

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.1986 of 2012 (O&M)

Date of Decision: .05.2017

Jit Kaur and others

...Appellants

Vs.

Naranjan Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present:- Ms. Supriya Garg, Advocate
for the appellants.

Ms. Rupinder Kaur Thind, Advocate,
for the respondent.

Amol Rattan Singh, J.

This is a second appeal instituted by the legal representatives of the defendant in a suit filed by the respondent-plaintiff, seeking possession of the suit land by way of specific performance of an agreement of sale dated 30.01.2000, stated to have been entered into between the plaintiff and the defendant, Bachan Singh. The present appellants are seen to be his widow, two sons and five daughters, as per the memo of parties before this Court.

The suit instituted on 01.08.2000 having been decreed in favour of the respondent-plaintiff by the learned Additional Civil Judge (Senior Division), Sultanpur Lodhi, on 05.02.2004 and the first appeal filed by the defendant against that judgment and decree having been dismissed by the learned Additional District Judge, Kapurthala, vide her judgment and decree dated 16.03.2012, the present second appeal has come to be filed.

2. The facts leading up to the filing of the suit by respondent-plaintiff Naranjan Singh are being taken from the judgments of the Courts

below.

As per the plaintiff, the defendant was owner of land measuring 24 kanals situated in village Dudwindi, Tehsil Sultanpur Lodhi, District Kapurthala, fully described in the head note of the plaint. The defendant had agreed to sell the suit land to the plaintiff for a consideration of Rs.2,75,000/- per acre and therefore, an agreement had been entered into on 30.01.2000, "in the presence of a scribe and attesting witnesses" and the defendant had received Rs.6,35,000/- as earnest money in their presence. Rs.2,00,000/- were stated to have been paid in cash and Rs.4,35,000/- were paid vide cheque no.110906 dated 31.01.2000, drawn on the Punjab National Bank, Dudwindi.

As per the agreement, the land was to be sold alongwith all incidental rights and a tubewell bore with an electricity connection of 2 HP, a security room, etc., constructed thereupon.

The date for execution of the sale deed was stated to have been fixed as 15.05.2000, with the balance sale consideration to be paid at the time of such execution and registration of the deed.

The possession of the land was also to be given at the time of the execution of the sale deed. It was further stated to have been stipulated in the agreement that if the defendant failed to execute the sale deed and get it registered, the plaintiff would have the right to have it executed and registered through a court or to recover the earnest money paid by him, alongwith an equal amount thereupon, with the total compensation thereby coming to Rs.12,70,000/-.

Conversely, if the plaintiff failed to honour his part of the agreement, the earnest money was to be forfeited to the defendant.

3. As per the plaintiff, on the date fixed for execution of the deed,

i.e. 15.05.2000, he remained present in the Tehsil premises with the balance sale consideration and expenses but despite waiting there from morning to evening, the defendant never turned up and consequently, the plaintiff got an affidavit attested at the Tehsil by way of proof of his presence there.

He thereafter got a notice issued on 16.05.2000 to the defendant, requiring him to get the sale deed executed and registered on 06.06.2000 but on that date also, though the plaintiff claimed that he remained present in the Tehsil office again, with the balance sale consideration and expenses, the defendant never turned up through out the day. Consequently, the plaintiff again got an affidavit attested as proof of his presence at the Tehsil office.

He also got another legal notice issued to the defendant on 09.06.2000, requiring him to execute the sale deed on 26.06.2000, but yet again, on that date also, the defendant did not turn up, with the plaintiff again getting an affidavit attested to show his presence at the Tehsil office.

Thus, contending that he had always remained ready and willing to perform his part of the agreement but the defendant having failed to do so, the suit was instituted on 01.08.2000.

In his suit, the plaintiff primarily sought a decree of possession of the suit property by way of specific performance of the agreement of sale in question but in the alternative, he prayed that a decree of recovery of Rs.8,25,000/- be issued in his favour and against the defendant, by way of return of the earnest money paid, plus Rs.1,90,000/- as compensation, with interest upon the entire amount running till the date of actual recovery of the amount.

In the alternate, he prayed for recovery of Rs.8,25,000/- stated to have been paid by him as earnest money to the defendant at the time of the

agreement of sale and further, he sought Rs.1,90,000/- as compensation, with interest on the entire sum, till the date of such recovery.

4. Upon notice having been issued, the defendant filed his written statement taking various preliminary objections on maintainability, locus and the plaintiff having put forth a fabricated and frivolous document, non-joinder of necessary parties etc.

It was also contended that the suit land was ancestral property in the hands of the defendant who was the Karta of a Joint Hindu Family and as such, he only had a right to manage the property and therefore, all coparceners were necessary parties to the suit.

Yet further, it was stated that the defendant was not a fully sane person and was under treatment from various doctors on account of fits suffered.

On merits, the same contentions were reiterated, further stating that there was no necessity for the defendant (even as the Karta of the Joint Hindu Family) to sell the property for the benefit of the estate.

Yet further, it was contended that the plaintiff had joined hands with bank officials to create false and wrong entries showing encashment of a cheque by the defendant, as he never went to the bank to get any such cheque encashed. Thus, as per the defendant, a fraud had been played upon him.

Further, it was stated that in any case the land comprised in khasra no.191 had already been agreed to be sold to one Sarwan Singh on 13.08.1998, land comprised in khasra no.1950 had been agreed to be sold to Mohinder Singh vide agreements dated 18.06.1998 and 15.06.1999, with yet another agreement executed with one Phuman Singh on 10.09.1999, qua khasra no.1955. Hence, it was contended that the alleged agreement

propounded by the plaintiff could not be specifically enforced and that the aforesaid prospective vendees were also necessary parties to the *lis*.

Lastly, it was reiterated that with no such agreement of sale having been entered into by the defendant in any case, there was no question of complying with any terms and conditions of a forged document.

5. The plaintiff having filed a replication to the aforesaid written statement, reiterating the averments of the plaint and denying those of the written statement, the following issues were framed by the learned Additional Civil Judge:-

- “1) Whether the defendant had entered into agreement to sell dated 30.01.2000 in favour of plaintiff and received Rs.6,35,000/- as earnest money on that day? OPP
2. Whether the plaintiff has been ready and willing to perform his part of the agreement in question? OPP
3. Whether the suit is not maintainable in the present form? OPD
4. Whether the plaintiff has no cause of action to file the present suit? OPD
5. Whether the suit is bad for mis-joinder and non-joinder of necessary parties? OPD
6. Whether defendant Bachan Singh was not competent to execute the agreement to sell in question? OPD
7. Relief.”

6. The plaintiff examined four witnesses and led ten documents by way of evidence, including the agreement in question, the affidavits executed by him in the Tehsildars' office, a power of attorney, copies of the notices issued to the defendant, a postal receipt and a *jamabandi* (record of rights) for the year 1996-97.

The defendant examined five witnesses including himself and produced about fourteen documents by way of his evidence. The documents included a writing on the back of a stamp paper, a photocopy of an entry dated 21.01.2000 on the register of the stamp vendor, the cheque stated to have been encashed by him in his bank, a prescription slip, a mutation entry and a *jamabandi* for the year 1957-58. Five withdrawal forms and a copy of his bank account were also included in the documentary evidence aforesaid.

7. The learned Additional Civil Judge having appraised the evidence and the pleadings before him, as also the arguments raised, eventually decreed the suit of the plaintiff as already stated, on various grounds, given hereinafter.

8. As per the documentary evidence, the agreement of sale having been duly exhibited as Ex.P1, that Court first went on to examine the contention of the defendant that his thumb impressions were obtained when he was not in a fit state of mind, i.e. he was suffering from temporary insanity on 30.01.2000. The Court found that the thumb impressions and signatures of the defendant were otherwise not denied, to the effect that they had been obtained by the son of the plaintiff, (a person by the name of Laddi), but according to the defendant, they were obtained on blank stamp papers and a blank cheque.

As regards the cheque for an amount of Rs.4,35,000/-, which was led by way of evidence as Ex.D2 by the defendant, it was found by the Civil Judge that a sum of Rs.4,35,000/- had been drawn by the defendant Bachan Singh, through the cheque, which also bore his thumb impressions, though Bachan Singh disputed actually having received any payment through the cheque.

9. To determine the truth or falsehood of his statement, that Court

first looked at his stand in the written statement, wherein it was found that in paragraph 5 of the preliminary objections and paragraph 2 on merits, it had been stated that the plaintiff had obtained the thumb impressions of the defendant. On the other hand, in the evidence led, the aim of the defendant was to prove that the son of the plaintiff (aforesaid Laddi), was instrumental in playing a fraud upon him, which was found to be wholly contrary to the stand taken in the written statement. Further, it was held by the Civil Judge that no time and place of where the thumb impressions had been obtained by the plaintiff on the blank papers and cheque had been given in the written statement, though in his testimony, he stated that the incident had taken place at Adda Dudwindi. It was further held that as per the defendants' own testimony, the said place was a very busy place, with a market and a bus-stand, adjoining a grain market; hence, it was held that the thumb impressions having been obtained on blank papers and a blank cheque at such a place would be very doubtful.

10. The next contention of the defendant, to the effect that he was suffering from fits and on account of that used to “fall into temporary insanity during that time”, and that the agreement had been executed at such a time, was then examined by the Additional Civil Judge.

It was found that though names of doctors had been mentioned by the defendant in his written statement, however, no documentary proof pertaining to such fits having been suffered by him was ever produced, despite a direction by the Court to do so subsequently. Thereupon, a prescription slip, taken on record as Mark-DX, was produced, but as per that Court, even that did not show that the defendant was suffering from any fits or was under any temporary insanity.

A slip issued by the Civil Hospital, Jalandhar, dated 27.03.2003 was issued by a doctor not named in the written statement.

Yet further, it was found that on the defendants' own admission, he had been entering into agreements of sale with different persons and had executed three different agreements on 18.06.1998 and 15.06.1999, 13.08.1998 and 10.09.1999.

Also, he never made any application or request to the Court to get him medically examined to prove that he was suffering from fits or temporary insanity.

Consequently, referring to Section 114 of the Indian Evidence Act, it was held that the aforesaid facts proved that the defendant was not suffering from any temporary insanity.

11. Having recorded so, the learned Additional Civil Judge went on to discuss in detail the oral evidence led by the defendant, first noticing that while testifying as DW2, he deviated from the stand taken by him in his written statement, to the extent that whereas in the said reply it was stated that the plaintiff had obtained his thumb impressions when he was suffering from temporary insanity, in his testimony, firstly he fixed the place where the thumb impressions were obtained (as already noticed), and thereafter stated that while he was going to take medicines at Jalandhar about two years earlier, i.e. in May 2001, the thumb impressions had been obtained. (The inference of thumb impressions having been taken in May 2001 seems to be drawn from the fact that in his testimony, Bachan Singh first stated that he was going to Jalandhar for getting his medicines about two years ago, with that statement having been made on 21.05.2003). Thus, the agreement, Ex.P1, being of January 2000, an adverse inference was drawn from that part of the testimony.

It was further found that the defendant testified that he was in fact, called by Laddi, son of the plaintiff, by “deceit and not under fit or temporary insanity”, and that he came to know of such deceit about three years later when he received summons in the civil suit. The learned Court further inferred that the testimony was wholly false because if three years were to be added to the time period of two years earlier, such three years were still to be reached in the year 2006. (The year 2006 has been erroneously written in the judgment, because if three years were to be added to a back dated period of two years, i.e. since May 2001, the year arrived at would be 2004 and not 2006).

Further in his cross-examination, the defendant had stated that he had been getting treatment from the Gulab Hospital, Jalandhar, but no such documentary evidence had been produced to that effect. Also, as per his deposition, including cross-examination and “conversation” in Court, it was found that he did not appear to be suffering from any kind of insanity.

12. Further, it was found that though there was nothing stated in the written statement to the effect that DW3, Phuman Singh, was present at the bus-stand at Dudwindi, when the son of the plaintiff had allegedly taken the defendant to his shop at a time when he was in a fit of temporary insanity, or that any conversation had taken place between the defendant and this witness before the plaintiffs' son took him away, the testimony of this witness was to that effect.

In cross-examination, this witness had also admitted that he was in litigation with the firm of the plaintiffs' son and further, that in the litigation between this witness and his own brother, the plaintiffs' son Harjinder Singh had supported his brother.

That litigation had started on 25.01.1999 and therefore, inference was also drawn by the Additional Civil Judge that this witness was appearing in favour of the defendant and against the plaintiff due to the aforesaid reasons. Further, it was held that had he seen the plaintiffs' son (Laddi) actually obtaining the thumb impressions of the defendant on blank papers, he could have either persuaded him not to do so, or could have told his family to take action against Laddi, even if it was to settle a score with the said Laddi. In fact, it was found that this witness did testify that he had informed the defendants' son on that very date, i.e. 30.01.2000. However, it was found to be wholly unbelievable by the Court that even thereafter neither the defendant nor his son took any action against the plaintiff or his son for having obtained the thumb impressions of the defendant on blank papers.

13. Similarly, it was found that even DW4 Gurdev Singh (son of the defendant), was under debt to the plaintiffs' son Harjinder Singh since 1998, and that he had also borrowed Rs.50,000/- from one Sarwan Singh and Rs.1,00,000/- from DW3, Phuman Singh. It was found that this witness had admitted that he was selling his crops to the plaintiffs' son, due to which he had to pay him a sum of Rs.2,20,000/-, plus interest @ 4% thereupon, and that he had not paid that amount. However, that was not the stand taken by the defendant in his written statement.

It was also found that the defendants' son in his testimony had admitted that though a report was filed against the plaintiff with the Senior Superintendent of Police on 02.08.2000 and an FIR was also registered on 16.08.2000, however, eventually the complaint was found to be false. The suit in this *lis* having been instituted on 01.08.2000, the Additional Civil Judge also drew an inference that the report to the police on 02.01.2000 was “an

after thought”.

Lastly, as regards this witness, it was held by that Court that in his examination-in-chief he had stated that his father was a simpleton and could not travel to the city alone, which falsified the story that defendant Bachan Singh was travelling alone to Jalandhar to get his medicine on the date that the plaintiffs' son, Harjinder Singh @ Laddi, allegedly took him to his shop to obtain his signatures on blank papers.

14. As regards the last witness examined on behalf of the defendant, i.e. DW5 Baldev Singh, the Civil Judge found that this witness was “over anxious” to go even further ahead to defend the defendant, than the defendant himself, inasmuch as, he testified that two Panchayats were convened relating to the dispute, which were attended by him, though no such stand had been taken by either the defendant or his son. This witness was found to be working as a Director, Physical Education, in a Government School at Dudwindi, and that despite the fact that he also testified to the effect that he was present on 30.01.2000 at the Bus-Stand at Dudwindi, he did not say even a word about the presence of DW3 Phuman Singh at that place, despite Phuman Singh having testified that he himself was there. Further, it was also found strange by that Court that a person working on a responsible position, would not in the normal course, have either objected to Harjinder Singh @ Laddi taking the signatures of the defendant on blank papers, or not have reported the matter to the police.

15. Thus rejecting the testimonies of the witnesses for the defendant, the Additional Civil Judge then went on to examine the documentary evidence led on both sides.

It was found from the date on which the stamp papers (on which

the agreement was executed), as also from the date on which a copy of the *jamabandi* (record of rights) was obtained by the defendant, that the defendant had been in need of money and therefore, had been trying to obtain it from different persons.

Noticing the statement of DW1, Gorakh Singh, the stamp vendor from whom the said stamp papers were stated to have been purchased, that against the name of the person who purchased the stamp papers, the defendants' signatures were shown to be in the English language, that fact was not held to be significant enough to discard the case of the plaintiff, holding that the conduct of the defendant himself showed that he was a manipulator and therefore the agreement being genuine, could not be doubted.

The contention of Rs.4,35,000/- not having been received by the defendant, vide the cheque, Ex.D2, it was held that the said statement was negated by documentary evidence to the effect that the amount had been drawn by the defendant.

Further going on to hold that the testimonies of PWs1, 2 and 3 also supported the case of the plaintiff, that the defendant had agreed to alienate the suit property to the plaintiff for a sum of Rs.8,25,000/- vide the agreement in question, after receiving a sum of Rs.4,35,000/- by cheque and Rs.2,00,000/- in cash, the primary issues no.1 and 2 were decided in favour of the plaintiff. Issues no.3, 4 and 5, on the maintainability of the suit, lack of cause of action and the suit being bad for mis-joinder and non-joinder of parties, have been shown in the judgment to be not pressed, and were therefore also decided in favour of the plaintiff.

16. As regards issue no.6, on whether the defendant was competent to alienate the suit property or not, the stand of the defendant in that regard

was also rejected, by holding that, firstly, the defendant himself had taken a stand that he had agreed to alienate the property to three persons, i.e. Phuman Singh, Mohinder Singh and Sarwan Singh and further, his son had testified to the effect that the property came to his father by way of a will.

Hence, it was held that it had to be treated as self-acquired property, and even if it was to be considered to be ancestral property for any reason, the fact that even the son of the defendant had testified that he had to pay a sum of Rs.2,20,000/- to the son of the plaintiff, i.e. Mohinder Singh, plus interest thereupon which remained unpaid, and he had also admitted to having raised loans of Rs.1,25,000/-, Rs.50,000/- and Rs.1,00,000/- from Mohinder Singh, Sarwan Singh and Phuman Singh respectively, showed that there was also legal necessity for the plaintiff to sell his land and therefore, that issue too was decided in favour of the plaintiff.

17. Consequently, the suit of the plaintiff was decreed by the Additional Civil Judge in the plaintiffs' favour, directing the defendant to get sale deed executed and registered in terms of the agreement, Ex.P1, after receiving the balance consideration, within a period of two months from the date of judgment and decree, after which the plaintiff would be at liberty to get it executed by due process of law.

18. The defendant having filed a first appeal which came up before the learned Additional District Judge, Kapurthala, that Court after noticing the pleadings, the issues framed and considering the judgment of the learned Additional Civil Judge, also eventually came to the same conclusion for essentially the same reasons as those arrived at by the trial Court. However, the reasoning given by the first appellate Court, in terms of the arguments raised before it, is still being enumerated hereinafter.

19. First of all, it was noticed by that Court that of the two witnesses other than the defendant and his son, DW3 Phuman Singh was already litigating with the firm of the son of the plaintiff who was running a commission agency. Hence, this witness was held to be an interested witness against the plaintiff, and also because he was a person in whose favour an agreement of sale was stated to have been executed earlier by the defendant, as per his written statement. It was further noticed that this witness had admitted in his cross-examination that he did not accompany the defendant to the shop of the son of the plaintiff where his thumb impressions were taken.

The rest of the reasoning given qua this witness is seen to be the same as that given by the trial Court.

20. As regards DW5 Baldev Singh, it was found by the lower appellate Court that though he had stated that the thumb impressions of the defendant were taken on blank papers and on one cheque in his presence, with the thumb impressions on the cheque being on the front as well as its rear side, however, the cheque itself, Ex.D2, showed that there were no thumb impressions on the front side of it.

Further, though this witness had stated that the thumb impressions on the blank papers were taken in front of him, however, he could not point out the place of affixing of such impressions on the papers and further he admitted that he had never informed anyone with regard to such impressions having been taken from the defendant, despite being a teacher.

Yet further, the lower appellate Court also held, as had the Civil Judge, that it was not stated in the written statement that either of these two witnesses had seen the respondents' son taking the thumb impressions of the appellant on blank papers, nor that any Panchayat was convened with regard

to the issue.

21. As regards the defence of temporary insanity, the first appellate Court also held that in the absence of any medical evidence to that effect, the testimony of the witnesses alone could not be held to be sufficient proof of any such insanity.

22. Before the lower appellate Court an argument is also seen to have been raised that since the son of the defendant was running a shop as a commission agent, which though was not denied by the plaintiffs' witnesses, however, there was no plea taken by the defendant in his written statement with regard to there being any relationship of a farmer and commission agent between the two parties. Hence, it was held that no evidence led on that contention could be taken into account, more so, because the defendant had admitted in his cross-examination, that he used to sell his crops through the commission agency of Balwinder Singh "Pump Wala". This fact was also found to have been admitted by DWs2 and 4. Hence, it was held that no such relationship was existent.

23. The next argument raised before the first appellate Court is seen to be that the agreement was not scribed by a regular deed-writer and that all the thumb impressions were with a black ink-pad, and that the blank papers had later been converted into an agreement of sale, with irregular spacing in the deed.

That argument was rejected on the ground that when the defendant appeared in the witness box he had admitted in his cross-examination with regard to the cheque, and that his son had gone to take money from the bank on his behalf and further, that they had deposited the money themselves. Further stating that the reverse side of the cheque, Ex.D2,

showed the thumb impressions of the appellant-defendant, it was held that that would be so if the defendant and his son had gone to collect the money themselves from the bank.

Yet further, the defendant had agreed in his cross-examination that he had not signed any withdrawal form in the bank, whereas DW5, who alleged that he was an eye witness to the forgery, specifically stated that the defendants' thumb impressions had been taken on the cheque.

The fact that the cheque had been produced by the defendant himself, was also held to be going against the defendant, as, if he had never been given the cheque by the respondent, it would not have come into his possession. Still further, it was held by the lower appellate Court that the cheque was seen to have been also signed by the son of the respondent-plaintiff.

It was further held that simply because it had not been actually encashed, that was not the fault of the plaintiff, and even if they had not got it encashed due to illiteracy, they could get the amount recovered from the respondent, but it could not be said that no money had been given to them at the time of the execution of the agreement of sale dated 30.01.2000.

24. Thereafter, the lower appellate Court held that though a perusal of the agreement itself showed that there was some irregular spacing in typing on page 2 of the document, as the last five lines had lesser space than the remaining agreement, however, the same situation existed even on the first page, as the heading giving the name of the parties had more space than the other typing. Consequently, it was held that because there was irregular spacing even on the page where the typing had started, it showed that it was so because the person who had typed it actually did not know how to type an

agreement.

It was further held that a perusal of the thumb impressions on the second page of the agreement, showed that the thumb impressions were made on the writing in the document, because if they had been taken prior to the writing (typing) thereof, then no thumb impressions would have appeared on the typed words. This finding was further clarified by that Court to hold that if the thumb impressions were already in existence on the blank papers, then the typed words would have appeared on the thumb impressions and not under them.

Hence, it was held that even the irregular spacing did not make the agreement invalid, the thumb impressions appearing over the typed words (and not beneath them).

25. The next argument raised before the lower appellate Court was that the thumb impressions over the endorsement made by the stamp vendor, and on the agreement itself, were with the same ink-pad; however that argument was also rejected on the ground that no expert had been examined by the appellant to prove such contention.

A finding was also recorded by that Court that it was admitted that the stamp papers were not purchased by the plaintiff, nor was the plaintiff with the defendant at the time of purchase. Thus, it was held that the stamp papers having been purchased by the defendant himself, simply because the signatures on the register of the stamp vendor were in English, did not mean that the plaintiffs' case became doubtful, because stamp papers can be purchased by any person on behalf of the vendor (of the property).

26. It was next held by the lower appellate, like it was by the Additional Civil Judge, that the defendant was a manipulator who had cooked

up different stories, first stating that he was suffering from temporary insanity, but with no medical record produce to that effect. The prescription, Mark-DX, and another slip dated 28.03.2003 were also disbelieved, holding that the slip was not issued by any doctor.

Again referring to the contention in the written statement that the defendant had been treated in Gulab Devi Hospital, with no record produced therefrom, and it having been stated that the thumb impressions had been taken on blank papers whereas thumb impressions appeared on the written material, these were all held to be unacceptable stands taken by the defendant, further holding that his whole cross-examination was very shaky, with him stating one thing in one line and something else in the other.

27. On the suit property being an ancestral coparcenary property, though the finding of the Additional Civil Judge that the testimony of the defendants' son with regard to the property having been willed to his father was not referred to by the first appellate Court, however, the finding on the financial capacity of the defendant and his son was commented upon in the same manner as the lower court, holding that it was obvious that they needed money and therefore had agreed to sell the property.

28. On the aforesaid findings, the first appeal of the defendant was dismissed.

29. Before this Court, learned counsel for the appellants (LRs of defendant), has framed the following questions of law:-

- “i) Whether the impugned judgment and decree can be sustained in the eyes of law?
- ii) Whether the alleged agreement to sell dated 30.1.2000 was an act of fraud keeping in view the fact that against the plaintiff/respondent, the criminal court has already taken the

cognizance of cognizable offence committed by the plaintiff and has summoned the accused in which charge has been framed and facing the trial and suit filed by the respondent for damages has been dismissed while taking into consideration the factum of fraud?

- iii) Whether the plaintiff/respondent has proved the due execution of the alleged agreement?
- iv) Whether the courts below have totally misread the evidence available on record.”

However, as would be seen from the arguments addressed before this Court, the three actual questions of law that arise in this appeal, are:-

Firstly, whether, without the plaintiff himself testifying in support of the facts contained in his plaint, the testimony of his special attorney, i.e. PW3 Malkiat Singh, can be accepted as the testimony of the plaintiff himself, the attorney otherwise standing in his shoes?

Secondly, if the testimony of PW3 is not to be accepted as the testimony of the plaintiff himself, then is the agreement Ex.P1, still a valid agreement in the eyes of law?

Thirdly, whether the agreement of sale propounded by the respondent-plaintiff, Ex.P1, can be accepted even at face value, with a competent Court having taken cognizance of a criminal complaint instituted by the appellant-defendant against the respondent-plaintiff?

30. Addressing arguments before this Court, Ms. Supriya Garg, learned counsel for the appellants, first submitted that the plaintiff himself never stepped into the witness box to testify and instead appointed a special attorney to pursue the civil suit on his behalf, vide an instrument of power of attorney executed on 24.02.2003, Ex.P5 before the Court of the learned

Additional Civil Judge. It was in fact the attorney, Malkiat Singh, who testified in place of the plaintiff as PW3.

She, therefore, submitted that the suit itself was barred in terms of Section 16 of the Specific Relief Act, 1963, read with Explanation (ii) thereof. On the aforesaid issue, Ms. Supriya Garg relied upon judgments of the Supreme Court in Man Kaur (dead) by LRs v. Hartar Singh Sangha (2010) 10 SCC 512 and Janki Vashdeo Bhojwani and another v. Indusind Bank Ltd. And others (2005) 2 SCC 217.

31. Ms. Garg next referred to the testimony of the attorney, PW3, from the record of the learned trial Court, to point out that this witness stated that the plaintiff had told him of the agreement two years earlier. Hence, he obviously had no personal knowledge of the entire case of the plaintiff, or even with regard to the agreement itself.

Learned counsel next reiterated what was contended before the Courts below, to the effect that the agreement was a fraudulent transaction. To substantiate her contention, she first referred to paragraph 15 of the judgment of the lower appellate Court to point to the fact that at the time of purchase of the stamp papers, the defendant was shown to have signed in English though he was illiterate. She pointed to the testimony of the stamp vendor himself, DW1, Gorakh Singh, stating that the “entry on the register, pertaining to the purchase of the stamp paper, is signed by purchaser Bachan Singh in english. I do not know personally said purchaser Bachan Singh.”

32. Ms. Garg then submitted that both witnesses to the agreement, i.e. PW1 Bahadur Singh and PW2 (double numbered) Sucha Singh, had admitted in their cross-examination that the plaintiff was their uncle. Hence, she submitted that they were very much interested witnesses.

Learned counsel next reiterated the argument before the lower appellate Court, to the effect that the thumb impression on the first page of the agreement, Ex.P1, is appearing on the typed part of the document, which would be wholly unnatural if the document was actually typed when the thumb impression was taken.

Learned counsel next submitted that no issue had been framed on whether the late defendant had become temporarily insane and whether a fraud had been played upon him or not.

Ms. Garg, learned counsel for the appellants submits that though this argument was raised in the grounds of appeal before the first appellate Court, it has not been dealt with by that Court.

Lastly, Ms. Garg submitted that though in the criminal proceedings initiated by the defendant, the respondent-plaintiff had been acquitted, an appeal was pending before this Court against such acquittal.

33. In response to the aforesaid arguments, Ms. Rupinder Kaur Thind, learned counsel appearing for the respondent-plaintiff, first pointed to the written statement of the defendant, from the record of the courts below, to submit that while initially denying the agreement itself, subsequently in paragraph 2 of the written statement itself, the defendant admitted that his thumb impressions were obtained by taking undue advantage of his temporary insanity, which according to learned counsel was wholly a contradictory plea and was further negated by no such temporary insanity proved.

Ms. Thind next reiterated what was held by the Courts below, to the effect that it could not be said, as contended in the written statement, that there was no legal necessity for the defendant to sell the land, because even earlier he had executed three agreements as per his own admission and

therefore, it was wholly a contradictory plea.

34. On the special attorney of the plaintiff testifying in his place, learned counsel submitted that in *Man Kaurs'* case (supra), there were 3 to 4 instruments by which powers of attorney had been executed by the plaintiff in that case, at different times. In this context, she pointed to paragraph 23 of the judgment (SCC citation), to submit that it had been held that the basic principle contained in Section 16(c) of the Act of 1963, read with Explanation (ii) thereof, was that any person seeking benefit of specific performance of a contract must manifest that his conduct has been blemishless throughout.

She submitted that the plaintiff had duly proved before the Courts below that he had come present on three dates before the Sub-Registrar to get the sale deed registered and therefore had duly proved his willingness to execute the contract.

No question had been put in cross-examination to the plaintiff doubting his willingness and readiness to execute the contract. She further submitted that in any case, when the agreement itself was being denied, the defendant could not raise the plea of the plaintiff not being willing to execute the contract.

On this issue, learned counsel for the appellants-defendant cited a judgment of the Supreme Court in **Santosh and another v. Namdeo and others** AIR 2016 (4) Bom. R 321 and a judgment of a single Bench of the Bombay High Court in **Pandurang Jivaji Apte v. Ramchandra Gangadhar Ashtekar (dead) by LRs and others** AIR 1981 SC 2235.

35. Learned counsel next submitted that as regards no issue on the question of insanity having been framed, since the entire oral evidence of the

defendant was in respect of him being temporary insane, non-framing of that issue specifically, would not make a difference.

In this regard, she cited a judgment of the Supreme Court in **P. Purushottam Reddy and another v. Pratap Steels Ltd.** AIR 2002 SC 771.

To similar effect, she cited a judgment of this Court in **Inderjit Singh v. Hardev Singh** 2016(1) PLJ 314.

36. On the issue of the criminal proceedings initiated against the plaintiff, she submitted that first, the FIR that had been registered had been cancelled and thereafter, upon a criminal complaint having been filed in the competent Court, the plaintiff had been acquitted and therefore, with no stay on that judgment by this Court, simply the filing of an appeal by the defendant would make no difference whatsoever.

37. Next, Ms. Thind submitted that when both the Courts below had come to a specific finding that the defendant was a manipulator, then even his signatures being in English, on the register of the stamp vendor, would be inconsequential.

She submitted that in any case, on an agreement of sale even the signatures of the vendor alone are sufficient, with no need of an attesting witness being present, especially when the thumb impressions in this case were eventually admitted by the defendant.

On this contention, learned counsel cited a judgment of a co-ordinate Bench of this Court in **Mulakh Raj v. Kishan Kaur** 2014 (4) CCC 372.

38. Lastly, learned counsel for the respondent-plaintiff pointed to the testimony of DW2, i.e. the defendant himself, wherein he admitted that when he was going to take medicines from Jalandhar two years earlier, he was

called by the son of the plaintiff “by deceit”, and that then he took him to his shop and got his thumb impressions on some papers, when the defendant was “under a fit”.

Ms. Thind submitted that neither the factum of the defendant having suffered from fits was proved, nor any temporary insanity for any other reason having been proved, the fact that the defendant had even thumb marked the paper would be an admission on his part, with the contradictory stands that he took, firstly stating that the plaintiff had obtained his thumb marks and signatures, but thereafter testifying that it was the plaintiffs' son who had done so.

39. In rebuttal to the aforesaid arguments, Ms. Supriya Garg, learned counsel for the appellants-defendant, submitted that even *de hors* the bar under Section 16(c) of the Specific Relief Act, firstly, the agreement itself was not proved to be genuine, with all the 'discrepancies' present; i.e. of the stamp papers having been thumb marked by the defendant on blank papers, the thumb mark appearing on the second page on the typed part itself, and on the last page, it appearing well below where the recital ended.

Next, she submitted that more than half the consideration would not have been paid by the plaintiff to the defendant, without possession of the suit property having been taken.

Thirdly, Ms. Garg submitted that only one witness for the plaintiff was not shown to be an interested witness, i.e. the Oath Commissioner, with the other witnesses all being relatives of the plaintiff. She pointed to the testimonies of PWs2 and 3 and DWs1 and 2 also in this context.

Learned counsel for the appellants-defendant last submitted that other than the plaintiff himself not having testified in Court, even the scribe to

the agreement was never examined.

40. Both learned counsel had also addressed arguments on the issue of the readiness and willingness of the plaintiff to execute the contract, with learned counsel for the appellant obviously denying such readiness and counsel for the respondent affirming such readiness. However, those arguments specifically would need to be gone into only if the agreement is held to be validly proved and in fact, even while considering the first question of law, as to whether the testimony of the plaintiffs' special attorney, PW3 Malkiat Singh, can be accepted at all, that would also be in relation to the readiness and willingness of the plaintiff to perform his part of the contract.

41. Having considered the aforesaid arguments, the first question of law that is required to be gone into by this Court, is as to whether the suit of the respondent-plaintiff could have been decreed in his favour, despite the fact that he never stood to testify as his own witness and chose to appoint a special attorney by an instrument, Ex.P5, who thereafter testified on his behalf as PW3.

Learned counsel for the appellants-defendant has first referred to Section 16(c) of the Specific Relief Act, 1963, read with Explanation (ii) of the said provision, to submit that the relief of specific performance of a contract cannot be granted to a person who fails to even prove that he has performed or has been ready and willing to perform his part of the contract.

Hence, before going on to consideration of the argument raised, Section 16 is being reproduced hereinbelow:-

“16. Personal bars to relief.—Specific performance of a contract cannot be enforced in favour of a person—

- (a) who would not be entitled to recover compensation for its breach;
or
- (b) who has become incapable of performing, or violates any essential

term of, the contract that on his part remains to be performed, or acts in fraud of the contract, or wilfully acts at variance with, or in subversion of, the relation intended to be established by the contract; or

- (c) who fails to aver and prove that he has performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him, other than terms the performance of which has been prevented or waived by the defendant.

Explanation.—For the purposes of clause (c),—

- (i) where a contract involves the payment of money, it is not essential for the plaintiff to actually tender to the defendant or to deposit in court any money except when so directed by the court;
- (ii) the plaintiff must aver performance of, or readiness and willingness to perform, the contract according to its true construction.”

42. A perusal of the aforesaid provision, specifically clause (c) and Explanation (ii) thereto would obviously suggest that the plaintiff must aver and prove his readiness and willingness to perform his part of the contract, as was required to be performed.

The issue is whether it must be the plaintiff in person, or even some other person standing in his shoes as his attorney, who can make such averment, which would then suffice to hold that the plaintiff has actually made such averment with regard to his readiness and willingness to perform his part of the agreement.

In the context of her aforesaid contention, Ms. Garg first relied upon *Man Kaurs'* case (supra), wherein their Lordships first observed as follows:-

“11. The contentions of the appellant in brief are:

- (i) The plaintiff did not sign the agreement of sale nor signed the plaint, nor gave evidence. His attorney-holder

(Paramjit Singh) who entered into the agreement of sale on behalf of the plaintiff and who represented the plaintiff initially, was not examined. The second attorney-holder (Jagtar Singh Sangha) examined as PW1 was not personally aware of the transaction and admitted that he was not aware of what transpired prior to the execution of the power of attorney in his favour on 1-3-1980. There was therefore no acceptable or valid evidence about the readiness and willingness of the plaintiff to perform the contract. The courts below ought to have dismissed the suit by drawing a presumption that the plaintiff's case was false and for non-compliance with Section 16(c) of the Specific Relief Act, 1963 as the plaintiff did not enter the witness box.”

In the present case, it was not his attorney who stood in the plaintiffs' shoes to execute the agreement propounded by the plaintiff. Admittedly the case of the plaintiff was that he himself had entered into the agreement with the defendant. Of course the defendants' case in his written statement was that the plaintiff had taken undue advantage of his temporary insanity and had obtained his thumb impressions, as already discussed. Subsequently, as per the judgments of the Courts below, his testimony was to the effect that it was the plaintiffs' son who had obtained his thumb impressions on blank papers, taking advantage of his temporary insanity on account of a “fit” suffered at that time.

However, though the defendants' stand may have been a shifting stand, as regards the plaintiffs' own positive averments in his plaint, as to when and with whom he entered into an agreement, and the subsequent events of payment of earnest money/consideration, his having gone to the Sub-Registrars' office time and again etc., the plaintiff himself, or the person who entered into the agreement on his behalf as his attorney, would be required to

testify to that effect, in terms of the personal knowledge of such events. In other words, for the purpose of consideration of the issue of whether the plaintiffs' attorneys' testimony was sufficient to discharge the onus on the plaintiff, as contained in Section 16(c) of the Act of 1963, the defendants' stand would not be necessary to be seen, unless it is held that such shifting stands amounted to an admission of the plaintiffs' averments as contained in the plaint.

Before going into that aspect, it is first to be seen that the plaintiffs' own case was that it was he who entered into an agreement with the defendant, (not his attorney). Therefore, the onus was on him to support his averment to that effect, by testifying before the Court. In the present case, even his special attorney who testified in his place, did not depose that he was accompanying the plaintiff at the time of the agreement and when the plaintiff paid the earnest money/part consideration. Nor did he depose that he went to the Sub-Registrars' office with the plaintiff. Hence, the person who had personal knowledge of such events (the plaintiff), did not testify to that effect, and the person who testified in Court (his attorney), did not have personal knowledge of any such events.

43. In that context, it was further held in *Man Kaurs'* case as follows:-

“Thus, in a suit for specific performance, the plaintiff should not only plead and prove the terms of the agreement, but should also plead and prove his readiness and willingness to perform his obligations under the contract in terms of the contract. (See N.P Thirugnanam v. Dr. R. Jagan Mohan Rao; Pushparani S. Sundaram v. Pauline Manomani James and Manjunath Anadappa v. Tammanasa.).” (Reference paragraph 12, SCC citation)

(Emphasis added by this Court)

Thereafter, their Lordships, after discussing the earlier case law on the issue, laid down the following principles governing as to who would be competent to testify in terms of the averments made in the plaint, in order to prove such averments:-

"If a plaintiff has to prove that he was always ready and willing to perform his part of the contract, that is, to perform his obligations in terms of the contract, necessarily he should step into the witness box and give evidence that he has all along been ready and willing to perform his part of the contract and subject himself to cross-examination on that issue. A plaintiff cannot obviously examine in his place, his attorney-holder who did not have personal knowledge either of the transaction or of his readiness and willingness. Readiness and willingness refer to the state of mind and conduct of the purchaser, as also his capacity and preparedness on the other. One without the other is not sufficient. Therefore a third party who has no personal knowledge cannot give evidence about such readiness and willingness, even if he is an attorney-holder of the person concerned.

18. We may now summarise for convenience, the position as to who should give evidence in regard to matters involving personal knowledge:

(a) An attorney-holder who has signed the plaint and instituted the suit, but has no personal knowledge of the transaction can only give formal evidence about the validity of the power of attorney and the filing of the suit.

(b) If the attorney-holder has done any act or handled any transactions, in pursuance of the power of attorney granted by the principal, he may be examined as a witness to prove those acts or transactions. If the attorney-holder alone has personal knowledge of such acts and transactions and not the principal, the attorney-holder *shall* be examined, if those acts and transactions have to be proved.

(c) The attorney-holder cannot depose or give evidence in place of his principal for the acts done by the principal or transactions or dealings of the principal, of which principal alone has personal knowledge.

(d) Where the principal at no point of time had personally handled or dealt with or participated in the transaction and has no personal knowledge of the transaction, and where the entire transaction has been handled by an attorney-holder, necessarily the attorney-holder alone can give evidence in regard to the transaction. This frequently happens in case of principals carrying on business through authorised managers/attorney-holders or persons residing

abroad managing their affairs through their attorney-holders.

(e) Where the entire transaction has been conducted through a particular attorney-holder, the principal has to examine that attorney-holder to prove the transaction, and not a different or subsequent attorney-holder.

(f) Where different attorney-holders had dealt with the matter at different stages of the transaction, if evidence has to be led as to what transpired at those different stages, all the attorney-holders will have to be examined.

(g) Where the law requires or contemplated the plaintiff or other party to a proceeding, to establish or prove something with reference to his “state of mind” or “conduct”, normally the person concerned alone has to give evidence and not an attorney-holder. A landlord who seeks eviction of his tenant, on the ground of his “bona fide” need and a purchaser seeking specific performance who has to show his “readiness and willingness” fall under this category. There is however a recognised exception to this requirement. Where all the affairs of a party are completely managed, transacted and looked after by an attorney (who may happen to be a close family member), it may be possible to accept the evidence of such attorney even with reference to bona fides or “readiness and willingness”. Examples of such attorney-holders are a husband/wife exclusively managing the affairs of his/her spouse, a son/daughter exclusively managing the affairs of an old and infirm parent, a father/mother exclusively managing the affairs of a son/daughter living abroad.

44. Hence, the essential principle to be culled from the aforesaid judgment in the context of Section 16(c) of the Specific Relief Act, is that the person testifying in support of the averments made in the plaint, must have personal knowledge of such facts as are averred therein and as such, if the power of attorney holder has such personal knowledge of the factual events described in the pleadings, his testimony is acceptable qua such specific averments; but if he has no such personal knowledge, then those averments and contentions cannot be held to be proved.

In the present case, learned counsel for the appellants-defendant pointed to the testimony of PW3, Malkiat Singh, to submit that though he admitted that the plaintiff was his uncle and had appointed him as his attorney to pursue the case, within that first part of his testimony, he also stated that his

uncle had “told me regarding all facts of this case.”

Thus, very obviously, as has been correctly been argued by learned counsel for the appellants, the plaintiffs' attorney had only second hand knowledge, as was given to him by the plaintiff, with regard to the facts of the case and therefore, his testimony on solemn affirmation is not that of a person who actually knew of the events and facts given in the pleadings, i.e. in the plaint of the plaintiff.

Ms. Garg had submitted that this would be so with regard to the entire testimony of PW3, because he had simply testified in terms of what he had been told and what was stated in the plaint, including the plaintiffs' presence in the office of the Sub-Registrar/Tehsildar on three different occasions and the payment of the earnest money by cash and cheque, as also the plaintiffs' readiness and willingness to perform his part of the contract, all of which was without any personal knowledge of this witness.

45. I am in agreement with the contentions of learned counsel for the appellants, as the counter thereto by learned counsel for the respondent-plaintiff, is actually not at all in terms of what has been held in *Man Kaurs'* case (supra).

Ms. Thind had argued that in *Man Kaurs'* case there were 3 to 4 persons who were holding instruments of power of attorney executed by the plaintiff therein, at different points of time.

She further submitted that the plaintiff having shown by the documentary evidence in the form of his affidavit executed before the Executive Magistrate, with regard to his presence in the Registrars' office, i.e. Exs.P2, P3 and P4 and further, the defendant himself having produced the cheque showing that the plaintiffs' son had actually written out a cheque of

Rs.4,35,000/- in the name of defendant Bachan Singh, on the date of agreement (30.01.2000), the testimony of the attorney of the plaintiff, PW3, cannot be discarded.

46. That contention cannot be accepted in view of the fact that even though Ex.D2 is stated to be a cheque issued in the name of the defendant, Bachan Singh, for an amount of Rs.4,35,000/-, drawn on the Punjab National Bank on 31.01.2000, however, the fact still remains that the plaintiff did not stand to testify in respect of the fact that he or his son had actually issued the said cheque which had been encashed by the defendant. In fact, not even the plaintiffs' son, Harjinder Singh, or any bank official was examined by him, to prove the factum of the defendant having actually encashed the said cheque or with regard to whose account the cheque was drawn on.

The attorney, PW3 Malkiat Singh, having admitted at the outset in his testimony that he was testifying as the attorney of the plaintiff upon the facts of the case having been narrated/told to him by the plaintiff, obviously shows that he had no personal knowledge of either the agreement having been entered into by the plaintiff, or of any consideration having been paid pursuant to such agreement between the plaintiff and the defendant, or of any other events related to the case of the plaintiff, including his personal presence at the office of the Tehsildar/Registrar.

In fact, as pointed out by learned counsel for the appellants, in his cross-examination, PW3 (the plaintiffs' attorney), admitted that no signature or thumb impression was marked on the agreement in his presence, as he was not present at the spot on that date, but was told of it by the plaintiff. Though the subsequent part of his cross-examination is suggestive of the fact that he knew the entire sequence of events, however, he was unable to answer the details of

such sequence of events and in any case, he himself having admitted in the earlier part of the cross-examination that he had been told that the agreement was executed about a year after it had been executed and that the dispute was about two years old, read with his examination-in-chief to the effect that he had been told of such facts of the case by the plaintiff, actually proved that he was not part of the proceedings at any stage.

47. Thus, the argument of learned counsel for the respondent-plaintiff, that in *Man Kaur's* case many instruments of power of attorney had been executed in the names of different persons, is an argument to no effect, as the principle laid down in that judgment is not on the number of attorneys appointed and therefore disbelievability of an agreement on that ground. The ratio of the judgment is that unless a attorney has personal knowledge of the averments made in the pleadings of his principal, for whom he is the attorney, the testimony of such attorney cannot be accepted to be that of the principal, (whether a plaintiff or a defendant). Hence, whether it is one attorney of a plaintiff or a defendant, or successive attorneys of such person, each such attorneys' testimony can only be accepted if that attorney testifies in respect of his personal knowledge of any of the averments made in the pleadings.

48. In view of the aforesaid discussion, in the light of the ratio of the judgment in *Man Kaur's* case (supra), re-affirmed in **S.Kesari Hanuman Goud v. Anjum Jehan** (2013) 12 SCC 64, the first question of law is decided to the effect that the testimony of PW3, Malkiat Singh, special attorney of the respondent-plaintiff, cannot be accepted to substitute the testimony of the plaintiff himself, PW3 having no personal knowledge of the facts averred in the plaint, either qua the agreement of sale, the payment of any consideration, or even with regard to the presence of the plaintiff at the Registrars' office on

different dates for execution of the sale deed in terms of the agreement set up by the plaintiff.

49. Coming then to the next question of law, as to whether the agreement can still be held to be a valid agreement, despite what has been already held by this Court hereinabove.

In this context, it first needs to be said that once having found that the testimony of the attorney of the plaintiff cannot be accepted to prove the agreement set up by him in terms of Section 16(c) of the Specific Relief Act, 1963, read with Explanation (ii) thereto, the second question, of it being a valid agreement set up by the plaintiff, would not actually seem to be arising, as the agreement then *ipso facto* would be an agreement not duly proved.

Yet, both the learned courts below having held that the defendant was a manipulator who took different stands at different points of time, that finding has to be looked into, to determine whether such shifting stands amount to an admission of the averments in the plaint, thereby leading to the conclusion that the agreement is a legally valid one.

50. On that issue, there is no doubt that the defendant, first in his written statement itself, denied having executed the agreement completely, then went on to state in that very pleading that since the agreement had been propounded by the plaintiff, it was because of the reason that he had been taken advantage of at a time of temporary insanity, arising due to his suffering from a “fit”, and that his signatures had been obtained on some blank papers and on a cheque, during such period/moment of insanity. Very obviously, that averment was wholly without any basis, no evidence whatsoever having been led by him to prove any such mental health condition.

51. During his testimony, as also in the testimony of his witnesses, it

was given out that, as a matter of fact, it was not the plaintiff himself but his son, Harjinder Singh @ Laddi, who had obtained the thumb impressions and signatures on the agreement, though again taking advantage of the defendants temporary insanity.

Therefore, the finding of the Courts below, holding that the defendant had shifted his stand at different points of time and therefore, could not be relied upon as being truthful and as a manipulator, cannot be stated to be findings without basis.

Very obviously, the defendant did not deny that he had at least appended his thumb impressions on some papers and on a cheque. Hence, to that extent, there is a definite admission on his part that some papers were thumb marked by him. However, his stand was that blank papers were got signed by him, in a 'fit' of temporary insanity. As already held, such temporary insanity was never proved and therefore, that averment has to be wholly rejected. The question then is as to whether he took that stand only to deny the agreement of sale, or to substantiate his contention that he was made to sign blank papers and a cheque.

In the opinion of this Court, even in such a situation, in order to prove that it was actually an agreement of sale that was signed or thumb marked by the defendant, and not blank papers, a positive stand must be taken by the plaintiff, by testifying himself, or through an attorney who has first hand knowledge of an agreement of sale actually having been entered into between the plaintiff and the defendant. Thus, with such positive assertions not having been proved by the plaintiff himself by stepping into the witness box to testify to that effect, and his attorney not having such first hand knowledge, it would have to be accepted that the plaintiff not having proved

his own case, the stand of the defendant to the effect that he thumb marked blank papers cannot be thrown out, even while rejecting his contention that he had done so in a 'fit' of temporary insanity.

The fact still remains that the plaintiff never stood to testify in terms of his suit set up by him, nor did even his son testify with respect to any agreement executed in his presence, or with regard to any cheque issued.

The basic principle remains that it is the plaintiff who has to prove his case, which onus cannot be held to have been obliterated by the defendants' shifting stands, unless such stands actually tantamount to an admission, which in the present case cannot be held to be so, in the opinion of this Court.

52. However, what further still needs to be examined, is that the defendants' son, DW4 Gurdev Singh, admitted that “they had to pay a sum of Rs.2,20,000/- to Harjinder Singh in 1998”. (Harjinder Singh being the son of the plaintiff as per the said judgment, not denied before this Court by either counsel).

As per the judgment of the learned first appellate Court, DW4 had also stated that he had 'demanded' a sum of Rs.1,00,000/- from Harjinder Singh thereafter to purchase a plot, and had borrowed different sums of money from different persons.

The said statement, however, has been shown to be that of the defendants' son and not of the defendant himself, and as such, no recovery having been sought from the defendants' son, whether or not any amount was due from the defendant himself, cannot be held as a fact by this Court on account of the testimony of the son, even to hold that at least money was admitted to have been received by the defendant, which can be decreed to be

recovered from him to the plaintiff, in terms of the alternate prayer made in the plaint.

Therefore, with the defendant himself not having admitted either in his pleadings or in his testimony, that any amount was due from him to the plaintiff, even the alternative prayer in the suit, for recovery of money, cannot be decreed in favour of the plaintiff, firstly, for the aforesaid reason, i.e. that the defendant has never admitted any such money paid and more so, even the alternate prayer is only on the basis of the agreement set up by the plaintiff, as the recovery that is sought, is in respect of the consideration alleged to have been paid, plus compensation and interest thereupon. Hence, with the agreement itself not having been validly proved, the alternate prayer also cannot be granted to the plaintiff.

What appears to this Court is that there was a dealing between the defendants' family and the plaintiffs' son, Harjinder Singh, who was stated to be a commission agent selling agricultural crops, through whom possibly the defendant and his family may have sold their crops at some point. In that relationship, it is very common for the farmer to borrow money from the commission agent, for his needs. It is therefore equally possible that some papers may have been obtained from the defendant, either by the plaintiff or his son; but simply on that presumption or possibility, obviously no decree can be issued in favour of the plaintiff, with not even his son, who otherwise may have had personal knowledge of some transaction or the other, having testified in support of his fathers' suit.

53. Therefore, it has to be held that the agreement set up by the plaintiff as Ex.P1 in his suit, was not validly proved by him, in terms of Section 16(c) of the Specific Relief Act.

The second question of law is therefore answered to that effect, against the respondent-plaintiff.

54. Coming to the 3rd question of law framed; which as a matter of fact, no longer survives, both, on account of the agreement having been held by this Court as one not duly proved, and further, because the criminal complaint instituted by the defendant, which was taken cognizance of by the competent Court, admittedly ended in the acquittal of the respondent-plaintiff. Therefore, simply because an appeal against that judgment is pending, with no stay on the judgment of the learned trial Court, that would have no bearing on the present case.

55. Yet, this Court having found in the light of the ratio of the judgment in *Man Kaurs'* case and as per the discussion held hereinabove, that the agreement dated 30.01.2000 was not validly proved by the plaintiff to have actually been executed by the defendant, i.e. the predecessor-in-interest of the present appellants (their father), the judgments of the Courts below cannot be sustained, even though the 3rd question of law has not been answered in favour of the appellants.

56. Consequently, this appeal is allowed and the impugned judgments of the Courts below, as also the decrees issued by those Courts, are set aside and the suit of the plaintiff is dismissed. However, no costs are awarded to the appellants, in view of the shifting stand of the defendant in response to the suit.

A decree-sheet be drawn up accordingly.

May 23, 2017
dinesh

(AMOL RATTAN SINGH)
JUDGE

1. Whether speaking/reasoned?	Yes/No
2. Whether reportable?	Yes/No