IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Regular Second Appeal No.3388 of 2009 (O&M)
Date of Decision: 11.01.2017

Kirpal Singh and another

......Appellants

Vs

Jatinderpal Kaur and others

.....Respondents

CORAM: ***HON'BLE MR. JUSTICE RAJ MOHAN SINGH***

Present: Mr. S.D. Sharma, Sr. Advocate with
Mr. Premjit Kalia, Advocate and
Mr. Ved Priya Malik, Advocate
for the appellants.

Mr. Puneet Bali, Sr. Advocate with
Mr. Ranjit Saini, Advocate
for respondent Nos.1 to 3.

Mr. Prem Kumar, Advocate
for respondent No.4.

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RAJ MOHAN SINGH, J.

[1]. Vide order dated 31.01.2014, the Hon'ble Supreme Court remanded this appeal to this Court for fresh disposal in accordance with law, after framing substantial questions of law as mentioned in sub-paragraphs No.(i) to (vi) of para No.15 of the grounds of appeal. The same are reproduced hereasunder:-

"(i) Whether an allottee of a plot of Improvement Trust can enter into an agreement to sell,

although the possession of the plot had not been delivered to the said allottee?

(ii) *Whether an owner can enter into an agreement to sell the immovable property, although he is not in possession of the same at the time of agreement to sell?*

(iii) *Whether a person, who enters into an agreement to sell having incomplete or defective title is under obligation to execute the conveyance deed, even if subsequently his title and possession is perfected in accordance with law?*

(iv) *Whether in the absence of any last deed for execution of the sale deed, the suit would be deemed to be barred by time, if filed after three years of the agreement to sell, even if the transferee has not refused to execute the conveyance deed?*

(v) *Whether the findings recorded by the lower Appellate Court without meeting with the reasoning of the trial Court are patently illegal?*

(vi) *Whether the findings of fact of the lower Appellate Court are vitiated on the ground of misreading and non-consideration of oral and documentary evidence?"*

[2]. Brief facts as gathered from the record are that plaintiffs filed a suit for specific performance of agreement to sell dated 15.01.1997 and also sought declaration that the plaintiffs have succeeded on right, title and interest in plot No.D-542 on the

basis of Will dated 15.01.1997 executed by S. Satnam Singh. Directions were sought against the Amritsar Improvement Trust, Amritsar/defendant No.5, directing it to transfer the plot in favour of the plaintiffs and further restraining the defendants from alienating the suit property.

[3]. Plaintiffs alleged that Satnam Singh had entered into an agreement to sell with the plaintiffs on 15.01.1997 in respect of Plot No.D-542 and received consideration of Rs.60,000/- in the presence of marginal witnesses of the agreement. Satnam Singh executed an irrevocable power of attorney and a Will in respect of plot in question in favour of the plaintiffs, which was registered on 30.01.1997 in the office of Sub-Registrar, Amritsar. After receiving the full consideration of Rs.60,000/-, Satnam Singh handed over the allotment letter issued by defendant No.5 dated 01.03.1988, agreement of sale executed by defendant No.5 in favour of Satnam Singh dated 12.08.1988 along with receipts of payments made to defendant No.5. Satnam Singh had died and defendant Nos.1 to 4 were his legal heirs.

[4]. Plaintiffs further alleged that the area of plot in question became disputed along with area of Scheme known as Ajnala Road Development and Ajnala Road. Plaintiffs along with other plot holders contested the case before this Court and this Court

had cleared the area of the plot in question along with other area of Ranjit Avenue, Amritsar. It was asserted that Satnam Singh deceased had already received full consideration of the plot and had executed agreement to sell dated 15.01.1997 and the defendant Nos.1 to 4 were bound to get the sale deed executed in favour of the plaintiffs through defendant No.5, who had allotted the plot to Satnam Singh deceased. Defendant Nos.1 to 4 were served with legal notice dated 02.03.2002 and defendant No.5 was also intimated through registered notice. Defendant Nos.1 to 4 did not show any willingness to get the sale deed executed in favour of the plaintiffs, whereas plaintiffs were always ready and willing to perform their part of obligation.

[5]. Satnam Singh deceased had also executed Will dated 15.01.1997 registered on 30.01.1997. At the time of execution of Will, Satnam Singh was in sound and disposing mind. The Will was outcome of free will, without any pressure and ill-will or coercion from any corner. Defendant Nos.1 to 4 were disinherited from the plot in question and, therefore, defendant No.5 was bound to hand over the possession to the plaintiffs. With this background the suit was filed before the trial Court.

[6]. The suit was contested by defendant Nos.1 to 4 and the allegations of plaintiffs were denied. Execution of agreement to sell by Satnam Singh on 15.01.1997 was denied. Receipt of

consideration of Rs.60,000/- was also denied. It was asserted that the plot in question was allotted to Satnam Singh being an Army personnel on preferential basis. Satnam Singh paid all the dues of the plot. In the year 1997, alleged agreement to sell was forged, whereas market value of the property was Rs.15 lacs and no prudent man would have sold the valuable plot for a paltry amount of Rs.60,000/-. Forgery was alleged on the part of the plaintiffs. It was also asserted that even if, original allotment letter and the receipts were held by the plaintiffs, the same were removed from the office of the deceased in a very clandestine manner. Possession of these documents was claimed to be an outcome of theft and misappropriation of documents.

[7]. Execution of Will dated 15.01.1997 was also denied. Class-I heirs/blood-relations were deprived of their right and it was asserted that no prudent man would do so in his sound disposing mind. Class-I heirs were living with the deceased and were taking care of the deceased very well. Satnam Singh died at his home in the presence of the defendants and he never showed any inkling in respect of Will, General Power of Attorney and Agreement to Sell in respect of plot in question. Other allegations of the plaint were also denied.

[8]. Defendant No.5/Amritsar Improvement Trust, Amritsar also filed separate written statement and contested the suit on

merits. The alleged Will dated 15.01.1997 executed by Satnam Singh was denied. Improvement Trust was never informed in respect of alleged Will.

[9]. After completion of pleadings, both the parties went to trial on the following issues:-

"1. Whether the plaintiffs are entitled to Specific performance of an agreement to sell dated 15.1.1997 of suit property? OPD

2. Whether they were ready and willing to perform their part of contract and are still ready and willing to perform their part of contract? OPP

3. Whether the plaintiffs are entitled to declaration that they have succeeded to all rights and interest in the plot No.B-542 on the basis of Will dated 15.1.1997 executed by Satnam Singh? OPP

4. Whether the plaintiff are entitled to permanent injunction restraining defendant Nos.1 to 4 from alienating the suit property by way of sale, mortgage? OPP

5. Whether the plaintiffs have not come to the Court with clean hands? OPD

6. Whether the plaintiffs are estopped by their act and conduct to file the suit? OPD

7. Whether the suit is not maintainable? OPD

8. Relief."

[10]. Both the parties led their respective evidence on the aforesaid issues to prove their case. Plaintiffs got examined PW-1 Harjinder Singh, PW-2 Harwinder Singh, PW-3 Harbhajan Singh, PW-4 Sarabjit Singh and PW-5 Deepak Bhaskar. Thereafter the evidence of the plaintiffs was closed. On the other hand, defendants got examined DW-1 Avtar Singh, DW-2 Jatinderpal Kaur, DW-3 Dolly, DW-4 Narotam Singh, DW-5 Charanjit Bhatia and DW-6 Sunil Kumar, Clerk office of Amritsar Improvement Trust. The evidence of the defendants was closed by the order of the Court.

[11]. After appraisal of the evidence, trial Court decreed the suit vide judgment and decree dated 29.03.2008, thereby holding the plaintiffs to be entitled for specific performance of agreement to sell in respect of the suit plot and defendants were given two months' time to execute the sale deed and hand over the possession of the plot to the plaintiffs, failing with plaintiffs were held entitled to get the assistance of the Court for execution of sale deed of the plot. The plaintiffs were also held entitled to succeed all rights, title and interest in the suit plot on the basis of Will dated 15.01.1997 and defendants were restrained from alienating the suit property/plot to any other person except the plaintiffs.

[12]. Defendant Nos.1 to 3 went in appeal against the

judgment and decree of the trial Court. Lower Appellate Court vide judgment and decree dated 10.04.2009 accepted the appeal and set aside the judgment and decree of the trial Court and subsequently, suit was dismissed. That is how the present appeal came to be filed before this Court.

[13]. I have heard learned Senior counsel for both the parties and have also perused the record.

[14]. Learned Senior counsel for the plaintiffs/appellants submitted that agreement to sell (Ex.P-1) dated 15.01.1997 was executed by Satnam Singh in favour of the plaintiffs/appellants. The said agreement to sell was executed for a total sale consideration of Rs.60,000/- and the entire consideration was received by Satnam Singh in the presence of Harjinder Singh PW-1, and Harwinder Singh PW-2. Agreement to sell was signed by Satnam Singh and the same was attested by the aforesaid witnesses as well as by the plaintiffs. The agreement to sell also contained that general power of attorney and papers of Will were also executed and the same were not to be cancelled by the executant. General power of attorney was executed on the same day i.e. 15.01.1997 in favour of the appellants which was scribed by Deepak Bhaskar PW-5 and attested by Harwinder Singh PW-2 and Sarabjit Singh, Advocate PW-4. Satnam Singh had signed the document being executant.

The Will dated 15.01.1997 (Ex.P-3) was also executed by Satnam Singh on the same day which was scribed by Deepak Bhaskar and witnessed by Harwinder Singh PW-2 and Sarabjit Singh, Advocate PW-4. General power of attorney and aforesaid Will were got registered on 30.01.1997.

[15]. Learned Senior counsel argued that Satnam Singh at the time of execution of agreement to sell and general power of attorney on 15.01.1997 received amount of Rs.60,000/- in the presence of PW-1 Harjinder Singh and PW-2 Harwinder Singh. All the original documents i.e. allotment letter Ex.P-3/1, receipt of payment of instalment Ex.PW-3/3 to Ex. PW-3/15 and agreement PW-3/2 were handed over to the plaintiffs/appellants. Satnam Singh died on 12.05.1998, leaving behind Jatinderpal Kaur as widow, Dolly and Bobby as daughter and son and Man Kaur as her mother.

[16]. Learned Senior counsel submitted that Satnam Singh after coming from Army, joined the legal profession as an Advocate and he used to attest documents in Tehsil office. Satnam Singh was quite healthy from 15.01.1997 to 12.05.1997. No complaint was ever made by him during this period. After the death, appellants requested the legal representatives of deceased Satnam Singh to fulfill the requirement in the context of agreement to sell. The plaintiffs

also served legal notice dated 02.03.2002 Ex.PW-3/X. Defendant No.5/Improvement Trust was also informed.

[17]. Legal representatives of Satnam Singh replied to the notice on 20.03.2002 (Ex.PW-3/4). The documents were claimed to be fraudulent. The civil suit was filed by the plaintiffs on 16.04.2002. At one point of time, this Court accepted the appeal vide judgment and decree dated 12.10.2012, however the same was reversed by the Hon'ble Supreme Court and the case was remanded to this Court for consideration of substantial questions of law as formulated in sub-paragraphs No.(i) to (vi) of para No.15 of the grounds of appeal vide judgment dated 31.01.2014.

[18]. Learned Senior counsel has vehemently argued that the plea of fraud has been raised by the defendants which could have been taken by the Satnam Singh only. Satnam Singh could have challenged the documents on the basis of fraud during his life time. Plea of fraud is a subjective ground, that could have been proved by Satnam Singh alone. Learned Senior counsel contended that particulars of fraud have not been pleaded and proved on record. From the testimonies of attesting witnesses produced on record, executions of agreement to sell, general power of attorney and Will were proved to the hilt. If there was a fraud committed upon Satnam

Singh, then how the original documents were found in the custody of the plaintiffs. Satnam Singh himself was an Advocate and was involved in the work of execution of sale deeds, general power of attorneys etc. in Tehsil complex. If signatures of Satnam Singh were forged, then Expert should have been examined. Onus to prove such a fact was on the legal representatives of Satnam Singh. Plea of Satnam Singh being chronic and alcoholic was not proved with reference to evidence on record.

[19]. Learned Senior counsel highlighted that the lower Appellate Court dismissed the suit on limitation in terms of Section 54 of the Limitation Act. The limitation was to be appreciated and cause of action should have been appreciated only from the date on which refusal was made by the opposite party. The agreement to sell was with consideration and in the agreement itself it was recorded that an amount of Rs.60,000/- was paid and, therefore, no separate receipt was required. The plea of the defendants that market value of the plot was more than the consideration shown in the agreement to sell, was of no consequence in terms of Section 20 of the Specific Relief Act. Inadequacy of consideration is of no consequence, particularly when other requirements are fulfilled. The property was self-acquired property of Satnam Singh, therefore, he was

competent to alienate it. Learned Senior counsel by referring to para 15 of the plaint sought to project cause of action on 02.03.2002, when legal notice was issued and also a week back and finally a day before filing of the suit when defendants finally refused to accept the request of the plaintiffs.

[20]. In the written statement filed by the defendants, cause of action was denied. Agreement to sell, general power of attorney and Will were claimed to be forged and fabricated. The plaintiffs re-asserted their claim in the replication. Learned Senior counsel contended that limitation was not set up as a ground of attack in the written statement, nor any issue was framed. Limitation is not a pure question of law, as the same was a mixed question of law and facts. A foundation was required to be made in the written statement and thereafter evidence should have been led as to on what date the alleged refusal was given in order to show concurrence with Article 54 of the Limitation Act.

[21]. Learned Senior counsel for the appellants by referring to the Section 92 of the Indian Evidence Act, submitted that when the terms of any such contract of grant or other disposition of the property required by law to be reduced to the form of a document, even proved as per law, then no evidence of any oral agreement or statement shall be admitted,

as between to such instrument or their representatives in interest, for the performance of contradicting, varying, adding to or subtracting from, its terms. Further the decree passed by the trial Court was against all the defendants including the Improvement Trust. No appeal or cross-objection was filed by the Improvement Trust before the lower Appellate Court. The judgment and decree of the trial Court became final *qua* defendant No.5/Improvement Trust.

[22]. Learned Senior counsel further contended that even if, title was imperfect, Satnam Singh was competent to pass over the title and the Improvement Trust in the absence of any appeal or cross-objection had no objection. The money for the stamp was already deposited on 15.01.1997 and the same was supplied on 16.01.1997. Accordingly, stamp was affixed on 16.01.1997 by the District Treasury Officer on the already written agreement to sell. It was further contended that when no time was fixed in the agreement to sell for execution of the sale deed, limitation reckoned from the date, when the plaintiffs had noticed that performance was refused by the defendants. The cross-examination of the plaintiffs clearly depicted that they went to the house of the legal representatives of Satnam Singh after the death of Satnam Singh, but they refused. Learned Senior counsel submitted that there was no denial to para No.8

of the plaint. In the written statement and the statement of fact recorded in para Nos.1 to 3 of the examination-in-chief of PW-3 were not subjected to cross-examination by the defendants.

[23]. Learned Senior counsel relied upon ***Ritesh Tewari & Anr. vs. State of U.P. and Ors., 2010 AIR (SC) 3823*** and contended that equitable jurisdiction of the Court has to be exercised to prevent perpetration of legal fraud and promote good faith and equity. If the claim of the party is not founded on valid grounds, the said party cannot claim equity. In order to supplement the aforesaid, learned Senior counsel relied upon ***A. Shanmugan vs. Ariya K.R.K.M.N.P Sangam Tr. Pres. Etc., 2012(3) R.C.R. (Civil) 1*** and further contended that it is the duty of the Court to segregate false pleas and irrelevant documents to uphold the cause of justice. Dishonest and unscrupulous litigants have no place in the court of law. The duty of the Court is to discern the truth and do justice.

[24]. Learned Senior counsel further by citing ***Gunwantbhai Mulchand Shah & Ors. vs. Anton Elis Farel & Ors., 2006(2) R.C.R (Civil) 251*** and ***Janardhanam Prasad vs. Ramdas, 2007(1) R.C.R. (Civil) 881*** contended that when time for performance of agreement to sell was not specified, then the suit will be governed by second limb of Article 54 of the

Limitation Act. The suit for specific performance can be filed within three years, when the plaintiff has noticed that performance is refused by the defendants. In a case, where no time for performance was fixed, the Court had to find out the date on which the plaintiffs had noticed that the performance was refused and on finding that date, to see whether the suit was filed within three years thereof?

[25]. By referring to ***Kartar Singh and another vs. Kuldeep Singh and another, 2010(2) R.C.R. (Civil) 702***, learned Senior counsel emphasized that even if, the vendor was neither owner, nor was in possession of the suit land at the time of execution of agreement to sell, still suit can be decreed. On acquisition of title subsequently, the vendee can enforce contract, agreement of specific performance in view of Section 13(1)(a) of the Specific Relief Act.

[26]. In order to supplement the view taken by this Court in ***Kartar Singh and another's*** case (supra), learned Senior counsel relied upon ***Vishwa Nath Sharma vs. Shyam Shankar Goela and another, 2007(2) R.C.R. (Civil) 415*** and contended that the embargo on sale of property without prior sanction of competent authority is of no consequence. Vendor can sell the property and execute the sale deed despite embargo. Relevant sanction can be subsequent to the execution of sale.

[27]. On the strength of ***<u>Ahmmadsahab Adbdul Milla (dead) by proposed LRs vs. Bibijan and others, 2009(2) RCR (Civil) 788</u>***, learned Senior argued that the expression "date fixed for the performance" is a crystallized notion. This is clear from the fact that the second part "time from which period begins to run" refers to a case where no such date is fixed. It implies that when date is fixed, it means that there is a definite date fixed for doing a particular act. Even in the second part, the stress is on "when the plaintiff has noticed that performance is refused". Here again, there is a definite point of time when the plaintiff notices the refusal. In that sense, both the parts refer to definite dates, therefore, there is no question of finding out an intention from other circumstances. Whether the date was fixed or not, the plaintiffs had noticed that performance was refused and the date there of are to be established with reference to material and evidence on record. The expression "date" used in Article 54 of the Schedule to the Act is suggestive of a specified date in the calendar. Ultimately the view was expressed in the context of date fixed and in essence, it means a final and crystallized form and not the subject matter of change or fluctuation. So the date on which the performance of the agreement was refused, would give rise to cause of action for filing a suit for specific performance in a case where no date

was specified in the agreement to sell.

[28]. The question of limitation was liable to be rejected inasmuch as that no plea of limitation was raised in the written statement. Both the parties did not make the time being essence of the contract. Therefore, the defendants cannot be permitted to rake up the issue of limitation. Learned Senior counsel by relying upon ***Rathnavathi and another vs. Kavita Ganashamdas, 2014(4) R.C.R. (Civil) 904*** in the aforesaid proposition and contended that Section 54 of the Limitation Act does not apply in such a situation, where time was not made essence of the contract and no date was fixed in the agreement for its performance.

[29]. Learned Senior counsel also contended that testimonies of the witnesses which was not cross-examined, cannot be relied upon in terms of Section 138 of the Evidence Act. Again learned Senior counsel, emphasized that under Section 114 of the Evidence Act and under Section 17 of the Registration Act, there was a presumption that a registered document was validly executed. The onus of proof, thus, would be on a person, who leads evidence to rebut the presumption.

[30]. On the other hand, learned Senior counsel for respondent Nos.1 to 3 vehemently submitted that agreement to

sell itself was on questionable note inasmuch as that last four lines of the agreement to sell speak volume about the nature of alleged agreement. From the date of knowledge of Will, there has to be limitation of three years or from the date of death of Satnam Singh i.e. 12.05.1998. Agreement to sell was executed on 15.01.1997 and so as Will, though registered later on. Satnam Singh died on 12.05.1998 and suit was instituted on 16.04.2002. The filing of suit was patently time barred. This argument cannot be hit by Article 54 of the Limitation Act as the suit itself is based on agreement to sell, general power of attorney and Will. Secondly, the stamp paper was of 16.01.1997 on that agreement to sell dated 15.01.1997 was allegedly written. The statement of DW-5 Charanjit Bhatia, District Treasury Officer was sufficient to highlight the aforesaid anomalous situation where he admitted that the receipt mentioned on Ex.P-1 was having serial No.124428 dated 16.01.1997. In such a situation, how agreement to sell could have been executed on 15.01.1997. The name of the purchaser was not forthcoming, then surprisingly, how name of Satnam Singh had come on Ex.P-1, wherein recital of “paid by Satnam Singh” in Punjabi language was written. Learned Senior counsel also highlighted anomaly in the name of seller as shown on the right handside of the deed and the typed text of full name has to mentioned below the signature, however the signature of Satnam Singh was shown to have affixed over the name of Harwinder Singh instead of typed name of Satnam Singh. By referring to specimen signatures of scribe, Satnam Singh and witnesses, learned Senior counsel contended that there was total haphazard viz-a-viz. placement of these names and signatures. Similarly, on the Will signature of Satnam Singh was affixed on the name of witness Harwinder Singh and the signature of scribe appeared over the name of Satnam Singh. The agreement to sell was proved to be *ante* dated.

[31]. Learned Senior counsel by referring to Ex.PW-3/X i.e. legal notice dated 02.03.2002 issued by the plaintiffs referred to para nos.4, 5, and 6 and contended that the payment made to defendant No.5/Improvement Trust were not on record in terms of mode of payment. All the receipts on record were pre-dated to agreement to sell, but version of these pleadings were changed in the statement of witnesses. In the reply to the legal notice, the defendants specifically replied in para nos.3, 4 and 5 by submitting that the documents were forged. Factum of the property being highly priced property was very much taken and documents were pleaded to be forged. The payment of the plot was to be made in installments over the period of seven years from the year 1987 onwards. The installments of the plot were

paid by the deceased Satnam Singh himself before the year 1995. So, the recital of Ex.PW-3/X in terms of para nos.4, 5 and 6 were duly replied in para nos.3, 4 and 5 of the reply to legal notice. Final installment of the plot was paid in the year 1995 itself and the consideration was Rs.27,000/- after the period of 10 years. It was allegedly sold for a paltry amount of Rs.60,000/-.

[32]. Since the receipts were prior to the agreement to sell and the same were stolen, but the factum of name of depositor being Satnam Singh cannot be ignored and the last payment made in the year 1995 itself. So, it was totally imaginary to presume that a person, who had deposited consideration of Rs.27,000/- by way of installments, would sold the plot for a paltry amount of Rs.60,000/-, subsequently, as against the potential value of about Rs.20 lacs. In all the receipts, name of Satnam Singh was duly recorded as name of the depositor, who made payment to the Improvement Trust. Further the statement of Harwinder Singh PW-2 in para No.6 of affidavit, last lines were absent in the legal notice. Similarly, statement of PW-3 in terms of para no.3 last three lines should have been given due appreciation and under Section 3 of the Limitation Act, the Court should have dismissed the suit being time barred.

[33]. Learned Senior counsel further highlighted that as per

application of allotment, there was specific condition/ undertaking given by the allottee Satnam Singh that he shall not transfer the plot except to blood relations, if the same allotted to him. In the affidavit executed by him, he again endorsed the same undertaking in para No.4. Even if, these documents were marked documents, but the original were seen and photocopies were placed on record and the same can be seen. In the letter of allotment, in terms of clause (8), the allotment of the plot was liable to be cancelled, if any of the declaration made in the application/affidavit for the allotment of plot was established to be incorrect. The property was not conveyed in the name of Satnam Singh and the title remained with the Improvement Trust.

[34]. The statement of Harbhajan Singh PW-3 on being recalled for cross-examination would show that the plot in question was situated in Ranjit Avenue. These plots were allotted to paramilitary personnel as well as ex-military personnel. The plots were on fixed price. The witness admitted that his brother Kirpal Singh had already been allotted plot near the plot in question. Therefore, by referring to the aforesaid statement, learned Senior counsel contended that Kirpal Singh was already having knowledge of condition, therefore, he cannot be permitted to plead ignorance on the basis of alleged

marking of documents. Statement of DW-6 Sunil Kumar, Clerk, Amritsar Improvement Trust was to the effect that Satnam Singh never informed the Trust. In view of the contents i.e. *"asal copy adalat nu vikha diti hai"* of the statement of DW-6, the mark documents have significance and have to be given due acknowledgment. PW-1 in his statement also admitted that the plot was situated in a prime location and in the year 1997 the price of suit plot was Rs.16-20 lacs. Even in the statement of wife of Satnam Singh, the value of plot was Rs.15-20 lac in the year 1997.

[35]. Learned Senior counsel submitted that in terms of Section 162 of the Evidence Act as well as in terms of statement of Sunil Kumar DW-6, the Court saw the documents in original and photocopies were retained on record, therefore, there cannot be any legal impediment in reading the marked documents in evidence. Learned Senior counsel also argued that in terms of Section 23 of Indian Contract Act, when the documents were unlawful, fraudulent being contrary to terms and conditions of the allotment, the same cannot be seen. Relief of specific performance is a discretionary relief and cannot be claimed as an absolute right. Such a right is always subject to exceptions contained in Section 20 of the Specific Relief Act in case of hardship. Keeping in view the disability,

two daughters and a son, the time gap between the agreement to sell and date of filing of the suit, relief of specific performance should have been declined to the plaintiffs.

[36]. Learned Senior counsel relied upon ***State of Punjab and another vs. Balkaran Singh, (2006) 12 SCC 709*** and contended that limitation of three years starts when the right to sue first accrues. Once the time starts running with the accrual of right, then it would not stop. Under Article 58 of the Limitation Act, in declaratory suit, the cause of action was barred by limitation as the time does not stop to run once it has started to run. The suit for declaration is governed by Article 58 of the Limitation Act and the period is three years and the terminus a*u quo* is "when the right to sue first accrues".

[37]. Learned Senior counsel further relied upon ***Khatri Hotels Private Limited and Another vs. Union of India and another, (2011) 9 SCC 126*** and contended under Article 58 of the Schedule, challenge has to be made within a period of limitation of three years from the date of knowledge and limitation which was started running, it was not extended by the plaintiffs by obtaining certified copy or by giving notice to the defendants. If the suit is based on multiple causes of action, the period of limitation will begin to run from the date when right to sue first accrues. Successive violation of the right will not give

rise to fresh cause and the suit will be beyond limitation. A clear departure from the language of Article 120 of the 1908 Act of the Limitation Act has been made in Article 58 of the1963 Act. The word “first” has been designedly used between the words “sue” and “accrued”.

[38]. Learned Senior counsel contended that under Section 3 of the Limitation Act, the trial Court was obligated to see whether suit was within limitation or not, irrespective of the fact whether limitation was set up as a ground of defence or not? Section 3 is mandatory and casts an onerous duty upon the Court to dismiss the suit, if the same is instituted after the period of limitation, even if limitation has not been pleaded in defence. There cannot be any waiver of this legal plea, rather plea can be raised, even in Regular Second Appeal. There cannot be any abandonment of legal plea of the limitation. In support of his contention, learned Senior counsel relied upon ***Anup Singh & others vs. Smt. Bachni @ Bachan Kaur and another. 1997(1) ILR (P&H) 381***; ***Bandari Pushpamma vs. Bandari Krishna and others, (2004) 4 ICC 12 (AP)*** and ***Sanghamitra Jena vs. The Director of Higher Education, Orissa & others, (2002) 94 CLT 280 (Orissa)***.

[39]. At last, learned Senior counsel by referring to the claim based on Will, submitted that if the declaration is based on the

fact that the Will is forged and fabricated, then under Article 56 of the Limitation Act, period of limitation is three years and the same begins to run from the date when the issue become known to the plaintiff. The suit filed beyond the period of limitation i.e. three years from the date of knowledge of Will would be barred by limitation. Learned Senior counsel relied upon ***Mrs. Kumud Bhargava vs. Sri Sudhir Bhargava and others, (2015) 1 All LJ 480*** and ***Saranpal Kaur Anand vs. Parduman Singh Chandhok & Ors., 2016 SCC OnLine Del 2434***.

[40]. I have considered the submissions made by learned Senior counsel for the parties and have gone through the record of the case.

[41]. Substantial question Nos.(i) to (iii) of para 15 of the grounds of appeal, as pleaded are totally based on factum of contingent title to be conferred by the original allottee in favour of prospective buyer. As discussed above, in view of ***Kartar Singh and another's*** case (supra) the vendor even if, was not owner in possession of the suit property could enter into agreement to sell and the suit for specific performance could be decreed as the vendor on acquisition of title at a later stage can enforce the agreement of specific performance. Such a proposition of law is based on the dictum laid down by the

Hon'ble Supreme Court in ***B. Rajamani vs. Mrs. Azhar Sultana, 2005(2) CivCC 696 (A.P.)***.

Apparently, the aforesaid issue is not *res integra* between the parties. It is a settled principle of law that the vendor can enter into an agreement to sell with incomplete and defective title and would remain under obligation to execute the conveyance deed on acquiring perfect title in accordance with law. So question Nos(i) to (iii) as framed in para 15 of the grounds of appeal, are decided accordingly.

[42]. Question No.(iv) is also dependent upon the analogy of question Nos.(i) to (iii). The additional plea of limitation can be appreciated along with question Nos.(iv) to (vi). It is true that defendants, who alleged fraud has to plead and lead cogent evidence to substantiate the plea of fraud. The plea of fraud could have been taken by Satnam Singh only being a subjective issue. Plea of fraud could have taken by the defendants during lifetime of Satnam Singh. Particulars of fraud have to be pleaded and proved in the pleadings and evidence. Defendants could not plead and prove the particulars of fraud with reference to any evidence. The original documents were found to be in possession of the plaintiffs. Satnam Singh was himself an Advocate and was involved in the work of executions of sale deeds etc. at Tehsil complex. If Satnam Singh had not signed

the documents, then the onus was on the defendants to examine expert evidence to show that the documents did not carry signatures of Satnam Singh. Even plea of Satnam Singh being chronic and alcoholic could not be proved by the defendants by leading any cogent evidence. The findings on this pertinent issue ultimately have to be appreciated in favour of the plaintiffs.

[43]. Specific performance is discretionary relief and the Court is not bound to grant such relief merely because it is unlawful to do so, but the discretion has to be exercised on sound judicial principles which are capable of correction by the Court of law. The discretion of the Court is guided by the judicial principles. There are certain exceptions in which Court may appropriately exercise discretion not to grant relief of specific performance. Section 20 of the Specific Relief Act deals with certain exceptions where the Court can refuse to exercise discretion for specific performance. Hardship in terms of Section 20(2)(b) has to be pleaded and proved on record. Inadequacy of consideration in the agreement to sell is of no consequence. The findings to this extent can be appreciated in favour of the plaintiffs/appellants.

[44]. The basic issue which goes to the root of the case is the issue of limitation. All other issues would be totally

dependant upon this issue. The plaintiffs in the suit pleaded cause of action in para No.8, when they stated that the defendant Nos.1 to 4 were served with registered legal notice dated 02.03.2002, but the defendants did not show their willingness to get the sale deed executed in favour of the plaintiffs. Satnam Singh had also executed a Will dated 15.01.1997 registered on 30.01.1997 in respect of the suit plot. Satnam Singh died on 15.05.1998. In para No.15 of the plaint, the plaintiffs have pleaded the cause of action accrued to the plaintiffs on 15.01.1997, firstly when agreement to sell was executed. Secondly, on execution of registered irrevocable general power of attorney and Will dated 15.01.1997. Thirdly, on issuance of legal notice dated 02.03.2002 and fourthly about a week prior to filing of the suit, when the defendants flatly refused to accept the request of the plaintiffs. When no date for execution of sale deed was fixed, Article 54 of the Limitation Act, would come into play. The limitation for filing a suit of specific performance is three years from the date fixed for performance thereof. If no date is fixed, then the limitation would start when the plaintiffs have noticed that performance was refused. Factum of Will has been duly incorporated in the agreement to sell. Plaintiffs has also sought declaration on the basis of Will dated 15.01.1997/30.01.1997 with consequential relief of permanent injunction. This case can be appreciated in terms of Article 58 of the Limitation Act also.

[45]. While drafting the plaint, the plaintiffs have not pleaded anything with regard to their assertion while submitting affidavit in examination-in-chief. In para No.3 of the affidavit tendered in examination-in-chief, PW-3 Harbhajan Singh deposed the following manner in vernacular:-

> "*Vasiyat Ex.P3 hai. Vasiyat upar lagi photo Satnam Singh di hai, jo ki m pehchanda ha. Asi dono bhai ate Harwinder Singh, Satnam Singh di maut de baad usde ghar muddayellehi nu mile. Muddayellehi nu benami da kharcha den di koshishi kiti par muddayellehi ne benama krne se inkar kar diya. Asi har vehle benama krne layi taiyyar-bar-taiyyar rhe han, jis din to ekrarnama likha gya hai."*

[46]. Evidently, Satnam Singh died on 12.05.1998. The Will became operative on the death of Satnam Singh. The first cause of action as per the aforesaid statement of plaintiff No.2, accrued when after the death of Satnam Singh both the plaintiffs went to the house of Satnam Singh and tried to pay the expenses of sale deed to the defendants. Date of such visit was not pleaded by the plaintiffs in the affidavit, but the said date was certainly after the death of Satnam Singh. The aforesaid fact of visit of the plaintiffs to the house of Satnam Singh after

his death was also pleaded by PW-2 Harwinder Singh in para No.6 of his affidavit. The said statement was in consonance with para No.3 of the affidavit of Harbhajan Singh plaintiff No.2.

[47]. The cause of action so far as Article 54 of the Limitation act is concerned has to start from the refusal made by the defendants after the death of Satnam Singh. Under Article 58 of the Limitation Act, the declaratory suit based on Will has to be filed within a period three years of limitation from the date of death. The suit was filed on 16.04.2002. If period of limitation is computed from the date of death of Satnam Singh, the same comes out to be 12.05.2001. Issuance of legal notice dated 02.03.2002 was patently beyond the period of three years from 15.01.1997 and also from 12.05.1998. Even if, the suit is presumed to have been governed in terms of second part of Article 54 of the Limitation Act, the same cannot be stretched beyond period of three years from the date of death of Satnam Singh. Since composite reliefs have been sought in the suit, declaration based on Will was also one of the relief, therefore, limitation for filing the suit has to be seen under Article 58 of the Limitation Act.

[48]. From both the aforesaid aspects, the suit is found to have been instituted beyond the period of three years, i.e. in the event, when no date was fixed, then the plaintiffs had noticed

the refusal by the defendants after the death of Satnam Singh, who died on 12.05.1998. Limitation for seeking declaration on the basis of Will is three years in terms of Article 58 of the Limitation Act. The cumulative effect of both the Articles 54 and 58 of the Limitation Act, would be that the suit was not instituted within a period of three years of refusal by the defendants as well as within a period of three years from date of death of Satnam Singh. The ratio laid down in ***Mrs. Kumud Bhargava; Saranpal Kaur Anand*** and ***Khatri Hotels Private Limited and Another's*** cases (supra) are squarely applicable to the facts of the case.

[49]. Since the suit is found to be barred by limitation, the onerous duty was cast upon the trial Court to see whether the suit was barred by limitation or not in terms of Section 3 of the Limitation Act. This plea can be raised even in Regular Second Appeal. Therefore, cumulative effect of the aforesaid reasonings would answer the substantial questions of law Nos.(iv) to (vi) and the findings recorded by the lower Appellate Court cannot be faulted with, nor the same are vitiated on account of any misreading of oral or documentary evidence.

[50]. Since issue of limitation was core issue and all other issues and questions were depending upon the issue of limitation, therefore, other pleas even if, found to be in favour of

the plaintiffs/appellants would be of no consequence, once the suit is found to be barred by the limitation.

[51]. Consequently, I find no justifiable grounds to interfere in the judgment and decree passed by the lower Appellate Court and the appeal is accordingly dismissed.

January 11, 2017 **(RAJ MOHAN SINGH)**
Atik **JUDGE**

Whether speaking/reasoned Yes / No

Whether reportable Yes / No