IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

1. **RSA No. 3338 of 2011 (O&M)**
Date of Decision : 06.11.2015

Ravinder Pal ....Appellant

Versus

Ashwani Kumar and another ....Respondents

2. **RSA No. 3486 of 2011 (O&M)**

Ashwani Kumar ....Appellant

Versus

Ravinder Pal and others ....Respondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Akshay Kumar Goel, Advocate
for the appellant in RSA No. 3338 of 2011
and for respondents in RSA No. 3486 of 2011.

Mr. Akshay Bhan, Senior Advocate with
Mr. Santosh Sharma, Advocate
for respondent in RSA No. 3338 of 2011
and for appellant in RSA No. 3486 of 2011.

Surinder Gupta, J.

These are the appeals against concurrent judgments of Courts below whereby suit filed by plaintiff-Ravinder Pal under Section 31 of the Specific Relief Act, 1963 for cancellation of agreements dated 08.04.1985 and 20.06.1989 in respect of sale of plot No. 1404, Sector 44-B, Chandigarh, measuring 150 sq. yards, was decreed and the alleged agreement(s) were held to be void and illegal.

2. In later part of judgment parties will be referred as plaintiff and defendants as per the civil suits.

3. The case of plaintiff, in brief, is that he was allotted

plot No. 1404 measuring 150 sq. yards in Sector 44-B, Chandigarh by Progressive Cooperative House Building Society (Regd.), Chandigarh (later referred to as 'the Society') vide letter No. 77/1404 dated 29.03.1985 for a total premium of ₹ 26,650/-, which was payable in four equal installments. The plaintiff had paid ₹ 20,626/- and a sum of ₹ 6430/- was outstanding *qua* which the Society had issued a demand notice dated 15.04.1990. Defendant no. 1-Ashwani Kumar fraudulently and in a clandestine manner got signatures of the plaintiff on blank stamp papers and converted the same into agreement for sale of plot. As per terms of allotment, the plot could not be sold or transferred for a period of 15 years from the date of completion of building. Thereafter, defendant no. 1 started threatening to raise construction over the plot compelling the plaintiff to file the instant suit. Later on by way of amendment the plaintiff sought alternative relief that as per clause 9 of the agreement in the event of plaintiff backing out from the bargain, defendant no. 1 is entitled to a sum of ₹ 55,000/- plus another equated amount as liquidated damages plus double the cost of construction of the building.

4. Defendant no. 2 is the wife of plaintiff and she filed separate written statement admitting claim of the plaintiff.

5. Defendant no. 1-Ashwani Kumar contested claim of the plaintiff *inter alia* pleading in para 1 of the preliminary objections, as follows:-

> *"(a) Initially the plaintiff entered into an agreement to sell dated 08.04.1985 in respect of plot no. 1404, Sector 44-B and that at that time the price was*

fixed at ₹ 37,500/-. The purchaser paid a sum of ₹ 9,375/- to the seller which was in fact paid by the seller at the time and the receipts issued by the department were taken by the purchaser. The receipts, allotment letter and other documents relating to the plot were handed over by the seller to the purchaser after the receipt of ₹ 9,375/-. In fact a sum of ₹ 3,750/- and ₹ 5,625/- total amount to ₹ 9,375/- was paid by the defendant to the plaintiff which was further paid by the plaintiff to the department. The plaintiff was not in a position to pay the amount. Bank drafts were got prepared of the above mentioned amount by the defendant from his banker i.e. State Bank of India, Sector 9 Branch. Agreement to sell dated 08.04.1985 was executed, Will was also executed on 09.04.1985. The plaintiff further executed Special Power of Attorney and General Power of Attorney. However, the plaintiff tried to back out from the bargain and did not offer himself before the Sub Registrar, Union Territory, Chandigarh for the registration of the Special Power of Attorney and the General Power of Attorney. Affidavit was duly attested by the Oath Commissioner.

(b) The defendant persuaded the plaintiff again in November, 1985 to execute the documents. The defendants purchased the required stamp papers. The plaintiff in persuasion of the agreement to sell dated 08.04.1985 executed an affidavit on 03.04.1986, Will dated 03.04.1986, Special Power of Attorney and General Power of Attorney dated 03.04.1986 but he again did not appear before the Sub Registrar for the registration of the documents.

(c) *The defendant again approached the plaintiff several times and finally the plaintiff executed a fresh Will, Special Power of Attorney, General Power of Attorney on 08.09.1987 in pursuance of the agreement to sell dated 08.04.1985. These documents were got registered before the Sub Registrar, U.T. Chandigarh.*

(d) *The defendant asked the plaintiff to sign certain more papers for the construction of the plot in the year 1989 but the plaintiff was avoiding and the defendant smelt a foul play. The plaintiff further threatened the defendant that he would cancel the power of attorneys and agreement to sell and demanded more money. At the intervention of Jagdish Ram and Krishan Lal and other common friends further agreement to sell was executed and more money was paid. The defendant paid ₹ 34,000/- more in addition to a sum of ₹ 21,000/- already paid. In this way the total price was fixed at ₹ 55,000/-. The plaintiff acknowledged the receipt of the same.*

(e) *That again on 16.04.1990 the plaintiff wrote a letter dated 16.04.1990 cancelling the general power of attorney dated 18.09.1989."*

6. It was alleged that possession of the plot was delivered and defendant no. 1 raised construction of a *kotha* over the plot.

7. The plaintiff reasserted his case in the replication alleging that he has not executed any document in favour of defendant no. 1. Father of defendant no. 1, Jagan Nath Sharma alongwith defendant no. 1 obtained signatures of the plaintiff on blank stamp papers. The plaintiff never consented the execution

of any document as alleged by defendant no. 1. The recital in these documents are false. The plaintiff was delivered possession of the plot on 26.04.1985 vide letter dated 190 dated 26.04.1985 while agreement dated 08.04.1985 recites that possession had already been delivered to the proposed vendee. These documents have been intentionally fabricated by defendant no. 1 with a view to grab property of the plaintiff. Jagan Nath Sharma was posted as Superintendent in the office of Legal Remembrancer, U.T. Chandigarh and was instrumental in fabrication and creation of all the documents as alleged by defendant no. 1. On coming to know of general power of attorney, the plaintiff got the same cancelled.

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

1. Whether the agreements dated 08.04.1985 and 20.06.1989 are void, illegal as alleged? OPP
2. Whether defendant no. 1 is in possession of the disputed plot? OPD
3. Whether the agreements dated 08.04.1985 and 20.06.1989 are liable to be cancelled? OPP
4. Whether the suit is not maintainable as alleged? OPD
5. Whether the suit is time barred? OPD
6. Relief.

9. While decreeing the suit, learned Civil Judge (Junior Division), Chandigarh observed, as follows:-

"(i) In the first agreement it was mentioned that the sale consideration was ₹ 37,500/- out of which two bank drafts, first for ₹ 3,750/- and second of ₹ 5,625/- were got issued by the defendant from

his account and were handed over to the plaintiff for depositing the same with the Society. However, the defendant had not brought any evidence from the bank record showing that this amount was handed over to the plaintiff after getting the draft prepared from the account of defendant or his father.

(ii) *As far as agreement to sell Ex. D-5/1 is concerned, the Court observed that the language of agreement to sell placed on record clearly depict and prove that the sale consideration was not got typed at the time of drafting the said document. Similarly, day of its execution was also not got typed and kept blank, which was written by pen subsequently. If the amount was actually settled as alleged before the execution of this agreement, then this amount certainly should have been got typed at the time of executing the same.*

(iii) *Similar are the facts regarding amount mentioned in the receipt Ex. DW-5/2 wherein the amount was filled in lateron with the ink pen. It was observed that these documents were got typed earlier and not on the date when the same are being shown to have been executed. DW-5 defendant himself had stated in his cross-examination that all the documents discussed in earlier part of the judgment including the agreements were got typed on the same day.*

(iv) ***It was also clear from the bare observation of the agreement to sell Ex. D-1 and DW-5/2 at page 2 of both the agreements, wherein in line 3 of the page 3, three words were typed in both the agreements and later on cutting was made with pen. Had they not***

been typed on the same day, then in Ex. DW5/1 there was no need to type these words and thereafter making cutting thereof.

(v) ***The Court drew the inference that the documents placed on record were not executed with the free consent of the plaintiff as it had come in the evidence of the defendant that he and other DWs namely, Krishan Lal, Jagdish, K.K. Monga, B.N. Kaushal, Y.P. Tiwari and Amrit Lal were all working in the office of his father and signed these documents on the asking of father of the defendant.***

(vi) The stamp papers of documents proved on record were purchased on dates much earlier than date of execution of agreements which reflect that the matter was not reduced thereon on the same day when these were purchased rather after a long gap. Under these circumstances, the defendant no. 1 was under legal obligations to examine the Stamp Vendors and the Typist who typed the same, to remove the doubt that stamp papers were purchased on the dates, they are showing.

(vii) The defendant had concealed the documents. Had these documents been executed by the plaintiff in the manner as alleged by the defendant, he must have given notice to the plaintiff for the execution of the Sale Deed on the basis of alleged Power of Attorney in his favour or favouring his father. He also did not make any correspondence with the Progressive Society or Estate Office regarding this transaction. This conduct of the defendant create a doubt in the mind of the court that these documents were not

genuine and were written in the circumstances shrouded with mystery."

10. On the point of sale consideration, learned Civil Judge (Junior Division) observed in para 24, as follows:-

"24. Even it is assumed that the documents were executed by him (the plaintiff), the further question arise whether consideration was passed to the plaintiff or not as per the agreements. It is the case of the defendant that initially the sale consideration was ₹ 37,500/- and thereafter same was increased to ₹ 55,000/-. It is further case of the defendant that at the time of passing over the consideration of ₹ 55,000/-, the earlier payment made by the defendant was deducted and balance amount was paid. However, the documents as well as evidence brought on record goes contrary to it. As per the averments made in the written statement that at the time of executing the agreement to sell Ex. DW-5/2, ₹ 34,000/- was given in addition to ₹ 21,000/- already paid. However, the evidence shows that only ₹ 21,000/- were not paid earlier to the execution of the agreement. In fact the evidence shows that only ₹ 9,375/- were allegedly paid by the defendant to the plaintiff by way of bank drafts. There is no evidence on record when balance amount out of ₹ 21,000/- was paid to the plaintiff. There is also contradictory evidence regarding the payment given to the plaintiff at the time of execution of Ex. DW-5/2. As per evidence of DW-8 Kishan Lal, who was attesting witness to the agreement to sell Ex. DW-8/A, has stated in his cross-examination that full payment of ₹ 55,000/- was paid to the plaintiff at the time of

*execution of the document i.e. agreement to sell in question in his presence. Whereas, it is the case of the defendant that only ₹ 34,000/- were paid at that time. In citation **2002 (2) Civil Court Cases 37 (P&H), Harnam Singh vs. Dogar Singh** it has been settled that onus to prove passing over the consideration is upon the vendee. However, in the present case there is no cogent and reliable evidence to prove that what actual amount was paid, which strengthen the case of the plaintiff that no agreement to sell was executed nor any payment was received by him. In the absence of strict proof of payment of earnest money or sale consideration it would be a suspicious circumstances on the valid execution of the agreement to sell or sale. I am guided by law laid down in citation **2002 (3) Civil Court Cases 215 (P&H) Balwinder Kaur vs. Bawa Singh and others**. **Moreover, defendant in his cross-examination has also admitted that he has not paid the balance amount of ₹ 16,500/- to the plaintiff of the disputed plot. Further more Ex. DW-5/1 recites that a sum of ₹ 55,000/- has been paid to the plaintiff at the time of execution of the agreement in the presence of witnesses.**"*

11. On the point of possession, it was observed that possession of the plot was never delivered by the Society to the plaintiff, as such, question of delivery of the same to defendant no. 1 does not arise.

12. The Ist Appellate Court, however, reversed the findings of learned Civil Judge (Junior Division) that signatures of appellant-plaintiff were obtained on blank papers. It observed

in para 19 of the judgment, as follows:-

> *"19. In this regard, so far as the first contention is concerned, no doubt, the plaintiff has stated, when appeared in the witness box that his signatures were obtained by the other party on blank papers, but it is to be seen that original documents of allotment were with defendant no. 1. What is more astonishing to the Court is that PW-1 Ravinder Pal when cross-examined on 07.09.2001 at page no. 1 has stated that he is M.A, LL.B. From such a highly educated person, it cannot be expected that he would sign the blank papers. So, this plea of the plaintiff is not acceptable to the court and it cannot at all be said that defendant no. 1 got signatures on blank papers from the plaintiff especially when the documents signed by the plaintiff is not one or two. These are 10 in number, all typed on stamp papers. Ex. D-1 is the agreement for sale on stamp papers of ₹ 2.25 ps., Ex. D-2 is an affidavit on the stamp paper of ₹ 3/-, Ex. DW-2/1 is the General Power of Attorney on the stamp papers of ₹ 15/-, Ex. DW-2/2 is the special power of attorney on the stamp paper of ₹ 3/-, Ex. DW-5/1 is again agreement for sale on the stamp paper of ₹ 5/-, Mark-A is general power of attorney on the stamp paper of ₹ 15/-, Mark-B is again special power of attorney on the stamp paper of ₹ 3/-, then there is an affidavit Mark-D on the stamp paper of ₹ 3/-, special power of attorney Mark-F on the stamp paper of ₹ 3/-, General power of attorney Mark-G on the stamp papers of ₹ 15/-. No explanation has been given by the plaintiff as to who purchased these stamp papers. On the endorsement which is on the back of the stamp*

> *papers, the name of plaintiff Ravinder Pal is written and as such, it cannot at all be said that plaintiff signed the said blank stamp papers."*

13. About possession over the plot, it was observed that the same was delivered by the plaintiff to defendant no. 1 at the time of agreement. However, in view of the bar under clause 15 of the allotment letter Ex. PF, the judgment of lower Court cancelling the agreement was upheld. Against judgment of Ist Appellate Court, Ravinder Pal-plaintiff as well as Ashwani Kumar-defendant no. 1 have come up in appeal.

14. Learned counsel for appellant-Ashwani Kumar (in RSA No. 3486 of 2011) has argued that the plaintiff-Ravinder Pal is a highly educated person. He had signed different documents which include special power of attorney, Will, agreement to sell etc. at different point of time. The execution of these documents at different point of time displace the plea of plaintiff that his signatures were obtained on blank stamp papers. Firstly, being a highly educated person in the field of law he would never sign the blank papers; secondly, even if he had once signed the blank stamp papers, he would not have resorted to the same time and again; and thirdly, Will, special power of attorney and general power of attorney are registered documents and the plaintiff had also appeared before the Sub Registrar to get these documents registered. He had received full sale consideration and now cannot back out from the agreement. Clause 15 of the letter of allotment may be a bar against the plaintiff but it does not apply to defendant no. 1-Ashwani Kumar. Moreover, this matter was to be seen by the Society, which so far has not taken any action.

Defendant no. 1 had produced evidence to prove his possession over the disputed plot and raising construction of a *kotha* over it. The possession is protected under Section 53-A of the Transfer of Property Act. Even the plaintiff while moving application for contempt against defendant no. 1 had admitted his possession over this plot. Both the Courts below have committed grave error of law and fact while decreeing the suit in the facts and circumstances of the case. Judgments of both the Courts below are liable to be set aside.

15. Learned counsel for the plaintiff-Ravinder Pal (appellant in RSA No. 3338 of 2011) has argued that it is a case where father of defendant no. 1 had taken undue benefit of his relations with the plaintiff and his father. The plea of plaintiff that his signatures were obtained on blank papers is duly proved from the fact that stamp papers of the agreements etc. were purchased months ago at one point of time. No stamp vendor has been examined to prove that the plaintiff had purchased the stamp papers. These documents were not got scribed from regular deed writer, rather it is evident that these documents were prepared in his office by Jagan Nath Sharma father of defendant no. 1 and the witnesses to the agreements were none other then his colleagues, who were directly under his influence. He further argued that even if the entire case of defendant no.1 is believed that agreement was executed, the same is required to be cancelled as this transaction can never mature. Sale of the plot is barred for a period of 15 years after raising of construction. This is why defendant no. 1 had avoided to file

the suit for specific performance of agreements. The Ist Appellate Court was swayed by the fact that plaintiff is a well educated person and could not sign blank stamp papers. It has failed to evaluate the pleadings and evidence in the facts and circumstances of the case. The Ist Appellate Court has skipped this fact that Jagan Nath Sharma being posted in the office of Legal Remembrancer, U.T. Chandigarh had exercised his influence and misused his relations with the plaintiff and his father in getting the agreements and other documents regarding the plot in question, fabricated.

16. In view of the facts discussed above and submissions of learned counsel for the parties, substantial questions of law requiring determination arise in these appeals, as follows:-

(i) Whether rights of defendant no. 1 are protected under Section 53A of the Transfer of Property Act, 1881?

(ii) In the event of entire plea taken by defendant no.1 regarding execution of the agreement being upheld, whether the agreement is sustainable in view of clause 15 of the letter of allotment?

(iii) Whether the Ist Appellate Court has upheld the execution of agreement to sell by plaintiff in favour of defendant no. 1 while observing that the document propounded by defendant no. 1 bear signatures of plaintiff?

17. Firstly, I discuss the plea of defendant no. 1-Ashwani Kumar that his possession under the agreement is protected as per provision of Section 53A of the Transfer of Property Act. Section 53-A of the Transfer of Property Act reads as follows:-

"53-A. Part performance *- Where any person* *contracts to transfer for consideration any immovable property by writing signed by him or on his behalf from which the terms necessary to constitute the transfer can be ascertained with reasonable certainty, and the transferee has, in part performance of the contract, taken possession of the property or any part thereof, or the transferee, being already in possession, continues in possession in part performance of the contract and has done some act in furtherance of the contract, and the transferee has performed or is willing to perform his part of the contract, then, notwithstanding that the contract, though required to be registered, has not been registered, or, where there is an instrument of transfer, that the transfer has not been completed in the manner prescribed therefor by the law for the time being in force, the transferor or any person claiming under him shall be debarred from enforcing against the transferee and persons claiming under him any right in respect of the property of which the transferee has taken or continued in possession, other than a right expressly provided by the terms of the contract:*

Provided that nothing in this section shall affect the rights of a transferee for consideration who has no notice of the contract or of the part performance thereof."

18. Under the provision of Section 53-A of the Transfer of Property Act, the transferee is entitled to resist any attempt on part of the transferor to disturb his lawful possession under the contract of sale. Here a vital question which arises for consideration is as to whether the plaintiff had ever surrendered possession of the plot in favour of defendant no. 1-Ashwani Kumar?

19. The plaintiff was allotted plot vide allotment letter

(Ex. PF) and clause 22 of the allotment letter provides that possession of the plot should be obtained from the Society. As per letter of the Society bearing no. 190 dated 26.04.1985, addressed to plaintiff-Ravinder Pal, possession of the plot no. 1404, Sector 44-B, Chandigarh was handed over to the plaintiff on that day i.e. 26.04.1985. This displace the plea of defendant no. 1 that possession of the plot was handed over under the agreement dated 08.04.1985 (Ex. D-1). It is evident that on 08.04.1985, even plaintiff was not in possession of the plot, as such, there is no question of delivery of possession of the same. Similar recital in affidavit (Ex. D-2), as such, is also a paper transaction, consequently leading to an unassailable conclusion that possession of the plot was never delivered to defendant no. 1 under the agreement dated 08.04.1985 (Ex. D-1). Even otherwise letter (Ex. PG) by President of Progressive Cooperative House Building Society nowhere indicates that any demarcation of the plot was also given to plaintiff. Mere assertion that possession had been delivered has no meaning without delivery of actual possession at the spot after demarcation. While appearing as DW-5 Ashwani Kumar-defendant no. 1 has alleged that he was handed over possession of the plot in the month of May, 1984. It is evident from the evidence on record that all the assertions made by defendant no. 1-Ashwani Kumar and in the agreement regarding delivery of possession are not correct. Defendant No. 1 has examined a witness, namely; Bal Kishan as DW-3, who stated that he raised construction of one *kacha kotha* on the disputed plot at the instance of defendant no. 1. His statement is irrelevant. Admittedly, no site plan of any construction made over the disputed plot was got sanctioned. As per receipt Ex. DW-3/1, ₹ 350/- were paid as charges for making a store on 17.03.1990. This receipt has been issued on a letter pad. Even if defendant no. 1 has made any construction over the disputed plot a few days before filing of the suit it nowhere indicates that he was given possession over the same in pursuance of the agreement. There is nothing that defendant no. 1 had taken permission or got any site plan approved from Progressive Cooperative House Building Society or Chandigarh Administration before raising any construction. The statement of DW-3 Bal Kishan and defendant no. 1 in this regard that this raising of construction be taken as proof of their possession over the plot, is liable to be rejected. It is not proved that possession was delivered at the time of agreement dated 08.04.1985. The term 14(a) of the allotment letter specifically provides that the Society/its member shall construct the building in accordance with the approved sanctioned plan, failing which the plot will be resumed. There is no evidence that defendant no. 1 was ever admitted as member of the Progressive Cooperative House Building Society so as to become competent to raise any construction over the plot or to take possession of the plot. There is no evidence that defendant no. 1 ever applied to the Society to become its member. In the subsequent agreement dated 20.06.1989, this fact has again been reiterated that seller has delivered physical possession of the plot to the purchaser. The agreement dated 20.06.1989 (Ex. DW-5/A) is a reproduction/copy of the agreement dated 08.04.1985. There is no evidence that any steps were taken as per this agreement to deliver possession at the spot.

20. In view of the facts discussed above, this plea of defendant no. 1-Ashwani Kumar that he was delivered possession of the disputed plot by the plaintiff is without substance and is liable to be discarded. It is not proved on record that defendant no. 1 was ever given possession of the plot under the agreement to sell and he is entitled to protection of Section 53-A of the Transfer of Property Act.

21. Learned Civil Judge (Junior Division) discarded the plea of defendant no. 1 that the plaintiff had executed any agreement and other documents. While reaching the conclusion, it has taken into account various facts and circumstances discussed in paras 9 and 10 above, like purchase of stamp papers months ago before the date of execution, non-examination of the stamp vendor, all these documents are not scribed by any regular deed writer and that the witnesses are officials working under Jagan Nath Sharma father of defendant no. 1 etc. However, the Ist Appellate Court discarded the plea of plaintiff that his signatures were taken on blank stamp papers with the observation that the plaintiff is a highly educated person and it cannot be believed that he would sign blank papers. The above observation of Ist Appellate Court is not without substance. No doubt, stamp papers of the agreement dated 08.04.1985 is purported to have been purchased on 15.01.1985. It is quite strange that in January, 1985, the plaintiff had not

even been allotted the plot in question by the Progressive Cooperative House Building Society. The plaintiff was communicated the allotment of plot vide letter dated 28.03.1985. In clause 14 (a) the date of allotment is mentioned as 22.03.1985. Under these circumstances, this cannot be believed that he will purchase the stamp papers for affidavit and agreement on 15.01.1985 and got scribed general power of attorney, special power of attorney etc. on the stamp papers purchased in January, 1985. The question here is not only of the signatures of plaintiff on these documents but about the genuineness and due execution of the same by the plaintiff-appellant. Learned Ist Appellate Court took no notice of facts and circumstances noted by trial Court (mentioned in paras 8 and 9 above) or dealt with the same. It recorded no finding that agreements dated 08.04.1985 or 20.06.1989 are proved to have been duly executed for consideration. The findings of learned Civil Judge (Junior Division) that agreement was not proved to have been duly executed and were without consideration, have not been set aside by Ist Appellate Court. Even if it be believed that agreement to sell and other documents bear signatures of plaintiff, this sole factor in no manner prove its due execution.

22. The facts as pleaded by defendant no. 1 smack of foul play on the part of defendant no. 1-Ashwani Kumar and his father Jagan Nath Sharma. It is evident that they had made preparations to get the disputed plot even before it was allotted to plaintiff-Ravinder Kumar in March, 1985. The stamp paper for the alleged agreement was purchased well in advance in

January, 1985, which shows that defendant no. 1-Ashwani Kumar through his father had made preparation to get the disputed plot before it could be allotted to plaintiff-Ravinder Kumar. Defendant no. 1-Ashwani Kumar has not come up with any explanation for purchase of stamp paper well in advance and getting executed so many documents like Will, special power of attorney, general power of attorney, receipt etc. from plaintiff-Ravinder Kumar instead of coming forward to seek specific performance of agreement.

23. Even if the entire version of defendant no. 1 regarding execution of agreement to sell the plot be believed, the question which call attention is whether it will be appropriate to cancel the contract as claimed by the plaintiff-appellant (Ravinder Pal) and what will be impact of clause 15 of the letter of allotment on this agreement?

24. As per the case set up by defendant no. 1-Ashwani Kumar, the plaintiff had entered into an agreement to sell the disputed plot to him vide agreement dated 08.04.1985. Thereafter, there was a second agreement dated 20.06.1989(Ex. DW-5/A). Admittedly, till date defendant no. 1 has not filed any suit seeking specific performance of either of the agreement. As already discussed he failed to prove that he was delivered possession of the plot under the agreement. Coupled with above facts, the entire transaction is to be read under the terms of allotment to plaintiff. **Clause 15 of the allotment letter put a specific bar against the Society or its members against selling or transferring his/her right in the plot or part**

thereof for a period of 15 years from the date of completion of building. On appraisal of evidence in this case it appears that defendant no. 1 has projected that stamp papers for agreement and allied documents were purchased in January, 1985 i.e. before allotment of plot to plaintiff in March, 1985. Till date no site plan of the building to be constructed over the plot has been submitted to competent authority. The bar under clause 15 continues for 15 years after completion of building. It means that in the given circumstances, even if, for the sake of argument it be believed that defendant no. 1 is in possession of the disputed plot, he can never raise construction over the same as he is neither a member of the society nor owner of the plot in dispute.

25. Clause 15 of the letter of allotment (Ex. PF) further lays down the terms for transfer even after expiry of a period of 15 years from the date of completion of building, as follows:-

> *"15. ....After the expiry of this period the society/its member may be allowed by the Government to sell or transfer his/her rights in the site to any other party subject to the condition that 50% of the unearned increase in the value of land at the time of the site is sold or transferred shall be payable to the Chandigarh Administration before registering such sale or transfer. The value of the property for this purpose shall be assessed by the Estate Officer or any other authority which may be appointed by the Chief Administrator whose decision shall be final and binding on the lessee."*

26. Seeing the implication of above clause, it is apparent that the transaction for purchase of plot with plaintiff, as claimed

by defendant no.1-Ashwani Kumar, cannot be given any legal approval by the Court or the Society or the competent authority under the Chandigarh Administration. The relief of cancellation of agreement as sought by the plaintiff, if declined, will create a peculiar situation. In the given circumstances neither the plaintiff nor defendant no. 1 would be in a position to get their site plan approved for raising construction of building over the plot. It is evident from the term contained in clause 15 of the allotment letter that purpose of creating a bar restraining the Society/its members from selling/transferring the plot, was to prevent speculative transactions and further to watch interest of the member of Society who were allotted the plot keeping in view their *bonafide* need/requirement. It is not a case that defendant no. 1 or his father, who was instrumental in getting all the documents scribed and executed, was not aware of terms of allotment. They were aware and have relied upon the terms of allotment. A transaction which is against or in violation of specific term of allotment by the Society to its members cannot be recognized by Court.

27. Here learned counsel for the defendant no. 1 (Ashwani Kumar in RSA No. 3486 of 2011) has argued that the plea of plaintiff-Ravinder Pal if allowed will result in undue enrichment and taking of benefit of money received by him under the agreement with defendant no. 1.

28. Here the question arises as to whether relief under term incorporated in the agreement giving option to the plaintiff to cancel the agreement on return of ₹ 55,000/- plus another

equated amount as liquidated damages can be allowed to defendant no. 1-Ashwani Kumar. Though execution of the agreement is shrouded with suspicious circumstances as discussed above and learned trial Court has refuted the plea of defendant no. 1 regarding payment of earnest money, still keeping in view the fact that the plaintiff himself has sought that relief that the agreement be cancelled on return of ₹ 55,000/- plus another equated amount as liquidated damages, this relief can be allowed to defendant no. 1-Ashwani Kumar.

29. It appears that defendant no. 1 was also cautious and had doubt about transfer of plot in dispute under term of allotment. This appears to be a cause that a specific term was got mentioned in the agreement(s) that in case the seller cancels or revokes the documents like general power of attorney, special power of attorney, Will and other documents at any later stage or backs out of the bargain, he shall be liable to return to the purchaser a sum of ₹ 55,000/- plus another equated amount as liquidated damages plus double the cost of construction of the building (if raised at the spot).

30. Keeping in view the fact that the agreement can never mature, defendant no. 1 has not taken any step during the period of last 30 years for seeking specific performance of the agreement. Under these circumstances, it will be appropriate and in the interest of justice to cancel the agreements and allow the return of amount of ₹55,000/- mentioned as paid to the plaintiff-appellant alongwith liquidated damages as per the agreement and the *pendente lite* interest.

31. In view of my discussion above, the substantial questions of law framed in these cases are answered in favour of plaintiff-appellant (Ravinder Pal). Consequently, RSA No. 3338 of 2011 has merits and is allowed. The judgment and decree passed by the Courts below is affirmed with modification that agreements dated 08.04.1985 and 20.06.1989 are cancelled, however, the plaintiff is directed to pay a sum of ₹ 1,10,000/- alongwith interest @ 9% per annum from the date of filing of the suit till actual payment. Consequently, the appeal filed by defendant no. 1-Ashwani Kumar (RSA No. 3486 of 2011) is partly allowed to the extent that he shall be entitled to return of the earnest money with liquidated damages and interest as mentioned above.

32. Keeping in view the facts and circumstances of the case, the parties are left to bear their own costs.

November 06, 2015 **(SURINDER GUPTA)**
jk **JUDGE**

Whether to be referred to the Reporters? Yes/No