

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

RSA No.1086 of 1988 (O&M)

Date of Decision: 27.07.2017

Munshi Singh

.. .Appellant

Vs.

Tarlok Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present:- Mr. K. S. Sidhu, Senior Advocate, with
Mr. G. S. Beniwal, Advocate,
for the appellant.

Mr. H. N. S. Gill, Advocate,
for respondent no1.

Mr. R. K. Shukla, Advocate,
for respondent no.2.

Amol Rattan Singh, J.

CM No.107-C of 1992

By this application dismissal of the accompanying appeal is sought on the ground that it has abated and further, that action be taken as per law against the appellants for filing a false affidavit in this Court.

The application is seen to be dated 04.01.1992 with the affidavit accompanying it surprisingly dated 05.08.1991, i.e. the affidavit in fact pre-dates the application which it contends to support.

Be that as it may, it is the contention of the applicant cross-objector (plaintiff in the suit- Tarlok Singh) that the sole appellant, Munshi Singh, had died on 25.05.1990 in village Machhli Kalan and that the legal representatives of the deceased appellant not having filed an application for impleadment as appellants in his place, within the time prescribed for doing

so, the appeal actually stands abated.

The application seeking impleadment of the legal representatives was filed on 11.09.1990, with the date of death of appellant Munshi Singh shown as 25.06.1990 instead of 25.05.1990, allegedly in order to deliberately bring the application seeking impleading of the LR's within limitation.

It is further contended that the application was allowed vide an order of a co-ordinate Bench dated 22.02.1991, on the ground that it had been filed within limitation.

Yet further, it is contended that apart from the legal representatives shown in CM no. 2864-C of 1990 (i.e. the application by which the LR's of the appellant are sought to be impleaded in his place), one Lachhmi Devi, a daughter of Munshi Singh, was also alive and similarly, Jarnail Singh, Bhakhu Singh and Nek Singh, sons of Hazura Singh, and Karnail Kaur and Jarnail Kaur, daughters of Hazura Singh, who was a son of Munshi Singh, who pre-deceased him, were also not sought to be impleaded as LR's.

It is, therefore, contended that firstly, the application (CM no.2864-C of 1990) not having been filed within limitation and secondly, the aforesaid facts having been concealed and the date of death of Munshi Singh having been given wrongly, the application deserves to be dismissed.

When this application (CM no.107-C of 1992) came up for hearing before a co-ordinate Bench on 05.02.1992, it was ordered to be put up before the Bench that had allowed the application of the LR's, i.e. CM no.2864-C of 1990.

Notice having been issued in the present application, a reply is also seen to have been filed thereto on behalf of the non-applicant (i.e. the

LRs of the original appellant Munshi Singh), in which reply, firstly, even knowledge of the cross-objections filed by the applicant in this case, i.e. Tarlok Singh plaintiff, has been denied, though it has been admitted that Munshi Singh actually died on 25.05.1990 and that the application for bringing on record his LRs was filed on 11.09.1990. The factum of the date of death being shown as 25.06.1990 instead of 25.05.1990 has been contended to be an inadvertent mistake attributed to the lack of knowledge on the part of the applicant, Bachan Singh son of Munshi Singh, he being illiterate. Similarly, the delay in filing the application for impleading him as an LR of Munshi Singh, has also been attributed to his illiteracy.

Further explanation has been given that had the applicant known of the period of limitation, he could well have also moved an application seeking condonation of delay in filing such an application but he, taking the date of his death to be 25.06.1990, did not file such an application.

As regards the non-impleadment of Smt. Lachhmi Devi and sons of the pre-deceased son of Munshi Singh, it has been stated that the daughter was married long time ago and had relinquished her right in the property of the deceased Munshi Singh and similarly, Jarnail Singh, Bapu Singh and Harnek Singh, sons of Hazura Singh, had also relinquished their right in the property, as had his daughters Karnail Kaur and Jarnail Kaur, which was the reason for them not having approached this Court by way of filing any second appeal.

On the aforesaid contentions, dismissal of this application (CM no.107-C of 1992) has been prayed for.

This application having come up for hearing for a few dates thereafter, eventually on 04.05.1992 it was ordered to be heard alongwith the

main case, i.e. the accompanying appeal, RSA no.1086 of 1988.

Hence, it is being taken up for consideration alongwith the appeal, though no arguments whatsoever have actually been addressed by learned counsel for the applicant-cross-objector, and it could also be dismissed as having been not pressed.

However, even so, it needs to be noticed that undoubtedly at the time when the appeal was filed and upto the time that appellant Munshi Singh is stated to have died on 25.05.1990, Order 22 Rule 3 CPC read as follows:-

“3. Procedure in case of death of one of several plaintiffs or of sole plaintiff.- (1) Where one of two or more plaintiffs dies and the right to sue does not survive to the surviving plaintiff or plaintiffs alone, or a sole plaintiff or sole surviving plaintiff dies and the right to sue survives, the court, on an application made in that behalf, shall cause the legal representative of the deceased plaintiff to be made a party and shall proceed with the suit.

(2) Where within the time limited by law no application is made under sub-rule (1), the suit shall abate so far as the deceased plaintiff is concerned, and, on the application of the defendant, the Court may award to him the costs which he may have incurred in defending the suit, to be recovered from the estate of the deceased plaintiff.”

However, thereafter, vide an amendment notified on 21.02.1992, applicable to this Court, sub-rule 2 has been substituted to read as follows:-

“(2) Where within the time limited by law no application is made under sub-rule (1), the suit shall not abate as against the deceased plaintiff and the judgment may be pronounced notwithstanding his death which shall have the same effect as if it has been pronounced before the death took place, and the contract between the deceased and the pleader in that event shall continue to subsist.”

Hence, firstly, with this appeal still pending and the application still under consideration, though on the date of death of Munshi Singh, the unamended rule was in force, however, this Court would not hold the accompanying appeal to have abated on account of the application for impleading the LRs having been filed belatedly, giving the date of death of the appellant one month after the actual date, even if only for the reason stated in the application on behalf of the LRs. This would be especially so as no arguments were addressed on this application on behalf of the applicant, but even on merits, I find no reason to hold the appeal to have abated, the application for impleadment of the LRs having been moved not too long after the death of the appellant.

Secondly and more importantly, Order 22 Rule 1 CPC reads as follows:-

“1. No abatement by party's death if right to sue survives.- The death of a plaintiff or defendant shall not cause the suit to abate if the right to sue survives.”

In the opinion of this Court, the right to appeal at the hands of the legal representatives of the appellant-defendant no.6, Munshi Singh still survives and consequently, there would be no reason for the appeal to abate in any case, only because the appeal was filed slightly beyond limitation, even if at the time of its filing, no application seeking condonation of delay accompanied the appeal.

Moreover, to repeat, the rule having been amended during the pendency of the appeal itself, with this application having been ordered to be heard with the main appeal, I find no reason to entertain the application or to hold that the appeal has abated on account of it having been filed slightly

beyond limitation.

Consequently, this application is dismissed.

RSA No.1086 of 1988

This is the second appeal of one of the six defendants (defendant no.6), in a suit filed by respondent no.1 herein, Tarlok Singh, seeking a decree of specific performance of a contract dated 28.06.1978, pertaining to the suit land measuring 37 bighas 10 biswas, fully described in the head note of the plaint, situated in the revenue estate of village Pawala, Tehsil Rajpura, District Patiala. The plaintiff also sought possession of the suit land after specific performance of the contract and in the alternative, prayed that a decree of recovery of Rs.19,688/- be passed in his favour as refund of the earnest money/part consideration, and interest thereupon.

It is necessary to state at the outset that in fact, even though the suit was decreed by the learned Additional Senior Sub Judge, Rajpura, in favour of the plaintiff, but it was to the extent that defendants no.1 to 4 and 6, (defendant no.6 being the present appellant), were directed to execute the sale deed in favour of plaintiff Tarlok Singh as also defendant no.5 Jagtar Singh (presently respondent no.2).

That judgment and decree was challenged by both, the present appellant-defendant no.6 Munshi Singh, as also by plaintiff Tarlok Singh (respondent no.1 herein), vide separate appeals, which were heard and decided together by the learned first appellate Court vide the impugned judgment and decree. Both the appeals were dismissed.

Hence, this 2nd appeal has been filed by defendant no.6, with cross objections having been filed by the plaintiff (respondent no.1 herein), Tarlok Singh.

2. The facts of the case, as set up in the plaintiffs' suit, are being taken from the judgments of the learned Courts below.

As per the plaintiff, defendants no.1 to 4, Balbir Singh, Dalip Singh, Budh Singh and Parkash Kaur, who are all siblings (respondents no.3 to 6 herein but referred to as defendants no.1 to 4 hereinafter), had entered into an agreement of sale qua the suit land with plaintiff Tarlok Singh and defendant no.5 Jagtar Singh (respondent no.2 herein but referred to as defendant no.5 hereinafter), on 28.06.1978. It was averred that defendant no.1 Balbir Singh had received Rs.1000/- as earnest money, as the *Mukhtiar-i-Am* (Attorney) of defendants no.2 to 4. It was agreed that defendants no.1 to 5 would execute a registered sale deed in favour of the plaintiff and defendant no.5 upto 05.08.1978 and that by the said sale deed a 3/4th share of the suit land would be transferred in the name of the plaintiff and the remaining 1/4th share in favour of defendant no.5, Jagtar Singh.

As per the plaintiffs' contention, it was also stipulated in the agreement that if either of the two proposed vendees did not wish to get the sale deed executed in his favour, then the other proposed vendee would be entitled to get the sale deed executed in his name for the entire land.

The plaintiffs' case was that defendant no.5 not having agreed to get the sale deed executed and registered in his favour, the plaintiff filed the suit in the instant *lis* on 28.01.1982, seeking possession of the suit land after specific performance of the contract entirely in his favour, to the exclusion of defendant no.5, Jagtar Singh.

3. As per the plaintiff, he was always ready and willing to, and was still ready and willing at the time of filing of the suit, to perform his part of the contract. However, defendants no.1 to 4 committed a breach of the

agreement by selling 6 bighas and 5 biswas of the suit land to the present appellant-defendant no.6, Munshi Singh.

Therefore, as per the plaintiff, the sale deed in favour of the present appellant-defendant no.6 was not binding on him (plaintiff). Consequently, as defendants no.1 to 4 did not get the sale deed executed and registered in his favour and did not deliver the possession of the land to him, the filing of the suit was necessitated.

4. Upon notice issued, defendants no.1 to 4, i.e. the vendors, did not appear despite service and were proceeded against *ex parte*.

Defendant no.5, Jagtar Singh, in his written statement, while admitting the execution of the agreement, pleaded that an amount of Rs.1800/- had been paid by him to defendants no.1 to 4 as earnest money. Further, he denied that he had not agreed to get the sale deed executed in his favour alongwith the plaintiff, and that in fact he too had always been ready and willing to perform his part of the agreement.

5. The present appellant-defendant no.6 also filed a written statement, averring therein that defendant no.1 Balbir Singh was the owner of 6 bighas and 5 biswas of land out of the total suit land and was also holding a General Power of Attorney for defendants no.2 to 4, i.e. his brothers and sister.

As per the appellant, he had been in cultivating possession of land measuring 13 bighas and 16 biswas and that defendants no.1 to 4 had actually agreed to sell the said land (measuring 13 bighas and 16 biswas) to him, i.e. appellant-defendant no.6 Munshi Singh, in the month of December, 1976.

Thereafter, on 13.07.1978, defendant no.1 executed a written

agreement on his own behalf and on behalf of defendants no.2 to 4, in favour of the present appellant, with the consideration settled @ Rs.640/- per bigha, and an amount of Rs.1000/- was received as earnest money, with the remaining consideration to be paid on 05.08.1978 at the time of the execution of the sale deed.

5-A. It was further contended by the present appellant that he had already been in cultivating possession of the land since December 1976, by virtue of an oral promise made that he would purchase the land, which was thereafter reduced into writing on 13.07.1978 in the presence of witnesses and that in pursuance thereto, two registered sale deeds had been executed in his favour on 17.04.1979, qua 13 bighas and 16 biswas of land, of which land measuring 6 bighas and 5 biswas was sold to him for a consideration of Rs.4000/-.

He thus contended that he was a bonafide purchaser of 6 bighas and 5 biswas out of the total suit land, as he had no knowledge of the agreement in favour of the present plaintiff and defendant no.5 Jagtar Singh.

Yet further, he contended that he had been in possession of that part of the suit land as a tenant and was therefore entitled to retain its possession in that capacity also, even if a decree was passed in favour of the plaintiff (for specific performance of the agreement dated 27.06.1978).

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

- “1. Whether defendants no.1 to 4 entered into an agreement to sell land dated 28.06.1978 in favour of the plaintiff and defendant no.5? OPP
2. Whether defendant no.1 Balbir Singh received Rs.1000/- as Mukhtiar-i-am of defendant no.2 to 4 at the time of

execution of agreement dated 28.06.1978? OPP

3. Whether as per terms of the contract dated 28.06.1978 defendant no.5 was ready and willing to get the sale deed executed and registered in his favour? If so, its effect? OPD
4. Whether the plaintiff is entitled to get the specific performance of contract dated 27.06.1978 in toto? OPP
5. Whether defendant no.6 is a bonafide purchaser of K.No.49(6-5) with consideration and without notice? OPD
6. Whether defendant no.6 was tenant of Khasra no.49 before he purchased and he has been in possession under agreement to sell as alleged in the W/S vide sale deed dated 17.04.1979? if os, its effect? OPD
7. Relief.”

7. The plaintiff examined deed-writer Inder Singh as PW1, another deed writer Bhupinder Singh as PW2, Shri Satish Bhardwaj, Notary Public, as PW3, one Surain Singh as PW4, Jaswant Singh as PW5, Diwan K. S. Puri as PW6 and himself as PW7.

The present appellant-defendant no.6, examined himself as DW1 and one Babu Singh as DW2.

Defendant no.5 Jagtar Singh, examined himself as DW3, after which the plaintiff examined Bhoj Raj, Reader, as PW8.

8. Upon appraising the evidence adduced, as regards issues no.1 and 2, the learned trial Court found that deed-writer Inder Singh testified to having scribed the agreement dated 28.06.1978, Ex.P2, executed by defendant no.1 on behalf of himself and as the attorney of defendants no.2 to 4.

The learned Additional Senior Sub Judge also recorded that out of the earnest money of Rs.2800/-, as was recited in the aforesaid agreement

to have been received, Rs.1800/- related to a previous agreement and Rs.1000/- were additionally advanced at the time of the execution of the deed dated 28.06.1978.

PW1 testified to the document having been attested by PW4 Surain Singh and PW5 Jaswant Singh. He is further seen to have deposed that the previous agreement, Ex.P2, had been cancelled vide an endorsement on its reverse, Ex.P2/A, which was admitted by counsel for defendant no.5, Jagtar Singh.

9. In the light of the plaintiffs' witnesses' testimonies, the learned Additional Senior Sub Judge came to the conclusion that in fact earlier an agreement dated 15.03.1977 had been executed by defendant no.1, on his own behalf and on behalf of defendants no.1 to 4, with defendant no.5 alone, who had paid him an amount of Rs.1800/- as earnest money but that agreement did not actually mature into a sale.

Subsequently, a fresh agreement, Ex.P1, was executed by the same defendants no.1 to 4 in favour of plaintiff Tarlok Singh and defendant no.5 Jagtar Singh, as had been contended in the plaintiffs' suit. It was also found that the subject matter of the agreement dated 15.03.1977 was also the same land as was agreed to be sold in the subsequent agreement dated 28.06.1978.

Thus, as regards the contention in the plaint that the second agreement was duly executed between the parties to the *lis*, in the presence of the attesting witnesses, PWs4 and 5, on the basis of the testimonies of those witnesses, the agreement was found to be fully proved, containing therein a recital that a 3/4th share of the suit land would be transferred to the plaintiff and 1/4th to defendant no.5, Jagtar Singh.

It was also recorded in the judgment that no evidence to the contrary, refuting the execution of the agreement between defendants no.1 to 4 on the one hand and the plaintiff and defendant no.5 on the other, had been led by the defendants and consequently, issues no.1 and 2 were accordingly decided in favour of the plaintiff.

10. On the 3rd issue, as to whether, as per the terms of the aforesaid contract, defendant no.5 Jagtar Singh was ready and willing to get the sale deed executed in his favour, it was found that PW4 Surain Singh, one of the attesting witnesses to the agreement, Ex.P1, had testified on 02.09.1985 that Jagtar Singh was not ready to get the sale deed executed though he and plaintiff Tarlok Singh had requested him to do so. Jagtar Singh was alleged to have told him that he had no money to do so.

In his cross-examination, the said witness had stated that Jagtar Singh had expressed his disincilation to get the sale deed executed about 1 to 1½ years earlier.

The testimony of PW4 was disbelieved to that extent by the learned trial Court, holding that since the suit had been instituted on 06.08.1981, there would be no occasion for defendant no.5 to express his unwillingness to purchase the land in 1984, when he had already filed his written statement in the present *lis* on 20.10.1982, controverting those allegations of the plaintiff.

11. Even though PW5 Jaswant Singh and plaintiff Tarlok Singh also testified to the effect that the 2nd sale agreement of 1978 was entered into because defendant no.5 Jagtar Singh did not have the money to buy the suit land in terms of the agreement earlier entered into by him alone, in 1977, and that even in respect of the second agreement of 1978 Jagtar Singh found

himself unable to give the remaining money to pay his share of the consideration, those testimonies were also disbelieved by the learned trial Court, holding that since it was admitted that defendant no.5 had paid Rs.1800/- as earnest money to defendants no.1 to 4 in 1977, there would be no reason for him to lose that money by refusing to pay the remainder consideration to get the sale deed executed in his favour also, to the extent of 1/4th of the suit land.

Further, on that issue, it was held that since the plaintiff had admitted that he never served a notice upon Jagtar Singh either for fulfilling his part of the contract or even to join him as a co-plaintiff in the current *lis*, that too was taken as an adverse inference against the plaintiff, qua his 'co-prospective vendee', defendant no.5.

12. Yet further, it was found that as per an affidavit dated 07.08.1978, sworn by the plaintiff, he had stated that he was ready and willing to perform his part of the contract against defendants no.1 to 4. He had also stated therein that he was ready alongwith his co-sharer to pay the balance amount to get the sale deed executed.

(It is also noticed in the judgment at that stage that the said affidavit was executed in view of the fact that in the agreement, the date for execution of the sale deed was fixed as 05.08.1978, which was a Saturday and therefore, the said affidavit was executed by the plaintiff on 07.08.1978 before the Notary Public.)

13. An argument is also seen to have been raised before that Court that in another litigation between defendant no.5 and plaintiff Tarlok Singh, defendant no.5 Jagtar Singh had made a statement, Ex.P5, that he had not executed any agreement dated 28.06.1978. However, even that was not taken

to be an adverse inference against defendant no.5 by the trial Court in the present *lis*, holding that the circumstances in which that statement was made were not known and moreover, defendant no.5 had not been confronted with the said statement (during his cross-examination), in order to enable him to furnish an explanation with regard thereto.

On the other hand, in the present *lis*, it was the common case of both the plaintiff and defendant no.5, that defendants no.1 to 4 had executed the agreement dated 28.06.1978 in their favour.

Hence, the contradictory statement made in another *lis* was not held against defendant no.5, qua the agreement dated 28.06.1978, and his readiness and willingness to perform his part of that contract.

The plaintiff having concealed the factum of Rs.1800/- paid by defendant no.5 earlier as earnest money in respect of the agreement in question, was also taken as an inference against him qua defendant no.5, with the final conclusion on the issue of readiness and willingness of defendant no.5 to purchase his 1/4th share of the suit land, in terms of the said agreement, being decided in favour of the said defendant.

14. On the 5th issue, of whether the present appellant-defendant no.6, Munshi Singh, was a bonafide purchaser of 6 bighas and 5 biswas of the suit land, in terms of an agreement executed by defendants no.1 to 4 in his favour on 13.07.1978, it was found that that the said agreement itself not having been placed on record by the present appellant, an adverse inference had to be drawn against him.

Further, it was found as a matter of fact by the learned trial Court, that on the sale deed Ex.D1, the original date shown was 18.01.1979, which was subsequently changed to 17.04.1979, by cutting the digits “8” and

“1”.

It was also found that PW4 Surain Singh, who was a witness to the agreement dated 28.06.1978 between the plaintiff and defendant no.5 with defendants no.1 to 4, was also a witness to the sale deed, Ex.D1, in favour of the present appellant-defendant no.6 Munshi Singh.

This witness specifically deposed that he had informed defendant no.6 at the time of the execution of the sale deed that there was already an agreement qua land bearing khasra no.49 in favour of Tirlok Singh and Jagtar Singh, and that a dispute would arise subsequently if the appellant, Munshi Singh, went ahead with the transaction.

The plaintiff was also found to have testified to the same effect, that he had met the present appellant-defendant no.6 in the office of the Sub-Registrar and had told him that a previous agreement of sale existed qua 6 bighas and 5 biswas of land that was part of the subject matter of Ex.D1.

15. In the light of the aforesaid testimonies, especially that of PW4, also seeing the cuttings on Ex.D1, the learned Additional Senior Sub Judge came to the conclusion that the appellant very well knew of the earlier agreement between the plaintiff and defendants no.1 to 4 and in fact, that is why he changed the date of execution of the sale deed, with two sale deeds executed qua the single agreement alleged to have been entered into by him with defendants no.1 to 4.

The aforesaid conclusion was drawn even while noticing the testimony of PW4 Surain Singh and DW2 Babu Singh, i.e. the two attesting witnesses to the sale deed, that an amount of Rs.4000/- was paid as sale consideration by the present appellant to defendant no.1 Balbir Singh, before the Sub-Registrar.

Holding that even if payment of sale consideration by the present appellant to defendant no.1 were accepted to be correct, the appellant in the aforesaid circumstances could not be held to be a bonafide purchaser of 6 Bighas and 5 Biswas of the suit land, as he had knowledge of the earlier agreement between the plaintiff and defendant no.5 (on the one hand), with defendants no.1 to 4 on the other. It was also reasoned that the appellant being a resident of the same village in which the land was located, i.e. Pawala, he was in any case required to be more vigilant with regard to the sale and purchase of the said land.

Consequently, issue no.5 was decided in favour of the plaintiff and against the present appellant-defendant no.6.

16. On issue no.6, as to whether the present appellant was in cultivating possession of 6 bighas and 5 biswas of the suit land as a tenant and therefore was entitled to remain in possession of it, that issue was also decided against the present appellant, as in the copies of the entries in the *jamabandi*, Ex.D6, appellant Munshi Singh was shown to be the owner in possession of land measuring 6 bighas and 5 biswas.

Thereafter, it is recorded in the judgment of the learned Sub Judge that even if it was presumed that defendant no.6 was a tenant on khasra no.49 before purchasing the said land, he thereafter came into possession as its owner consequent upon the sale in his favour vide the sale deed dated 17.04.1979, Ex.D1, and therefore, he no longer remained a tenant thereupon.

It was so held despite the fact that as per the copy of the *jamabandi* for the year 1976-77, Ex.P3, it was noticed by that Court that khasra no.49 was under the tenancy of the present appellant. However, holding that after purchase of that part of the suit land he became an owner

thereof, the said issue, of his right to continue in possession as a tenant, was also decided against him.

17. Thus, having held that the agreement dated 28.06.1978 was duly proved to have been executed, with Rs.1000/- also having been paid as earnest money to defendant no.1 Balbir Singh, and that the plaintiff and defendant no.5 Jagtar Singh were ready and willing to get the sale deed executed and registered in their favour, and that the present appellant-defendant no.6 was not a bonafide purchaser of 6 bighas and 5 biswas of the total suit land, and also no longer remained a tenant thereon, issue no.4 was decided in favour of the plaintiff alongwith defendant no.5, holding them entitled to get executed the contract in their favour.

18. On the aforesaid findings and conclusions, the suit of the plaintiff was decreed in his favour as also in favour of defendant no.5, holding that they were both entitled to get the agreement dated 28.06.1978 specifically performed in their favour by getting defendants no.1 to 4 and 6 to execute a sale deed qua the entire suit land measuring 37 bighas and 10 biswas, on payment of the total sale consideration of Rs.19,688/-.

The said amount was apportioned to be paid by the plaintiff and defendant no.5 in the ratio of 3:1.

Thus, it was further decreed that upon the balance sale consideration of Rs.16,888/- being paid by the plaintiff and defendant no.5, the remaining defendants would join in getting the sale deed executed (in favour of the plaintiff and defendant no.5).

Thereafter, possession of the suit land was to be delivered to the decree holders.

19. As already noticed at the outset, plaintiff Tarlok Singh as also the

present appellant-defendant no.6 Munshi Singh, both filed separate appeals (Civil Appeal no.160 T of 18.01.1986 and Civil Appeal no.161 T of 16.01.1986 respectively) before the learned first appellate Court, which came up for hearing before the learned Additional District Judge, Patiala.

That Court, after noticing the pleadings of the parties, the issues framed by the learned lower Court and the evidence adduced before that Court, agreed with the findings of the learned Additional Senior Sub Judge, on all issues, essentially on the same reasoning.

On the issue of readiness and willingness of defendant no.5 Jagtar Singh to execute his part of the contract, again the affidavit sworn by the plaintiff on 07.08.1978 was referred to by the first appellate Court also, to the same effect, i.e. that till that date at least, it was the case of the plaintiff also that Jagtar Singh was ready to perform his part of the contract.

An argument having been raised on behalf of the plaintiff that Jagtar Singh had actually filed an application on 04.12.1984 stating that he was not a party to the agreement dated 28.06.1978, was rejected by the learned lower appellate Court, holding that no such application had actually been brought to the notice of the Court during the course of arguments and if there had been such an application, it had no value unless it was put to Jagtar Singh (by way of cross-examination), which was not done. Jagtar Singh also having been found to have paid Rs.1800/- pursuant to his first agreement with defendants no.1 to 4, with that amount having been adjusted as earnest money in the second agreement, that reasoning of the learned trial Court was also accepted by the first appellate Court.

20. An argument on behalf of the present appellant-defendant no.6 to the effect that eventually if a decree for specific performance of the contract

were to be passed in favour of the plaintiff, the appellants' tenancy would not stand determined, that argument was rejected by the first appellate Court also, holding, as had the lower Court, that the tenancy of appellant Munshi Singh was determined when the sale deed (Ex.D1) was executed in his favour, and that it could not be restored even if the sale deed was set aside.

21. On the aforesaid reasoning, it being almost wholly the same as that of the learned lower Court, the first appeals filed by the present appellant-defendant no.6 and plaintiff Tarlok Singh were dismissed, the reasoning for the dismissal of Tarlok Singhs' appeal being (as noticed hereinabove), that defendant no.5 Jagtar Singh was found to be very much willing to perform his part of the contract and therefore, the entire suit land could not be claimed by the plaintiff alone, and only to the extent of a 3/4th share therein, 1/4th being that of defendant no.5, in terms of the agreement dated 28.06.1978.

22. Against that judgment, upon this 2nd appeal having been filed, when it first came up for hearing before this Court on 06.05.1988, notice was issued and dispossession of the appellant was stayed till further orders. Thereafter, cross-objections were also filed by plaintiff Tarlok Singh and consequently, arguments were addressed by learned counsel in respect of the appeal and cross-objections, both.

23. The questions of law that arise for adjudication before this Court, on which arguments have been addressed by learned counsel, are as follows:-

- “i) Whether in the face of the contentions and the pleadings of the appellant, that there was an agreement in his favour, dated 13.07.1978, and the said written agreement was made pursuant to an oral agreement of December 1976, the Courts below have correctly held that the agreement dated 28.06.1978, between plaintiff-respondent no.1 and defendants no.1 to 4 (respondents no.3 to 6 herein), to be a

valid agreement which also could be enforced against the rights of the appellant, especially because a long time has elapsed since?

- ii) Whether the appellant can be considered to be a bonafide purchaser of 6 bighas 5 biswas of the suit land, transferred to him vide the sale deed dated 17.04.1979, Ex.D1?
- iii) Whether the Courts below have correctly held defendant no.5 Jagtar Singh to have been ready and willing to perform his part of the contract to the extent of a 1/4th share in the suit property, on the basis of the agreement dated 28.06.1978?
- iv) If the first question is answered in favour of the respondent-plaintiff, whether the Courts below have correctly decided the issue on tenancy of appellant-defendant no.6, in the face of the finding to the effect that he was actually a tenant on 6 bighas and 5 biswas of the suit land, as per the jamabandi for year 1976-77, Ex.P3?
- v) Whether, in the absence of a second appeal filed by the plaintiff, he can raise any issue qua his right against a non-appellant before this Court, i.e. qua defendant no.5 (present respondent no.2, Jagtar Singh) or has to restrict his arguments only to the questions raised in the appeal filed by the present appellant-defendant no.6?
- vi) Whether the suit filed by the cross-objector-plaintiff was within limitation?
- vii) Whether the suit of the plaintiff was not maintainable on account of his not having executed Forms 47 or 48 contained in Appendix 'A' of the Code of Civil Procedure, 1908?

24. The first argument of Mr. K. S. Sidhu, learned senior counsel appearing for the appellant, was however, not on any of the afoersaid questions, but that respondent-plaintiff Tarlok Singh did not come with clean hands in his suit, he not having disclosed that defendant no.5, Jagtar Singh,

had paid Rs.1800/- towards earnest money/part consideration, even as per the agreement in question dated 28.06.1978. Hence, as per learned counsel, the suit should have been dismissed on that score alone.

25. Mr. Sidhu next submitted that there was no specific plea taken in the plaint regarding the readiness and willingness of the plaintiff to perform his part of the contract, which is a mandatory requirement of Section 16(1)(c) of the Specific Relief Act, 1963, to be executed by way of Forms 47 or 48 contained in Appendix-A of the Code of Civil Procedure, 1908.

Hence, he contended that the suit itself was defective.

26. Learned senior counsel next contended that the appellant continued to be in possession of at least 6 bighas and 5 biswas of the suit property, first as a tenant and thereafter on the strength of the sale deed Ex.D1, dated 17.04.1979, executed in his favour. Consequently, he can not be dispossessed by enforcing a suit for specific performance, by this Court, the agreement in question now being almost 40 years old.

He further submitted that this would be especially so as the agreement of sale between the plaintiff and Jagtar Singh, with defendants no.1 to 4 (dated 28.06.1978), was in respect of 37 bighas and 10 biswas of land, whereas the present appellant-defendant no.6 Munshi Singh, is only concerned with 6 bighas and 5 biswas thereof.

27. Mr. Sidhu next submitted that, as a matter of fact, two witnesses to the agreement in question, one of whom was also a witness to the sale deed executed by defendants no.1 to 4 in favour of the present appellant-defendant no.6, having testified that defendant no.5 Jagtar Singh had not been willing to execute his part of the contract, it would be inequitable at this stage, to enforce the decree of specific performance on that count also against the

appellant.

28. Lastly, Mr. Sidhu submitted that as regards the tenancy of the appellant on 6 bighas and 5 biswas of the suit property, that had been specifically proved by him as found by the lower Court, even as per the jamabandi for the year 1976-77, Ex.D4. Hence, that finding was wholly erroneously 'discarded' by the courts below simply on the ground that since he had become an owner of the suit property vide the sale deed Ex.D1, the tenancy ceased and therefore, he was not entitled to continue in possession even as a tenant.

Learned Senior Counsel specifically pointed to the finding of the learned first appellate Court to the effect that the tenancy of Munshi Singh was determined when the sale deed was executed in his favour and that it cannot be restored even if the sale deed is set aside.

He submitted that no reasoning, whatsoever, actually has been given as to why, if the sale deed by which the appellant became the owner of the suit property to the extent of 6 bighas and 5 biswas thereof, is set aside, on the ground that he was not a bonafide purchaser, his status as a tenant would cease to exist.

Learned counsel submitted that if the sale deed had been upheld, very obviously the tenancy would have ceased from the date of the sale deed, but with the sale deed itself being set aside on the ground that it was not a bonafide purchase in the face of the agreement between the vendor and the plaintiff, held by the Courts below to be to the knowledge of the appellant (even though such knowledge is denied by the appellant), the status of the appellant as a tenant would not be ousted.

29. In support of his arguments, Mr. Sidhu relied upon the following judgments:-

- 1) On the issue of the plaintiff not coming with clean hands to Court:-
Biswanath Ghosh (Dead) by LRs and others v. Gobinda Ghosh @ Gobindha Chandra Ghosh and others 2014(4) JT 132:
- 2) On the appellant being a bonafide purchaser:-
K. Nanjappa (Dead) by LRs v. R. A. Hameed @ Ameersab (Dead) by LRs and another (2015) 4 CCC 30
- 3) On non-execution of an agreement after a long period of time:-
 - i) **Nanjappan v. Ramasamy and another (2015) 3 PLR 218 SC**

30. In response to the aforesaid arguments, Mr. H. N. S. Gill, learned counsel appearing for respondent no.1-plaintiff, by whom cross-objections to the appeal have also been filed, submitted that as regards the appellants' alleged agreement with defendant no.1 Balbir Singh, that agreement was never proved, with the agreement (allegedly dated 13.07.1978) never having been led by way of evidence, as noticed by the Courts below.

He further submitted that even as per the alleged agreement, the date fixed for execution of the sale deed between the present appellant and defendant no.1, was alleged to be also 05.08.1978, i.e. the same date as fixed in the agreement in favour of the plaintiff and defendant no.5, Jagtar Singh. However, no evidence whatsoever was adduced by the appellant to try to prove that he was present in the office of the Sub-Registrar on 05.08.1978, pursuant to the alleged agreement dated 13.07.1978.

Hence Mr. Gill submitted that the entire story of the agreement

dated 13.07.1978 was cooked up by the appellant-defendant no.6, only to try and defeat the agreement between the plaintiff and defendants no.1 to 4.

Thus, as a matter of fact, he contended that it was the appellant who did not come to the Court with clean hands and he simply turned that around to make the same allegation against the plaintiff.

31. Mr. Gill thereafter referred to the findings of the Courts below on the testimony of the attesting witness to the sale deed executed in favour of the appellant by defendant no.1, i.e. PW4 Surain Singh, to submit that the Courts below correctly found that the appellant was not a bonafide purchaser as he had specifically been told by Surain Singh, as also the plaintiff, that 6 bighas and 5 biswas of the land that he (the appellant) wished to buy (out of a total 13 bighas 16 biswas), was already subject matter of an agreement of sale between the plaintiff and defendants no.1 to 4. Learned counsel submitted that as a matter of fact, even the appellant himself, as DW1, in his cross-examination stated that the plaintiff had also told him so, though only in front of the Sub-Registrar, that the said part of the suit land was under an agreement of sale with him.

Thus, learned counsel submitted, that the learned Courts below had correctly held the agreement dated 26.08.1978 to be validly executed and had held the appellant-defendant no.6 not to be a bonafide purchaser of 6 bighas and 5 biswas of the suit land.

32. With regard to the plaintiffs' cross-objections in this appeal, Mr. Gill submitted that they are actually qua the finding of the Courts below that defendant no.5 Jagtar Singh was ready and willing to perform his part of the contract on the purchase of a 1/4th share of the suit property, in terms of the agreement, Ex.P1, dated 28.06.1978. Mr. Gill submitted that even though the

affidavit dated 07.08.1978, referred to by the Courts below, may have stated that the plaintiff and defendant no.5 were both ready and willing to execute the contract, factually defendant no.5 was not present on that date before the Sub-Registrar, which itself showed that even on that date he was not ready and willing to execute that part of the contract, as pertained to him. Hence, the agreement (Ex.P1) having a recital to the effect that in the event that one of the prospective vendees backing out of the agreement, the other prospective vendee could get the entire suit land transferred in his own favour, that would be a recital that became operative in favour of the respondent-plaintiff, Tarlok Singh.

Learned counsel further submitted that the Courts below also wholly erred in giving no importance to the statement of defendant no.5, Jagtar Singh, Ex.P5 in the present *lis*, which though made in another suit, was in respect of the same suit property, wherein Jagtar Singh had stated that there was no contract between him and the plaintiff Tarlok Singh. In fact, he had wholly denied the agreement dated 28.06.1978 and therefore, that statement should have been taken to be evidence enough of Jagtar Singh resiling from his part of the contract.

Next on that issue (qua defendant no.5 Jagtar Singh), Mr. Gill submitted that PWs4 and 5 both had specifically deposed that Jagtar Singh was not ready and willing to execute his part of the contract, with no testimony of Jagtar Singh himself to the effect that he was ready and willing to do so.

[It is necessary to notice here at this stage itself that the Courts below have specifically noticed that Jagtar Singh in his written statement had stated that he had always remained ready and willing to perform his part of

the contract and further, it has also been noticed (in paragraph 12 of the judgment of the learned Additional Senior Sub Judge) that his testimony was to the same effect, which is borne out from a perusal of the testimony itself (in Punjabi)].

32-A. Lastly, Mr. Gill submitted that the appellant has continued in possession of the suit property only because of the stay operating in his favour since 1988 and therefore, the respondent-plaintiff-decree holder, cannot be penalised for the pendency of the appeal in this Court.

33. Mr. R. K. Shukla, learned counsel appearing for respondent no.2, i.e. Jagtar Singh (defendant no.5), submitted that as regards the argument of learned counsel for the appellant that the plaintiff did not come with clean hands, he having suppressed the fact that the present respondent no.2, i.e. Jagtar Singh (defendant no.5), had earlier paid Rs.1800/- out of the total earnest/part consideration of Rs.2800/-, that argument is not available to the appellant-defendant no.6 but only to respondent no.2, Jagtar Singh, with him not taking that argument in this appeal, the suit having been decreed in his favour also.

34. On the second argument of learned senior counsel for the appellant, with regard to non-compliance of Section 16(1)(c) of the Specific Relief Act and Forms 47/48 contained in Appendix-A of the CPC, learned counsel submitted that the readiness and willingness of the plaintiff and defendant no.5 to execute their part of the contract was duly averred in their pleadings itself, as also stated in their testimonies, and as regards the non-compliance of clause (2) of Form no.47, to the effect that the plaintiff “has applied to the defendant specifically to perform the agreement on his part, but the defendant had not done so”, firstly, (as per learned counsel), that is an

argument available only to defendants no.1 to 4, i.e. the persons with whom the plaintiff and respondent no.2- defendant no.5 (Jagtar Singh) had entered into an agreement. Thus, with defendants no.1 to 4 never having contested the suit at all, or even having filed any appeal thereafter, such argument does not lie with the present appellant -defendant no.6, as he was not the person with whom the contract had been entered into.

Secondly, learned counsel for respondent no.2, Jagtar Singh, submitted that with the averment in the plaint itself specifically being that defendant no.1 had been requested many a time to get the sale deed executed, but he had finally refused to do so a month prior to the filing of the suit, non-filing of Form 47 may only be a procedural defect, with no substantive provision of any statute violated.

35. Lastly, Mr. Shukla submitted that both the Courts below having come to a specific finding to the effect that the said respondent (Jagtar Singh) was actually willing to perform his part of the contract even as per the affidavit of the plaintiff himself, dated 07.08.1978, the remaining findings also, with regard to such readiness and willingness, would not be set aside by this Court.

36. In rebuttal to the arguments of learned counsel for respondents no.1 and 2 respectively, Mr. Sidhu, learned senior counsel for the appellant, reiterated that the appellant was actually found to be a tenant in the suit property and therefore, he cannot be dispossessed even by any subsequent owner of the property, except as per the terms and conditions of the tenancy laws prevailing, and the present suit not being one instituted under any such provision but only under the provisions of Specific Relief Act, 1963, his possession over the suit property cannot be disturbed.

37. Lastly, at the stage of rebuttal, Mr. Sidhu, raised an issue on the suit having been filed beyond limitation on 28.01.1982, for specific performance of an agreement dated 28.06.1978, which was to be finally executed on 05.08.1978.

38. Having considered the arguments of learned counsel on both sides, as also the judgments of the learned Courts below, as regards the first question of law framed, on the aspect of the execution of the agreement of sale dated 28.06.1978, Ex.P1, no serious objection is seen to have been raised qua the execution of the agreement itself, except to the extent that defendant no.5 (respondent no.2 herein), Jagtar Singh, in a different *lis*, denied the execution of that agreement.

However, such denial in a wholly different *lis* for what ever reasons, though would be a relevant factor to consider qua the dispute between the plaintiff-cross objector and defendant no.5 Jagtar Singh (present respondent no.2), but qua the appellant such denial by Jagtar Singh would not be relevant, because firstly, the persons with whom the agreement had been entered into, i.e. defendants no.1 to 4, not having cared even to contest the suit, the agreement would not be doubted, with both the attesting witnesses thereto, i.e. PW4 Surain Singh and PW5 Jaswant Singh, having duly testified that the document had been executed and was a true document, with the scribe, PW1, also having been found by the trial Court to have testified to that effect.

39. Coming to the argument of Mr. Sidhu on the non-readiness and willingness of the plaintiff to execute his part of the contract, the plaintiff (respondent no.1 herein), Tarlok Singh, was also found to have proved that he was ready and willing to execute the sale deed on the date fixed, by way of his

affidavit executed before the Notary Public on 07.08.1978, with that affidavit having gone unrebutted. (As already noticed, though the date fixed in the agreement, for execution of the sale deed, was 5.8.1978, however, as per the trial Court, that being a Saturday, the plaintiff executed the affidavit on the next working day).

Thereafter, he also instituted the suit in the instant *lis*, though exactly three years after the date settled for execution of the contract. Though that would otherwise appear to be a delayed institution by this court, however, that aspect would be considered while discussing the question on limitation. Otherwise, this Court would not upset the concurrent findings of the Courts below on the question of willingness of the plaintiff, because firstly, the present appellant-defendant no.6 is not shown to have actually raised any serious issue before the Courts below on the non-willingness of the plaintiff to execute the contract, with his entire defence being that actually it was he who had entered into an oral contract with defendants no.1 to 4 in December 1976, reduced into writing on 13.07.1978 and therefore, the sale deeds executed in his favour on 17.04.1979, were valid sale deeds.

The issue of non-readiness to execute the contract was actually only raised by the plaintiff himself, against defendant no.5 Jagtar Singh, who was a co-prospective vendee in the agreement in question and therefore, it is not possible for this Court to hold in these circumstances, that because the suit was filed exactly three years after the last date fixed for execution of the sale deeds, the plea of non-willingness and readiness, as has been taken in this second appeal in arguments, can be sustained.

40. As regards the appellants' contention on him having entered into an agreement on 13.07.1978 with the owners of the land, i.e. defendants no.1

to 4 (respondents no.3 to 6 herein), I see no reason to upset the finding of fact arrived at by the learned Courts below, to the effect that with no such agreement having been produced, the appellants' sole averment and testimony to that effect, cannot be accepted as regards any such agreement entered into, to supersede the agreement dated 28.06.1978 entered into between the said respondents-defendants and the plaintiff alongwith defendant no.5 Jagtar Singh. Though obviously even that alleged written agreement is of a date after 28.06.1978, the appellants' contention that it was simply reducing into writing an earlier oral agreement of December 1976, cannot be held to be proved in any manner.

41. Hence, the findings of the Courts below on issue no.4, i.e. the right of the plaintiff to get the contract dated 28.06.1978, specifically performed in his favour, is a finding that is upheld, alongwith the findings on issues no.1 and 2.

42. As regards the contention of Mr.Sidhu that 38 years having gone by since the agreement was entered into, and therefore at this stage no decree for specific performance should be enforced against the interest of the appellant, though in certain circumstances that contention would be acceptable, however in the present case a decree of specific performance was passed in favour of the plaintiff and defendant no.5-Jagtar Singh by the learned Additional Senior Sub Judge on 11.12.1985, upheld by the learned lower appellate Court and simply because in the present appeal which has remained pending for now 29 years, a stay was operating in favour of the appellant, he cannot, in the opinion of this Court, be allowed to take advantage of that against the rights of the plaintiff which actually stand fructified in his favour for the past 35 years. Hence that contention is rejected, though the

judgments of the Courts below would be modified to a certain extent by this Court as would be seen further, holding that it would only be the plaintiff and not defendant no.5 who could claim a decree of specific performance in his favour.

43. Consequently, the question of law framed at sr. no.(i) in paragraph 23 (supra), is answered to the effect that the learned Courts below have correctly decided that the agreement dated 13.07.1978, contended to have been entered into by the present appellant- defendant no.6 with defendants no.1 to 4, never having been proved or even produced, that would (naturally) not be an impediment on the agreement dated 28.06.1978 being enforced by the plaintiff. Thus, pursuant to the agreement dated 28.06.1978, the plaintiff would be entitled to get the agreement enforced by way of the suit in the present *lis*, upon payment of the remaining consideration. Further, it is held that simply because this appeal has remained pending for the past 39 years, that would not affect the rights of the plaintiff, in view of what has been discussed heretofore on that aspect.

44. Coming then to question no.(ii), which is essentially as to whether issue no.5, on whether the appellant-defendant no.6 is a bonafide purchaser of khasra no.49, comprising 6 bighas and 5 biswas of land, was correctly decided by the Courts below, or not.

With PW4, Surain Singh, being an attesting witness to both, the agreement dated 28.06.1978 as also the sale deed in favour of the appellant, (Ex.D1 dated 18.01.1979), having specifically testified that he had informed the appellant that 6 bighas and 5 biswas of the total 13 bighas and 16 biswas of land that he was purchasing, were subject matter of an agreement between the plaintiff, Tarlok Singh and defendants no.1 to 4 Balbir Singh etc., with the

plaintiff of course having testified that he had also informed the appellant accordingly, those testimonies cannot be discarded, in view of the other findings of the learned trial Court, upheld by the first appellate court.

The first is, (as already discussed in the context of Q. no.(i)), that though the present appellant in his pleadings set up a case of having entered into an agreement with the owners of the land, i.e. defendants no.1 to 4, for purchase thereof, but he not having produced any such document, his whole story of the purchase being a bonafide purchaser falls flat there itself.

This is to be seen further with the fact that the learned Additional Senior Sub Judge found that there was a cutting on the sale deed, Ex.D1, by which the date of execution thereof was changed from 18.01.1979 to 17.04.1979. That finding is borne out by a perusal of the bottom left hand margin of the pages of the said sale deed, which is available in the records of evidence led before that Court.

Though the endorsement of the Sub Registrar behind the first page is dated 17.04.1979, very obviously the date that the said deed was actually written out on, was originally 18.01.1979, but subsequently changed to 17.04.1979.

Though that by itself may not have been reason enough to hold that the appellant was not a bonafide purchaser of the suit property, however the fact that one of the attesting witness thereto testified that he had informed him with regard to the agreement qua 6 bighas and 5 biswas of land and in fact thereafter two sale deeds were drafted qua land that was subject matter of a single agreement claimed by the appellant to have been entered into between him and defendants no.1 to 4, and one of the sale deeds, i.e. Ex.D1, is in respect of exactly as much land as is subject matter of dispute between the

appellant and the plaintiff, that would, in the opinion of this Court, all go to show that the appellant tried to “play its safe” by executing two different sale deeds, to ensure that at least that much of the land as was not subject matter of any dispute, was transferred to him, (i.e. the remaining 7 bighas and 11 biswas which he purchased vide the sale deed Ex.D2, also dated 17.04.1979). It is to be noticed that the said sale deed, Ex.D2, does not show any cutting on it qua the date. Hence, with him having executed a separate sale deed qua the 6 bighas 5 biswas of land in dispute, with their being cuttings therein, and he also having been found to be a resident of the same village, and a tenant on the land (though eventually not given that benefit by the Courts below), it cannot be believed that he was not aware of the agreement of sale in favour of the plaintiff and defendant no.5, especially seen with the testimony of PW4 Surain Singh.

The aforesaid conclusion would further be fortified by the fact that the Courts below found that in cross-examination the appellant herein had himself also admitted that he was told by the plaintiff (though before the Sub-Registrar) that part of the land that he was purchasing was subject matter of an agreement between him (the plaintiff and defendants no.1 to 4).

45. Consequently, the finding of Courts below on issue no.5 are upheld and the question of law framed at Sr. no.(ii) is answered accordingly, to the effect that the appellant is not a bonafide purchaser of 6 bighas and 5 biswas of the land.

46. Coming then to question no.(iii), of the readiness and willingness of respondent no.2 (defendant no.5) Jagtar Singh, to perform his part of the contract in which he was a “co-prospective vendee” of the plaintiff for purchase of the suit land from defendants no.1 to 4. (respondents no.3 to 6

herein).

In the opinion of this Court, actually respondent no.2 cannot be held to be ready and willing to perform his part of the contract at least after 28.06.1978. On that date of course, the plaintiff himself having executed an affidavit to the effect that he and Jagtar Singh were willing to execute their part of the contract, a plea to the contrary does not lie in the mouth of the plaintiff-cross-objector.

Yet, thereafter, respondent no.2 is neither shown to have communicated in any manner, either with the plaintiff or with defendants no.1 to 4, nor to have filed a suit seeking specific performance of the contract in question. Hence, with the attesting witnesses to the agreement, PWs4 and 5, also having testified that he was unwilling to execute the contract, qua his 1/4th share of the suit land, in the opinion of this Court, the learned Additional Senior Sub Judge, simply on the basis of the affidavit of the plaintiff and the fact that Rs.1800/- had earlier been paid by way of earnest money by respondent no.2 in his separate contract, erred in holding that defendant no.5, Jagtar Singh, was ready and willing to perform his part of the contract, (even though that sum (Rs.1800/-) was adjusted as the earnest money in the agreement dated 28.06.1978). Thus Rs.1800/- paid by him at the time of his earlier agreement, alone would not, in the opinion of this Court, prove Jagtar Singhs' willingness to perform his part of the contract for 3 years thereafter.

Further, seen with the fact that even his earlier agreement of the year 1977 with defendants no.1 to 4 was not honoured by him, this Court is of the opinion that respondent Jagtar Singh was not ready and willing to perform his part of the contract, yet further seen with the fact that as even found by the Courts below, Ex.P5 was actually a statement made by him in a *lis* between

himself and the plaintiff in this *lis*, Tarlok Singh, that he (Jagtar Singh) and the plaintiff herein were never co-vendees (prospective) in the agreement dated 28.06.1978.

47. Consequently, the findings of the Courts below on issue no.3 are set aside and it is held that respondent no.2-defendant no.5, Jagtar Singh, had not proved that after 07.08.1978, he was ready and willing to execute his part of the contract reflected in the agreement dated 28.06.1978, Ex.P1.

Hence, question no.(iii) as framed in paragraph 23 supra, is answered to the effect that the learned Courts below have erred in holding that defendant no.5-Jagtar Singh (respondent no.2), was ready and willing to perform his part of the contract along with the plaintiff.

48. Next, taking up Q. no.(v) before Q. no.(iv), as regards the contention of learned counsel for the appellant, as also of counsel for respondent no.2, Jagtar Singh, to the effect that the plaintiff not having filed the present appeal against the dismissal of his appeal by the lower appellate Court and he having filed only cross objections in a second appeal filed by defendant no.6, who has only about a 1/6th share in the total suit land and therefore, the respondent-plaintiff be deemed to be not actually aggrieved of the findings against him on issue no.3 before the Courts below. That is an argument that, though not found to be unattractive to this Court, would have to be rejected in view of the plain wordings of Order 41 Rule 22 of the CPC, which reads as follows:-

“22. Upon hearing respondent may object to decree as if he had preferred a separate appeal.- (1) Any respondent, though he may not have appealed from any part of the decree, may not only support the decree [but may also state that the finding against him in the Court below in respect of any issue ought to

have been in his favour; and may also take any cross-objection] to the decree which he could have taken by way of appeal provided he has filed such objection in the Appellant Court within one month from the date of service on him or his pleader of notice of the day fixed for hearing the appeal, or within such further time as the Appellate Court may see fit to allow.

[Explanation-A respondent aggrieved by a finding of the Court in the judgment on which the decree appealed against is based may, under this rule, file cross-objection in respect of the decree in so far as it is based on that finding, notwithstanding that by reason of the decision of the Court on any other finding which is sufficient for the decision of the suit, the decree, is, wholly or in part, in favour of that respondent.]

(2) Form of objection and provisions applicable thereto.- Such cross-objection shall be in the form of a memorandum, and the provisions of rule 1, so far as they relate to the form and contents of the memorandum of appeal, shall apply thereto.

(3) Omitted by Act 46 of 1999.

(4) Where, in any case in which any respondent has under this rule filed a memorandum of objection, the original appeal is withdrawn or is dismissed for default, the objection so filed may nevertheless be heard and determined after such notice to the other parties as the Court thinks fit.

(5) The provisions relating to appeals by indigent persons shall, so far as they can be made applicable, apply to an objection under this rule.”

Thus, with the cross-objections of respondent no.1 herein, i.e. the plaintiff, expressly stating his grievance against the finding of the Courts below on issue no.3, it cannot be said that the cross-objections are not maintainable or are an acceptance of the findings of the Courts below on that issue in the absence of an independent appeal filed by the respondent-

plaintiff. This would especially flow from not just the wordings of sub rule (1) and the explanation thereto, but also because of what is stipulated in sub rule (4), that even where the appeal filed by another person is withdrawn or is dismissed in default, the cross-objections may still be heard independently. Hence, very obviously the cross-objections are not subservient to even the appeal to which the cross-objections have been made, but are to be treated as an independent appeal itself.

49. Therefore, the question of law framed at Sr. no. (v) in paragraph 23 hereinabove, is answered as above, that the cross-objections of the respondent-plaintiff are wholly maintainable.

50. Next, coming to question no.(iv), i.e. whether the learned Courts below have correctly decided the issue of tenancy of the appellant, holding that since he had purchased the suit land to the extent of 6 bighas and 5 biswas thereof from defendants no.1 to 4, vide the sale deed dated 17.04.1979, Ex.D1, he ceased to be a tenant on the said land.

In this context, it is first to be noticed that though neither in the prayer of the plaintiff, nor in the decree issued by the learned Courts below, (specifically the decree of the learned Additional Senior Sub Judge, dated 11.12.1985), has it specifically been held that the aforesaid sale deed, Ex.D1, is null and void and not binding on the rights of the plaintiff; yet with the appellant-defendant no.6 having been held to be not a bonafide purchaser and having been directed, alongwith defendants no.1 to 4, to execute a sale deed qua the suit land, in favour of the plaintiff and defendant no.5, the effect of the judgment and decree of the Courts below is to hold that the said sale deed in favour of the appellant herein, is not a valid sale deed. Therefore, his status as an owner by virtue of the said sale deed, has been practically set aside.

In such a situation, the Courts below wholly erred in holding that once the appellant had become an owner of the suit land, his status as a tenant cannot be restored. In the opinion of this Court, once the appellant was held not to be a bonafide purchaser of the suit land and therefore not the owner thereof, and consequently was directed to execute a sale deed in favour of the respondent-plaintiff (and defendant no.5-respondent no.2), his status as a tenant on the suit land, by virtue of that finding itself, stood restored, the suit in the current *lis* not being one seeking ouster of a tenant in terms of the prevalent tenancy laws.

Possession of the suit property was sought by the plaintiff on the basis of an agreement executed by him and defendant no.5 with the owners of the land, and not with the tenant thereon, i.e. the appellant. Thus, though the status of tenancy had been converted to an ownership (of the appellant), by the original owners, i.e. defendants no.1 to 4, by executing a sale deed in favour of the appellant (tenant), but that status itself, of an owner, has been held by the Courts below to not be a legally valid status, (which finding has been upheld in the present judgment, heretofore). Hence, the appellants' status as a tenant stood ipso facto restored, it having been specifically noticed by the 'trial Court' that khasra no.49 was under the tenancy of the appellant, as per the jamabandi (record of rights), Ex.P3.

51. Consequently, the plaintiff (cross-objector herein), would be entitled to a decree of specific performance of the agreement and be declared to be the owner of the suit land, but he cannot be put into possession thereof, in place of a tenant already in possession, in a suit seeking specific performance of a contract qua transfer of ownership, without invoking the provisions of either the Punjab Tenancy Act 1887, or The Punjab Occupancy

Tenants (Vesting of Proprietary Rights) Act, 1952, or any other law applicable to such tenancy, (with the tenants' new status of ownership having been effectively set aside).

52. Hence, the findings of the Courts below on issue no.6 are set aside, and the appellant is held to be a tenant on khasra no.49, to the extent of 6 bighas 5 biswas contained therein, even though the transfer of ownership of the property in favour of the plaintiff, by virtue of the agreement dated 28.06.1978, has been upheld by this Court hereinabove.

Therefore, the appellant would continue to be in cultivating possession on khasra no.49 of the suit property, even when the plaintiff becomes the owner thereof upon execution of the sale deed in his favour by defendants no.1 to 4 and the present appellant, till such time as the appellant is evicted therefrom in any proceedings instituted by invoking the tenancy laws qua agricultural land, if such proceedings are brought by the owner of the said khasra number and are found to be maintainable.

53. In this context, it must be emphasised again here, that the suit not being one seeking ouster of a tenant, and the issue of tenancy having come up as a 'corollary' to the primary issue of execution of a sale deed in terms of the agreement of sale in question, the nature of cultivating possession held by the appellant on the aforesaid khasra no.49, is not being further commented upon by this Court, but only to the extent that the Courts below have not held the entry in the jamabandi for the year 1976-77, Exs.P3/D4, to be an invalid or void entry, by which the appellant is shown to be in cultivating possession of the suit land and was found to be a tenant by the learned Additional Senior Sub Judge, (though was not granted the benefit of such finding by that Court).

Naturally, all legal pleas as are available to an occupier of such

land, against his ouster therefrom, would also be available with the appellant if any such proceedings are instituted.

54. Hence, with issue no.6 framed by the Additional Senior Sub Judge having been decided in favour of the appellant and against the respondents herein, the question of law framed at sr. no.(iv) in paragraph 23, is answered accordingly, to the effect that the learned courts below erred in holding that the appellant had lost his status as a tenant once a sale deed was executed in his favour, and that even with the sale deed held to be ineffective his status as a tenant (or person in cultivating possession thereof) did not stand restored.

55. All the aforesaid questions having been answered as they have, the question of the suit having been instituted within the period of limitation prescribed is being taken up next, i.e. Question no.(vi). In fact, that is not a question seen to have been raised by the defendants either in the civil suit itself, or even in the first appeal filed by the present appellant. It has therefore been raised for the first time in second appeal and that too at the stage of rebuttal by learned counsel for the appellant, in response to the arguments made on behalf of the respondents herein.

Nevertheless, the question having been raised, which goes to the root of the *lis* itself, this Court is bound to deal with it, even though it means looking at a question of fact at the stage of a 2nd appeal.

56. It is to be first stated that contrary to what has been contended by Mr. Sidhu, on the basis of the date of institution of the suit given on the opening page of the judgment of the learned Additional Senior Sub Judge, factually the suit is seen to have been filed on 05.08.1981, as per the stamp of the Registry/filing branch of the subordinate courts at Rajpura.

In fact, though on the opening page of the judgment of the learned Additional Senior Sub Judge, Rajpura, the suit is shown to be numbered as “171T/391T of 28.1.82”, as also suit no.602T of 28.11.84, yet, firstly, even in the judgment of that Court itself, in paragraph 10 thereof, it is shown to have been instituted on 06.08.1981, (with the reference to the date being in the context of the testimony of PW4 Surain Singh, on the issue of whether defendant no.5 Jagtar Singh was willing to perform his part of the contract or not).

Further, it is seen from the record of the Courts below, that the suit was first numbered as 238 dated 06.08.1981, then is shown to be numbered as 602T of 28.11.84, with a 3rd endorsement below the earlier dates, showing it to be suit no.171T/391T of 28.1.82. However, what clinches the issue of the date of filing, is the stamp seen on the opening page of the plaint, showing that it was presented by learned counsel appearing for the plaintiff, on 05.08.1981.

Thus, with the last date fixed for execution of the sale deed being 05.08.1978, as per the agreement dated 28.06.1978, the suit was filed just within limitation, though an argument can be raised that limitation actually expired on the mid-night of 04.08.1981, with the 4th year commencing on 05.08.1981. However, in the opinion of this Court, that would be a “grey area” and that argument not having been actually raised even before this Court and in any case no issue at all having been raised at any earlier stage and no formal issue framed on any contention made in the written statement that the suit was filed beyond limitation, this Court would not interpret that “grey area” to the disadvantage of the plaintiff cross-objector. Hence, it is held that the suit having been filed exactly three years from the date fixed for

the execution of the sale deed in terms of the agreement dated 28.06.1978, i.e. 05.08.1978, it was filed within limitation.

Consequently, question no.(vi) is answered to that effect.

57. Coming to Mr. Sidhus' argument that the plaintiff did not come with clean hands, he not having disclosed that Rs.1800/- had been paid earlier by defendant no.5, in a separate agreement, but was adjusted as part of the total earnest money of Rs.2800/- paid upon the agreement dated 28.06.1978 having been entered into, it is held that with counsel for defendant no.5 Jagtar Singh (respondent no.2), i.e. the person who actually paid Rs.1800/-, having specifically stating that Jagtar Singh is not raising any issue qua such concealment, I agree with the argument that it would not lie in the mouth of the appellant-defendant no.6 to submit that the plaintiff had not come with clean hands to disclose that.

This is especially to be seen with the fact that the appellant himself has not been found to be of a conduct wholly above board, in terms of alleging an agreement to have been entered into by defendants no.1 to 4 with him, reduced into writing on 13.08.1978, with not even a single paper led by way of evidence to show that any such agreement was actually entered into.

Hence, that argument is rejected.

58. Coming then to the last question of law framed, as arises for adjudication in this 2nd appeal, as to whether the suit of the plaintiff was not maintainable on account of his not having executed Form 47/48, contained in appendix A of the Code of Civil Procedure, 1908.

On that question, I agree with the contentions of learned counsel for respondent-Jagtar Singh (defendant no.5), to the effect that with it specifically having been stated in the plaint itself that the plaintiff had been

ready and willing to execute his part of the agreement, but defendants no.1 to 4 having delayed the matter time and again and finally having refused to do so, non-filling of Form 47 contained in Appendix A in the Civil Procedure Code, would only be a procedural defect, which, in the opinion of this Court, cannot defeat the suit by holding it to have been non-maintainable simply on that account.

Consequently, question no.(vii) framed in paragraph 23 (supra) is answered to the effect that the suit of the plaintiff was maintainable and non-filling of Form 47 aforesaid, would not result in the suit itself not being maintainable, the averment that was to be contained in the form, having been effectively made in the plaint itself.

59. In view of the detailed discussion hereinabove, this appeal is partly allowed and the finding of the learned Courts below on issue no.6 reversed, with the appellant herein held to be in cultivating possession of 6 bighas and 5 biswas out of the total suit land of 37 bighas and 10 biswas, qua which possession can be sought from him only by due course under the laws governing tenancy on agricultural land, if such proceedings (if instituted), are found to be maintainable after conclusion of the present *lis*, a suit already having been instituted by the plaintiff, i.e. the suit in this *lis*, with those provisions not having invoked.

The findings of the Courts below, against the present appellant, on issues no.1, 2, 4 and 5 framed by the trial Court, are upheld, as per the questions of law answered in this appeal.

60. The cross-objections of respondent no.1, plaintiff Tarlok Singh, are allowed and the findings against him by the learned Courts below, on issue no.3 are reversed, with the said issue decided in favour of the cross-

objector/plaintiff and against respondent no.2- defendant no.5-Jagtar Singh,
(as per the answer given to question no.(iii) framed in paragraph 23
hereinabove.

Consequently, the directions given by the learned Additional
Senior Sub Judge, Rajpura, upheld by the learned Ist appellate Court,
directing defendants no.1 to 4 and the present appellant (defendant no.6), to
execute sale deeds qua the suit land measuring 37 bighas and 10 biswas of
land in favour of the plaintiff and defendant no.5, Jagtar Singh, are modified
to the extent that defendants no.1 to 4 (respondents no.3 to 6 in this appeal)
and the appellant-defendant no.6, would upon payment of the remaining
consideration money as has been directed to be paid by the learned Courts
below, execute a sale deed qua the suit land in favour of the plaintiff, now
represented by his LRs.

61. The parties are left to bear their own costs in the appeal and the
cross-objections.

A decree-sheet be drawn up accordingly.

July 27, 2017
dinesh

(AMOL RATTAN SINGH)
JUDGE

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