

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.1186 of 1986 (O&M)
Date of Decision: January 30, 2017

Baljinder Singh

... Appellant

Vas.

Jarnail Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present:- Mr. R.S. Chahal, Advocate
for the appellant.

Mr. Adarsh Jain, Advocate,
for the respondents.

Amol Rattan Singh, J.

This appeal has been filed by the second defendant in a suit filed by respondents no.1 to 4 herein (respondent no.1 now represented by his legal heirs), seeking possession of the suit property upon specific performance of an agreement of sale stated to have been entered into between the plaintiffs and defendant no.1 (present respondent no.5).

The suit was dismissed by the learned Sub-Judge Ist Class, Ambala City, but on an appeal filed by the plaintiffs, it was decreed in their favour by the learned lower appellate Court. Hence the present appeal by the second defendant (Baljinder Singh), who is the vendee of the suit property, the vendor being defendant no.1 (Balbir Singh).

2. As per the suit of the plaintiffs, they were residents and owners of 44 kanals of land in Village Shahpur, Tehsil and District Ambala and being desirous of acquiring more land for their cultivation, approached

defendant no.1, Balbir Singh, for purchase of his land which was otherwise already stated to be under cultivation of the plaintiffs.

Defendant no.1 is stated to have consequently executed the following transactions:-

- i) Sale deed dated 6.4.78 in favour of the plaintiffs, of land measuring 8 kanals bearing Khasra Nos.98/7, 8, for Rs.11,000/-.
- ii) Mortgage deed with possession, of land measuring 13 kanals 4 marlas falling in khasra nos. 97/10,11/1, for Rs.6000/-, in favour of defendant no. 4.
- iii) Sale deed dated 28.7.78 in favour of defendant no.4, of land measuring 8 kanals bearing khasra nos.97/11/1, 10, for Rs.13,000/-
- iv) Sale deed dated 14.9.78 in favour of the plaintiffs, of land measuring 8 kanals, bearing khasra nos.97/26, for Rs.12,000/-
- v) Sale deed dated 20.10.78 in favour of the plaintiffs, of land measuring 7 kanals 15 marlas, bearing khasra no.98/7, for Rs.10,000/-.”

3. It was stated to have been further agreed that the plaintiffs would continue to be tenants on the remaining land owned by defendant no.1. Even so, as stated in the plaint, thereafter on 12.05.1979 the said defendant entered into an agreement for the sale of another 22 kanals and 10 marals of land to the plaintiffs, for a consideration of Rs.12,000/- per acre. The plaintiffs are stated to have paid a sum of Rs.17,000/- as part payment and it was stated to have been agreed between the parties that a sale deed would be executed by 31.3.1980.

On 29.5.1979, defendant no.1 “obtained further sum of Rs.2,000/- from the plaintiffs”, again as part payment of the above sale consideration and was stated to have also executed a writing with regard to

that transaction.

Again on 23.3.1980, another sum of Rs.4,000/- is stated to have been paid by the plaintiffs to the said defendants and a “regular agreement” for the sale of 22 kanals 10 marlas of land was executed, with the date for execution and registration of the sale deed extended up to 31.12.1980.

4. It was further contended by the plaintiffs that sometime thereafter, defendant no.1 told them that out of the 22 kanals and 10 marlas of land agreed to be sold to them, 18 kanals and 10 marlas had been attached by the civil Court and therefore he was incapable of executing a sale deed qua the land.

However, upon the plaintiffs finding that actually 5 kanals and 3 marlas out of the land was not attached, a sale deed was executed on 1.7.1980 for that much land, on payment of Rs.3,000/-. The sale deed is also stated to have been registered on that date.

As per the plaintiffs, Rs.2,000/- was received by defendant no.1 in cash, with the remaining amount of Rs.1,000/- having been adjusted against previous payments made towards the total sale consideration.

It was further contended in the plaint that since 18 kanals and 10 marlas of land was still under attachment, the date for registration of the sale deed “was extended upto 31.12.1980”. (As stated in the plaint, despite the fact that it is earlier stated therein that the said date had already been 'fixed' on 23.03.1980 itself).

5. Yet further, it was contended that, however, since thereafter there was no possibility seen of an early release of the land from attachment, accounts were settled between the parties on 2.7.1980 (i.e. the day after the last sale deed), and a sum of Rs.12,000/- was found due against defendant

no.1, which was paid by him on the said date itself to defendant no.4, Sampuran Singh, father of the plaintiffs. Despite the above, it was contended that the “previous agreement of sale remained binding between the plaintiffs and defendant no.1, and the date for execution and registration of the sale deed was extended up to 31.12.80”. (The same date as had been stated earlier). Later, defendant no.1 is stated to have been in need of funds and therefore on 13.11.1980, a fresh agreement of sale of 18 kanals and 10 marlas of land was executed and it was stated to have been agreed that a sale deed would be executed and registered on 15.6.1981. Defendant no.1 is stated to have obtained a sum of Rs.10,000/- from the plaintiffs, as part payment of the sale consideration.

6. “On or about 28/29.12.80”, the plaintiffs came to know that the first defendant was inclined to sell the land to defendant no.3, i.e. Labh Singh. Consequently, notices were issued to the said two defendants, with intimation to the Sub-Registrar, Ambala. A civil suit was also stated to have been filed, in which an injunction was granted to the plaintiffs on 03.01.1981.

On 06.01.1981, the Sub-Registrar is stated to have been requested not to register any sale deed in respect of the suit land; yet, a sale transaction was entered into between defendants no.1 and 2, by which the land was sold to the son of defendant no.3, i.e. to defendant no. 2 Baljinder Singh (the present appellant), for a sum of Rs.49,000/-, on 15.04.1981.

7. On the aforesaid contentions, the suit was filed on 26.5.1981, seeking specific performamnce of the agreement dated 13.11.1980. (The copy of the judgment of the learned Sub-Judge erroneously shows the date of institution to be 26.01.1981)

8. In response to the notices issued to them, defendants no.1 and 2

filed separate written statements, with the former contending that he had never entered into the agreement in question with the plaintiffs, further denying that he had received any part payment towards sale consideration for any land of his.

It was further averred that the sale in favour of defendant no.2 was very much valid and that he was a bona fide purchaser of the land, for value.

Defendant no.2 in his separate written statement denied the allegations of the plaintiffs, contending that the sale deed in his favour was valid as he had no notice of any injunction by the Court qua the suit land and that he was a bona fide purchaser thereof.

Defendants no.3 and 4 appeared and stated that they did not wish to file any written statement and thereafter did not appear before the Court, though no order proceeding against them ex parte is stated to have been passed.

9. On the aforesaid pleadings, the following issues were framed by the learned Sub-Judge:-

- “1) Whether defendant no.1 entered into an agreement of sale dated 13.11.1980 of the suit land, if so, to what effect? OPP
- 2) Whether the plaintiffs always remained and are still ready and willing to do and perform their part of the contract, if so, to what effect? OPP
- 3) Whether the plaintiffs are not in actual possession of the suit land? OPD1
- 4) Whether the defendant no.2 is a bonafide purchaser of the land in dispute for the value of Rs.49,000/- and purchased the same in good faith, if so, its effect? OPD2
- 5) Whether the property in dispute is a co-parcenary

property, if so, its effect? OPD1

6) Relief.”

10. In support of their suit, the plaintiffs examined one Kamal Kishore as PW-1, who testified that he had scribed the agreement, Ex.P-1, at the instance of defendant no.1 Balbir Singh, in favour of the plaintiffs and that he had read over its contents, after which Balbir Singh and the witnesses had appended their signatures in his presence and an entry in that regard was also made in his register.

However, it was noticed by the learned Sub-Judge that this witness did not state that the plaintiffs had appended their signatures or thumb impressions on the agreement.

Plaintiff no.2, Baljit Singh, also testified as PW-2, to the effect that a sum of Rs.10,000/- was paid on the spot when the agreement was scribed; however, as per that Court, he did not state as to whom the amount was paid. He also did not testify with regard to any receipt having been executed with regard to the payment.

One Ravinder Seth/Ravinder Nath testified that he had attested the agreement and further, to the effect that plaintiff no.3 Baljit Singh, and Sampuran Singh, father of the plaintiffs, were also present on the spot.

However, he also could not depose with regard to any receipt having been issued on the payment of Rs.10,000/- as earnest money.

In cross-examination, he is stated to have conceded that the agreement (Ex.P-1) did not bear the signatures of even plaintiff Baljit Singh.

It was also noticed by the Sub-Judge that neither PW-1 nor even plaintiff no.2 himself, as PW-2, had testified that the latter (plaintiff no. 2) was present at the spot at the time that the earnest money was paid. Thus, it

was held that it had not been proved that any of the plaintiffs were actually present on the spot.

11. Having recorded a finding as above, it was held by that Court that the plaintiffs not having been signatories to the agreement and therefore not bound by it, they could not bind the vendor (defendant no. 1-Balbir Singh) to such agreement, even if it was presumed for the sake of argument, that the said agreement, Ex. P-1, had been executed.

To hold as above, a judgment of the Patna High Court in **Kedar Dass Mohta and others** vs. **Nand Lal Poddar and others** AIR 1971 Patna 253, was cited by that Court.

12. Other than the above, it was held that even from the statements of the witnesses, including that of plaintiff Baljit Singh, it was seen that the “stamp paper for Ex. PW”, was supplied by one Kanwal Jain whereas later the witness stated that he had himself purchased it and also could not recollect if his signatures were obtained at the time when the stamp paper was purchased.

These statements were found to be falsified by that Court on a perusal of the endorsement of the stamp vendor on the stamp paper, which, as per the judgment, showed that it had been purchased by Balbir Singh son of Nasib Singh (defendant no.1) through Nasib Singh, whose name appeared to have been scored off, to show that it had been purchased through one Santosh Kumar. This difference was found to be irreconcilable by the Court, as to how Santosh Kumar came to purchase the stamp paper, when he was not a party to the suit (the inference seemingly being that he was neither a vendor nor a vendee).

Still further, it was seen that as per the entry in the register of the

stamp vendor, the stamp paper was shown to have been purchased by Santosh Kumar, for the purpose of execution of the affidavit.

[Note:- As a matter of fact, it is seen from the agreement, Ex.P1, as available in the record of the learned lower Court, that it is the name of Santosh Kumar, written in English, that has been scored off, with the name of Balbir Singh shown to be existent, written in Hindi, against the date 13.11.1980, alongwith Sr.No.4868].

13. In the aforesaid circumstances, the contention of the plaintiffs that an agreement dated 13.11.1980 had been entered into by defendant no. 1 with them, for the sale of the land, was held to be false, with the agreement thereby not proved to have been executed.

14. The issues of actual possession of the land and whether it was co-parcenary property or not, were held to be inconsequential, in view of the fact that the agreement on the basis of which specific performance and possession was sought, was not found to have been executed at all.

As regards whether the second defendant was a *bona fide* purchaser of the land from defendant no. 1 for a sale consideration of Rs. 49,000/-, with the sale deed having been executed on 15.04.1981, the contention of the plaintiffs was duly noticed by the learned Civil Judge, to the effect that, as per the plaintiffs, defendant no.2 had knowledge of the agreement in favour of the plaintiffs, as also of the injunction order restraining defendant no.1 from alienating it.

This contention was also rejected as no evidence with regard to knowledge of the agreement possessed by either defendant no. 2 or his father, defendant no.3, was held to have been led by the plaintiffs, with the agreement in any case not having been found to be executed.

As regards the contention that the defendants had knowledge of the injunction order regarding creating any encumbrance on the suit land, the Court held that the earlier suit filed by the 2nd plaintiff (Baljit Singh), against the 2nd and 3rd defendants, i.e. Baljinder Singh and Labh Singh, being only one seeking permanent injunction, and it having been withdrawn on a statement by the defendants that the plaintiffs would not be forcibly dispossessed from the land, it could not be said that defendant no. 2 was not a *bona fide* purchaser of the land.

15. On the aforesaid findings, the suit of the plaintiffs was dismissed by the learned Sub-Judge.

16. In the appeal filed by the plaintiffs against that judgment, the learned Additional District Judge, Ambala, after noticing the facts and the evidence led, first recorded a finding that in paragraph 10 of the plaint, it was alleged that the agreement dated 13.11.1980 was left with defendant no. 1 “while its counter-part which was also signed by defendant no. 1 remained with the plaintiffs”

In the reply thereto, in the written statement of defendant no.1, the contents of the said para were denied and consequently, the learned Court held that in such a situation, defendant no. 1 obviously could not have been asked to produce the original agreement and the only alternative left with the plaintiffs was “to produce the counter-part of the said agreement dated 13.11.1980”.

That copy having been accepted as Ex. P-1, supported by the testimonies of the scribe, PW-1 Kanwal Kishore and an attesting witness, Ravinder Nath, PW-3, with the said witnesses stating that it was executed by Balbir Singh with Rs.10,000/- paid in advance, it was held that the document

had been duly proved.

17. As regards the finding of the lower Court to the effect that Ex. DW-2/A, (i.e. the copy of the register of the stamp vendor showing that the stamp paper sold at entry no. 4868 dated 13.11.1980 was for the purpose of an affidavit), it was held that simply because there was a discrepancy in the entry and the endorsement behind the stamp paper, that made no difference because it was clearly recorded on the stamp paper itself that it was purchased for the purpose of an agreement. Hence, it was held that the secondary evidence, with regard to the purpose for which the stamp paper was purchased, was not required or admissible. In other words, it was held that if in the stamp register, the stamp vendor recorded that it was purchased for an affidavit or any other purpose, that did not change the endorsement on the back of the original stamp paper. Thus, the finding of the learned Sub-Judge on the basis of exhibit DW-2/A was held to be erroneous.

18. An argument having been raised on behalf of the plaintiffs before the first appellate Court, that the agreement was not a genuine document because in the pleadings it was stated that Balbir Singh had entered into an agreement with the plaintiffs (four in number), whereas Ex. P-1 was actually shown to be executed between Balbir Singh and plaintiffs no. 1 and 3 only, the said argument was rejected on the ground that since at least two of the plaintiffs were shown to be parties to the agreement, as such, it at least created a right in their favour.

19. Another argument raised, and the finding of the Sub-Judge, that the plaintiffs not being signatories to the agreement, it was therefore not binding on the vendor, was also rejected on the ground that there was a penal clause pertaining to the plaintiffs also, that in case they defaulted in making

the balance payment, then the amount of Rs. 10,000/- paid by them would stand forfeited. Hence, with possession of the suit land admittedly being with the plaintiffs, it was held that they not being signatories to the document, but with the vendor (defendant no. 1) having signed it, it would still be “a bilateral document and not a unilateral document”.

20. Yet further, it was held by the first appellate court that in effect there was no “rebuttal” to Ex. P-1, other than the testimony of DW-1 Balbir Singh, who could not otherwise disprove it by summoning the other person shown to be the attesting witnesses thereto, i.e. Parshotam.

It was further found that the said defendant (vendor) had taken a plea that his signatures were often obtained by the 4th defendant, Sampuran Singh (father of the plaintiffs) and that he had simply signed it, he being uneducated.

However, it was held that simply because a person is uneducated, it did not make him unwise, and with four transactions of alienation of land having been executed earlier by defendant no. 1, it could not be accepted that he simply appended his signatures to a document, unmindful of what he was signing.

21. Thus, on the aforesaid reasoning and holding that the testimonies of PWs 1 and 3 corroborated that of plaintiff-Balbir Singh, the agreement was held to be proved to have been executed.

22. As regards whether defendant no. 2 was a *bona fide* purchase from defendant no. 1, it was found that defendant no. 2 had stated that he had verified from plaintiff Jarnail Singh (with regard to the clear title of the property), but this statement of the said defendant was held to be falsified because the plaintiffs already being in occupation of the land, it would not be

expected that they would inform defendant no. 2 that they had not entered into an agreement to purchase it. Further, it was found that defendant no. 2 had not stated that he tried to verify that the land was free of encumbrances from any other person.

Yet further, it was found that an order of dismissal, dated 19.11.1982, was passed by the Assistant Collector Ist Grade, Ambala, on an application filed by the second defendant himself, seeking that the plaintiffs be ejected from the suit land. Hence, with the 2nd defendant knowing fully well that the plaintiffs were in possession of the land, it could not be accepted that he had asked them with regard to it being encumbrance free and that they had told him that it was unencumbered.

23. Finally, it was held that actually it was because defendant no. 1 was offered a higher sale consideration (Rs. 49,000/-) than had been offered by the plaintiffs, he got tempted to sell his land to the said defendant, even though he had earlier executed an agreement in favour of the plaintiffs, with the sale consideration for that land being Rs. 27,750/-.

24. Holding as above, the judgment of the learned Sub-Judge was reversed by the first appellate court and the suit of the plaintiffs decreed in their favour, directing them to deposit the balance sale consideration in the trial court within one month.

25. Before proceeding to the arguments of learned counsel for the parties before this Court, the questions of law which would need determination in this second appeal, in terms of Section 41 of the Punjab Courts Act, 1918, need to be referred to, in terms of which arguments were addressed. In the opinion of this Court, the following questions arise for determination:-

- i) Whether the reversal of the judgment of the learned Sub-Judge, by the first appellate Court, thereby holding the agreement set up by the plaintiffs, dated 13.11.1980, to be a void agreement, is a wholly perverse finding?
(Not actually a question of law, but a question necessary to be determined in view of wholly conflicting findings on the issue by the first two courts).
- ii) Whether, in the absence of the signatures of the prospective vendee on the agreement of sale, but with the vendors' signatures duly proved, the agreement can be held to be a valid agreement?
- iii) Whether the sale deed dated 15.04.1981 executed by respondent no.5 (defendant no.1 in the suit) in favour of the present appellant (defendant no.2), is to be declared null and void and not binding on the rights of the plaintiffs, i.e. Respondents no.1 to 4, on the application of the doctrine of *lis pendens*?

26. It is to be noticed at the outset that the suit filed by the respondents-plaintiffs sought a decree of possession of the suit land as owners thereof, by specific performance of the aforesaid agreement of sale dated 13.11.1980. No decree of declaration, to the effect that the sale deed dated 15.04.1981 is null and void, was specifically prayed for, though in paragraph 16 of the plaint, it is contended that the said deed is in no way binding upon the plaintiffs. As seen, an issue with regard to the present appellant being a bonafide purchaser or not, was also framed by the learned Sub-Judge.

In my opinion, if this Court eventually comes to the conclusion that the appellant is not a bonafide purchaser of the suit land, and the sale deed is hit by the doctrine of *lis pendens*, then in terms of Order 7 Rule 7 of

the Code of Civil Procedure, 1908, this Court would not be barred from declaring the sale deed to be not binding upon the respondents-plaintiffs, they having specifically made an averment in that regard in the plaint and, in any case, the decree of specific performance only being a relief that can be claimed if the sale deed already executed in favour of the present appellant is declared to be null and void.

More would be discussed on that aspect, at the end of this judgment.

27. Before this Court, Mr. Chahal, learned counsel for the appellant, first pointed to paragraph 10 of the plaint itself, from the record of the Courts below, to submit that it was very strange that the plaintiffs had contended that the original agreement signed by the plaintiffs and defendant no.1 was left with the said defendant, with only the counter part signed by the first defendant left with the plaintiffs. Learned counsel submitted that in any agreement of sale, the original agreement is always with the prospective vendee so that he can enforce his right to get the sale deed executed, with a copy left with the vendor.

He next submitted that the original document was never produced and as contended in the aforesaid paragraph of the plaint itself, only a photostat copy was annexed with the plaint, without there ever being any application filed to lead secondary evidence.

Learned counsel next pointed to the fact that though the person who contended to be the scribe to the agreement, i.e.Kamal Kishore (PW1), and one of the attesting witnesses, Ravinder Nath (PW3), both testified that they had seen Ex.P1 and admitted to their signatures, however, as per learned counsel, the said document being a photo copy, they could not have identified

their signatures.

(It needs to be noticed at this stage itself that Ex.P1 in the trial Court record is not seen to be a photocopy, with the document being a stamp paper of a value of Rs.3/- and the typing on it, in Hindi, is also not seen to be a carbon copy. However, a photocopy is also on record. Thus, judicial notice needs to be taken of that fact that Ex.P1 is an original typed document. Whether it was another copy of the original Ex.P1 or not, as contended in the plaint, would need to be considered at a later stage).

Learned counsel for the appellant further submitted that both these witnesses testified that the agreement was signed by both, Balbir Singh, i.e. defendant no.1 (vendor) and Baljit Singh, i.e. one of the prospective vendees (plaintiff no.3). However, he pointed to the document again to submit that it was actually signed only by Balbir Singh, two witnesses and the person who claimed to have scribed it, i.e. PW1. No signature of any of the plaintiffs can be seen on the document.

28. Mr. Chahal next pointed to Ex.DW2/A from the record, which is an extract of the register of the stamp vendor from whom Ex.P1 is stated to have been purchased. Learned counsel submitted that though the register of the stamp vendor showed that it was actually purchased by one Santosh Kumar as a stamp paper to be used as an affidavit on 13.11.1980, the plaintiffs' claim was that it was purchased for executing the agreement for sale.

He next pointed to the difference in line spacing in the document Ex.P1, to submit that the paper which was originally meant to act as an affidavit, was converted to show it to be an agreement of sale, therefore leading to adjustment in the line spacing, to make good the deficiency. He

submitted that in fact that was the reason why there was such a gap between the last line of the written content, and the signatures of defendant no.1 (the vendor) and the witnesses.

Yet further, learned counsel pointed to the fact that the original date of 24.12.1980 had been changed by superimposing the date 13.11.1980 on it, which showed that actually the agreement was not executed on 13.11.1980.

On the contents of Ex.P1, Mr. Chahal submitted that it was contained therein that Rs.10,000/- had been paid in cash to defendant no.2, i.e. the vendor, by plaintiffs no.1 and 3, but when it was stated in the plaint that various payments had been made earlier, of an amount of Rs.2000/- on 01.07.1980 (with Rs.6000/- left to be paid), and earlier payments also having been made of Rs.17,000/- on 12.05.1979, Rs.2000/- on 29.05.1979 and Rs.4000/- on 23.03.1980, totalling Rs.25,000/-, then there would be no occasion to pay another Rs.10,000/-, with the total sale price of 18 kanals and 10 marlas of the land working out to be only Rs.27,750/-.

Learned counsel for the appellant next submitted that the prospective vendees not being signatories to the agreement, that fortifies the constant stand of the respondent-defendant no.1, i.e. the vendor, in his written statement, as is contained in paragraphs 4 and 10 as also the additional plea, to the effect that he had never entered into any agreement of sale with the plaintiffs and that they were only taking advantage of him being a poor and an illiterate person.

29. Learned counsel next pointed to paragraph 22 of the judgment of the learned lower appellate Court, wherein it is stated that PW2 Baljit Singh had stated that appellant-defendant no.2 Baljinder Singh had knowledge of

the agreement of sale before entering into the agreement to purchase the land from defendant no.1. Learned counsel submitted that actually the said statement has not been made by Baljit Singh, which is verifiable from his testimony.

(It is necessary to notice here that this contention of learned counsel is actually contrary to the record, because in the cross-examination of PW2 it is very clearly stated that the plaintiffs had informed defendant no.2 Baljinder Singh, that they had entered into an agreement, which he also knew of).

30. In response, Mr. Adarsh Jain, learned counsel for the respondents-plaintiffs, first pointed to Ex.P4 which is seen to be a notice issued to defendant no.1 on behalf of the plaintiffs, by their counsel, on 31.12.1980, stating therein that he (defendant no.1) had entered into an agreement for the sale of land measuring 18 kanals and 10 marlas (fully described in the notice) on 13.11.1980 and had received a sum of Rs.10,000/- as earnest money also, with the agreement being that the consideration would be @ Rs.10,000/- per acre and that the balance amount was to be received on or before 15.06.1981, at the time of execution and registration of the sale deed.

The notice further states that since the noticee (defendant no.1) had threatened to transfer the land to Labh Singh, he should refrain from doing so, in view of the fact that the plaintiffs were still willing to perform their part of the contract.

It needs to be noticed here that in para 2 of the said notice, while stating that the noticee had received a sum of Rs.10,000/- as earnest money on 13.11.1980, it was further stated that the agreement for the sale of the land

had also been delivered to the plaintiffs, duly executed. (Obviously referring to the instrument by which the agreement was reduced to writing).

31. Learned counsel submitted that, in fact, plaintiff Baljit Singh had also filed a suit seeking a decree of permanent injunction against defendants no.1 and 3, against alienation of the suit land and as a matter of fact, such injunction had been granted by the Sub-Judge Ist Class, vide his order dated 03.01.1981 (Ex.P5 in the present *lis*). Despite that, he contended that the sale deed dated 15.04.1981 was executed by defendant no.1 in favour of defendant no.2 who is the son of defendant no.3, therefore leading to the filing of the suit in the present *lis*.

Mr. Jain further submitted that as regards the agreement, Ex.P1, being brought on record without any application seeking secondary evidence, when earlier admittedly only a photo copy was submitted, no objection in that regard was ever taken by the defendants at any stage except now during the course of arguments in this second appeal. Hence, as per learned counsel, with subsequently the copy available with the plaintiffs also having been duly exhibited, as is obvious from the record of the lower Court, the objection at this stage in any case is wholly without basis.

32. With regard to the authenticity of the document, learned counsel in this regard further pointed to paragraphs 14 to 18 of the judgment of the learned first appellate Court, wherein the document being proved by the scribe who had written it out, as also by one attesting witness, has been discussed by that Court.

He further pointed to the fact that as regards the stamp paper being sold only for the purpose of an affidavit, that too had been duly dealt with by the first appellate Court by holding that the purpose for which it was

eventually used, having duly been endorsed behind the original stamp paper, there was no need to go to the secondary evidence of the entry in the register.

On the contention of learned counsel for the petitioner that there were discrepancies in the typing, spacing etc. of the agreement, Mr. Jain submitted that these objections again were never taken before the Courts below and as such, such arguments based on a documentary fact, cannot be taken up at the stage of second appeal.

33. On the issue of the appellant-defendant no.2 not being a bonafide purchaser from defendant no.1, learned counsel again reiterated the reasoning given by the lower appellate Court.

Further on that issue Mr. Jain pointed to the cross-examination of the appellant as DW3, where he admitted that his father, i.e. defendant no.3 Labh Singh, had partly financed the purchase of the suit land which was also financed by his maternal uncle, with his father being a contributor to the extent of Rs.34,000/-.

Learned counsel further pointed to the fact that though the appellant initially denied even having cordial relations with his father, thereafter he admitted that he had been cultivating his fathers' land also.

Hence, it was contended that the appellant could not claim lack of knowledge with regard to the injunction order against his father, in the suit filed by the plaintiffs against defendants no.1 and 3, i.e. the vendor and the father of the appellant. Thus, Mr.Jain submitted that the appellant could not claim to be a bonafide purchaser of the suit property, he being fully aware that it was under litigation at the time of purchase on 15.04.1981.

Learned counsel therefore contended, that in terms of Section 52 of the Transfer of Property Act, 1882, the suit land having been transferred

during the pendency of the earlier suit, it would be hit by the doctrine of *lis pendens*.

34. On the issue of validity of a contract not signed by the prospective vendee, learned counsel cited a judgment of the Supreme Court in **Aloka Bose v. Parmatma Devi and others** (2009) 2 SCC 582, wherein it was held that an agreement of sale comes into existence when the vendor agrees to sell and vendee agrees to purchase any property for an agreed consideration, on agreed terms and that the document by which such agreement is reduced into writing can even be signed by the vendor and delivered to the purchaser, who accepts it.

It was further observed by their Lordships that “In India, an agreement of sale signed by the vendor alone and delivered to the purchaser, and accepted by the purchaser, has always been considered to be a valid contract. In the event of breach by the vendor, it can be specifically enforced by the purchaser. There is, however, no practice of a purchaser alone signing an agreement of sale”. (Para 18 SCC citation).

Hence, learned counsel for the respondents-plaintiffs submitted that though Ex.P1 was contended to be the second copy of the agreement entered into, with the first/original copy being with the vendor, i.e. defendant no.1 Balbir Singh, and this copy not having been signed by the vendees, i.e. the plaintiffs, it was still a valid agreement.

This, Mr. Jain further contended, is other than the reason that in any case, no objection had been raised to the photostat copy being exhibited as Ex.P1, and thereafter to the production of the deed scribed on the stamp paper, which is now available on record as Ex.P1.

35. In rebuttal, Mr. Chahal, learned counsel for the appellant,

submitted that as regards the aforesaid judgment of the Supreme Court, it would be applicable only where there are two copies of an agreement, one signed by the vendor and one by the vendee and not to a case where the vendees' signatures is not available on either copy.

Mr. Chahal then reiterated that the date on Ex.P1, i.e. "13.11.1980", is superimposed on the original date given on the document, i.e. 24.12.1980.

Lastly, Mr. Chahal pointed to Ex.P8, which is a statement made by the counsel for plaintiff no.3, in the suit seeking permanent injunction, to the effect that the suit stood withdrawn in view of the fact that the suit in the present *lis*, seeking specific performance, had been filed. Hence, learned counsel submitted, with that suit withdrawn, the doctrine of *lis pendens* would not apply to any sale of the suit land during the pendency of that *lis*.

[It needs to be noticed that the said statement made in Civil Suit No.14 of 1981, filed by respondent-plaintiff no.3 herein, against defendants no.1 and 3 herein (defendants No.1 and 2 in Civil Suit No.14/1981), was a statement made on 19.01.1982 Exs.P7 & P8, with the suit in the present *lis* having been instituted on 26.05.1981 (erroneously shown as 26.01.1981 in the copy of the judgment annexed with the present appeal, as the original plaint is seen to have been drafted on 24.05.1981 and instituted on 26.05.1981)].

36. Having heard learned counsel for the parties and having considered the judgments of the learned Courts below, as also the evidence pointed to from the record by both learned counsel, the findings of this Court are recorded hereinafter.

Coming to the first question framed by this Court, as to whether

the finding of the learned lower appellate Court holding that the agreement Ex.P1, was a void agreement, is a wholly erroneous or a perverse finding or not.

In this regard, having considered the arguments of both learned counsel and having actually seen the agreement on record (Ex.P1), it needs to be reiterated here that though initially the photocopy of the said agreement was led by way of evidence by the plaintiffs, as is obvious even from a perusal of paragraph 10 of the plaint, thereafter, a typed copy of the agreement was also obviously filed, as already noticed, as Ex.P1, with the signatures of defendant no.1 Balbir Singh (vendor) visible in ink, in the Devnagri script (Hindi) and the signatures of two witnesses, also in ink, visible on it, in the Persian script. Again, as already noticed, the said document is neither seen to be a photocopy, nor even a carbon copy of an original document. Therefore, to that extent, the contention made in paragraph 10 of the plaint that a “counter part thereof signed by the defendant No.1 was left with the plaintiffs”, would otherwise seem to be a plausible statement, especially as no objection is seen to be raised before the Courts below with regard to substitution of the document (Ex.P1), as is existent at page 79 of the record of the lower Court. It is also necessary to notice in this context that the photocopy of the said document, as was stated in paragraph 10 of the plaint, is also available at page 75/35 of the said record. (The document at page 79 is also seen to be duly marked as Ex.P1, with the stamp of the Court of the learned Sub-Judge First Class, Ambala, affixed on it).

37. Having said that, the question then is as to whether this document is actually the one executed as an agreement on 13.11.1980, by defendant no.1 Balbir Singh, in favour of the plaintiffs, or not.

In the opinion of this Court, eventually upon consideration it has to be held that the said agreement cannot be held to have been proved to have been entered into by defendant no.1 with two of the plaintiffs, i.e. Jarnail Singh and Baljit Singh.

The misgiving of this Court is essentially for two reasons, i.e. on Ex.P1, the date '13.11.1980' is seen to be clearly typed over the previous date on 24.12.1980. Hence, with such obvious 'over typing', the date of execution of the agreeent, straightaway becomes suspect, the document having been presented by the plaintiffs themselves.

The other reason is that on the reverse side of Ex.P1, the name (seen to be possibly a signature) "Santosh Kumar", is written in ink, which has been struck out. To the above and right of the aforesaid name, the date '13.11.1980' alongwith Sr. No.4868 is written, ahead of which the name of defendant no.1, with his parentage and address is shown in the Devnagri script (Hindi). Beneath that the word "*Ikrarnama*" in Hindi is seen, below which another signature in English is seen, though the name contained in the signature is not decipherable.

The learned Sub-Judge firstly found a discrepancy in the statement of the 3rd plaintiff as PW2, to the effect that he first stated that the stamp paper was supplied by one Kanwal Jain, whereas in the subsequent part of his statement he stated that he himself had purchased it. The witness also could not recollect if his signatures were obtained at the time when the stamp paper was purchased. This statement was found to be incorrect by that Court holding that actually the stamp paper is shown to be purchased by the witness' father, Nasib Singh. It is further stated that Nasib Singhs' name seemed to have been scored off to show that it was purchased through one

Santosh Kumar, whose signatures also “purport to appear on a part of the stamp paper”. This was again found to be irreconcilable as to how it came to be purchased by Santosh Kumar.

Further discussing the relevant entry in the register of the stamp vendor (the hand written extract of which was exhibited as Ex.DW2/A and in support of which DW2 testified), the learned Court held that it was shown to be purchased by Santosh Kumar for the purpose of an affidavit. The identity of Santosh Kumar was not established and the purpose for which it was purchased was also shown to be different from the one for which it was actually shown to have been used, i.e. as an agreement (“*Ikrarnama*”).

38. Other than the above, the learned trial Court had noticed that defendant no.1 had simply denied the agreement altogether. As regards the plaintiffs, it was found as an obvious finding, that the agreement was not signed by any of them. The Court also found that even in the testimony of the scribe to the document, PW1, Kamal Kishore, it was not stated that any of the plaintiffs were present when the document was scribed.

Further, it was held that though PW2 Baljit Singh, i.e. the 3rd plaintiff, had testified that a sum of Rs.10,000/- was paid when the document was scribed, he could not tell the Court as to who the amount was paid to. That Court also found it strange that despite the said amount having been allegedly paid, and it not being a meagre amount (in the year 1980), no receipt was seen to have been issued to the plaintiff.

The attesting witness examined, i.e. PW3, Ravinder Nath/Ravinder Seth, on the other hand, specifically stated that plaintiff Baljit Singh and his father Sampuran Singh were present at the time of execution of the agreement. He however also could not testify as to whether any receipt in

respect of the payment of earnest money was executed or not and further, he also eventually in cross-examination could not deny that the document, Ex.P1, did not bear the signatures of Baljit Singh.

39. Hence, as already noticed, holding that a person who had not bound himself to an agreement by signing it, and further holding that there were many discrepancies in the document, Ex.P1, its execution as an agreement of sale on 13.11.1980 was disbelieved by the trial Court.

40. The learned first appellate Court, as regards the absence of signatures of any of the plaintiffs, on the alleged agreement, held that such signatures were not essential to prove the agreement or even to bind the vendor, i.e. Defendant no.1, to it.

As regards the aspect of the document itself not having been proved to have been executed in view of the discrepant entries in the register of sale of the document (Ex.DW2/A) and the endorsement behind the document, it was held that the only question that would arise with regard to entry No.4868 on 13.11.1980, in the register, was as to what purpose the stamp paper had been sold for. However, since the endorsement behind it clearly shows that it was purchased for the purpose of an agreement (“*Ikrarnama*”), the register was not required to be looked at, which would actually be secondary evidence.

The discrepancy in the pleading to the effect that it was stated in the plaint that the agreement had been entered into with the plaintiffs, whereas Ex.P1 showed only the names of plaintiffs Jarnail Singh and Baljit Singh as prospective vendees, was not held to be an irreconcilable difference, two of the plaintiffs in any case being named in the document.

41. On the issue of the defendant admitting his signatures on the

document, but taking a plea that his signatures were often obtained by the father of the plaintiffs, that was disbelieved, as again already noticed, on the ground that with defendant no.1 having entered into many transactions earlier, even if he was not well educated, he could not be held to be unwise so as to simply sign any blank document.

42. In the opinion of this Court, as regards the double dating on Ex.P1, i.e. with the date '13.11.1980' superimposed by typing on the original dated 24.12.1980, that itself would create a suspicious circumstance, even though it must be stated that there has been no attempt to hide the superimposition of one date on the other and that issue is not seen to be raised before the Courts below. Hence, it cannot be ruled out that it was a bonafide correction of an error. Yet, it also cannot be lost sight of that the date 24.12.1980 is obviously more than a month and ten days after 13.11.1980. Therefore, as to why an earlier date would be superimposed on a subsequent date is difficult to accept, unless both parties mutually agreed to change the date and appended their signatures to such changed date contained on the original agreement. However, in the absence of the signatures of defendant no.1 specifically on the changed date and keeping in view the fact that the document Ex.P1 was produced as a “counter part” of the original agreement by the plaintiffs, it also cannot be ruled out that the date was changed by the plaintiffs having superimposed on the original date, the document always having been with them. Of course, that also would mean that the agreement was actually entered into on 24.12.1980 instead of 13.11.1980 but with no such plea having been taken by the plaintiffs, it is difficult to accept the document as a genuine agreement of sale. As said, though the double dating is not an argument seen to be raised before the

Courts below, however, with this Court necessarily having to go into the facts and evidence pointed out to it, due to the contrary findings of the Courts below, a glaring 'discrepancy' on the most material document cannot be ignored.

This would also need to be seen with the fact that there is also a discrepancy in the entry in the register of the stamp vendor (Ex.DW2/A), the said stamp paper shown to have been sold on 13.11.1980 for the purpose of executing an affidavit. The extract of the register (Ex.DW2/A) also shows the entry in the name of defendant no.1 (alongwith his parentage and name of the village), with the name of Santosh Kumar thereafter written, and the words “*Byan Halphi*” written immediately below the name, i.e. showing that it was purchased for the purpose of an affidavit. Again, though it cannot be ruled out that Santosh Kumar may have simply been a person who purchased the stamp paper on behalf of defendant no.1, as the entry undoubtedly is in the said defendants' (vendors') name even in the register, but with Santosh Kumars' name/signature, scratched out on the reverse side of the stamp paper, Ex.P1, and the name of Nasib Singh (father of defendant no.1) also scratched out on the reverse of the document, through whom it is first shown to be purchased, the circumstance of the execution of the document is definitely suspicious. [On the reverse of the document it is first shown that Balbir Singh son of Nasib Singh of Shahpur had purchahsed it through Nasib Singh, with the words written in Hindi being “*Marfat Nasib Singh*”].

Thus, with Santosh Kumar not examined as a witness by the plaintiffs, even though it may actually be an entirely bonafide error with the stamp paper erroneously entered in the register showing it to be sold for the purpose of an affidavit, though it was actually for an agreement

(“*Ikrarnama*”), which is the word stated on its reverse side, however, with the entire circumstances put together, this Court cannot but agree with the finding of the learned Sub-Judge, to the effect that the suspicion cast, without any specific clarification by the plaintiffs for all the discrepancies, it would definitely cast a large doubt on the agreement, which goes beyond the preponderance of possibilities in favour of the plaintiffs, and therefore such preponderance actually works against them.

43. I do however agree with that part of the reasoning of the learned first appellate Court, that Balbir Singh (defendant no.1) could not be expected to sign a blank document, he already having entered into many transactions; yet, with the number of discrepancies and suspicious circumstances with regard to the document, including the double dating, this Court cannot hold it to be a duly proved agreement of sale, even while nursing a suspicion that it may actually be so. Yet, with there further being no evidence of Rs.10,000/- paid by way of earnest money/part consideration, in the form of any receipt to that effect, it cannot be held that the document purporting to be a mutually entered agreement, has been duly proved to be so.

44. Consequently, the first question framed by this Court, with regard to the validity of the agreement set up by the plaintiffs, has to be answered in favour of the appellant, and the judgment of the learned lower appellate court is found to be erroneous to that extent, with that of the learned Sub-Judge found to be wholly reasonable and correct on that issue.

45. Coming to the second question, as to whether, in law, the signatures of a prospective vendee are essential to hold an agreement of sale to be valid. In this regard, I agree with learned counsel for the respondent-plaintiffs and the finding of the first appellate Court, that even in the absence

of the signatures of a prospective vendee, an agreement of sale may still be valid, if it is proved to be signed by the person selling the property, i.e. by the vendor, against whom a suit for specific performance is instituted. In this regard, *Aloka Bose* (supra) needs to be referred to, wherein it was held by their Lordships as follows:-

“14. Certain amount of confusion is created on account of two divergent views expressed by two High Courts. In *S.M. Gopal Chetty v. Raman* a learned Single Judge held that where the agreement of sale was not signed by the purchaser, but only by the vendor, it cannot be said that there was a contract between the vendor and the purchaser; and as there was no contract, the question of specific performance of an agreement signed only by the vendor did not arise. On the other hand, in *Mohd. Mohar Ali v. Mohd. Mamud Ali* a learned Single Judge held that an agreement of sale was a unilateral contract (under which the vendor agreed to sell the immovable property to the purchaser in accordance with the terms contained in the said agreement), that such an agreement for sale did not require the signatures of both parties, and that therefore an agreement for sale signed only by the vendor was enforceable by the purchaser.

XXXXX

XXXXX

XXXXX

16. On the other hand, the observation in *S.M. Gopal Chetty* that unless agreement is signed both by the vendor and purchaser, it is not a valid contract is also not sound. An agreement of sale comes into existence when the vendor agrees to sell and the purchaser agrees to purchase, for an agreed consideration on agreed terms. It can be oral. It can be by exchange of communications which may or may not be signed. It may be by a single document signed by both parties. It can also be by a document in two parts, each party signing one copy and then exchanging the signed copy as a consequence of which the purchaser has the copy signed by the vendor and a vendor has a copy signed by the purchaser. Or it can be by the vendor

executing the document and delivering it to the purchaser who accepts it.

(Emphasis applied by this Court)

XXXXX XXXXX XXXXX

18. xxxxx In India, an agreement of sale signed by the vendor alone and delivered to the purchaser, and accepted by the purchaser, has always been considered to be a valid contract. In the event of breach by the vendor, it can be specifically enforced by the purchahser. There is, however, no practice of purchaser alone signing an agreement of sale.”

XXXXX XXXXX XXXXX

46. Hence, in view of the law settled on this issue, the question of law framed, is answered to the effect that it is not essential that an agreement of sale must necessarily contain the signature of the prospective vendee, for it to be proved to be a valid agreement.

However, in the present case, even while upholding the finding of the learned first appellate Court on that question of law, however, it does not help the respondents-plaintiffs in this appeal, with the agreement itself not having been believed by this Court, for the reasons given in the judgment of the learned Sub-Judge, upheld by this Court.

47. Coming then to the 3rd question framed, i.e. as to whether the sale deed executed by defendant no.1 in favour of the present appellant (defendant no.2), is to be held to be null and void on the touchstone of the doctrine of *lis pendens*, it having been executed during the pendency of the suit first filed by the respondents-plaintiffs, against the father of the present appellant (defendant no.3 in the suit), Labh Singh. I am in agreement with the judgment of the first appellate Court on this issue, to the effect that the appellant cannot be held to be a bonafide purchaser of the suit land and

therefore, the sale deed in his favour must suffer the consequence of the principle contained in Section 52 of the Transfer of Property Act, 1882.

This is for the reason that, as noticed by that Court, the present appellant had contended that he had verified from the first plaintiff (respondent no.1 herein), Jarnail Singh, that there was no encumbrance on the suit land and that Jarnail Singh had not disclosed the factum of any agreement of sale having been entered into by him or his brothers with the land owner Balbir Singh (defendant no.1). I agree with the reasoning of the learned first appellate Court, that it is not believable that the plaintiffs, having been in possession of the suit land as tenants, which is the admitted position of all parties, plaintiff Jarnail Singh would have stated that the land was unencumbered. If the plaintiffs were not interested in the suit land, Baljinder Singhs' statement to that effect would be correct. What is unbelievable is that, firstly, the appellant, Baljinder Singh, did not even know of the civil suit instituted by the plaintiffs against his (Baljinder Singhs') father Labh Singh, defendant no.3 in the suit. The said suit, seeking permanent injunction against the land owner, i.e. Balbir Singh defendant no.1 and the aforesaid Labh Singh, from alienating the land, was instituted on 10.01.1981 by the 3rd plaintiff, Baljit Singh, and was withdrawn on the statement of counsel for both parties, on 19.01.1982, as seen from Ex.P8, on the ground that a suit for specific performance (i.e. the suit out of which the present second appeal arises) had been instituted. The suit in this *lis* was instituted on 26.05.1981 as can be seen from the order of the learned Sub-Judge Ist Class of that date, endorsed behind the plaint itself.

48. Thus, though no doubt, the present appellant was not a party to the said suit and only his father was a party, but the father had been restrained

by an interim order in that suit, from alienating the suit property, it is not believable that the appellant was not aware of any such proceedings. Though there could otherwise be a possibility of a son not knowing of the litigation between his father and another person, however, in the present case, in the opinion of this Court also, it is difficult to accept that argument made before the Courts below on behalf of the present appellant. The disbelief is for the reason that he, i.e. appellant Baljinder Singh, as DW3 testified to the effect that he and his father had been cultivating their own land jointly, though in the earlier part of his testimony the appellant had averred that he and his father were not on good terms. Thereafter however, as pointed out to this Court from the record by learned counsel for the respondents, he admitted that he had, in fact, taken 15-16 acres of land for cultivation from his father in the previous year. He also admitted that his father had partially financed the purchase of the suit land.

49. Hence, it seems obvious to this Court also, as is did to the learned lower appellate Court, that the plea of the present appellant not getting along with his father, was only a plea to try and prove that he was a bonafide purchaser of the suit land. In fact, in the opinion of this Court, it is because of the fact that there was litigation between the 3rd plaintiff, Baljit Singh and the father of the present appellant, qua the suit land, that the land was transferred by defendant no.1 to the appellant and not to his father. With the respondents-plaintiffs admittedly being tenants on the suit land, which fact was not denied even before the Courts below by either the present appellant or any of his co-defendants, it is not possible to accept the statement of the appellant, in his testimony, that he was a bonafide purchaser of the land. This would be especially so as the sale deed in favour of the

appellant (Ex.D1), was executed on 15.04.1981, whereas the plaintiffs, on 31.12.1980 itself, had got issued a notice (Ex.P4) to the land owner, i.e. defendant no.1 Balbir Singh, telling him that he had already entered into an agreement of sale on 13.11.1980 with them, but he had yet threatened to transfer the land to Labh Singh, i.e. the father of the appellant. Hence, with that notice having been issued on 31.12.1980, with a copy thereof sent to the Sub-Registrar, Ambala, then other than the fact that even as per normal behaviour the plaintiffs would not have stated that the land is unencumbered and free for sale, when they were themselves tenants on it, it is impossible to believe that they would have stated so to the son of Labh Singh, when they had already issued a notice to the land owner Balbir Singh, referring to his threat to alienate the land to Labh Singh, father of the appellant. Hence, even though the agreement dated 13.11.1980 would not stand validly proved simply because the plaintiffs referred to it in their notice (so as to show it to be an actual agreement), however, with them obviously aware by 31.12.1980 that Balbir Singh was planning to sell the land to Labh Singh, they certainly could not have told Labh Singhs' son that he was free to buy the land.

Therefore, in the opinion of this Court also, the sale deed executed by Balbir Singh, defendant no.1 (present respondent no.5), in favour of the appellant-defendant no.2, on 15.04.1981, has to be held to be not binding on the rights of the respondents-plaintiffs, it having been executed during the pendency of the first *lis* instituted by the second plaintiff Baljit Singh against defendants Balbir Singh and the father of the present appellant, Labh Singh, i.e. Civil Suit No.14/81 instituted on 10.01.1981, withdrawn on 19.01.1982. Thus, the appellant cannot be held to be a bonafide purchaser entitled to protection of his purchase, as was rightly held by the learned lower

appellate Court.

50. A judgment of the Supreme Court in **Kedarnath Lal v. Sheonarain and others** AIR 1970 SC 1717, may be referred to in this regard, wherein it was held by their Lordships as follows:-

“Secondly, the doctrine of lis pendens applies irrespective of the strength or weakness of the case on one side or other. See Gouri Dutt Maharaj v. Sukur Mohammed, 75 Ind. App 165. There is, however, one condition that the proceedings must be bona fide. Here no doubt the Society knew that the plots had been enable Ram Narain Ram to dispose of some of the plots and pay Rs.500 to the Society. This amount was never paid and the Society must have bona fide felt that the plots still remained encumbered. In fact the attitude of Ram Narain Ram in not claiming that these plots be removed from the mortgage award shows that he too felt that this was the true position. In Gouri Dutt Maharaj's case, referred to by us, it was said that if the proceedings were bona fide, the applicability of Section 52 was not avoided.”

Amongst many other judgments also on the same issue, of a transaction entered into during the pendency of the litigation not being a binding transaction on the party claiming the suit property in the litigation, the judgment in **Thomson Press (India) Ltd. v. Nanak Builders & Investors P. Ltd. and others** (2013 (2) RCR (Civil) 875) can also be referred to (specifically paragraphs 24 to 26). Similarly, **K.N. Aswathnarayana Setty v. State of Karnataka and others** 2014 (1) RCR (Civil) 533 and **Gouri Dutt Maharaj v. Sukur Mohammed and others** AIR 1948 PC 147, can also be cited on the same proposition.

The observations of their Lordships in **Sanjay Verma v. Manik Roy and others** can also be cited wherein it was held as follows:-

“11. The principles specified in Section 52 of the T.P. Act are in accordance with equity, good conscience or justice because they rest upon an equitable and just foundation that it will be impossible to bring an action or suit to a successful termination if alienations are permitted to prevail. A transferee *pendente lite* is bound by the decree just as much as he was a party to the suit. The principle of *lis pendens* embodied in Section 52 of the T.P. Act being a principle of public policy, no question of good faith or *bona fide* arises. The principle underlying Section 52 is that a litigating party is exempted from taking notice of a title acquired during the pendency of the litigation. The mere pendency of a suit does not prevent one of the parties from dealing with the property constituting the subject matter of the suit. The Section only postulates a condition that the alienation will in no manner affect the rights of the other party under any decree which may be passed in the suit unless the property was alienated with the permission of the Court.”

51. Thus, the finding of the learned lower appellate Court on the issue of *lis pendens* is upheld and the 3rd question of law framed in this appeal by this Court, is answered to the effect that the sale deed dated 15.04.1981 executed by respondent no.5 herein in favour of the appellant is not binding on the rights of the plaintiffs, i.e. respondents no.1 to 4 on the principle of *lis pendens*.

52. Resultant from what has been held by this Court on the issues framed, it is concluded that since the agreement set up by the plaintiffs, on the basis of which they sought a decree of specific performance by way of execution of a sale deed in their favour, has itself been held by this Court to be a doubtful document not validly proved, the suit of the plaintiffs seeking specific performance of the aforesaid agreement is to be dismissed and this

appeal partly allowed to that extent.

However, the suit is to be partly decreed to the extent that the sale deed executed by respondent no.5 herein, in favour of the appellant on 15.04.1981, is held to be null and void and not binding on the respondents-plaintiffs, even after rejection of the prayer seeking specific performance of the agreement of sale.

53. It needs mention here again that though no prayer for a declaration was made by the respondents-plaintiffs in their suit that the sale deed dated 15.04.1981 be declared to be null and void, however, it has been specifically contended by them in paragraph 16 of the plaint that the present appellant, as also his co-defendants in the suit, being fully aware of the actual possession of the suit land and the agreement of sale executed in favour of the plaintiffs, the sale deed is in no way binding upon the plaintiffs. Even though this Court, to repeat, has held that the agreement of sale has not been proved by the plaintiffs to be a genuine document, yet having held that the appellant was not a bonafide purchaser, who undoubtedly purchased the suit land during the pendency of the first suit filed by the 3rd plaintiff against respondent Balbir Singh and the appellants' father Labh Singh, in the opinion of this Court, a decree of declaration holding the aforesaid sale deed dated 15.04.1981 to be null and void would be necessarily issuable, even in terms of Order 7 Rule 7 of the Code of Civil Procedure, 1908, which reads as under:-

“7. Relief to be specifically stated.- Every plaint shall state specifically the relief which the plaintiff claims either simply or in the alternative, and it shall not be necessary to ask for general or other relief which may always be given as the Court may think just to the same extent as if it had been asked for. And the

same rule shall apply to any relief claimed by the defendant in his written statement.”

Hence, with it having been contended in the plaint that the said sale deed was not binding on the plaintiffs, the appellant not being a bonafide purchaser of the land, and that issue having been specifically framed by the Civil Judge and this Court having agreed with the lower appellate Court, that the appellant had knowledge of the civil suit pending, seeking a restraint on the vendor and the appellants' father from alienating the suit land, in the opinion of this Court, a decree of declaration declaring the said sale deed to be null and void and not binding on the respondents-plaintiffs is to be issued. A judgment of the Supreme Court in Ganesh Shet v. Dr. C.S.G.K. Setty 1999 (1) RCR (Civil) 65/AIR 1999 SC 2216 can be referred to in this context. Four points were formulated by their Lordships for their consideration, of which the relevant one is Point-3, which is as follows:-

“(3) What are the legal principles applicable to suits for specific performance under section 20 of the Specific Relief Act, 1963 where there is variation between pleadings and evidence in regard to the date or other terms of the contract? To what extent can relief be given under the heading 'general relief' in suits for specific performance under Order 7 Rule 7 Civil Procedure Code?”

Considering the aforesaid point, it was held as follows:-

“23. As to the 'general relief' in suits for specific performance it is stated:

“In accordance with the general rules and its qualifications and limitations where the bill or complaint in a suit for specific performance contains a prayer for *general relief*, the court may grant relief consistent with the facts pleaded and proved and the court may in some cases grant or

award partial relief.

In other words, other relief to be granted must be consistent with both pleading and proof, in suits for specific performance. The principles stated above under (a) and (b) appear to us to be the broad principles which are to be borne in mind while dealing with exercise of discretion in cases of specific performance. We decide Point 3 accordingly.”

54. Though the proviso to Section 34 of the Specific Relief Act, 1963, stipulates that no Court shall make any such declaration (as is provided by way of discretion to the Court, by Section 34 itself), where the plaintiffs being able to seek further relief than a mere declaration of title, omit to do so, however, the situation in the present case, is somewhat in reverse, to the effect that the relief sought by the plaintiffs was a decree of possession as owners by way of specific performance of the agreement dated 13.11.1980, with the defendants being directed to execute a sale deed in their favour. They already being in possession as plaintiffs, a decree of possession per se was obviously not required to be sought. Hence, the proviso, in the opinion of this Court, would not apply to the present case, the 'further relief' of possession already having been prayed for in the suit, seeking that such possession be 'declared' to be their as owners (even though the word 'declaration' is not specifically stated in the plaint).

In other words, though the mere seeking of a declaration of ownership, without seeking a decree of possession, would render a suit to be not maintainable, however, in the present case, with possession also sought by the plaintiffs, as owners, actual possession already being with them, the bar contained in the proviso to Section 34 of the Act of 1963 would not apply at all, and on the other hand, appropriate relief in terms of the averments in

the plaint would need to be granted to the plaintiffs, even while not granting them relief in terms of the specific prayer made by them seeking specific performance of the agreement dated 13.04.1980, that having been held by this Court, to be an agreement not validly proved.

55. Consequently, the appeal of the appellant partly succeeds, to the extent that the judgment and the decree of the lower appellate court, decreeing the suit of the plaintiffs seeking specific performance of the agreement dated 13.11.1980 is set aside and the suit of the plaintiffs is dismissed qua the said relief sought, but the finding of that Court, holding that the sale deed executed in favour of the appellant by respondent no.5 herein, on 15.04.1981, is not binding upon the respondents-plaintiffs, is upheld and the suit decreed to that limited extent.

A decree-sheet be accordingly drawn up.

The parties are left to bear their own costs.

January 30, 2017
dinesh

(AMOL RATTAN SINGH)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable	Yes