

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.**

(1)

Regular Second Appeal No.2171 of 1987 (O&M)

Date of Decision: December 17, 2015.

Harjit Kaur (D) through LRs

.....APPELLANT(s).

VERSUS

Jangir Singh (D) through LRs and others

.....RESPONDENT(s).

(2)

Regular Second Appeal No.2170 of 1987 (O&M)

Harjit Kaur (D) through LRs

.....APPELLANT(s).

VERSUS

Bhan Singh (D) through LRs and others

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Argued by: Mr. Anupam Gupta, Senior Advocate with
Mr. Gaurav Pathania, Advocate
for the appellants in both the appeals.

Mr. Akshay Bhan, Senior Advocate with
Mr. Santosh Sharma, Advocate
for respondent No.1 in both the appeals.

SURINDER GUPTA, J.

RSA-2171-1987

Jangir Singh (since deceased) now represented by his legal heirs
filed suit seeking the relief of specific performance of agreement dated
23.01.1974 executed by appellant Harjit Kaur with regard to the land
measuring 146 kanals 14 marlas as fully described in the head note of the

plaint. As per the plaintiff(s), the land was agreed to be sold by Harjit Kaur at the rate of ₹6,450/- per killa and she received ₹15,000/- as earnest money and also executed a receipt dated 23.01.1974 to this effect. The date for execution of the sale deed was fixed as 05.06.1974.

2. On 01.05.1974 Shivdev Singh son of Jangir Singh son of Natha Singh filed a civil suit against Harjit Kaur and obtained an interim order from the Court against her to prevent execution of the sale deed by Harjit Kaur. On 29.05.1974, Harjit Kaur while acknowledging the agreement dated 23.01.1974 got scribed on the back of the agreement that she will execute the sale deed in favour of plaintiff within 30 days of the vacation of the injunction order. The suit filed by Shivdev Singh was dismissed in default on 15.12.1975 and he filed another civil suit on 05.01.1976 against Harjit Kaur and plaintiff Jangir Singh and obtained an injunction order to restrain the execution of the sale deed. That suit was finally dismissed on 22.04.1980. Shivdev Singh filed appeal against that judgment and decree on 28.04.1980 and obtained injunction order till the decision of the appeal which was finally decided on 03.05.1982.

3. Out of the suit land, 32 kanals 0 marlas was mortgaged by Harjit Kaur with defendants No.5 to 7 i.e. Saudagar Singh, Gurnam Singh and Bant Singh sons of Chad Singh, residents of village Sadowal. The mortgage has since been got redeemed. However, the same was not incorporated in the revenue record and defendant No.4 was recorded in possession of some of the portion of the land by mistake. Due to this reason, defendants No.4 to 7 were impleaded as party in this case.

4. 41 kanals 17 marlas of land bearing khasra Nos. 26//23(8-0), 24

(8-0), 35//13(8-0), 4(8-0), 8(8-0) and 13min (1-17) was recorded as ownership of Punjab Government. This entry was made as the above land of Harjit Kaur was declared surplus but later on it was released in favour of Harjit Kaur, who continued to be its owner.

5. Harjit Kaur had given 84 kanals 1 marla of land bearing khasra Nos. 35// 1(8-0), 2(8-0), 3(8-0), 4(8-0), 7(8-0), 8(8-0), 9(8-0), 10(8-0), 13(8-0), 6 min(6-2) and 18 min(5-19) for cultivation to Bhan Singh towards the interest of ₹20,000/- taken by her as loan. Bhan Singh had obtained a decree of ₹23,433/- against Harjit Kaur, as such, this amount was to be paid to Bhan Singh and Harjit Kaur had agreed to leave this amount with the plaintiff under the agreement.

6. The land measuring 62 kanals 13 marlas bearing khasra Nos. 26//23(8-0), 24(8-0), 35//23(8-0), 42//1(7-11), 2(7-11), 3(7-11), 8(8-0), 9(8-0) and land measuring 10 kanals 12 marlas bearing Khasra Nos.43//14/2 (2-12), 15(8-0) were given by Harjit Kaur to Hari Singh vide agreement dated 29.05.1974 for cultivation towards the interest of the loan of ₹18,000/- taken by her vide pronote and receipt dated 29.05.1974 and this amount was also agreed to be left with the plaintiff under the agreement. In this manner, the plaintiff was entitled to retain a sum of ₹23,433/- and ₹18,000/- i.e. ₹41,433/- with him out of the sale consideration.

7. Plaintiff had always been ready and willing to perform his part of contract and Harjit Kaur was also asked to perform her part under the agreement dated 23.01.1974 but she refused to execute the sale deed as per agreement dated 23.01.1974 and the endorsement dated 29.05.1974. Hence, this suit.

8. Defendant Harjit Kaur contested the claim of plaintiff inter-alia pleading that suit had not been filed within limitation and the same was not maintainable in its present form. She denied the execution of the agreement dated 23.01.1974 in favour of plaintiff and receipt of the earnest money. Filing of the suit against her by Shivdev Singh was admitted but the execution of the writing dated 29.05.1974 was denied. She denied that any land was given to Bhan Singh or Hari Singh towards the interest of the loan taken from them. All the other averments of the plaintiff were contested, controverted and denied, inter-alia pleading that he is not entitled to the relief as claimed in this case.

9. Bhan Singh, defendant No.2 and Sukhdev Singh, defendant No.3 filed separate written statements admitting the claim of the plaintiff.

Pleadings of the parties led to the framing of issues as follows:-

- (1) Whether the defendant No.1 Harjit Kaur had executed an agreement dated 23.1.74 and received the earnest amount to the extent of Rs.15000/- from the plaintiff?OPP
- (2) If issue No.1 is proved whether the plaintiff was willing and ready to perform his part of the contract? OPP
- (3) Whether the plaintiff's suit is within limitation? OPP (onus objected to)
- (4) Whether the suit in the present form cannot proceed? OPD
- (5) Whether this suit is bad for mis-joinder and non-joinder of necessary parties? OPD
- (6) Relief.

RSA-2170-1987

10. Plaintiff Bhan Singh sought specific performance of the

agreement dated 23.01.1974 concerning 135 kanals 15 marlas of land as fully defined in head note of the plaint, inter-alia pleading that Harjit Kaur, defendant executed the aforementioned agreement and received ₹15,000/- as earnest money. Remaining facts regarding non-execution of the sale deed on the date fixed i.e. 05.06.1974 are similar as in the case of Jangir Singh, as such, are not being repeated. The plea regarding giving of 47 kanals 19 marlas of land to Gurbaksh Singh for cultivation towards the interest of loan of ₹20,000/- taken by Harjit Kaur, decree obtained by Gurbaksh Singh for ₹23433.50p giving of 77 kanals 4 marlas of land for cultivation to Nahar Singh towards interest amount on the loan of ₹17,000/- taken by Harjit Kaur are also similar as taken in case of Jangir Singh. It was alleged that due to filing of the suit by Shivdev Singh, Harjit Kaur extended the date for execution of the sale deed vide writing dated 29.05.1974 to 30 days after the vacation of the injunction order. The other facts as pleaded by Jangir Singh were also pleaded in the plaint of the suit filed by Bhan Singh. Plaintiff Bhan Singh claimed the relief of specific performance of the agreement on payment of ₹47,757/- after adjusting the earnest money and other liabilities of Harjit Singh towards the land agreed to be sold.

11. In the written statement, Harjit Kaur defendant No.1 contested and controverted the claim of plaintiff Bhan Singh and denied execution of agreement or receipt ₹15,000/- as earnest money. Preliminary objections were also taken that the suit was barred by limitation and plaintiff has no cause of action to file the suit. All the other averments in the plaint were also contested, controverted and denied inter-alias pleading that she is not liable to execute any sale deed as claimed by the plaintiff.

12. Pleadings of the parties led to the framing of issues as follows:-

- (1) Whether defendant No.1 Harjit Kaur had executed an agreement dated 23.1.74 and received the earnest amount to the extent of Rs.15000/- from the plaintiff?OPP
- (2) If issue No.1 is proved whether the plaintiff was willing and ready to perform his part of the contract? OPP
- (3) Whether the plaintiff's suit is within limitation? OPP (onus objected to)
- (4) Whether the suit in the present form cannot proceed? OPD
- (5) Whether this suit is bad for mis-joinder and non-joinder of necessary parties? OPD
- (6) Relief.

13. Both the suits were dismissed by the then Additional Sub Judge, Barnala vide judgment dated 25.03.1986 with the observations as follows:-

- (i) The execution of the agreements dated 23.01.1974 and receipt of earnest money by defendant is proved.
- (ii) The plaintiff(s) have proved that they were possessed of money requisite for paying balance sale consideration. As the case of defendant was of denial of agreement and she has not pleaded her readiness and willingness to perform her part of the agreement, as such, this fact was also held as proved that the plaintiff(s) had always been ready and willing to perform their part of contract.
- (iii) The suits filed on 11.05.1982 and 12.05.1982 were held as barred by limitation.

14. plaintiff(s) Jangir Singh and Bhan Singh filed appeals against the judgment and decree passed by Additional Senior Sub Judge, Barnala

which was accepted by Additional District Judge, Barnala vide judgment dated 24.04.1987 with the observation that the suit was within limitation. Against the judgment of first Appellate Court, Harjit Kaur defendant (since deceased now represented by legal representatives) had come up with this regular second appeal.

15. The dispute in this appeal centres around the point of limitation as the issue of execution of the agreement dated 23.01.1974 and payment of earnest money were decided against the appellant-defendant and she has not filed any appeal against these findings of trial Court, which have since attained finality.

16. Before proceeding further, it will be relevant to take note of certain facts which are relevant for the purpose of decision of this appeal:

<i>RSA-2171 of 1987 titled Harjit Kaur Vs. Jangir Singh</i>	<i>RSA-2170 of 1987 titled Harjit Kaur Vs. Bhan Singh</i>
Date of agreement : 23.01.1974.	Date of agreement : 23.01.1974.
Land agreed to be sold : 146 kanals 14 marlas @ ₹6450/- per acre.	Land agreed to be sold : 135 kanals 15 marlas @ ₹6450/- per acre.
Total sale consideration : ₹1,18,277/-	Total sale consideration : ₹1,09,449/-
Date fixed for execution and registration of the sale deed : 05.06.1974.	Date fixed for execution and registration of the sale deed : 05.06.1974.
Date on which time for execution of the sale deed was extended : 29.05.1974.	Date on which time for execution of the sale deed was extended : 29.05.1974.
Date on which suit was filed : 11.05.1982.	Date on which suit was filed : 12.05.1982.

17. As the facts of both the cases under appeal are similar and the witnesses are also the same, counsel for the parties have addressed common arguments in both the appeals. However, for the sake of convenience, reference to evidence and documents in this judgment shall be from civil suit titled as '*Bhan Singh Vs. Harjit Kaur*' in Civil Suit No.158 of 12.05.1982.

18. Learned counsel for the appellant-defendant has argued that the date for execution and registration of the sale deed in this case was fixed as

05.06.1974. The suit was filed after a period of more than seven years, as such, is clearly barred by time under Article 54 of the Limitation Act. The contention of respondent-plaintiff(s) is that the time was extended for execution of the sale deed vide writing dated 29.05.1974 (Ex.P5 and P9). Vide this writing, no date was fixed for execution of the sale deed. This extension was vague, uncertain, obscure rendering the agreement void for uncertainty. He has relied on the observation in case ***Keshavlal Lallubhai Patel and others Vs. Lalbhai Trikumlal Mills Ltd. AIR 1958 Supreme Court 512***. Learned Additional Senior Sub Judge on perusal of the wording of alleged extension of time vide writing dated 29.05.1974 has observed that there was no injunction order restraining defendant No.1 from executing the sale deed in favour of plaintiff(s) in between 22.01.1976 to 22.04.1980. Even vide order dated 27.05.1980 status quo was ordered to be maintained. If the contention of plaintiff(s) be believed that the writing dated 29.05.1974 was executed because of the injunction obtained by Shivdev Singh adopted son of defendant No.1, the sale deed was to be executed within 30 days of the vacation of the stay order. The plaintiff(s) have failed to prove any injunction order restraining them from seeking the relief of specific performance of agreement.

19. Learned counsel for the appellant-defendant has further argued that the first Appellate Court has virtually re-written the agreement for the plaintiff(s) while observing that the extension of time was till the disposal of the suit filed by Shivdev Singh against defendant Harjit Kaur. If that proposition is accepted, Shivdev Singh had also filed regular second appeal (RSA No.1407 of 1982) which was dismissed only in December, 2001 as

such suit filed in the year 1982 was pre-mature and without cause of action. The writings (Ex.P5 and Ex.P9) had firstly not extended the period of limitation and secondly, limitation could not be extended for indefinite period. Relying on the observations in case of ***Keshavlal Lallubhai Patel and others Vs. Lalbhai Trikumlal Mills Ltd. (supra)***, it has been argued that where the condition mentioned in the writing for extension of time are vague and uncertain and period of time for performance of contract could not be ascertain definitely the agreement for extension of time must be held to be vague and uncertain and hence, void under Section 29 of the Indian Contract Act. The writings Ex.P5 and Ex.P9, as such, are void and do not extend the time of limitation.

20. Learned counsel for the appellant has further argued that onus was on the plaintiff to prove his case which he has utterly failed to prove by leading any evidence that it was filed within limitation. The first Appellate Court has wrongly interpreted the language of Ex.P5 and Ex.P9 while observing that the period was extended till the decision of the case filed by step son of appellant Harjit Kaur as the principle of '*lis pendens*' would have applied in the event of any alienation made during the pendency of that suit. This is a wrong notion. Bhan Singh and Jangir Singh have their independent rights to seek the specific performance of agreement. The filing of suit by anyone against the vendor, in no manner, effected their rights to claim specific performance of the agreement. Even otherwise, they have failed to prove that the Courts below have passed any injunction order restraining Harjit Kaur from alienating the suit land and that injunction was in operation throughout the period of seven years till the filing of the suit by them or till

the disposal of the appeal filed by Shivdev Singh. Another aspect which the Court has to take notice while deciding this appeal is that a period of more than 40 years has elapsed after the agreement. There has been a phenomenal rise in prices of property and this sole factor is a reason to decline the relief of specific performance of the agreement under Section 20 of Specific Relief Act. He has relied upon the observations in case of ***Chand Rani(Smt.) (Dead) by LRs Vs. Kamal Rani (Smt.)(Dead) by LRs (1993) 1 Supreme Court Cases 519.***

21. Per contra, learned counsel for the respondents has argued that it is a case where Harjit Kaur has tried to hoodwink the agreement to sell executed by her. The execution of the agreement, receipt of earnest money and extension of period for execution of the sale deed were duly proved and the judgment of the trial Court to this effect has become final. This fact is admitted that before the date fixed for execution of the sale deed i.e. 05.06.1975, Shivdev Singh step son of Harjit Kaur filed a suit against her and obtained an injunction order. This led the parties to extend the time for execution of the sale deed. The words used for extension of time is to be read and interpreted in the facts and circumstances of the case. Harjit Kaur had agreed to execute the sale deed in 30 days when permitted to execute the same. These writings dated 29.05.1974 can be interpreted only to mean that the parties wished to wait till the decision of the suit filed by Shivdev Singh. The suit was filed immediately after the decision of appeal filed by Shivdev Singh within a period of 30 days, as such, there is no lapse on the part of respondents-plaintiff(s), who were always ready and willing to perform their part of contract. The respondents-plaintiff(s) have proved that there was

interim order passed in the suit filed by Shivdev Singh. Even if, it has not been proved that the interim injunction allowed was continued till disposal of the suit/appeal, the same is deemed to be in operation till it is vacated or modified. The appellant has not produced on record any evidence that the interim injunction order passed in the suit filed by Shivdev Singh was ever vacated or modified. Reliance has been placed on the observations in case of *Court on its own Motion Vs. Malook Singh 2013(2) PLR 1996*. On the point of expiry of period of more than four decades after the execution of the agreement, he has argued that it is not a lapse on the part of respondents-plaintiff(s) and they cannot be made to suffer on this ground. Hardship in execution of the sale deed was neither pleaded nor proved and this argument could not be raised for the first time in this regular second appeal.

22. The substantial questions of law which arises for determination in this appeal are as follows:-

- (i) *Whether both the writings dated 29.05.1974 (Ex.P5 and Ex.P9) are vague, indefinite, uncertain?*
- (ii) *Whether the suits filed by the respondents-plaintiff(s) relying on the writing dated 29.05.1974 were within limitation?*
- (iii) *If the above substantial questions of law are decided in favour of respondents-plaintiff(s), whether it will be equitable to allow the specific performance of the agreement dated 23.01.1974 on the terms mentioned therein after the expiry of more than four decades?*

23. Appellant Harjit Kaur had executed two agreements both dated 23.01.1974 in favour of plaintiff Bhan Singh with regard to land measuring 135 kanals 15 marlas @ ₹6450/- per acre and in favour of plaintiff Jangir Singh for sale of land measuring 146 kanals 14 marlas at the same rate. She

received ₹15,000/- each as earnest money from both the plaintiff(s). The date for execution of the sale deeds was fixed as 05.06.1974. Plaintiff Bhan Singh filed suit seeking the relief of specific performance of the agreement dated 23.01.1974 on 12.05.1982 and Jangir Singh filed the similar suit on 11.05.1982.

24. The first and foremost question which arises for consideration is whether the suit filed by Bhan Singh and Jangir Singh were within limitation. Apparently, under Article 54 Limitation Act, both the suits were barred by limitation as the period of three years had elapsed on 04.06.1977 from the date 05.06.1974 fixed for performance of both the agreements.

25. Article 54 of Limitation Act, reads as follows:-

1	2	3
<i>Description of suit</i>	<i>Period of Limitation</i>	<i>Time for which period begin to run</i>
<i>For specific performance of a contract:</i>	<i>Three years</i>	<i>The date fixed for the performance, or, if no such date is fixed, when the plaintiff has notice that performance is refused.</i>

26. It is apparent on perusal of the above article that when no date is fixed for specific performance of the agreement, the period of limitation starts from the date when plaintiff has noticed that performance is refused. In this case, plaintiff(s) have tried to bring their suit within limitation, taking assistance of second part of Article 54 of Limitation Act.

27. Before proceeding further, it will be relevant to take note of the observations of Hon'ble Apex Court explaining the scope of Article 54 of Limitation Act. Three Judges' Bench of Hon'ble Apex Court while answering as to whether the use of the word 'date' in Article 54 of Schedule II of Limitation Act, 1963 is suggestive of a specific date in the calendar, observed in case of *Ahmadsahab Abdul Mulla (2)(Dead) by proposed Lrs.*

Vs. Bibijan and ors (2009) 5 Supreme Court Cases 462 as follows:-

“11. The inevitable conclusion is that the expression “date fixed for the performance” is a crystallised notion. This is clear from the fact that the second part “time from which period begins to run” refers to a case where no such date is fixed. To put it differently, when date is fixed it means that there is a definite date fixed for doing a particular act. Even in the second part the stress is on “when the plaintiff has notice that performance is refused”. Here again, there is a definite point of time, when the plaintiff notices the refusal. In that sense both the parts refer to definite dates. So, there is no question of finding out an intention from other circumstances.

12. Whether the date was fixed or not the plaintiff had notice that performance is refused and the date thereof are to be established with reference to materials and evidence to be brought on record. The expression “date” used in Article 54 of the Schedule to the Act definitely is suggestive of a specified date in the calendar. We answer the reference accordingly.”

28. In this case, on 29.05.1974 a writing was scribed between the parties which read as follows:-

“Wisha miad Registry Wadhauni ate
Adalti Registry Hak.
Assin Dowain Farik Ikrar Karde Han Ke
Jadon Smt. Harjit Kaur wd/o Jangir
Singh Noon Registry Karwan Da Hukam
Ho Jawega, Us ton Laike 30 Dinan De Andar
Registry Karwa Lawange. Registry
Adalat Rahin Ho Sakdi Hai. Koyee Ujar Naa
Hai. Miti:-29.5.74.”

“(Subject: Extension of time for execution of the sale deed and right for registration of sale deed through Court:

We both the parties have agreed that the sale deed will be got executed and registered within 30 days of the order to Harjit Kaur to execute the sale deed. The sale deed can also be got executed through Court. We have no objection. Dated 29.5.74.)”

29. In the complaints, the plaintiff(s) have taken the plea that Shivdev Singh son of Jangir Singh filed a civil suit to restrain Harjit Kaur from executing the sale deed and obtained injunction order. Due to this injunction order, defendant could not execute the sale deed and executed the above writing. In para 2 of the complaint, it was specifically mentioned that in view of the injunction order, the sale deed could not be executed. While appearing as PW7 plaintiff Jangir Singh has stated that the period of execution of the sale deed was extended due to injunction order in favour of Shivdev Singh.

30. Perusal of the writings (Ex.P5 and Ex.P9) shows that no time limit was fixed for execution of the sale deed. There is nothing in the writing that the sale deed will be executed on vacation of the injunction allowed to Shivdev Singh or on the final decision of the case filed by him. No specific date was fixed for performance of the agreement to sell.

31. In the instant case, plaintiff(s) have filed the suits after more than eight years of the agreement. The only question which arises for consideration as to whether the writing Ex.P5 and Ex.P9 extended the period for seeking specific performance to an indefinite period or till the date plaintiff(s) allege that they were refused the specific performance of the agreement.

32. In order to prove that Shivdev Singh had obtained an injunction order against appellant-defendant Harjit Kaur by filing a suit against her, respondents-plaintiff(s) have placed on file copy of injunction order dated

01.05.1974 (Ex.P12), which reads as follows:-

“Heard. The respondent Harjit Kaur is restrained from alienating the suit land till the disposal of the application. Notice of the application and the order be issued to the opposite side for 13.5.1974.”

33. As per the case of the respondents-plaintiff(s) that the suit filed by Shivdev Singh i.e. Case No.110 of 02.05.1974 **was dismissed on 15.12.1975**. Copy of judgment dated 15.12.1975 has been placed on record as Ex.P26. In that suit, vide order dated 10.06.1974 Harjit Kaur was restrained from transferring the suit land till decision of the suit. Copy of the order dated 10.06.1974 was placed on record as Ex.P32.

34. Shivdev Singh then filed another civil suit against Harjit Kaur and this bears civil suit No.11 of 05.01.1976. The case of the plaintiff(s) in the plaint is that after filing that suit, Shivdev Singh again obtained an injunction order to restrain Harjit Kaur from executing the sale deed. However, the plaintiff(s) have failed to produce and prove on record any injunction order passed in civil suit No.11 dated 05.01.1976. He has placed on record a copy of order (Ex.P19) passed by District and Sessions Judge, Sangrur which reads as follows:-

“Notice to respondent No.1 be issued for 22.01.1974 (sic 1976) and in the meantime, she is restrained from alienating the land in dispute.”

35. There is nothing on record to connect this order with the civil suit No.11 of 05.01.1976. It is not clear from the certified copy of the order that this pertains to the civil suit filed by Shivdev Singh. There is nothing as to why the file of civil suit filed before Sub Judge Barnala was put up before the District and Sessions Judge, Sangrur on 05.01.1976. Perusal of the

plaint of the suit filed by Shivdev Singh, which has been placed on record as Ex.PW6/A shows that this plaint was filed before Sub Judge, Barnala. In the absence of number and details of the case in order Ex.P13, it cannot be accepted that injunction order dated 05.01.1976 was passed in the second civil suit filed by Shivdev Singh. Harjit Kaur while appearing as DW1 has stated that in the second suit filed by Shivdev Singh, no injunction order was passed. Her statement to this effect has not been rebutted by producing any evidence to the contrary.

36. The above fact has been discussed in detail to look into this aspect that there was no injunction order after the dismissal of first suit filed by Shivdev Singh vide order dated 15.12.1975.

37. After the dismissal of the civil suit No.11 of 1976 vide judgment dated 22.04.1980, it is alleged that appeal was filed (civil appeal No.74 of 1980), which was dismissed vide judgment dated 30.04.1982. The plaintiff (s) placed on record copies of two orders one dated 29.04.1980 and the other dated 27.05.1980 which read as follows:-

“Heard. Admitted. Notice. Record. To come on 27.5.1980.

Notice of the application be given to the opposite party for the said date. Till then status quo be maintained.

Addl.D.J. Barnala
29.4.1980.”

“Malkit Singh respondent No.10 not appeared despite service. As such he is proceeded against exparte. Notice to the remaining respondents be issued on payment of fresh P.Fee and correct particulars for 26.7.1980. Notice be also sent through registered covers. Record be also sent for 26.7.1980. **Till then status quo be maintained.**

Addl.D.J. Barnala
27.5.1980.”

38. Here again, the plaintiff(s) have utterly failed to prove as to in which appeal or case, these orders dated 29.04.1980 and 27.05.1980 were passed. There is no title of suit or appeal on the copies of these orders. Even the civil suit and appeal number are also not mentioned to connect the same with the appeal filed by Shivdev Singh. In these circumstances, a very safe inference which can be drawn is that there was no injunction order restraining Harjit Kaur from executing the sale deed even after the dismissal of the suit of Shivdev Singh on 22.04.1980.

39. Even if it be believed that the order Ex.P14 and P15 dated 29.04.1980 and 27.05.1980 pertains to the appeal filed by Shivdev Singh against the judgment dated 22.04.1980, it is evident that the interim orders were passed only till next date i.e. 26.07.1980 and not beyond that. Here even if it be accepted that order dated 05.01.1976 Ex.P19 was passed by District and Sessions Judge, Sangrur in the civil suit filed by Shivdev Singh, the same was also till the next date i.e. 22.01.1976. In view of the above, the observations of a Co-ordinate Bench of this Court in case ***Court on its own Motion Vs. Malook Singh (supra)*** are not applicable. In that case, it was observed that the interim order requires extension when it is for a fixed period i.e. till the next date of hearing.

40. From the above discussion, it is evident that the plaintiff(s) have not been able to bring on record any evidence to show that after the dismissal of the first suit of Shivdev Singh on 15.12.1975, there was any order restraining Harjit Kaur from alienating her land.

41. The trial Court on detailed discussion of this fact has rightly reached the conclusion that there was no injunction order restraining

defendant No.1 from executing the sale deed in favour of plaintiff(s) from 22.01.1976 to 22.04.1980 and the orders placed on file Ex.P14 and Ex.P15 are not connected with the civil suit filed by Shivdev Singh. These orders only directed status quo to be maintained and in no manner restrain the alienation. In these circumstances, learned Additional Senior Sub Judge committed no error while observing that *“Even if the contention of the counsel for the plaintiff is accepted in its entirety that Ex.P9 was executed because the injunction had been granted by the court restraining defendant No.1 from executing the sale deed in pursuance of agreement dated 23.1.74 executed by her in favour of the plaintiff and that according to Ex. P9, sale deed was to be executed within a period of 30 days from the vacation of that stay order, the suit of the plaintiff does not appear to be within limitation. As stated by me earlier, there is not even an iota of evidence that the injunction order had remained in force from 22.1.76 uptill 27.5.80 i.e. for a period of 4 long years. According to the terminology of Ex.P9 even the sale deed was to be executed within a period of 30 days from 22.1.76 and the same having not been executed the suit was to be filed within a period of 3 years therefrom, but the same having been filed in the year 1982 is barred by limitation.”*

42. Now, I examine the case from another angle as to whether the term of writings (Ex.P5 and Ex.P9) were vague and uncertain and hence void under Section 29 of the Contract Act, which reads as follows:-

“Agreements, the meaning of which is not certain, or capable of being made certain, are void.”

43. The language of the writing dated 29.05.1974 Ex.P5/Ex.P9

shows as if the matter was left to the discretion of Harjit Kaur to execute the sale deed in terms of the agreement. This writing shows that as and when she will have the orders in this regard the plaintiff(s) will get the sale deed executed. The above term is clearly an uncertain, vague and incapable of giving any interpretation. If the parties had intended to keep execution of the sale deed in abeyance till the decision of the suit filed by Shivdev Singh, this fact would have been specifically mentioned in Ex.P5/Ex.P9. If the parties intended that the sale deed should not be got executed during the subsistence of the injunction order in favour of Shivdev Singh and against Harjit Kaur, the writing Ex.P5/Ex.P9 would have hinted towards that. If the parties intended that Harjit Kaur was required to have some order of the Court to execute the sale deed then they would have fixed some time period in this regard. The parties specifically agreed for seeking the execution of the agreement through Court, which shows that this writing, in no manner, had any reference to the litigation initiated by Shivdev Singh against Harjit Kaur and others. Filing of suit by Shivdev Singh against Harjit Kaur and others including the plaintiff(s), in no manner, could desist the plaintiff(s) from filing suit seeking the relief of specific performance of the agreement to sell. From the writing dated 29.05.1974, neither the intention of the parties can be ascertained nor it is possible to ascertain definitely the period for which the time for performance of the contract was really intended to be extended. In case of ***Keshavlal Lallubhai Patel and Ors Vs. Lalbhai Trikumlal Mills Ltd (supra)***, it was observed by the Hon'ble Apex Court that “*in such a case, the agreement for extension may be held to be vague and uncertain and as such, void under Section 29 of Indian Contract Act.*”

44. From the above discussion, it is evident that the agreement for extension of time(Ex.P5/Ex.P9) must be held to be vague and uncertain and as such, void under Section 29 of Indian Contract Act.

45. The first Appellate Court has given a wide extension to the term of the writing dated 29.05.1974 (Ex.P5/Ex.P9) by observing that the parties intended that sale deed shall be executed within 30 days after the suit filed by Shivdev Singh was decided. By no stretch of imagination, writing Ex.P5 and Ex.P9, could attract such a wide and liberal interpretation. In that eventuality, Shivdev Singh had filed regular second appeal against the judgment of first Appellate Court (RSA-1407 of 1982), which was dismissed on 21.12.2001, as such suit filed in May, 1982 was pre-mature.

46. In view of my above discussion, I find myself in agreement with the observations made by the trial Court that the suits filed by Jangir Singh and Bhan Singh were barred by limitation. The observations of the first Appellate Court that the scope of extension of time vide writings (Ex.P5/Ex.P9) was wider enough till the disposal of the case, are not based on fact and proper appreciation of law, as such, set aside.

47. Another aspect which call for attention, even if the plea of plaintiffs be believed, is the period that has elapsed after the agreement till date. The agreement is of the year 1974 i.e. it was executed 41 years ago. The land was agreed to be sold to plaintiffs @ ₹6,450/- per acre i.e. about ₹40/- per marla. The prices of land have gone sky high during this period of 40 years. The long efflux of time and the galloping value of the real estate are the two factors which require consideration in this regard. In case of

Satya Jain (Dead) through LRs and Ors Vs. Anis Ahmed Rushdie (Dead)

through LRs and Ors (2013) 8 Supreme Court Cases 131, a similar question cropped up before the Hon'ble Apex Court and it was observed in para 39 to 41 as follows:-

“39. The long efflux of time (over 40 years) that has occurred and the galloping value of real estate in the meantime are the twin inhibiting factors in this regard. The same, however, have to be balanced with the fact that the plaintiffs are in no way responsible for the delay that has occurred and their keen participation in the proceedings till date show the live interest on the part of the plaintiffs to have the agreement enforced in law.

40. The discretion to direct specific performance of an agreement and that too after elapse of a long period of time, undoubtedly, has to be exercised on sound, reasonable, rational and acceptable principles. The parameters for the exercise of discretion vested by Section 20 of the Specific Relief Act, 1963 cannot be entrapped within any precise expression of language and the contours thereof will always depend on the facts and circumstances of each case. The ultimate guiding test would be the principles of fairness and reasonableness as may be dictated by the peculiar facts of any given case, which features the experienced judicial mind can perceive without any real difficulty. It must however be emphasized that efflux of time and escalation of price of property, by itself, cannot be a valid ground to deny the relief of specific performance. Such a view has been consistently adopted by this Court. By way of illustration opinions rendered in *P.S. Ranakrishna Reddy v. M.K. Bhagyalakshmi (2007) 10 SCC 231* and more recently in *Narinderjit Singh v. North Star Estate Promoters Ltd. (2012) 5 SCC 712* may be usefully recapitulated.

41. The twin inhibiting factors identified above if

are to be read as a bar to the grant of a decree of specific performance would amount to penalising the plaintiffs for no fault on their part; to deny them the real fruits of a protracted litigation wherein the issues arising are being answered in their favour. From another perspective it may also indicate the inadequacies of the law to deal with the long delays that, at times, occur while rendering the final verdict in a given case. The aforesaid two features, at best, may justify award of additional compensation to the vendor by grant of a price higher than what had been stipulated in the agreement which price, in a given case, may even be the market price as on date of the order of the final Court.”

48. The Apex Court in that case allowed the execution of the sale deed in favour of plaintiff for the market price of the suit land prevalent on the date of the order and requested the High Court of Delhi to undertake said exercise to determine the prevalent market price.

49. In the instant case, a period of more than four decades has elapsed after the agreement. The claim of the plaintiff(s) has been found to be barred by limitation and issue in this regard was answered against plaintiff(s) by the trial Court which has been affirmed. Keeping the above facts and circumstances in view, I am convinced that it will be fair, reasonable and in the interest of justice that by applying the principle of '*Undue Enrichment*', the earnest money under the agreement along with amount of suitable interest be returned to the vendees (their legal heirs). Applying the above principles, Harjit Kaur (now her legal heirs) are directed to return the earnest money with interest @ 12% per annum from the date of agreement till the date of payment to plaintiff(s)(their legal heirs). The

amount so due shall remain a charge over the suit land.

50. The substantial questions of law framed in this case are answered accordingly in favour of the appellant. These appeals have merits and are accepted. Judgment passed by first Appellate Court in both the civil suits is set aside and that of Additional Senior Sub Judge, Barnala is restored, however, with modification that the legal heirs of Harjit Kaur or person claiming title over suit land are directed to return the earnest money to the plaintiff(s)-respondents with interest @ 12% per annum from the date of agreement till the date of payment and the amount so due shall remain a charge over the suit land till its payment. In view of the facts and circumstances of the case, the parties are left to bear their own costs.

December 17, 2015.
Sachin M.

(SURINDER GUPTA)
JUDGE