Singh's rights in property, her predeceased son. On June 08, 1978 Harbhajan Singh and Gurmel Singh mortgaged the property in favour of plaintiffs for a sum of Rs.45,000/- and delivered possession to them. They created a further mortgage of the suit land for Rs.6500/- vide separate mortgage deed dated December 28, 1978 vide [ExP2]. Both the defendants i.e. Bachan Kaur and Gurmel Singh created further charge on the said land in the sum of Rs.9000/- and executed another mortgage deed dated May 23, 1979. Thereafter, Harbhajan Singh died and was succeeded qua his share by his mother, Bachan Kaur. Bachan Kaur, according to the plaintiffs, agreed to sell her half inherited share to the plaintiffs by the sale agreement dated June 02, 1980 [ExP4] and received Rs.10,000/- as earnest money from the plaintiffs. A sum of Rs.35,750/- out of the previous mortgage deed was to be adjusted towards the sale price which was fixed at Rs.20,000/- per killa (acre). The sale deed was to be executed by March 10, 2037 BK (equivalent

to June 23, 1980). It may be mentioned in a minor digression that the Bikrami calendar starts in 57 BC and is named after King Vikramaditya. The stamp and registration expenses were to be borne by the plaintiffs. It was agreed that in case of default, the other party would be entitled to get the sale deed registered by court process.

6. It is the case of the plaintiffs that Bachan Kaur was not prepared to execute the sale deed due to certain unavoidable circumstances and the parties mutually extended the date of execution of the sale deed vide another agreement dated June 20, 1980, which was the target date to effect conveyance of property by registration in the Sub Registrar's office at Sunam, Punjab. On June 20, 1980 Bachan Kaur received another sum of Rs.6000/- as earnest money. Thus, she received Rs.16,000/- in all as earnest money on the basis of two agreements to sell. The plaintiffs claimed that they were ready and willing to perform their part of the agreement and get the sale deed executed but Bachan Kaur defaulted. They came to know that Bachan Kaur intended to sell her land before June 20, 1981, the target date. The suit was filed three days before the target date for permanent injunction to restrain Bachan Kaur from selling her land to third parties and intimation in this effect was sent to her by registered post. It was their say that five days before the target date, i.e. on June 15, 1981 she promised to reach the office of the Sub Registrar, Sunam for execution of the sale deed. The plaintiffs went forth but Bachan Kaur failed to turn up. They got an affidavit attested on that date to mark their presence before the Sub Registrar. They again approached Bachan Kaur and she once again promised to execute the sale deed on June 22, 1981. This is alone an oral assertion. The plaintiffs

again went to Tehsil office on the fresh date and remained there from 9 AM to 5 PM along with the balance of the sale price and expenses to meet stamp duty and registration charges but she failed to turn up. They got another affidavit attested on June 22, 1981. This is the background in which the suit was brought.

7. On notice, Bachan Kaur appeared and contested the case and filed her written statement wherein she denied the allegations in the plaint. She pleaded that Inder Singh son of Mithu had half share in the suit land while the remaining half was owned by her sons Gurmel Singh, Harbhajan Singh and Sadhu Singh in equal shares. Therefore, Gurmel Singh and late Harbhajan Singh were not owners to the extent of half share in the suit land. She, however, admitted that she succeeded her son Harbhajan Singh after the latter's death but the agreements dated June 02, 1980 and June 20, 1980 were fictitious. She was a poor widow. The plaintiffs had been cultivating the suit land on Chakota on her behalf for Rs.2000/- per year in terms of a *Chakotanama* and under the garb of this *Chakotanama*, they might have taken her thumb impressions on some documents/papers fraudulently to doctor them for their undue benefit. Defendant # 2 was served in the suit in person on February 16, 1982 but he failed to turn up to contest the case. He was proceeded against ex parte.

8. The contesting defendant left in the fray was Bachan Kaur, the present appellant. On the pleadings of the parties, the following issues were framed by the then Sub Judge I Class, Sangrur:-

> *"1. Whether the suit is bad for non-joinder of necessary parties?*
>
> *2. Whether the suit in the present form is not maintainable?*

> *OPD.*
>
> *3. Whether the plaintiffs have got no locus standi to file the suit? OPD.*
>
> *4. Whether the defendant No.1 entered into an agreement of sale deed dated 2.6.80 and received Rs.10000/- as earnest money as alleged? OPP.*
>
> *5. Whether the time of performance of agreement was extended after the receipt of Rs.6000/- on 20.6.80 as alleged? OPP.*
>
> *6. Whether the defendant mortgaged the land in dispute prior to the agreement of sale vide mortgage deed dated 8.6.78 and 28.12.78 as alleged? If so, its effect? OPP.*
>
> *7. Whether the plaintiffs were always ready and willing to perform their part of contract? OPP.*
>
> *8. Whether the thumb impression obtained on the agreement have been obtained fictitiously and fraudulently as alleged by the defendant. If so its effect? OPD.*
>
> *9. Whether the plaintiff is entitled to the injunction prayed for? OPP.*
>
> *10. Whether the plaintiff is entitled to the specific performance of agreement of sale? OPP.*
>
> *11. If issue No.10 is not proved whether to any other alternative relief the plaintiff is entitled to for Rs.32000/-? OPP.*
>
> *12. Relief."*

9. The parties produced both oral and documentary evidence on the issues struck, the onus of which were placed on either side according to the pleadings.

10. Issue # 1 was decided in favour of the plaintiffs holding that the suit does not suffer from non-joinder of necessary parties since only defendant # 1 remained in the picture and in contesting position. Issue # 2 was decided against the defendants. The suit was found maintainable. Issue # 3 re. locus standi went in favour of the plaintiffs. Issue # 4 & 5 were taken up together and they have an important bearing on the case. The learned

trial Judge reached the conclusion that defendant # 1 did not agree to sell the suit land nor had she received a sum of Rs.16,000/- as earnest money. The second agreement dated June 20, 1980 was exhibited as P-6.

11. In order to prove both these issues, the plaintiffs examined Gurbux Singh inter alia PW-10 who was one of the marginal witnesses to the agreement. Kaka Singh appeared as PW-1 to prove the agreements. Similarly, Rattan Singh PW-3 was marginal witness of the agreement Ex.P-6 dated June 20, 1980. The question was whether there was due execution of the agreements. After evaluating the evidence the trial court thought that plaintiffs had failed to prove the agreements as binding documents in support of a decree for specific performance of suit land of which they were already in possession through mortgage deeds. In reaching this conclusion, the trial court reasoned inferentially:-

(i) looking to the number of mortgage deeds from Harbhajan Singh and Gurmel Singh that after the death of Harbhajan Singh, if money was said to have been paid to the defendants then it appears that Bachan Kaur was "pre-possessed" by the plaintiffs including late Harbhajan Singh and Gurmel Singh who was young and had not the discretion to assess or fully understand the impact of their acts in respect to their property.

(ii) The revenue record placed on the file showed that neither Harbhajan Singh nor Gurmel Singh nor Bachan Kaur on the death of Harbhajan Singh had half share in the land measuring 38 Kanals 8 Marlas detailed in the head note of the plaint. On the other hand, it was Inder Singh son of Mithu who had half share in the joint khata including the land in dispute and the remaining half was owned by sons of Bachan Kaur i.e.

Gurmel Singh, Harbhajan Singh and Sadhu Singh. Therefore, Bachan Kaur representing Harbhajan Singh had only 1/6th share in the joint khata including the land in dispute. It was not the case of the plaintiffs that defendant # 1 had agreed to sell 1/6th share in the joint khata and had agreed to transfer possession of share in the land measuring 38 Kanals 8 Marlas subject matter of suit. Thus, even if Bachan Kaur intended to sell her part of the joint khata she would alienate only 1/6th share in the suit land and not half of it. It appeared to the trial Judge that the plaintiffs did not consult the previous record before entering into the alleged sale agreements. If they had exercised due diligence on the land they would have known the real position with respect to ownership of land. The trial Judge noticed with his eyes open that in the agreement Ex.PW-10/A, the number of the khewat entered is 37/78 as mentioned in the Jamabandi for the year 1972-73 but by June 02, 1980 the Jamabandi for the year 1977-78 had come into existence. In the heading of the plaint, the khewat number mentioned is 38. This also showed that the plaintiffs did not consult the latest revenue record to find out the true ownership legacy in respect of the suit land. The court found the plaintiffs were already in possession of land under certain mortgage deeds and on the basis of the same, they continued to obtain further sale deeds from the defendants and finally they ventured to procure the agreements of sale on the basis of entries in the mortgage deeds.

(iii) The trial Judge found a significant factor which it thought went to the root of the case and demolished the entire plank of the plaintiffs inasmuch as the stamp papers were purchased on the date of the agreement i.e. June 02, 1980 whereas the date for the execution of the sale deed was fixed prior thereto i.e. on March 10, 1980 in terms of condition # 2 of the agreement reproduced above. Obviously, it follows squitter that there was something fundamentally wrong in the agreement to sell where the target date could have only been subsequent to the date of execution. This alone cast a serious doubt as to the genuineness and validity of the sale agreement. This void or chasm was not explained by the plaintiffs in their oral and documentary evidence produced in support of a decree of specific performance.

(iv) Insofar as the thumb impressions on the sale agreements are concerned they were denied emphatically by Bachan Kaur. Her case was that she really intended to give the suit land on Chakota to the plaintiffs and they misused their authority and good faith reposed in them by Bachan Kaur who was by then an aged person and proved on the file not to be a literate or an educated person. The trial court reasoned, and I think quite correctly, that though burden remained on defendants but onus shifted on the plaintiffs in view of the denial of the thumb impressions as being intended to be put on a document for the purposes of sale. To recite this question, the trial court read the evidence of Shanti Sarup, the scribe of Ex.PW-10/A and Ex.P-6 appearing as PW-12 but no direct question was put to him in the cross-examination that these agreements were scribed by him although he appeared for them as a scribe to the aforesaid agreements. Bant Singh is also a common witness to the two sale agreements but he was given up as unnecessary by the plaintiffs. This, the learned trial Judge thought cast a serious shadow on the validity of the agreements in dispute. Facing failure of proof of fact by evidence, an attempt was made by the plaintiffs to recall

Shanti Sarup to face further examination through application dated January 20, 1983 but the same was disallowed by the then learned trial Judge and for a valid reason. The plaintiffs then moved an application dated December 04, 1982 to produce an expert to opine on the thumb impressions but the same was dismissed on February 10, 1983. These facts deliver their own story.

Fifthly, the next question presented before the trial Judge was to examine the file and to see wherefore the plaintiffs had the money to redeem the mortgage deeds and to foot the sale consideration of the agreements in dispute. Kaka Singh plaintiff appearing as his own witness PW-1 maintained that the entire amount was lying in his house. The court did not believe the story or found any other evidence to prove where the cash lying at home came from. If it came from commission agents there was no proof of it. The sale price was fixed at Rs.20,000/- per killa. Even if it is taken that Bachan Kaur would want to sell half share in the suit land, the price of that half share would come to Rs.52,000/-. The case of the plaintiffs in the plaint was that Rs.35,750/- out of the previous mortgage money was to be adjusted in the sale price. The plaintiffs alleged that contesting defendant had received two sums of money, i.e. Rs.10,000/- and Rs.5000/- respectively on the two sale agreements. Therefore, it follows sequitur that a sum of Rs.51,750/- had been received by defendant # 1 as sale consideration leaving only a few hundred rupees as balance of the sale price which would have hardly been of any difficulty in arranging if their story of keeping huge amounts in their house were to be accepted. The trial Judge found evidence on record to suggest that there was valid reason for not executing sale deed on June 20, 1980 and why was the date postponed and how. The court thus concluded that plaintiffs were taking undue advantage of defendant # 1, a septuagenarian widow. Bachan Kaur recounted her story that after the death of her husband Joginder Singh and with one son predeceased, the other two did not look after her material comforts. It was in these critical financial straits that she had asked the plaintiffs to lend her some money of the like of Chakota for her to survive and that are how the plaintiffs took undue advantage of the weak position and arranged the making of two sale agreements. It was in these circumstances that issues # 4 & 5 were held in favour of the contesting defendant and against the plaintiffs.

12. With respect to issue # 6 the trial court did not join issue since it was not a suit for redemption of mortgage but a suit for specific performance therefore the need to decide the issue did not arise. Therefore, essentially the execution and consideration of the mortgage deeds was not in issue, though an issue was framed to that effect.

13. Findings on issues # 4 & 5 were read into certain question and answers to resolve issue # 7 as to whether the plaintiffs were ready and willing to perform their part of the contract. In resolving this issue, the trial Judge reasoned: (i) why did the plaintiffs having paid almost the whole of the sale price leaving just a few hundred rupees in balance, and then wait for a year to press the execution of sale deed against defendant # 1. As a point of fact the trial Judge noted that no notice was given by defendant # 1 when the target date had arrived for postponing the execution of the sale deed. The affidavits Ex.P-4 dated June 15, 1981 and Ex.P-6 dated June 22, 1981 sworn by the plaintiffs to show they were present before the Sub Registrar on the material dates were not sufficient proof of presence since the best

evidence would have been to make an application before the Sub Registrar, Sunam requesting marking of their presence and to show the officer the source of meeting the balance sale price. The evidence of Shabad Parkash PW-2 to prove the affidavits is not proof by evidence of presence of the plaintiffs in the Tehsil office, Sunam in the office of the Sub Registrar. (ii) The suit was brought a few days before the target date and, therefore, presences recorded prior thereto or thereafter are of hardly any consequence and matter little. The suit was brought for a restraint order against alienation of suit land by the defendants and not for specific performance. In these circumstances, if it is so, it did not prove that they were ready and willing to perform their part of the agreement as prospective buyers. Therefore, the trial Judge turned to the view that since issues # 4 & 5 having been found against the plaintiffs issue # 7 ought to fail and against the plaintiffs. Then, this aspect should also suffer similar consequence. An injunction was refused so was relief for specific performance nor even the alternative relief of recovery of Rs.32,000/- claimed in the plaint because the due execution of the agreements by a preponderance of probabilities was not proved by evidence nor passing of any consideration thereof. The suit was dismissed.

14. Aggrieved by the decree dismissing the suit, the plaintiffs carried an appeal to the court of the learned Additional District Judge (II), Sangrur in Civil Appeal No.251 of 24.12.1985 which has reversed the decree. The court of first appeal has upturned the findings of the learned trial court on issues # 4 & 5 as not sustainable. The court of first appeal disagreed with the observations and findings of the trial court that the plaintiffs had been advancing money under mortgage deeds; therefore, they "pre-possessed" the

mind of Bachan Kaur. The court of first appeal reasoned that there was no such plea taken and consequently receipt of mortgage money stood admitted by Bachan Kaur in her written statement.

15. The court of first appeal did not also agree with the observations of the learned trial court that Bachan Kaur had $1/6^{th}$ share in the land and not half share. The learned Judge relied on Ex.PW-11/A which is the jamabandi according to which Harbhajan Singh had $1/6^{th}$ share in the entire holding measuring 232 Kanals 10 Marlas. If Harbhajan Singh had $1/6^{th}$ share in the whole khata and that $1/6^{th}$ share is less than 38 Kanals 8 Marlas which parcel of land was mortgaged with possession by Harbhajan Singh and Gurmel Singh in equal shares then the sale by Bachan Kaur could take place within her share albeit in the written statement Bachan Kaur had admitted that that she was the owner of one half share in the land in dispute. It was in this context that one half of the land was agreed to be sold and it could not be said that Bachan Kaur was the owner of $1/6^{th}$ share of the land in dispute. Thus, Bachan Kaur had agreed to sell one half share of the land already mortgaged with the plaintiffs and that could be validly done as it was less than $1/6^{th}$ share in the whole khata. In coming to this conclusion, the court of first appeal agreed as correct that Bachan Kaur was infact owner of $1/6^{th}$ share in the whole khata but still it is established that sale agreement pertained to 38 Kanals 8 Marlas and it was that "she agreed to sell half of that." This is a factually incorrect statement. Half of 38 Kanals 8 Marlas would be half less than what was agreed to be sold. If this argument prevails then most certainly the sale agreement is a vague contract hit by section 29 of the Contract Act. With respect to discrepancy in the description of the

khata numbers where the agreements talk about khata # 37 while the heading of the suit described claimed rights in different khata # 38 which the court of first appeal thoughts was only a clerical mistake in the description of land and permitted the same to be amended by the trial court vide order dated February 01, 1984. The court of first appeal has jibed the trial court for not noticing this fact in its final dispensation. However, Mr. Markan appearing for the appellants may not be wrong in urging that the amendment having been allowed even then nothing depended on it as to the fate of the suit.

16. The court of first appeal also did not agree with the observations of the trial court and has not like the use of the word venturing by the trial Judge that since plaintiffs were already in possession of the mortgage deed, therefore, they "ventured" out in succeeding to enter the agreements of sale. The court opined that there is no such plea in the pleadings nor is it true nor it has been shown as to how the agreements were ventured on the basis of mortgage deed. The court of first appeal found that both the agreements in question have been proved on record by their marginal witnesses and the plaintiffs. Bachan Kaur had impliedly admitted due execution of sale agreements when she took the plea that thumb impressions were got obtained by fraud. Bachan Kaur did not controvert in her statement the purchase of stamp papers by her and she has not proved that thumb impressions were obtained by fraud. No particulars of fraud have been mentioned in the written statement. If these were got by representing the same to be Chakota, no other Chakotanama of the similar type has been got proved on record although it has been admitted that the plaintiffs were

cultivating the land earlier to the execution of the alleged agreements. Therefore, the trial Judge fell in error in shifting the onus to the plaintiffs to prove the thumb impressions of Bachan Kaur.

17. In coming to this conclusion, the learned appellate Judge has failed to deal with all the findings of the trial court with sufficient degree of precision. The trial Judge may have made minor deviations in the process of his reasoning by using words like venturing etc. but that to the mind of this court are not sufficient to hold that the learned trial Judge deflected from the path of justice. If the learned trial Judge roped in the mortgage money and sale consideration or balance sale consideration then the mortgage part can be removed and the findings sustained on the question of sale consideration or the readiness and willingness of the plaintiffs to perform their part of the contract. It matters little to the lis with respect to specific performance which is a discretionary relief that Bachan Kaur did not deny the money received under the mortgage deed. The trial court was not deciding a case of mortgage or redemption of mortgage. It was only called upon to examine whether the discretionary relief of specific performance is to be granted or declined and the heart of the matter I am inclined to think is really the one as propounded by Mr. Markan that where the sale agreements suffer from vagueness and irreconcilable ambiguity then they are hit by the provisions of section 29 of the Contract Act, which important aspect and the proposition of law applicable to such a document has sadly not been considered by the court of first appeal while it was expected of him while sitting in superior judicial appellate jurisdiction, as the final court of fact and law, to have carefully perused and understood the terms and conditions

of the pretended agreement of sale and whether the terms therein amounted to a clog in redemption and therefore violative of section 60 of the Transfer of Property Act, 1882 as well. It is this principal argument that emerges from a reading of the agreement to sell dated June 02, 1980. The agreement says categorically that Bachan Kaur is in need of more money for her business. She was clearly in a position of disadvantage and a victim of circumstances. Bachan Kaur records in the agreement: "Therefore, I while making addition of Rs.10,000/- in mortgage amount in respect of the share of Harbhajan Singh, undertake that a sum of Rs.35750/- in respect of the share of Harbhajan Singh have been received by me at the house." Whatever this [by the underlined words] would mean is awfully hard to decipher or understand, there being insufficient or lack of direct evidence or by corroborative evidence in proof of payment of money and when and where exactly did it take place.

18. I am afraid, the court of first appeal did not even care to read the contents of the agreement by interpreting them and weighing them in the scales of the entire evidence to cull out the true intention of the parties and whether the document sounded like an agreement to sell at all or was in extension of the mortgage deed continuing the relationship of mortgagor and mortgagee and not of a prospective buyer and defaulting seller. What was the need to incorporate condition # 3 if the agreement was one of sale? Here lies the deepest ambiguity. Unless the subsequent agreement forms a charge on the property the mortgagor was not liable to pay any sum arising from his personal obligation except the mortgage amount. All said and done, Bachan Kaur had contracted that the remaining terms and conditions

would remain the same like that of mortgage deed. What was meant by this? This is the darker mystery. The document Ex.PW-10/A is a one-sided document and appears to me to be a clog on redemption of property. It is only who Bachan Kaur speaks in the document but it is not appear to be an agreement between Bachan Kaur on the one part and the plaintiffs on the other, intending to transfer property. It is not an agreement of sale between them and merely because the plaintiffs have put their thumb impressions is not enough to read it as a due execution of the sale agreement even though it pretends to be one. The veil must be lifted to find out what the parties embarked to do in the subsequent agreement and really intended. Besides, Condition # 2 fixes the target date as prior to March 10, 2037. This date is in Bikrami calendar. Therefore, 57 years had to be deducted from 2037 if it is to be converted into the Christian calendar (AD) then it means March 10, 1980. The agreement muddles up use of all three calendars including the Sakaya calendar where the date of the execution is March 12, 1902. The day is specified i.e. Monday, and obviously the registration, if any, had to take place on a date prior to its execution, which was impossibility itself. This was the fallacy. But I would not put too much weight on the dates and over blow them; as placed by the lower appellate court, since the three dates read in different ways of the working of calendars all add up to one and the same thing. The dates should not in this case act or be read as a red herring that misleads or distracts the court from the relevant and important issue forming the substratum of the case.

19. If the trial court committed an arithmetical error in calculation as reflected in para.12 of the judgment of court of first appeal then it is curable

defect without impacting the result of the *lis* and only a mathematical revision would be in order and even when sorted out would have no effect on the legal rights of the parties of whether the amount paid was Rs.51,750/- or Rs.41,750/- as money allegedly received by Bachan Kaur till June 20, 1980. At first flight the error might appear grave but on due reflection this court does not view the error as fatal to the intrinsic reasoning of the learned trial court in dismissing the suit. The trial court order can still be read in favour of the defendant by removing the calculation defect and even then the words 'few hundred rupees' will be changed to read a 'few thousand rupees'. But how does that matter. Nothing hinges on an apparent mistake which has no side effect on the conclusion of the trial court. In any case, this error does not give rise to a substantial question of law as suggested by the Mr. Majithia learned senior counsel appearing for the respondents to the contrary that it indeed does.

20. The most crucial point in the case, in the incorrect line of reasoning of the learned court of first appeal, was dependant on the dates mentioned in the agreement Ex.PW-10/A,. The court blamed the scribe or the deed writer to have "made a mess of the whole affair." The court of first appeal has further reasoned by a sweeping generalization that “petition writers do create such troubles so as to benefit one of the other party and the other party even does not come to know about the same." The court has apparently breached the first principle of the law of evidence that no amount of it can be led with respect to the contents of a document. In the making of the document evidence of facts can be brought in but it they have to be admissible and meet probative standards in value in their relationship with

relevant facts and the fact-in-issue on which the trial is based. Needless to say, the scribe of agreement Exb. PW 10/A Shanti Sarup was examined by defendant # 1 as witness PW 12. However, the trial court reasoned that the scribe was not asked in the witness stand by the plaintiffs during questioning hour to reveal at least this much whether he was indeed the scribe of the document, which was the first foundational fact to prove the genuineness of the agreement that it was one intended for sale of property. The court of first appeal appears to have ignored this aspect. Rather strangely, the appeal court should not have adopted a a suspect process of reasoning and to have accordingly penalized the defendant for the cleverness of the petition writer when such cleverness added to nothing of material value to the weight of the plaint. The lower appeal court has reasoned that the scribe should not have mentioned the dates like that [in the manner done]. This is how the learned ADJ (II), Sangrur answered the question of the disparity in the dates observing that discrepancies there are but they cannot be swept under the carpet.

21. The document Exb PW 10/A appears to this court *ex facie* vague and not definitive and I feel inclined to agree with Mr. Markan that it is not safe to rely on the alleged sale agreement being inhibited by section 29 of the Contract Act. Moreover, Bant Singh a common witness to the two agreements but was not produced as one given up as unnecessary by the plaintiffs. This, the trial court rightly thought casts a shadow on validity of the agreement in dispute. I would not like to agree with Mr. Majithia's contention that the ambiguity in the document has to be seen in the light of the backdrop that the plaintiffs are mortgagees in possession whose

mortgage amount has been adjusted in the agreement to sell and the same cannot be read in isolation but has to be read with the mortgage deeds on record duly exhibited and entered in the revenue record. Therefore the plaintiffs cannot be divested of possession as they are sitting mortgagees on the land from whom additional amounts have been received as sale consideration.

22. The question to be answered really is not what the scribe over did but what the parties intended to do. When a serious doubt is cast on the agreement to sell, then prudence demands that it should not be given a free hand to be acted upon by giving any undue benefit or unjust enrichment to the propounders, the plaintiffs Kaka Singh and Baldev Singh, on the sacrificial alter of the defendant. Bachan Kaur was reeling under mortgage and continued to be so carrying onerous burdens. From a reading of the remaining terms and conditions of the agreement which defendant Bachan Kaur signed for would appear to possess similar features as are indicative of a mortgage deed still in action. Even by the preponderance of probabilities and on reading the five terms and conditions of the agreement Ex.PW-10/A they do not even seem to me to read like a sale agreement or contract between two parties for transfer of property. An agreement to sell which prescribes the date of execution retrospectively is not enforceable being a vague contract for grant of discretionary relief under the Specific Relief Act, 1963 as that would dislodge any target date set for registration of sale deed and leave the entire deal in a confounded mess. This is back to the future syndrome. The drafters of the Contract Act knew the pitfalls of slippery fish in muddy waters of contracts had the foresight to enact the provisions of

section 29 of the Act to ensure that whenever bargains were struck the contractual terms should be sufficiently certain, and not too vague or too ambiguous, to be legally enforceable. The test lies is in the language used, if one or the other terms conflict with each other as to lend uncertainty on the contract read as a whole integrated document in the overarching intention of the parties expressed in language and the res gestae which led to formal writing, and with all these issues examined from the point of view of a "reasonable person".

23. There is still another aspect of the matter in order to balance the equities in a case of grant of discretionary relief, and that is, as to which of the parties was in a dominating position and which was the weak side so that neither takes advantage of the other. Even slight but irreconcilable ambiguities surfacing in the subsequent agreement of alleged sale, which has material bearing on the text and context of the contract, should ordinarily tilt the balance of probabilities in favour of the weaker party reeling under the yoke, as in this case, from the burdens of a pre-existing mortgage. The principle of *contra proferentem* can to some extent well be applied to this case which means "against the offeror." It refers to a standard in contract law which states that if a clause in a contract appears to be ambiguous, it should be interpreted against the interests of the person who insisted that the clause be included. The ostensible sale agreement arose out of the prior mortgage deed. The terms of the former suffer from an active degree of uncertainty and are not capable of any fixed notion on the evidence as the agreement presently stands formalized when nothing can be read into it to create certainty or be capable of being made certain.

24. It is said; and to be forgiven some digression in the discussion but not without value, that "Redemption is purely a creature of courts of equity": cf. **Posten v. Miller**, 19 N.W. 540. It is a principle of fairness and against undue advantage. It is nothing more than the creditor's interest in the property under mortgage which can be quantified by deducting the creditor's interest from the value of the security. In **U. Nilan v. Kannayyan (Dead) Through LRs**.; AIR 1999 SC 3750, the Supreme Court explained the philosophy behind the doctrine. It was observed that –

> "*Adversity of a person is not a boon for others. If a person in stringent financial conditions had taken the loan and placed his properties as security therefor, the situation cannot be exploited by the person who had advanced the loan. The Court seeks to protect the person affected by adverse circumstances from being a victim of exploitation. It is this philosophy which is followed by the Court in allowing that person to redeem his properties by making the deposit under Order 34 Rule 5 C.P.C.*"

25. In **Stanley v. Wilde,** (1899) 2 Ch 474 Lindley M.R. gave one of the founding explanations of the basis of the doctrine of redemption of mortgage:

> *"The principle is this: a mortgage is a conveyance of land or an assignment of chattels as a security for the payment of a debt or the discharge of some other obligation for which it is given. This is the idea of a mortgage: and the security is redeemable on the payment or discharge of such debt or obligation, any provision to the contrary notwithstanding. That, in my opinion, is the law. Any provision inserted to prevent redemption on payment or performance of the debt or obligation for which the security was given is what is meant by a clog or fetter on the equity of redemption and is therefore void. It follows from this, that 'once a mortgage always a mortgage'."*

26. The maxim 'once a mortgage always a mortgage' means that there

can no covenant that modifies the character of the mortgage agreed between the parties that would stop the mortgagor to redeem his property back on payment of the principal and respective interests., cf G.C.V. Subha Rao, Law of Transfer of Property Act 1882 (4^{th} ed., 2006). However, the legal also position appears to be that if there is a separate agreement whereby the mortgagor executes a sale deed in favour of the mortgagee as an independent transaction, such sale deed is valid. But in this case the so called sale agreement is not an independent transaction but is irretrievably mixed up with the prior mortgage where its terms were continued. And this is where confusion seeps in to shift the mind against the plaintiffs.

27. In **Meharban Khan v. Makhna,** AIR 1930 PC 142*,* the Privy Council had occasion to deal with a case in which the mortgage agreement provided that the mortgagee was to be entitled to possession of the property for 19 years. There was a stipulation that if the mortgagor paid off his debt, he would be allowed to redeem the property only till a limited interest and the residual interest would belong to the mortgagor. It was further envisaged that on failure of the mortgagor to pay, the property would be deemed to be sold to the mortgagee permanently. The Court ruled that both conditions amounted to a clog. It was held that on payment of the full amount due, the property would be reverted back without any encumbrance.

28. To expound the legal proposition adopted as an argument based on section 29 of the Contract Act, Mr. Markan relies on an authority of this court in **Bhagwan Singh (deceased) represented by Ranjit Singh and others vs. Nawab Mohammad Iftikhar Ali Khan, Nawab Malerkotla and others,** 1982 PLR 668 where the Bench considered the scope and

applicability of section 29 of the Contract Act with respect to an agreement to sell and held that a vague and indefinite contract is void and cannot be specifically enforced. Even oral evidence is not admissible to add to terms of the contract. This court observed that in a suit for specific performance the contract of sale must be definite and precise and if it is uncertain it must be held to be void. This court held that no evidence other than the agreement can be taken into consideration for determining the exact location of the land in dispute. In reaching this conclusion, the court relied on the decision of the Allahabad High Court rendered in **Smt. Phuljhari Devi vs. Mithai Lal and others**, AIR 1971 Allahabad 494. The learned Judge in the Allahabad High Court held that a plea that a particular contract is void for uncertainty under section 29 of the Contract Act is a pure question of law which can be raised for the first time at the hearing of second appeal. Mr. Markan points out from this ruling as one of its ratios that a contract of sale executed by the husband in regard to land owned by his wife cannot bind the wife unless it is proved that the husband had the authority either expressed or implied to act on behalf of his wife. There is no presumption that the husband has authority to act on behalf of his wife to sell the property. Implied agency within the meaning of section 187, Contract Act arises from the conduct or situation of the parties or necessity. Section 29 of the Indian Contract Act, 1872 reads:-

> *"Agreements, the meaning of which is not certain, or capable of being made certain, are void."*

29. Therefore, the court of first appeal fell in error in not paying due regard to the recitals in the agreement and has under-read them and gone tangentially wrong in erroneous directions to decree the suit on irrelevant

reasoning.

30. I am afraid that even though the learned trial court may have overstepped here and there in his observances but by and large he remained fixedly moving in the right direction that the suit was unworthy of decree in the equitable and discretionary jurisdiction exercised by it under the Specific Relief Act, 1963 where one reason or the other may dissuade a court in granting relief. No elaborate arguments are required to choose judicially which way to go on reading and appreciating the sale agreement Ex.PW-10/A and what it manifestly meant and intended.

31. On the other hand, Mr. Sanjay Majithia, learned senior counsel submits that the prospective vendees/respondents are mortgagees in possession of the land in dispute and they made the cut off date before which sale deed should be registered as they were in receipt of full sale price, it is thus urged that the agreement to sell is not void for uncertainty. Bachan Kaur or her predecessor has received the price of the land which fact is duly corroborated by executed documents and the evidence of mutation entry in revenue record. He relies *inter alia* on Ex.PW-11/A which is the Jamabandi for the year 1978-79 which bears an entry recognizing mortgage of land for Rs.45,000/- by Harbhajan Singh and Gurmel Singh in favour of plaintiffs, the present respondents. He did sign Ex.PW-12/A which is an entry in the deed writer's register wherein it is entered that as on December 28, 1978 a sum of Rs.51,500/- was received on behalf of the plaintiffs i.e. Rs.45000/- + Rs.6500/-. Ex.PW-12/A is an entry of the deed writer to the effect that Bachan Kaur had additionally received Rs.16,000/- from the plaintiffs. There is no doubt that the mortgage amount was

Rs.51,500/- and the proposed sale was by adjusting the mortgage amount as Bachan Kaur was unable to pay the mortgage money or to redeem the mortgage and that may be very good but still Mr. Majithia had nothing constructive to offer on Mr. Markan's argument based on section 29 of the Contract Act.

32. In order to press his case to distinguish it from vice of vagueness, Mr. Majithia recited from a selection of five judgments. He submits that in all events vagueness will not lead a fortiori to declaration of voidness of contract. In case 1 cited; **M/s. Dhanrajamal Gobindram vs. M/s. Shamji Kalidas and Co.**, AIR 1961 Supreme Court 1285 the Supreme Court dealt with a case arising out of arbitration, contract law and the Foreign Exchange Regulation Act, 1973. One of the parties invoked section 29 of the Contract Act pleading that contract was vague and void for uncertainty. The facts were: "Under Cl.6 of an agreement the buyers were to obtain the import licence and to communicate the number thereof to the sellers not later than February 20, 1958, and in the event of their failure to do so for any reason whatsoever, the sellers were entitled "at their discretion" either to carry over the goods or to ask the buyers to pay for the contracted goods and take delivery in British East Africa. By a subsequent letter, the sellers confirmed that "if necessary" they would carry over the contracted goods for two months, namely, March and April, subject to payment of charges. It was contended that the words "if necessary" were entirely vague and did not show, necessarily for whom, when and why. The Court held that the argument built on vagueness had no force whatsoever. By the letter the sellers said that, if necessary, that is to say, if the buyers found it difficult to

supply the number of the import licence, the contract would be carried over to March and April. By this amendment, the sellers surrendered to a certain extent their absolute discretion. The clause meant that the contract was not extended to March and April, but that the sellers would extend it to that period, if occasion demanded. Since both the parties agreed to this letter and the buyers confirmed it, it could not be said that there was no consensus ad idem, or that the whole agreement was void for uncertainty."

33. When parties had themselves agreed to the change brought about ad idem then there was no question of vagueness in the words "if necessary". I fail to see how this case is of any help to the respondents and is clearly distinguishable on facts and the legal proposition arising out of its own facts.

34. Mr. Majithia would then rely on case 2; **Gomathinayagam Pillai and others vs. Palaniswami Nadar**, AIR 1967 Supreme Court 868 to contend that since time was not of essence then delay alone would not disentitle plaintiff to a decree and it cannot be said that plaintiff was never ready and willing to perform his part of the contract when time was not of the essence. I also fail to see that how this case helps Mr. Majithia in the matter of discretionary relief.

35. In order to show the time was not the essence of the contract when agreement implied the words prior to the target date then the contract had to be performed within reasonable time and what is reasonable time is always a question of fact and not one of law, strictly speaking. For this proposition, Mr. Majithia relies on para.11 of case 3; **Firm Bachhraj Amolakchand and another vs. Firm Nandlal Sitaram and others**, AIR 1966 Madhya

Pradesh 145 (Vol.53, C. 34) a decision rendered by the Division Bench of Madhya Pradesh High Court. In raising the argument Mr. Majithia fails to see that the target date was two and a half month before the date of execution of the agreement Ex.PW-10/A. What could be vaguer than this, I fail to see. The blame could not be fastened on the scribe alone or the fatalistic principle that such things do happen or that if a thing can go wrong, it will.

36. On vagueness and uncertainty, Mr. Majithia also relies on Division Bench decision in case 4; **M/s. Uttam Singh Dugal and Co. Pvt. Ltd., New Delhi vs. M/s. Hindustan Steel Ltd., Bhilai Steel Project, Bhilai**, AIR 1982 Madhya Pradesh 206 which delineates the principles to be applied as a ground for declaring a contract void. The principle culled out is that when contracts have been acted upon by the parties then court should be very slow in finding defects in such contracts. The case arose out of the Arbitration Act, 1940. The Court observed:-

> *"Solemn contracts entered into between the parties are not to be readily declared invalid for uncertainty as to certain terms, at any rate in those cases where the parties have acted upon the contracts which have been fully executed. In construing a contract the object of the Court is to do justice between the parties and the Court will do its best, if satisfied that there was an ascertainable and determinate intention to contract, to give effect to that intention, looking at substance and not mere form. It will not be deterred by mere difficulties of interpretation. Difficulty is not synonymous with ambiguity so long as any definite meaning can be extracted. A contract can become void under Section 29 only when its terms cannot be made certain. Mere vagueness or uncertainty which can be removed by proper interpretation cannot make a contract void. In dealing with commercial and business contracts which have been acted upon by the parties, the Court should be very*

> *<u>slow in finding defects and to reject them as meaningless. This should be done only in extreme cases.</u>*
>
> *The instant case is a case of civil engineering contract. There was a clause in the general conditions of Contracts which envisaged that the contractors will comply with all legislations governing labour that may he passed from time to time including laws relating to fair wages, welfare measures, safety etc. While submitting the tender the contractors in their letter said that if there was any increase in the wage structure, they will be entitled to "corresponding amount". It was agreed between the parties in a meeting that the contractors shall be entitled to increased payment in case of increase of minimum wage rates of unskilled worker only and that the increased payment will be applied to the percentage of labour content in each item of work which the contractors would give for scrutiny and approval of the employers. At regards other laws, the parties differed on the point as to what was agreed in the meeting between the parties. <u>According to the contractors, the minutes were correctly recorded to the effect that "any other change in the labour laws will be admitted for escalation". The point of view of the employers was that the word "any" was a mistake for the word "no" and; that it was agreed that "no other changes in the labour laws will be admitted for escalation". The difference on this point, however, did not mean that the contract did not come into existence or that there was such ambiguity of uncertainty which made the contract void.</u> The result was that the relevant clause as contained in the General Conditions of Contracts prevailed subject to the variation agreed upon in respect of the increase in rates of minimum wages under the Minimum Wages Act. It could not therefore, he said that the contract documents read as a whole did not make the position certain as regards changes in other labour laws."* (underlined for emphasis)

37. Compulsions of law [labour legislation as in *Uttam Singh Dugal* case] are omnipresent and may have to be read into commercial and business contracts on their own strength otherwise it may lead to impermissible avoidance of statutory law, which could never have been

intended by the parties or even to contract out of the law.

38. Lastly, the learned senior counsel relies on case 5; a single bench decision again of the Madhya Pradesh High Court (Gwalior Bench) in **Mithu Kan vs. Ms. Pipariyawali and others**, AIR 1986 Madhya Pradesh 39. This was a case where no date was fixed for performance of contract. The agreement was said to be a loosely worded document. The court held that the principle in the maxim "certum est quod certum reddi potest" that if a thing is capable of being ascertained, it is treated as certain, cannot be invoked. The suit was filed within four months from knowledge of sale of property covered by the agreement of sale would attract principles of article 54 of the Limitation Act and the suit was held to be within limitation. The court also held with reference to section 16(c) of the Specific Relief Act, 1963 that averments as to readiness and willingness to perform his part of the contract, the plaintiff having paid full amount and having received the last payment then the necessary allegations have to be presumed and the literal compliance of language of the provision is not imperative nor is it the requirement of the law. The court observed in para.9 as follows:-

> *"The plaintiff, after he paid the full amount to respondent and obtained from him the receipt of the last payment, completes his part of the contract. The proof as to readiness and willingness by plaintiff to perform his part of the contract has to be adjudged in the broad perspective. The Court in suitable cases should look into the totality of the circumstances and the allegations made in the plaint and from them come to the conclusion whether necessary allegations have been made by the plaintiff in that regard or not. No particular language or phraseology is needed to be employed by the plaintiff. A literal compliance of the language appearing in the provision is not imperative, nor is this the requirement of law (see in case of Ramesh Chandra vs. Chunnilal, AIR 1971 SC 1238)."*

39. On a reading of the case law cited by Mr. Majithia, one is still left facing a document which does not meet the tests of an intention to sell immovable property as the agreement extends the principle of mortgage in recital 3, apart from other glaring discrepancies as to dates of performance. If there was an offer from Bachan Kaur for whatever it may be worth there is no clear and categorical intention expressed in the alleged agreements to sell that they were intended to act as a binding contract of sale and I would thus lean in favour of Mr. Markan's submission that what is vague to the degree experienced in the exhibited document cannot be fleshed out by imaginative accretions or flights of fancy. The discretionary relief of specific performance should not be decreed on a plank of the suit exhibits and, therefore, this court is of the considered opinion that the agreements fall within the vice and purview of section 29 of the Contract Act, 1872 and accordingly the substantial question is answered by holding that the agreements suffer from vagueness and are not enforceable in law by reading and giving effect to section 29 of the Contract Act with the principles in the Specific Relief Act, 1963 and, therefore, defendant # 1 was within her rights to avoid performance. Even assuming that the documents had Bachan Kaur's thumb impressions, which she had stoutly disputed in the trial as one on a agreement to sell, even then on refutation of the agreement as ad idem I tend to think that onus had shifted to the plaintiffs to prove them as governing the intention of the parties which they failed to meet the standards of by production of dependable evidence coming from any other source in the trial court record. The more I ponder the more strongly I feel this case is not fit for award of specific performance of the property in

dispute.

40. For the many reasons recorded above, it is held that the sale agreement is hit by section 29 of the Contract Act for being vague, ambiguous and uncertain. It was never intended by mortgagor to sell her property to the mortgagee and was an extension of the mortgage deed in existence prior thereto. It matters little if the term "agreement to sell" or "sale deed" in incorporated in the Exhibited document. The sale agreement is dated "2.6.1980" while the date of registration of sale deed was fixed as "13.3.1980". What can any person of reasonable intelligence make of this? Parties could not go back in time to execute the sale deed when the date of execution was prior to the date of the agreement. Plaintiffs did not put the defendant to notice of change by extension of the period of execution of sale deed by a separate contract or a corrigendum signed by mutual consent to go to office of the Sub Registrar for registration of the conveyance deed. The lacuna was fatal enough and tended to remove the base of a suit for specific performance which depends by the nature of things on future target dates agreed upon and compliances made to fructify a contract into a sale deed or a decree for execution of an agreement when defendant defaulted in performance of his part of the contract or within reasonable time of it where time is not the essence of the contract. The relief in any case is discretionary and an order will not be passed only because it is lawful to do so. Besides, the overarching principle against clogs in redemption found in section 60 of the Transfer of Property Act, 1882 which contains the exception "Provided that the right conferred by this section has not been extinguished by act of the parties" but the proviso did not apply when ambiguity did not dictate an

extinguishment of a right to redemption by any of the material acts of the original defendant in relation to the plaintiffs. On a comprehensive reading between the lines of the agreement dated June 2, 1980 in the context of the existing relationship of mortgagor and mortgagee between the parties and for the variety of reasons recorded above I am unable to persuade myself to commend the view that the right of redemption was "extinguished" by act of parties irrevocably in the face *inter alia* of the brooding presence of condition # 3 in the agreement. In any case the suit document was one sided and not ad idem and thumb impressions of the plaintiff on the document are not sufficient to conclude a contract based on consent of both the parties that it should be treated as an intention to transfer property. Still murkier is the condition lurking at the end of the deed which recites: "Hence, this **sale deed** has been got scribed so that it may serve as an authority at the time of need". If the document pretended to act in replacement of a sale deed or a "need" [to do what?]it was not registered and then what was the legal basis of effecting mutation of the suit property in the name of the plaintiffs when property had not been legally passed on, is not clearly discernible amongst the evidence oral and documentary on record when read as a whole. In any event a revenue entry in the mutation confers no title rights. Only a cumulative understanding of the totality of the facts and circumstances presented can resolve the controversy logically and holistically and in this pursuit allowance must rest finally in the court of second instance as the final court on law and fact and for this Court to act in support of the appellate decree even if it does so *ex aequo et bono*, that is, for a decision based on what is fair and just. It is towards this salutary end the above discussion proceeds to a culmination.

41. For the variety of reasons recorded above, the appeal is accepted, the appellate decree is set aside as not legally sustainable and that of the trial court is restored being a just and proper adjudication of the dispute. The suit for possession by way of specific performance is dismissed with costs in all the courts. Refund adjustments, if any, would remain open to redemption proceedings, if and when taken**.** Decree sheet be drawn accordingly. Pending applications, if any, stand disposed of. The lower court records be returned. The file be consigned to the record room.

(RAJIV NARAIN RAINA)
JUDGE

15.05.2015
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