

IN THE PUNJAB & HARYANA HIGH COURT AT CHANDIGARH

RSA-2575-2013 (O&M)

Date of decision: 03.07.2017

Gurdev Kaur and others

... Appellants

Versus

Daljit Singh Dhingra and others

... Respondent

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. Charanjit Singh Bakshi, Advocate
for the appellants.

Mr. Rakesh Chopra, Advocate,
for the respondents.

AMOL RATTAN SINGH, J.

This is the second appeal of three out of the four defendants in a suit instituted by respondents no. 1 and 2 herein (hereinafter referred to as the plaintiffs), seeking specific performance of an agreement of sale dated 04.12.2003, stated to have been executed by the late defendant no. 1 (Hari Singh, hereinafter referred to as the first defendant), in favour of the second plaintiff, i.e. respondent no. 2 herein, Ram Krishan.

The plaintiffs also sought a decree of possession of the suit property, after specific performance of the agreement aforesaid.

Respondents no. 3 to 6 in this second appeal are seen to be the LRs of the first defendant, Hari Singh, who died during the pendency of suit itself, as is discernible from the memo of parties before the learned Civil Judge (Sr. Divn.), Patiala. Thus, respondent nos. 3 to 6 have been impleaded as proforma respondents in this appeal.

2. The facts averred by the plaintiffs in their suit, are being taken

from the judgments of the learned Courts below.

As per the plaintiffs, the first defendant being the owner in possession of the suit property, i.e. a plot of land measuring 408 square yards, located at Sarhind Road, Patiala, being part of a larger plot measuring 01 kanal and 14 marlas, had agreed to sell it to the second plaintiff, Ram Krishan, vide the aforesaid agreement dated 04.12.2003.

The first defendant is stated to have received a sum of Rs. 2,00,000/- as earnest money, by way of a bank draft of the same date, drawn on the Oritental Bank of Commerce, with the total sale consideration settled to be Rs. 14,00,000/-

The sale deed was agreed to be executed and registered in favour of the second plaintiff or his nominee, on or before 09.02.2004, upon receipt of the balance sale consideration, with possession of the suit property to be delivered at that time.

It was further contended in the complaint, that as per the agreement, in case of breach thereof, the vendee, i.e. the second plaintiff, could get it enforced through the Court or get double the earnest money instead.

As per the contention in the complaint, it was also specifically stated in the agreement that the first defendant, i.e. the vendor, had not entered into any other agreement of sale with any other person.

3. However, with the sale deed not being executed despite requests made to the first defendant, the second plaintiff, accompanied by the first plaintiff, and one Gurmail Singh Lambardar, is stated to have remained present in the office of the Sub-Registrar from 9:00 a.m. to 5:00 p.m. on 09.02.2004, along with the balance sale consideration of

Rs. 12,00,000/- plus necessary expenses, to get the sale deed executed in his favour.

The first defendant not having turned up, the second plaintiff got his presence marked in the office of the Sub-Registrar by swearing an affidavit to that effect.

4. Thereafter, the plaintiffs contended that plaintiff no. 2 entered into an agreement on 17.02.2004 with plaintiff no. 1, signing and transferring all his rights accruing under the agreement of sale dated 04.12.2003, in lieu of which he also received Rs. 2,00,000/- from the first plaintiff, who also authorized him to “deal with the matter himself”.

Therefore, contending that the first plaintiff was the nominee and representative of the second plaintiff, the suit was instituted on 17.02.2004 (though the date of institution is shown to be 22.05.2004 in the judgment). Plaintiff no. 2 is also stated to have executed an instrument granting a power of attorney in favour of the first plaintiff on the same date, i.e. 17.02.2004, after which the first plaintiff came to know that the first defendant had executed two sale deeds dated 09.01.2004 in favour of defendants no. 2 to 4, i.e. the present appellants, in violation of the agreement dated 04.12.2003.

5. It was, therefore, contended by the plaintiffs that the sale deeds dated 09.01.2004 were fake, fraudulently executed, illegal, null and void, by which no title of the suit property had been conveyed to defendants no. 2 to 4.

The said defendants were stated to be the neighbours of defendant no.1 and it was further averred that they had knowledge about the agreement dated 04.12.2003.

6. Consequently, the plaintiffs are stated to have also got registered FIR No. 186 dated 24.03.2004, at Police Station Sadar, Patiala, against the four defendants and two other persons, Gurvinder Singh and Darshan Singh, whom they contended were conspirators along with the defendants.

7. It was further averred that till 17.02.2014 plaintiff no. 2, and thereafter plaintiff no. 1, always remained ready and willing to perform their part of the contract, to the knowledge of the defendants, but the defendants refused to execute the sale deeds as per the agreement dated 04.12.2003.

On the aforesaid averments, the suit was instituted, with the plaintiffs also praying for a decree of permanent injunction restraining defendants no. 2 to 4 from alienating the suit property in any manner, or from making any construction over it.

8. Upon notice issued to them, the defendants appeared, with defendant no. 1 filing a separate written statement and defendants no. 2 to 4 filing a joint written statement.

In his written statement, defendant no. 1 raised preliminary objections on the maintainability of the suit, misconduct on the part of the first plaintiff, he being an Advocate, and the agreement of sale being fictitious.

On merits, the first defendant wholly denied having executed the aforesaid agreement with the second plaintiff, also denying having received Rs. 2,00,000/- by way of bank draft as earnest money from him.

The ownership of the property of the first defendant was admitted by him, as were also the sale deeds executed by him on 09.01.2004 in favour of defendants no. 2 to 4, upon payment of a consideration of

Rs. 5,67,000/- in respect of each deed.

9. It was further contended that the wife of the first plaintiff, namely Kanwalpreet Kaur, had already forged an agreement to sell off land measuring 1054 square yards, which also included the suit property. Therefore he, i.e. defendant no. 1, under pressure of the first plaintiff, agreed to sell land measuring 643 square yards in favour of Kanwalpreet Kaur by way of a settlement.

The first defendant also contended that he had filed a complaint against the first plaintiff before the Bar Council of Punjab and Haryana, for professional misconduct.

Yet further, it was contended that a Civil Suit filed by Kanwalpreet Kaur had been decided before the Lok Adalat, though he (defendant no. 1) had not made any statement, "Nor all the presiding officers of the Lok Adalat had signed".

10. It was further alleged that the first plaintiff had manipulated to get the sale deed registered in his wives' favour, of the aforesaid plot measuring 643 square yards. Hence, it was further contended by the first defendant in his written statement, that since litigation was pending between him and the first plaintiffs' wife, there was no occasion for him to execute the alleged agreement dated 04.12.2003 in favour of the 2nd plaintiff, "who is the man of plaintiff no. 1".

11. Yet further, defendant no. 1 averred that Rs. 2,00,000/- was in fact given to him by way of the bank draft in question, for execution of a sale deed in favour of the first plaintiffs' wife, with a condition that he (defendant no. 1-Hari Singh), would not agitate the matter before any higher authority.

It was further contended that the first plaintiffs' wife had also withdrawn her civil suit.

12. Defendant no. 1 also contended that the agreement dated 04.12.2003 had been fraudulently prepared, because the first plaintiff was in possession of blank papers duly signed and thumb marked by the first defendant, which were thereby misused.

13. The assignment of rights in favour of plaintiff no. 1 by plaintiff no. 2 was also denied by the first defendant, stating that as a professional lawyer the first plaintiff could not become a nominee of his client as it amounted to misconduct.

As regards the sale deed dated 09.01.2004, in favour of the present appellants-defendants no. 2 to 4, the first defendant wholly stood by them, averring that he had earlier executed an agreement dated 15.05.2003, with defendant no. 3 (present appellant no. 2-Balwinder Singh), with whom his (defendant no. 1s') son was running a business on the plot in question, of the sale and purchase old cars.

The parties were stated to be bound for 20 years in terms of the said agreement dated 15.05.2003, with a recital contained therein that if the first defendant had any necessity for selling the plot measuring 408 square yards, then the first preference of purchase would be given to defendant no. 3 (appellant Balwinder Singh).

14. Yet further, it was contended that the first plaintiff was fully aware of this fact because he was a neighbour of Balwinder Singh.

It was next contended that the first defendant had a necessity for selling the plot because he had spent a huge amount on his heart ailment and had also executed an agreement dated 17.09.2003, binding Balwinder

Singh to get the sale deed executed before 15.01.2004, on which date possession was also to be handed over to defendant no. 3-Balwinder Singh. It was reiterated that all these facts were in the knowledge of the plaintiffs, being neighbours, and that there was therefore, no question of executing an agreement on 04.12.2003 in favour of the second plaintiff.

15. In their joint written statement, the present appellants-defendants no. 2 to 4 also raised the usual preliminary objections of non-maintainability of the suit, mis-conduct of plaintiff no. 1, as also of they (defendants no. 2 to 4) being *bona fide* purchasers of the suit land.

On merits, the written statement is shown in the judgments of the courts below to be similar to that of defendant no. 1, further adding that the plot/shop in dispute was held in their possession even prior to the execution of the sale deeds in their favour, and that the plaintiffs had got a false FIR registered against them at the instance of the local police, only in order to pressurize them (appellants-defendants no. 2 to 4); however, they had been admitted to anticipatory bail and therefore could not be arrested.

The factum of the suit property having been sold to them pursuant to the agreement dated 15.05.2003 and 17.09.2003 were reiterated in their written statement also.

16. The plaintiffs are stated to have filed a replication to both the written statements, reiterating their own stand and denying that of the written statements, further contending that in the earlier litigation, the first defendant had agreed to sell the entire property, including the suit property, to the wife of the first plaintiff, i.e. Kanwalpreet Kaur, and that she had filed a suit which was settled before the Lok Adalat on 27.08.2002.

As regards the complaint made before the Bar Council against

the first plaintiff, that was stated to have been dismissed on 19.12.1999, i.e. much before the agreement dated 04.12.2003.

17. Upon the aforesaid pleadings, the following 10 issues were framed by the learned Civil Judge:-

“1. Whether the defendant no. 1 executed agreement of sale dated 04.12.2003 in favour of plaintiff no. 2 and received a sum of Rs. 2,00,000/- from him as earnest money? OPP

2. Whether the plaintiff no. 2 further executed agreement to sale dated 17.02.2004 in favour of plaintiff no. 1 and received earnest money in the sum of Rs. 2,00,000/-? OPP

3. Whether the plaintiff no. 2 appointed plaintiff no. 1 as his attorney, vide power of attorney dated 17.02.2004? OPP

4. Whether the plaintiffs have been and are ready and willing to perform their part of agreement? OPD

5. Whether the plaintiffs are entitled to decree of possession of the plot in dispute by way of specific performance of agreement of sale dated 04.12.2003 and 17.02.2004? OPP

6. Whether the plaintiffs are entitled to recover a sum of Rs. 4,00,000/- from the defendant no. 1 in the alternative as breach of contract? OPP

7. Whether the suit is not maintainable in the present form? OPD

8. Whether the plaintiffs have not approached the court with clean hands, if so, its effect? OPD

9. Whether the defendants no. 2 to 4 are bona fide purchasers for consideration and without notice and their interest is protected under Section 41 of the Transfer of Property Act? OPD 2 to 4

10. Relief”

18. To support their suit, the plaintiffs examined the first plaintiff,

Daljit Singh Dhingra, as PW-1, one Harpreet Kumar as PW-2 and one Navdeep Gupta as PW-3. The defendants are shown to have examined the first defendant Hari Singh (since deceased), one Anju Devi, Jagdeep Singh Record Keeper, defendant no. 3 Balwinder Singh, one Darshan Singh, Rajinder Singh Sidhu and Rajinder Pal Singh, Advocate, as DWs 1 to 7 respectively.

19. The learned Civil Judge noticed in detail the testimonies of the first plaintiff, Daljit Singh, as PW-1 and the late first defendant Hari Singh, DW-1, and also referred to, specifically, the testimonies of Harpreet Kumar PW-2 and the hand-writing and finger print expert, Navdeep Gupta, PW-3 and thereafter observed that there was a previous transaction of the sale and purchase of land between Kanwalpreet Kaur, wife of plaintiff no. 1 and defendant no. 1 Hari Singh, in respect of which Civil Suit no. 02-T/01 of 13.10.1998, titled as Kanwalpreet Kaur vs. Hari Singh had been instituted.

The learned trial Court summoned the case file of that suit from the record room through the record clerk DW-3, Jagdeep Singh Bedi.

From that record, it was found that an agreement had been entered into between Kanwalpreet Kaur and Hari Singh on 05.09.1998 qua the sale/purchase of land measuring 1054 square yards.

It was further found that the said suit was withdrawn by counsel for Kanwalpreet Kaur upon making a statement, Ex. P-5, on the basis of a compromise executed (Mark-A in the record of the present *lis*).

It was also seen by the trial Court in this *lis* that a sale deed dated 27.08.2002, Ex. P-6, was also on record, proving that Hari Singh had sold land measuring 643.76 square yards to Kanwalpreet Kaur, wife of the first plaintiff, for a total sale consideration of Rs. 3,22,000/- with earnest

money of Rs. 2,00,000/- having been received at the time of the agreement dated 05.09.1998. The said amount was, consequently, adjusted against the total sale consideration of Rs. 3,22,000/-

20. Thereafter, after reproducing the evidence of the parties, the learned Civil Judge went on to notice that it had come out in the cross-examination of DW-1 Hari Singh, that the agreement dated 17.09.2003, Ex. D-9, between him and defendant no. 3 Balwinder Singh (appellant no. 2 herein), bears his signatures on all three pages. He also admitted his signatures over the endorsement with regard to the purchase of the stamp papers.

Noticing the aforesaid, the learned Civil Judge went on to hold that once those signatures were admitted, then the onus to prove that his signatures were obtained on blank stamp papers shifted on to the first defendant (Hari Singh), but other than his oral evidence he could not prove that he had ever actually signed blank papers which he gave to the first plaintiff.

It was also noticed that the first plaintiff in his cross-examination as PW-1 had admitted that he was engaged by the firm in which Hari Singh was a partner and that he, i.e. Daljit Singh, had filed income tax returns for the said firm for four years. Hari Singh had deposed that he had “switched over” his Advocate in the year 1998, leaving plaintiff Daljit Singh and engaging one Sh. K.P. Bajaj.

From the cross-examination of the first defendant, the learned Civil Judge eventually drew a conclusion that his signatures were never obtained on blank stamp papers, either given to the first plaintiff, or even to Sh. K.P. Bajaj.

This finding was held to have been fortified by the fact that no complaint had been filed against the plaintiffs or against PW-2 Harpreet Kumar, or against Satwant Singh (shown to be the other attesting witness of the agreement dated 04.12.2003, Ex. P-1). In fact, it was also found that the second attesting witness to the said agreement was actually the son-in-law of Hari Singh himself.

21. In view of the aforesaid circumstances, it was held by the learned trial Court that even non-examination of the second plaintiff, i.e. Ram Krishan, was not fatal to the case of the plaintiffs, as regards proving the agreement Ex. P-1.

The due execution of the agreement was further found to have been fortified from the fact that bail applications had been filed by the defendants in a criminal case lodged against them after execution of the sale deeds dated 08/09.01.2004 in favour of the present appellants, i.e. defendants no. 2 to 4. The said bail applications were filed on account of the first plaintiff having got a criminal case registered against Hari Singh, his son Gurvindwer Singh and other persons.

Similarly, defendant Balwinder Singh also admitted to having filed a bail application through his Advocate, Sh. K.S. Bassi.

In the bail applications (exhibited as Ex. P-29 etc. before the trial Court), the following averments were found to have been made by the defendants:-

“That the applicant no. 1 the owner of the plot became desirous of selling the same in the month of January and he offered Balwinder Singh to purchase the same who purchased 6-1/4 marlas of the plot in the name of his wife and himself and half of the remaining plot, i.e. 6-1/4 measuring 189 yards in the name of his mother Smt. Gurdev Kaur for a

sum of Rs. 11,34,000/- vide registered sale deeds No. 1594 of dated 09/01/2004 and Vasika No. 1593 dated 09/01/2002 respectively. The agreement with Shri Ram Krishan was with the understanding in the presence of witnesses that in the event of Balwinder Singh failed to purchase the next choice would be that of Ram Krishan.”

From the aforesaid averments, the learned Civil Judge came to a conclusion that the agreement dated 04.12.2003 was duly executed in favour of plaintiff no. 1, Ram Krishan and therefore the defendants were estopped from denying that fact in the present *lis*.

22. On the contention put forth by the defendants with regard to receipt of earnest money of Rs. 2,00,000/- on account of the sale deed executed in favour of Kanwalpreet Kaur, wife of plaintiff no. 1, it was held that the matter with Kanwalpreet Kaur having been settled in the year 2002, with a sale deed also executed in her favour on 27.08.2002 (Ex. P-6), it could not be imagined that the first plaintiff would have given Rs. 2,00,000/- in the year 2003 in respect of that sale to defendant Hari Singh, especially as even the complaint against him, pending with the Bar Council, had been disposed of in the year 1999.

23. As regards the agreements dated 15.05.2003 and 17.09.2003 Exs. D8 and D-9, set up by the defendants, it was found that the stamp papers on which these agreements were scribed were printed in the year 1994 and made available to the public on 23.05.1994, as per information received from the Government Treasury Officer and India Press, Nasik. The learned trial Court therefore inferred that it was not possible that the stamp vendor would have sold stamp papers of the year 1994 in the year 2003, especially with DW-1 Hari Singh deposing that he did not know any person by the name of Manoj or Prem Chand (the latter being a stamp vendor). He

had also admitted that he did not know who had purchased the stamp papers for the agreement dated 17.09.2003, nor from whom they were purchased, as he had not accompanied the said person. It was further found that even defendant Balwinder Singh, in his cross-examination, could not state as to from whom the said stamp papers had been purchased.

On the aforesaid reasoning, the learned Civil Judge held that the agreements dated 15.05.2003 and 17.09.2003, stated to have been executed by the first defendant in favour of defendants no. 2 to 4, could not be held to be proved.

24. As regards the consideration stated to have been passed by defendants no. 2 to 4 to defendant no. 1 on 08.01.2004, it was found that though other witnesses for the defendants had deposed that the said sale consideration was paid to Hari Singh in his house, defendant-DW-4, Balwinder Singh, in his cross-examination stated that the sale price was paid before the Sub-Registrar on 08.01.2004 and no receipt was obtained from Hari Singh for making payment of the said amount.

It was further found that even the attesting witness to the said sale deeds, namely Darshan Singh-DW-5, had stated that he did not know the date on which the consideration was paid but that it was paid in Hari Singhs' house, in the presence of four to five persons, including Balwinder Singh, Hari Singhs' son and Hari Singhs' wife.

In view of the aforesaid contradiction between the testimonies of DWs 4 and 5, the learned trial Court held that even the sale deeds had been prepared only to escape from the liability arising out of the agreement dated 04.12.2003.

Consequently, it was held that defendants no. 2 to 4 could not

be held to be *bona fide* purchaser of the suit property, for valuable consideration.

Thus, to repeat, the agreement of sale dated 04.12.2003 was held to have been validly proved and issue no. 1 accordingly decided in favour of the plaintiffs.

25. Coming to the 2nd and 3rd issues, i.e. the validity of the agreement of sale executed by the second plaintiff in favour of the first plaintiff on 17.02.2004, upon receipt of earnest money of Rs. 2,00,000/-, and the appointment of the first plaintiff as the attorney of the second plaintiff on the same date, the learned Civil Judge believed the testimonies of the first plaintiff and PW-2 Harpreet Kumar (son of the second plaintiff), to the effect that the rights of the second plaintiff were assigned to the first plaintiff and the power of attorney was also executed as contended in the plaint. Harpreet Kumar identified his fathers' signatures on these documents, Exs. P-3 and P-4.

The aforesaid testimonies were found to have remained un rebutted and as regards the contention of defendant Hari Singh that the first plaintiff being a professional lawyer could not become a nominee of his client and therefore, could not have purchased the rights assigned to him, it was found that no evidence was actually led to prove that the second plaintiff was either a client or “alleged hench man” of the first plaintiff.

Citing Habiba Khatoon vs. Ubaidul Huq 1997 (3) Recent Civil Reports 570, the learned Civil Judge held that there being no express or implied prohibition in the agreement of sale dated 04.12.2003 qua assignment of rights of the second plaintiff in favour of any other person, the agreement between the two plaintiffs could not also be faulted on that

ground.

26. On the readiness and willingness of the plaintiffs to perform their part of the agreement, issue no. 4 was also decided in favour of the plaintiffs, with the signatures of plaintiff no. 1 on his affidavit, Ex. P-2, showing his presence in the office of Sub-Registrar on 09.02.2004, having been proved by the second plaintiffs' son.

27. On the aforesaid findings, the 5th issue with regard to the plaintiffs' right to get the agreement dated 04.12.2003 specifically enforced was upheld, with the alternative relief of recovery of Rs.4,00,000/- therefore held to be not sustainable.

28. The other issues, on maintainability of the suit and the plaintiffs not having approached with the clean hands were also decided in favour of the plaintiffs, and issue no. 9 already having been decided along with issue no. 1 to the effect that defendants no. 2 to 4 were not *bona fide* purchasers of the suit land, the suit of the plaintiffs was decreed in favour of plaintiff no. 1, holding the sale deeds dated 09.01.2004 (Ex. D-6 and D-7) to be not binding upon him. The defendants were directed to execute a sale deed in his favour on receipt of the balance sale consideration, for which one months' time was given to the first plaintiff.

The consequential relief of permanent injunction was also, therefore, granted in favour of the first plaintiff.

29. The present appellants, i.e. defendants no. 2, 3 and 4, having appealed against the judgment and decree of the Civil Judge (Junior Division) dated 07.10.2010, before the learned first appellate Court, the learned Additional District Judge, Patiala, after noticing the pleadings and the issues framed before the lower appellate Court, as also the evidence led

before it, then went on to record the detailed arguments made before him. Thereafter, that Court enumerated the four points that arose before it for consideration and decision as follows:-

“1. Whether respondent no. 3/defendant no. 1 executed an agreement to sell Ex. P-1 in favour of respondent/plaintiff no. 2?

2. Whether the respondents/plaintiffs were ready and willing to perform their part of the contract?

3. Whether respondent/plaintiff no. 2 was competent to assign all his rights under the agreement to sell Ex. P-1 in favour of respondent/plaintiff no. 1, if so its effect?

4. Whether appellants/defendants no. 2 to 4 are bona fide purchasers for consideration and without notice of previous agreement between respondent no. 3/defendant no. 1 and respondent/plaintiff no. 2?”

30. It is seen that thereafter, discussing the evidence led before the learned Civil Judge, eventually the learned first appellate Court also adopted the same reasoning for dismissing the appeal as had been adopted by the trial Court for decreeing the suit of the plaintiffs.

It was specifically noticed that though the allegation made by the first defendant, Hari Singh, was that blank papers had been got signed from him at the time when plaintiff no. 1 was the lawyer of his firm, in his cross-examination Hari Singh admitted that he had never given any blank papers either to his present counsel or to anyone else and that he had also not filed any complaint to the police or in the Court in respect of blank papers being mis-used by the plaintiffs.

That court also noticed, as had the learned trial Court, that in the bail application filed by Hari Singh he had stated that the agreement with Balwinder Singh was on the understanding that if Balwinder Singh

failed to purchase the suit property, the next choice would be Ram Krishan.

On the aforesaid evidence, the first appellate Court also came to the same conclusion, that Hari Singh had admitted the execution of the agreement of sale, Ex. P-1, dated 04.12.2003.

Non-examination of Hari Singhs' son-in-law, who was an attesting witness to the agreement, despite Hari Singh having admitted that he had cordial relations with him, was also taken as an adverse inference against the first defendant.

31. As regards non-examination of plaintiff no. 2, Ram Krishan, the first appellate Court again adopted the same reasoning, to the effect that once the son of Ram Krishan testified to the effect that the agreement was executed, with the said son, i.e. PW-2 Harpreet Kumar, also being a marginal witness to the agreement, the non-examination of Ram Krishan would not affect the case.

Further, it was held that in any case, once the signatures on the agreement were admitted by defendant no.1, the onus shifted to him show that they were obtained by fraud.

32. As already noticed, the remaining reasoning for dismissing the appeal of the defendants was the same as given by the trial Court for decreeing the suit, including with regard to the receipt of the earnest money of Rs. 2,00,000/-.

However, an argument on behalf of the respondent-plaintiffs, that a subsequent purchaser could not raise a question on the readiness and willingness of the prospective vendee to purchase the property, was rejected, holding that a subsequent purchaser would be entitled to do so but in the present case that made no difference, because the willingness to

execute the sale deed was duly proved by the plaintiffs, both by virtue of the fact that plaintiff no.1 remained present in the Sub-Registrars' office on 09.02.2004, i.e. the date fixed for execution of the sale deed, and secondly because prior to that date, the first defendant had already executed sale deeds in favour of defendants no.2 to 4.

33. As regards the agreements dated 15.05.2003 and 17.09.2003, stated to have been executed by Hari Singh with the other defendants, the testimony of DW-6 Rajinder Singh was referred to by the lower appellate Court, Rajinder Singh having been shown to be one of the marginal witnesses to the agreement dated 15.05.2003, Ex.D-8.

Rajinder Singh also admitted that no money was exchanged between the parties and though he also stated that a site plan was appended with the agreement, no such site plan had been placed on record in the present *lis*. Further, though it was contended that the deed was scribed by a regular deed writer, that person was not examined by the defendants.

Still further, though as per DW-6 the deed writer typed the date as 15.05.2003 and the date was found to be written at the end of document, but with the name of the witness not typed on it. From that, an inference was drawn that when the agreement, Ex.D-8, was typed, actually the witnesses were not present, with their names incorporated therein later.

The non-presence of DW6 was further seen by that Court from the fact that though he had stated that Ex. D-8 was a registered document, the document factually was not registered.

34. As regards the agreement dated 17.09.2003, Ex. D9, the learned lower appellate Court found that DW-2, Anju Devi, widow of the scribe of the document, though had brought the stamp vendors' register, she admitted

in cross-examination that her husband had been arrested for forgery and for preparing an ante-dated documents. She also admitted that her husband had never purchased stamp papers from the Treasury in her presence and further that her father in law had also been prosecuted for selling stamp papers in “back dates”.

That Court also recorded that whereas one particular entry in the register, (no. 2265), was very dim, the next entry was dark, and there had also been cutting and alterations.

The witness also could not identify the handwriting of her husband and further admitted that there was no signature of, or certificate by, the Sub-Registrar, at the beginning of the register or on its closure. It was also found that the register was not page marked.

35. Moreover, in the bail application filed by the defendants, they had not even referred to the subsequent agreement dated 17.09.2003, but only to the agreement dated 15.05.2003, even though the bail application was filed in March 2004.

36. On the aforesaid reasons, as had given by the trial Court, the first appeal of the present appellants was dismissed.

37. Before this Court, learned counsel for the appellants (defendants no. 2 to 4) has framed the following questions of law in his grounds of appeal:-

“a) Whether the failure of the plaintiff no. 2 to step into the witness box and prove the agreement of Ex. P-1 of which the burden of proof as per Section 103 of the Indian Evidence Act, 1872 is upon the plaintiff no.2 only results in dismissal of the suit?

b) Whether a lawyer (plaintiff no.1) who in complete breach of trust and obligations and mentioned in

Section 126 of the Indian Evidence Act, 1872 can be permitted to forge the documents and prepare a fake agreement for sale?

c) Whether the non-appearance/non-participation of the plaintiff no.2 in the Civil suit brings in the presumption that the plaintiff no.2 did not intend to support a forged and fabricated document?

d) Whether the failure on the part of the plaintiff no.1 to show that he had given Rs. 2 lakhs to the plaintiff no.2 to obtain the rights as allegedly accrued vide agreement Ex. P-1 washes away his claim in the suit?

e) Whether the appellants having executed agreements of sale with due consideration prior to the alleged agreement Ex. P-1 are entitled to the suit property?

f) Whether the Civil Suit was liable to fail due to non fulfillment of Section 16-C of the Specific Relief Act?"

38. Mr. Bakshi, learned counsel for the appellants, after enumerating the facts given in the complaint, thereafter raised arguments as follows.

39. As per learned counsel the suit was liable to fail simply on account of the bar contained in Section 16 (c) of the Specific Relief Act, 1963.

Section 16 of the Act of 1963 reads as follows:-

“16. Personal bars to relief-- Specific performance of a contract cannot be enforced in favor 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 willfully 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 of 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.”

40. He submitted that the prospective vendee, i.e. plaintiff no.2 Ram Krishan, not having testified at all, the agreement cannot be stated to have been actually entered into by him and therefore the contention of the late defendant no.1, Hari Singh, that blank papers signed by him had been mis-used was factually a correct averment.

In support of his argument on a material witness not having been examined, who was also a plaintiff, Mr. Bakshi cited the following judgments:-

1. **N.P. Thirugnanam (Dead) by LRs. vs. Dr.R.Jagan Mohan Rao** AIR 1996 SC 116;
2. **Pukhraj D.Jain and others vs. G.Gopalakrishna** 2004 (3) R.C.R (Civil) 171;
3. **Janki Vashdeo Bhojwani and another vs. Indusind Bank Ltd. And others** AIR 2005 SC 439;
4. **Man Kaur vs. Hartar Singh Sangha** (210) 10 SCC 515;
5. **Padmakumari and others vs. Darsyyan and others** Civil Appeal No. 3570 of 2015.

41. The second argument raised by Mr. Bakshi was that the reasoning given by the learned trial Court for discarding the agreements dated 15.05.2003 and 17.09.2003, as given in paragraphs 44 of its judgment, is wholly irrational, inasmuch as the stamp paper, even if taken to be printed in the year 1994, was obviously of a date prior to the dates of the agreement executed in 2003 and therefore, it was not impossible that the stamp vendor was in possession of old stamp papers that he sold to the purchasers thereof in the year 2003, there being no limitation to the validity of such papers.

42. In response to the aforesaid two arguments raised by Mr. C.S. Bakshi, Mr. Rakesh Chopra, learned counsel appearing for the respondents-plaintiffs, referred to various parts of the judgments of the courts below, as also to the documents led by way of evidence, in support of his case.

Mr. Chopra first referred to Ex. P-29, i.e. the bail application of the late Hari Singh and his son Gurwinder Singh, to repeat what has been held by the courts below and to further submit that in the said document, not a word has been stated that any blank papers were signed by Hari Singh, which had been misplaced by the plaintiffs.

Mr. Chopra next drew attention to the statement made by Hari Singhs' counsel, as recorded in the order of the learned trial Court dated 11.10.2004, to the effect that defendant no. 1 (Hari Singh) never signed the agreement of sale dated 04.12.2003.

Learned counsel submitted that this was in complete contradiction to Hari Singhs' own stand that he had signed blank papers which were later mis-used, (with him thereby not at least denying his signatures on the document).

43. Mr. Chopra next submitted that Hari Singh or his LRs never

challenged the judgment and decree of the learned trial Court, nor have they filed any second appeal before this Court and it is only the subsequent purchasers who have done so, even though Hari Singh was the one who vehemently defended the suit.

Thus, Mr. Chopras' contention is that the appellants are not *bona fide* purchasers. He also submitted that even *bona fide* purchasers cannot challenge an agreement between the plaintiffs' *inter se*.

In this context, he cited a judgment of a co-ordinate Bench of this Court in **Bahadur Ram** vs. **Lakhwinder Singh and others** 2008 (3) CCC 526.

He drew special attention to paragraph 19 of the said judgment, which reads as follows:-

“19. There is no evidence led by the respondents that on the date when they had purchased the suit property i.e. in the year 1984 enquiries were made in respect of the possession of plaintiff over the suit land. Rather an application Ex.P12 was moved much later in the year 1991 seeking possession from the Court of AC, 1st Grade, Thanesar on the ground that lease of 20 years in favour of the plaintiff has expired without disclosing the date and that application was not even further prosecuted as the same was dismissed in default vide order dated 15.6.1992 which is on record as Ex.P15. Therefore, defendants No. 5 to 9 can not be held to be bona fide purchaser having made enquiries in respect of the possession of the plaintiff on the date of purchase. This question is thus, decided in favour of appellant and against the respondents.

In view of the discussion made here-in-above, the present appeal is allowed and the judgment and decree of the first Appellant Court is set aside and the judgment and decree of the trial Court is restored. However, there shall be no

order as to cost.”

44. On the validity of the assignment of the rights of the second plaintiff in favour of the first plaintiff, learned counsel has referred to Section 15 (b) of the Specific Relief Act, which reads as under:-

“15. Who may obtain specific performance.-
Except as otherwise provided by this Chapter, the specific performance of a contract may be obtained by---

xxxx xxxx xxxx xxxx

(b) the representative in interest or the principal, of any party thereto:

Provided that where the learning, skill, solvency or any personal quality of such party is a material ingredient in the contract, or where the contract provides that his interest shall not be assigned, his representative in interest of his principal shall not be entitled to specific performance of the contract, unless such party has already performed his part of the contract, or the performance thereof by his representative in interest, or his principal, has been accepted by the other party”

Thus, he submitted that any representative in interest of the principal is very much entitled to stake a claim to the property in terms of the contract, as an assignee of the person who originally entered into the contract.

In this context, learned counsel cited the following judgments:-

1. **T.M. Balakrishna Mudaliar vs. M.Satyanarayana Rao and others**
AIR 1993 SC 2449;
2. **Habiba Khatoon vs. Ubaidul Huq** AIR 1997 SC 3236;
3. **Sinnakaruppa Gounder vs. M. Karuppuswami Gounder and another** AIR 1965 Madras 506 (DB).

Therefore, learned counsel submitted that the agreement between plaintiffs no. 1 and 2, Ex. P-3, was very much a valid assignment of rights.

45. As regards the contention of Mr. Bakshi on Section 16 (c) of the Act of 1963, Mr. Chopra submitted that there was not even a suggestion made to the first plaintiff, at the time of his cross-examination as PW-1, that he was not ready and willing to perform his part of the contract.

Mr. Chopra also submitted that once the agreement was contended to be forged by the defendants, the plea of the plaintiffs not being ready and willing to perform their part of the contract was not a plea available to them.

46. Learned counsel thereafter submitted that actually with Hari Singh or his LRs not having filed an appeal either before the first appellate Court or before this Court, the only plea available to the present appellants is that being *bona fide* purchasers of the suit property, they have a prior right over and above that of the first plaintiff, provided the appellants can show that they are actually *bona fide* purchasers. However, he submitted that even that has not been proved by them for the following reasons.

47. Mr. Chopra submitted that firstly, the purported agreement relied upon by all the defendants *inter se* each other, i.e. by Hari Singh and appellants-defendants no.2 to 4 herein, was held to be a wholly fictitious document by the learned courts below.

He submitted that this finding of both the learned courts below was arrived at because it was highly unnatural that an agreement shown to be entered into in the year 2003 would be executed on stamp papers of the year 1994, i.e. nine years earlier and therefore, this document was obviously

created afterwards, as stamp paper of the year 2003 was not available with the stamp vendor and therefore, old stamp papers as were available with him, were used to create a document subsequently.

Learned counsel submitted that this is to be seen in the light of the fact that even as per the stamp vendors' widow, DW-2, Anju Devi, the licence of her husband had been suspended and he had been arrested for forgery and for preparation of ante dated documents, as had her father-in-law, Nand Lal.

In this context, Mr. Chopra pointed to Ex. P-43 before the trial Court, which is a copy of FIR No. 362 dated 23.09.1999, submitted in the court of the learned JMIC Patiala, arraigning Prem Chand, son of Nand Lal as one of the five accused, with the offences alleged therein being those punishable under Sections 450, 467, 468, 471 and 120-B IPC.

He next pointed to Ex. P-44, which, it is contended by him, is the agreement that was alleged to be fabricated /ante-dated, created by all accused in the aforesaid FIR.

Thus, learned counsel submitted that stamp papers were obviously purchased from such a stamp vendor who could only come up with very old stamp papers and therefore the disbelief of the learned courts below was very much justified in the entire set of circumstances.

Mr. Chopra next drew attention to Exs. P-38 and P-39, which was the report received from the District Works Managers of the India Security Press, Nasik, stating that the said stamp papers had been made available on 23.05.1994. He also pointed to Ex. P-40, i.e. a report of a communication received by the first plaintiff under the RTI Act from the District Treasury Officer, Patiala, giving therein the dates, between

26.07.2001 and 22.12.2003, on which Sh. Prem Chand, Stamp Vendor, had purchased non-judicial stamp paper worth Rs. 100/- from the Treasury.

Learned counsel submitted that between the said dates 155 stamp papers of the said denomination had been purchased by the said stamp vendor, including 65 till May 2003. Hence, even if all those stamp papers had been exhausted, all that the stamp vendor had to do was to purchase more stamp papers in that very year up-till 15.05.2003 and 17.09.2003, to scribe the agreements purportedly scribed on those dates, which obviously was not done and therefore, since the agreements were actually made either in the year 2004 or thereafter, (showing them to be ante-dated), the only old stamp papers available with the stamp vendor were obviously of the year 1994, which were therefore used to create such ante-dated documents.

48. Learned counsel next submitted that as regards the agreement dated 15.05.2003 is concerned, it does not even show any consideration for which the suit property would be sold, even by way of first right, to appellant no.2 Balwinder Singh or his son, and as such, the agreement cannot be stated to be a valid agreement even on that ground.

49. Learned counsel next submitted that a purchaser of any property would make diligent inquiries as to whether the property is encumbered in any manner and this would especially be so when the parties are neighbours, with the appellants allegedly having purchased the suit property in their immediate vicinity. Therefore, it is not possible to believe that they did not know of the transaction between the late Hari Singh and plaintiff no. 2, Ram Krishan, and in fact their bail applications proved that they knew of the deal with Ram Kishan.

50. As regards the agreement dated 17.09.2003, Ex. D-9, Mr. Chopra submitted that it purportedly cancels the earlier agreement dated 15.05.2003 and further shows the sale consideration to be fixed at Rs. 3,000/- per square yard, for a plot measuring 408 square yards.

Learned counsel for the respondents-plaintiffs submitted that the total sale consideration shown to be paid even as per the said sale itself is Rs. 11,34,000/-, whereas the total consideration as purportedly settled in the agreement dated 17.09.2003 would come to Rs. 12,24,000/- (Rs. 3,000 x 408 square yards).

He further submitted that no earnest money is shown to be paid in the agreement, which further makes it a highly suspicious document, other than the fact that it is obviously ante dated.

He next referred to the sale deeds Exs. D-6 and D-7, to submit that they do not even mention the agreements Exs. D8 and D-9, further proving that the agreements were prepared later.

51. Yet further, Mr. Chopra referred to the cross-examination of appellant no.2, Balwinder Singh (DW-4), to submit that he admitted that the suit property adjoins the property owned and possessed by the wife of the first plaintiff.

He also pointed to the cross-examination to submit that as per the second appellant, the sale price was paid before the Sub-Registrar on 08.01.2004.

Learned counsel next referred to the sale deed Ex. D-7 dated 09.01.2004, in which it has been shown that Rs. 0 were paid by the vendee to the vendor in the presence of the Sub-Registrar.

(The document referred to is a photocopy of the sale deed, in

'Gurmukhi', which bears out the contention raised by the learned counsel).

52. Yet further, Mr. Chopra, submitted that in Ex. D-2, which is a photocopy of the register of the stamp vendor, Hari Singh is seen to have signed it in 'Gurmukhi', with the signatures of one Manoj also on it. Hence, learned counsel submitted that Hari Singhs' testimony to the effect that he did not know any person by the name of Prem Chand (the stamp vendor) or Manoj, and that he did not go to purchase the stamp paper himself, was a wholly unbelievable part of his testimony.

53. On the aforesaid arguments, learned counsel submitted that neither were the agreements dated 15.05.2003 and 17.09.2003, allegedly executed between the late defendant no. 1 Hari Singh and the present appellants, believable documents, they being very obviously ante dated, and secondly, even the sale deeds themselves, dated 08.01.2004 (registered on 09.01.2004) between the same parties, can not be considered to be evidence of a *bona fide* purchase by the present appellants, especially with no sale consideration actually proved to have been passed in respect of the said sale deeds.

54. Coming to the issue of the agreement of sale dated 04.12.2003, specific performance of which was sought in the suit of the plaintiffs, he submitted that the said agreement stood proved from the testimony of the first plaintiff himself, as also by the testimony of the son of the second plaintiff, Harpreet Kumar Puri (PW-2), who was an attesting witness to the said agreement between his father and the late Hari Singh.

Learned counsel reiterated that non-examination of the second attesting witness, i.e. Satwant Singh, son in law of Hari Singh, actually was an inference against Hari Singh, as, if Satwant Singh had not actually been

an attesting witness thereto, there would have been no problem for him to testify in favour of his father-in-law to that effect. Obviously, Satwant Singh having refused to testify falsely, he was not examined as a witness by Hari Singh.

55. In conclusion, Mr. Chopra, learned counsel for the respondents-plaintiffs reiterated all his arguments to the effect that the non-readiness and willingness of plaintiff no.1 to execute his part of the contract between him and plaintiff no.2 was not put in cross-examination to plaintiff no.1 and as such, that plea is not available to the appellants and the very fact that the suit was instituted three and half months after the date fixed for execution of the sale deed, i.e. 09.02.2004, proved the willingness of the plaintiffs to go through their part of the contract, especially as the affidavit of plaintiff no.2, showing his presence before the Sub-Registrar on 09.02.2004, was duly proved by PW-2 Harpreet Kumar by testifying that the affidavit was executed by his father.

56. Learned counsel next reiterated that plaintiff no.1 admittedly did not remain counsel for Hari Singh after 1998, and the litigation between Hari Singh and the first plaintiffs' wife also having been settled in 2002, the contention that he would not enter into an agreement in 2003 with Ram Krishan, has no meaning at all.

The testimony of Hari Singh to the effect that he never gave any blank papers to his lawyer but yet reiterated that blank papers given by him were mis-used, despite which he filed no complaint, were again arguments reiterated by Mr. Chopra, to submit that the said testimony being wholly false, this appeal deserves to be dismissed.

57. In rebuttal to the aforesaid lengthy arguments addressed by

learned counsel for the respondents-plaintiffs, Mr. Bakshi, learned counsel for the appellants, first pointed to the summary prayer made in the plaint, to the effect that the only agreement, specific performance of which was sought in the suit in the present *lis* was the one dated 04.12.2003, which as per the plaintiffs also, was admittedly executed between plaintiff no. 2, Ram Krishan and the late Hari Singh, i.e. defendant no. 1.

Mr. Bakshi further submitted that with Ram Krishan never having examined in the witness box to testify in favour of the agreement between him and Hari Singh, even if it is accepted (though not admitted) that he had assigned his rights arising out of the agreement to the first plaintiff, the agreement dated 04.12.2003 itself cannot be held to have been validly proved.

He next submitted that Ram Krishan obviously did not step into the witness box because he knew that the agreement was a fictitious document.

58. He next submitted that the conduct of the first plaintiff is 'highly suspect', because his wife was earlier in litigation with Hari Singh qua a large chunk of land adjacent to the suit land, with the matter eventually compromised vide the document Exhibit/Mark P-28, which document in any case is not denied by the plaintiffs.

He submitted that as a matter of fact, the first plaintiff took advantage of his former relationship with Hari Singh, of lawyer and client, and got him to sign the agreement qua the remaining chunk of land, even if it is not to be believed that blank papers were signed by Hari Singh.

Learned counsel submitted that therefore, the suit of the plaintiffs deserved dismissal.

59. Having considered the arguments of learned counsel for the parties in detail, and also having considered the judgments of the learned courts below, what this Court first needs to record is that as regards the findings of the courts below on the agreements dated 15.05.2003 and 17.09.2003, purportedly entered into between the late Hari Singh (defendant no.1) and the present appellants (defendants no. 2 to 4), there is no reason to disagree with those findings of fact, based upon evidence appraised by those courts, in the form of the reports from Nasik to the effect that the stamp papers used in those arguments were of the year 1994, seen with the testimony of DW-2 Anju Devi, widow of the stamp vendor, to the effect firstly that the register used by her husband was not numbered and the courts below also saw alterations at the relevant places in the entries in that register.

Further, the fact that Hari Singh testified that he never went to purchase the stamp papers and even claimed not to know the name of the stamp vendor (which of course is possible) but the signature of Hari Singh being present at the relevant entry in the register qua purchase of the stamp papers along with one Manoj, but with Hari Singh however even denying knowledge of who Manoj was, are all facts that bely his testimony.

Hence, I do not find the findings of the learned courts below on ante-dation of the agreements dated 15.05.2003 and 17.09.2003 to be perverse findings in any manner, as it would also be very unnatural for a stamp vendor to use stamp papers of the year 1994 in the year 2003, when he could have easily used stamp papers of that year itself, especially as it is shown that he was purchasing stamp papers of a denomination of Rs. 100 between the years 2001 and 2003 fairly regularly. Thus, it would seem

obvious that he having run out of stamp papers of that denomination, purchased in the year 2003, when the agreements are shown to have been entered into, subsequently, the only old stamp papers he had, were of the year 1994 and were therefore used to create ante-dated agreements.

Though obviously simply usage of old stamp papers would not form a basis to reach a final conclusion that the agreements were ante-dated, but seeing the past conduct of the said stamp vendor, admitted even in his wives' testimony, further seen with the fact that the said agreements are not even referred to in the sale deeds registered on 09.01.2004, qua the same land, with there being a difference in the total sale consideration seemingly settled by the agreement dated 17.09.2003 and that shown to have been received in the sale deeds; and yet further in the light of the testimony of present appellant no. 2 as DW-4, that the said sale consideration was paid before the Sub-Registrar but the Registrars' endorsement on the sale deed actually showing no consideration paid before him, are all factors which this Court would infer to hold that the finding of the learned courts below with regard to the said agreements being ante-dated, are not perverse findings in any manner.

Hence, as regards the question of law framed at serial no (e) as reproduced in paragraph 37 hereinabove, it is answered to the effect that the agreements purported to have been entered into prior to the agreement Ex. P-1, are not proved to be agreements duly executed on the dates that they were purported to have been executed on (15.05.2003 and 17.09.2003) and therefore, the appellants are not entitled to the suit property on that basis.

60. Having held that, the question then is whether the plaintiffs-respondents would be entitled to the relief claimed by them, only because

the appellants-defendants and the late Hari Singh, created documents in support of their case, i.e. the aforesaid agreements dated 15.05.2003 and 17.09.2003?

61. However, before going on to answer that, as regards the second question of law, i.e. whether plaintiff no.1 committed a breach of trust with his client, i.e. the late Hari Singh, defendant no.1, even in terms of Section 126 of the Indian Evidence Act, 1872, is being taken up.

I do not agree with learned counsel for the appellants that there was any breach of trust as regards the conduct of the first plaintiff, inasmuch as it was eventually proved that he ceased to be a lawyer (tax lawyer) for the firm of the late defendant no.1 in the year 1998. Subsequently, there was admittedly litigation between the late Hari Singh and the wife of the 1st plaintiff, which was also settled by the agreement in the year 2002.

Hence, as regards any sale and purchase of property between a former lawyer and his client, which property is not shown in any manner to be subject matter of any litigation in which the lawyer was representing the client, in the opinion of this Court that would be a wholly independent transaction, not impinging upon the professional relationship between the parties. If, of course, the same property had been subject matter of litigation between Hari Singh and any other person, with plaintiff no.1 representing Hari Singh in that litigation, the matter would have been wholly different. However, that not shown to be the case at any stage, the question at serial no. (b) is answered to the effect that there was no breach of trust or professional misconduct qua the suit property, as regards the relationship between the first plaintiff and the late defendant no. 1.

62. Coming then to the primary argument of Mr. Bakshi, on

Section 16 (c) of the Specific Relief Act.

It is to be noticed first by this Court that apparently there would otherwise be no reason to infer that the plaintiffs had not proved their willingness to execute their part of the contract, as regards the agreement Ex. P-1, and therefore Section 16 (c) of the Act of 1963 would not be seen to even arise, with the affidavit of plaintiff no.2, Ram Krishan, also having been led by way of evidence, stating that he was present in the office of the Sub-Registrar on the last date by which the sale deed had to be executed by the late Hari Singh in his favour, in terms of the agreement dated 04.12.2003, with Hari Singh not having turned up there.

However, the question is whether the said affidavit or/and the agreement dated 04.12.2003, the specific performance of which was sought by the respondents-plaintiffs, can be held to have been duly proved?

63. The argument of Mr. Bakshi in that context cannot be wholly discarded, to the effect that with the person who is shown to be the prospective vendee in the agreement, i.e. plaintiff no.2 Ram Krishan, not having stepped into the witness box to testify in support of the agreement, then the said agreement cannot be held to have been proved in terms of the judgments of the Supreme Court in Man Kaurs' and Janki Vashdeo Bhojwanis' cases (supra).

The ratio of those judgments, and others in the context of Section 16 (c) and Section 10 of the Specific Relief Act, is to the effect that the testimony of any person who does have personal knowledge in respect of facts, cannot be accepted in respect of those facts and such person cannot be held to have proved them.

64. In that background, as regards the agreement which is sought to

be performed, i.e. Ex. P-1 dated 04.12.2003, no doubt Ram Krishan (plaintiff no.2), did not step into the witness box in support thereof, and plaintiff no. 1, Daljit Singh Dhingra, cannot claim to be in personal knowledge of the said agreement, he not being a signatory to it. However, Ram Krishans' son, Harpreet Kumar, who is admittedly shown to be an attesting witness to the said agreement, duly testified in support thereof, as per the findings of the courts below. In the opinion of this Court, he being a signatory (as an attesting witness) thereto, he had personal knowledge of the document. Hence, the contention of Mr. Bakshi to that effect has to be rejected, and the said document cannot be said to be not duly proved, only because Ram Krishan did not step into the witness box.

In this context, it again needs to be stated here that the contention of the late first defendant to the effect that he had signed blank papers which had been misused by the plaintiffs to create an agreement, cannot be held to be a contention which has been incorrectly rejected by the learned courts below, in view of the fact that, firstly, the very same contention was found to have been refuted by Hari Singh himself in his cross-examination, stating that he never gave any blank papers to any of his lawyers.

Secondly, his own counsels' statement, as recorded in the interim order of the learned Civil Judge dated 11.10.2004, that Hari Singh never signed the agreement at all, is obviously wholly contrary to the stand of Hari Singh, wherein he did not deny his signatures on the documents but stated that they were obtained on blank papers.

Thirdly, the learned courts below also drew an adverse inference, correctly in the opinion of this Court, to the effect that non-

examination by Hari Singh of his own son-in-law, i.e. Satwant Singh, who is shown to be the second attesting witness to the said agreement, proved that he had not signed on blank papers.

No doubt the plaintiffs could also have sought to examine Satwant Singh, but with the onus to prove that blank papers were got signed from him having shifted to Hari Singh, once he admitted his signatures, the adverse inference on non-examination of Satwant Singh was also correctly taken by those courts against Hari Singh.

In these circumstances even the testimony of PW-3, Navdeep Gupta, to the effect that the signatures of Hari Singh on Ex. P-1 were actually his, has to be accepted to be a true testimony.

Hence, as regards the agreement Ex. P-1, which was sought to be enforced by way of its specific performance, I find no perversity or error in the judgments of the courts below, holding that the said agreement was duly proved to have been executed between the late Hari Singh and plaintiff no.2 Ram Krishan.

65. Coming to the next part, of whether Section 16 (c) of the Specific Relief Act would still be invocable by the appellants in respect of the affidavit showing the presence of Ram Krishan before the Sub-Registrar on 09.02.2007. In that respect with Ram Krishan not examined, strictly the affidavit cannot be held to have been proved. However, Ram Krishans' son PW-2 Harpreet Kumar is seen to have testified that his father Ram Krishan used to request Hari Singh to execute the sale deed and that on 09.02.2004, Ram Krishan along with plaintiff no.1, Daljit Singh Dhingra and one Gurmail Singh, remained present in the office of the Sub-Registrar from 9:00 a.m. to 5:00 p.m., along with the balance sale price of Rs. 12,00,000/-

as also the money from stamps, registration and ancillary charges. He also identified his fathers' signatures on the said affidavit.

This is to be further seen with the fact that with Harpreet Kumar having testified to the aforesaid effect, plaintiff no.1 also testified that he was present with Ram Krishan and Gurmail Singh in the office of the Sub-Registrar on 09.02.2004.

Though in different circumstances this Court may have taken the non-examination of Ram Chand as an adverse inference to hold that the plaintiffs could not duly prove his readiness and willingness to perform his part of the contract, but seeing the conduct of the defendants, as dealt with earlier in paragraph 59 supra, and in paragraphs 70 & 71 infra, then, also in the light of the testimony of PW2, such adverse inference is not being taken.

66. The next question is as to whether the agreement executed between the plaintiffs *inter se* each other, i.e. Ex. P-3 dated 17.02.2004, by which Ram Krishan is shown to have assigned his rights arising out of the agreement dated 04.12.2003 to the first plaintiff, Daljeet Singh, can be held to be a duly proved document along with the instrument of power of attorney shown to have been executed by Ram Krishan in favour of plaintiff no.1 Daljeet Singh Dhingra.

As regards the power of attorney executed by Ram Krishan in favour of the first plaintiff, Ex. P-4, though neither Ram Krishan nor the witnesses of the said document (seen to be Amit Kumar Jain and Ashwani Kumar Jain) testified in respect thereof, however, in view of what has been held in **Man Kaurs'** case (supra), even the attorney appointed by an instrument, can testify in favour thereof.

In that context, the following part of the said judgment can be

referred to:-

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

(a) An attorney 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.”

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xxxxx

67. Hence, with the first plaintiff having testified in favour of the validity of the power of attorney conferred upon him under the said instrument, and that having been corroborated by the son of the executant, i.e. by PW-2 Harpreet Kumar, in his testimony, the execution of the said instrument of power of attorney by plaintiff no.2 in favour plaintiff no.1, would be upheld by this Court.

It may be noticed here that a power of attorney is not a compulsorily registrable document either in terms of Section 17 of the Registration Act 1908, or the Powers of Attorneys Act 1882, or by any provision in the Transfer of Property Act. Though Section 33 of the Registration Act does stipulate compulsory registration of an instrument of power of attorney, however, that is only in the context of documents to be presented for registration under Section 32 of the said Act.

In that context, two judgments of the Supreme Court, in **State of Rajasthan** vs. **Basant Nahata** (2005) 12 SCC 77 and **Rajni Tandon** vs. **Dulal Ranjan Ghosh Dastidar** (2009) 14 SCC 782, can be cited.

In the former case, it was noticed that by virtue of the amendment made by that State, registration of a power of attorney by which

transfer of immovable property is intended, would be compulsory in terms of Section 17 (1) (f) and (g), which were added vide the said amendment. Those clauses do not exist in the State of Punjab.

68. Coming back to the agreement between the plaintiffs *inter se* each other, dated 17.02.2004, Ex. P-3.

In that context it has to be seen that plaintiff no.2 being the attorney of plaintiff no. 1 and the said agreement dated 17.02.2004 being one between the two plaintiffs *inter se*, with the first plaintiff having testified in respect of the said agreement in his favour, then, after holding the instrument of power of attorney to be valid, it would be illogical to not hold that even the said agreement was validly proved, such validity being corroborated by the son of plaintiff no.2 in his examination-in-chief as PW-2.

68-A. Hence, as regards the argument raised by Mr. Bakshi, learned counsel for the appellants, in terms of Section 16 (c) of the Specific Relief Act, the question of law is answered to the effect that with the affidavit dated 09.02.2004 executed by plaintiff no.2 Ram Krishan, and the agreement dated 17.02.2004 executed between the two plaintiffs *inter se*, both having been held by this Court to have been proved, as they were by the learned courts below, further, seeing that the suit was instituted by the plaintiffs on 22.05.2004, i.e. within about 03 months thereafter, the readiness and willingness of the plaintiffs to perform their part of the contract has been duly proved and as such, the 'negative condition' stipulated in clause (c) of Section 16 of the aforesaid Act, would not stand in the way of the respondents-plaintiffs.

69. Though no question of law has specifically been framed by

counsel for the appellants on the issue of the appellants being *bona fide* purchasers of the suit land and therefore entitled to protection of the second clause of Section 53 of the Transfer of Property Act, 1882, arguments having been specifically addressed by both learned counsel on the principle (though without reference to Section 53 itself), the question obviously arises and is, therefore, to be considered by this Court.

70. On that aspect, though the argument of learned counsel for the respondents-plaintiffs is that the appellants being neighbours of the plaintiffs (as testified to by Hari Singh, noticed in the judgment of the learned Civil Judge), they would have knowledge of an agreement between Hari Singh and the plaintiffs, that argument by itself is not wholly sustainable, as it is not necessary that a neighbour would disclose any transaction made by him to anyone else.

However, seen with the fact that there was earlier also litigation between defendant no.1 and the first plaintiffs' wife and further, defendant no. 1 testified to the effect that his son and appellant-defendant Balwinder Singh were running a business together, it is difficult to believe that Hari Singh would not have disclosed the factum of an agreement entered into by him with Ram Krishan for sale of the plot, especially as the plot is stated to have been used for the purpose of the business itself.

It is very possible that Hari Singh entered into the agreement with Ram Krishan, with Ram Krishan actually being a person standing in for the first plaintiff to purchase the plot, because Hari Singh may not have been willing to sell it to the first plaintiff on account of the earlier litigation with his wife, and therefore, possibly upon coming to know that Ram Krishan was standing in for plaintiff no.1, he may have attempted to scuttle

that deal by selling the property to the present appellants vide the sale deeds dated 08/09.01.2004. However, with no such thing actually having been proved by Hari Singh or the present appellants, and they having in fact fabricated ante-dated agreements(Ex. D-8 and D-9) and no consideration actually shown to be passed between Hari Singh and the appellants, this Court will not hold the plaintiffs dis-entitled to the decree sought by them, on the aforesaid conjecture.

71. Undoubtedly, one factor which does go in favour of the appellants, is that the said sale deeds are seen to be executed on stamp paper worth Rs.34,020/- in respect of each sale deed (Rs. 68,040/- in all), and therefore, it would otherwise seem to be a *bona fide* transaction, but for the entire set of circumstances, including the fact that appellant-defendant no.2 Balwinder Singh testified to having paid the sale consideration on the date of the registration of the aforesaid sale deeds before the Sub-Registrar, with the endorsement of the Sub-Registrar on the deeds themselves showing wholly otherwise.

Further, in view of the fact that this Court has already agreed with the findings of the courts below, that the appellants and the late defendant no.1, in order to save the property from being sold to the plaintiffs, fabricated the agreements dated 15.05.2003 and 17.09.2003, the appellants cannot be held to be *bona fide* purchasers of the suit land.

72. Consequently, in view of the entire discussion hereinabove, this appeal is dismissed, with costs of Rs. 3,000/-.

(AMOL RATTAN SINGH)
JUDGE

July 3, 2017
nitin/dinesh

Whether speaking / reasoned

Yes

Whether reportable

Yes