

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.131 of 2015

Date of Decision: 07.02.2017

Manjeet Singh

...Appellant

Vs.

Prem Chand and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present:- Mr. Vivek Suri, Advocate
for the appellant.

Mrs. Munisha Gandhi, Senior Advocate
with Ms. Salina Chalana, Advocate,
for respondents No.1 to 4.

Amol Rattan Singh, J.

This is the second appeal of the legal representative of the first defendant, in a suit filed by respondents no.1 to 4 herein (hereinafter to be referred to as the plaintiffs), seeking possession of the suit property by way of specific performance of an agreement of sale, stated to have been entered into between the parties. A decree for permanent injunction was also prayed for, restraining the first defendant from alienating the suit property in any manner, other than to the plaintiffs. (The second defendant impleaded in the suit was the Punjab Urban Development Authority (PUDA), through its Estate Officer at Mohali).

2. The facts, as taken from the judgments of the Courts below, are that, as per the plaintiffs, the first defendant, Jai Singh, who is shown to have died even during the pendency of the suit before the learned Civil Judge, had

entered into an agreement with them on 18.10.2004, for the sale of industrial plot no.D-10, measuring 1250 sq. yards, situated in the Industrial Area, Phase-I, S.A.S. Nagar, Mohali, for a consideration of Rs.55,50,000/-. An amount of Rs.5,00,000/- is stated to have been paid by a demand draft, with Rs.50,000/- also paid in cash to Jai Singh (hereinafter to be referred to as the first defendant), at the time of entering into the agreement. The last date by which the sale deed was to be executed and registered, was fixed as 18.01.2005, with an undertaking stated to have been given in the agreement, that the first defendant would obtain the NDC/NOC/Income Tax clearance from the concerned departments, 7 days prior to 18.01.2005.

The plaintiffs were to incur all the expenses necessary for execution of the sale deed and the first defendant was to hand over all documents and possession of the property at the time of the completion of the transaction.

It had also been agreed upon that the first plaintiff would get the sale deed executed either in his own name or in the name of his nominee/nominees. In case the first defendant did not honour his part of the contract, the first plaintiff was entitled to have the suit property transferred through a suit for specific performance and also have the right to prosecute the first defendant by way of criminal proceedings, in addition to getting damages equal to double the amount of the earnest money paid by him.

In case of breach of contract by the plaintiffs, the earnest money was to stand forfeited in favour of the first defendant.

3. It was further contended in the plaint that the first defendant did not take any interest “for completion of the bargain before 18.01.2005” due to which the plaintiffs issued a registered notice to him on 01.01.2005, by way

of a reminder. It was also stated to have been intimated to the first defendant that plaintiff no.1 would remain present on 18.01.2005 in the office of the Sub-Registrar, Mohali, alongwith the balance sale consideration and expenses for purchase of stamp papers etc.

Defendant no.1 not having responded to the notice issued, the plaintiffs sent a telegram on 15.01.2005 and also intimated him by way of courier service, with a copy sent to Darshan Singh and Sons, property dealer, who had got the bargain settled, as contended.

It was further contended that the first plaintiff had also provided the names of his nominees, i.e. plaintiffs no.2 to 4 and had also filed an application before the second defendant, i.e. PUDA, for the issuance of a 'No Objection Certificate' for transfer of the property in favour of plaintiffs no.2 to 4 (erroneously shown as plaintiffs no.2 to 5 in the array of parties before the Civil Judge, as also in his judgment).

However, the NOC was not issued because the first defendant did not clear the dues payable by him to PUDA, intentionally, as alleged by the plaintiffs.

4. It was further contended that plaintiff no.1 however still remained present on 18.01.2005 in the office of the Sub-Registrar, Mohali, alongwith a pay order for a sum of Rs.50,00,000/- and requisite money for incurring expenses on stamp papers etc. The first defendant not having turned up, the first plaintiff is stated to have got his presence marked in the office of Sub-Registrar vide an affidavit duly sworn on the same date, i.e. 18.01.2005.

Alleging that the first defendant had started 'bargaining for the suit property' with other persons, on account of rising prices, the plaintiffs requested him to fulfill his part of the contract but upon his final refusal to do

so, the suit was instituted on 24.03.2005.

5. Upon notice issued by the Civil Judge (Senior Division), S.A.S. Nagar, defendant no.1 appeared and filed a written statement, taking objections with regard to non-maintainability and further stating that the plaintiffs had not come to the Court with clean hands and hence, were not entitled to the discretionary relief of specific performance of the agreement.

It was further contended that he (the first defendant) being 84 years old, had almost no vision and was also hard of hearing and was bound to suffer great hardship if the suit was decreed because he had no other residence or property. It was further contended that he was willing to return Rs.5,00,000/- to one Satpal, who it was alleged, had actually prepared the agreement.

6. On merits, it was stated that defendant no.1 was the owner of a plot measuring 4000 sq. yards, which also had construction on it and that he was actually not interested in selling it. The aforesaid Satpal was stated to be known to the first defendant and was closely related to the owners of the adjoining plot No.9. He had, therefore, been on visiting terms with the first defendant for about one year prior to 18.10.2004.

It was further stated in the written statement that the wife of the first defendant had died in the year 1992 and that he had no children. Being alone, he had a “weakness of liquor”, which Satpal knew of and therefore, on the day that the agreement was executed, he came to the defendants' house in the evening and served him liquor. Thereafter, Satpal is alleged to have obtained the signatures of the first defendant on several blank papers, representing that he had got a purchaser for the plot, for a sum of Rs.1,50,00,000/-.

As per the written statement, the first defendant signed blank papers under the influence of liquor.

It was further alleged that he did not receive Rs.50,000/- in cash and that he had never ever seen the plaintiffs. He, however, admitted to having received the bank draft, but stated that he had only signed a blank receipt.

7. The receipt of the notice stated to have been issued by the plaintiffs was admitted in the written statement, further stating that the defendant was under no obligation to obtain any clearance certificates from any authority.

[The judgment of the Civil Judge erroneously states, in paragraph 2 thereof, that the first defendant denied having received the bank draft and that he did not received the notice also. In fact, a perusal of the written statement shows that these two facts have been specifically admitted but with the qualification given above, i.e. that a blank receipt was got signed from the defendant and that the legal notice received was based upon “false facts”. The same mistake has been repeated by that Court in paragraph 7, though disbelieving that the notice was not received. The contention that the defendant was ready to return Rs.5,00,000/- has, however, been noticed in paragraph 7. The learned first appellate Court, however has correctly noticed in paragraph 3 of its judgment, that the first defendant had admitted to receiving the draft of Rs.5,00,000/- from Satpal, as also the receipt of the notice.]

8. It was further alleged that any purchase of drafts and affidavits had been done by the plaintiffs only to create evidence against the defendant, who never executed any document to sell the plot to the plaintiffs.

Thus, reiterating that he had been taken advantage of under the

influence of liquor, the other averments made in the plaint were also denied by the first defendant in his written statement.

9. As per the judgment of the learned Civil Judge, the second defendant, i.e. PUDA through its Estate Officer, initially appeared through its counsel but thereafter never filed any written statement and was therefore proceeded against *ex parte*, vide an order dated 26.11.2009.

10. The plaintiffs filed a replication to the written statement filed by the first defendant, denying all the averments made therein and reiterating the contents of the plaint.

Though not specifically stated in the judgment of the learned Civil Judge, it is seen from the record of that Court (summoned by this Court), that other than the fact that all averments made by the first defendant in his written statement had been denied, it was also stated in the replication that the document, i.e. the agreement, was duly signed by the defendant after getting the same typed as would be visible from the document itself.

11. On the aforesaid pleadings, the following issues were framed by the learned Civil Judge:-

- “1. Whether the plaintiffs are entitled to the relief of possession as owner through specific performance of agreement to sell dated 18.10.2004? OPP
2. Whether the plaintiffs are entitled to permanent injunction as prayed for? OPP
3. Whether the agreement to sell dated 18.10.2004 is forged and fictitious document? OPD
4. Whether the suit is not maintainable in the present form? OPD
5. Whether the plaintiffs have no locus standi to file the present suit? OPD
6. Relief.”

12. The plaintiffs examined five witnesses, including the first plaintiff, one Balbir Singh Mann, another Karnail Singh, the aforementioned property dealer, Darshan Singh and one Ravinder Kumar. Documentary evidence was also led by them which would be referred to wherever necessary.

The defendant, who had died by the time evidence was led before the learned Civil Judge, was thereafter represented by the present appellant, i.e. his grand-nephew Manjeet Singh, who examined himself as DW1 and also examined four other witnesses, namely Surinder Pal Singh, Anil Vashisht, HC Gurdav Singh and Jasdev Singh, DSP.

He also, led documentary evidence.

13. Upon considering the evidence and the pleadings and arguments before him, the learned Civil Judge first found that the execution of the agreement had been done through property dealers Satpal Singh and Darshan Singh, with the latter having actually got the agreement, Ex.P1, scribed, which also found mention as an entry in his business register. Satpal Singh was found to be not running any office but operating as a property dealer from his home. It was further noticed by the trial Court that as per Darshan Singh he had remained with the deceased defendant for one and half to two hours to complete the agreement, which was then signed by the son of the first plaintiff, plaintiff no.1 not knowing how to sign, in the presence of his wife and grand-son. Darshan Singh was also found to have got the papers seeking an NOC etc. prepared, with the first defendant also carrying his photographs with him.

It was further found by that Court that the present appellant, i.e. Manjeet Singh, legal representative of defendant no.1, could not defend the

stand taken by the late defendant in his written statement filed during his life time, inasmuch as, Manjeet Singh was found to be living and working in Ludhiana, running a business of electronics, and admitted to never having shared a drink of liquor with the late defendant during his life time.

The factum of the alleged fraud played upon the deceased defendant, was claimed by Manjeet Singh to have been told to him by the deceased, 15 minutes prior to his death, which the trial Court found to be not plausible at all.

14. The learned court also found that the late defendant, Jai Singh, had filed an application to the Senior Superintendent of Police, Mohali, seeking protection of life and property at the hands of first plaintiff, which was registered with the SSPs' office on 11.07.2006 and marked to DW4 DSP Jasdev Singh, who also conducted an enquiry and submitted his report, Ex.D6, on 11.05.2007, recommending that a case to be registered against the aforementioned Satpal and another but thereafter, no criminal proceedings were actually instituted against them right till the time that defendant Jai Singh died on 12.10.2010.

Hence, the conclusion drawn by the Court was that though the late defendant made every effort to frustrate the right of the plaintiffs, but ultimately in his written statement admitted to having appended his signatures on the agreement.

15. On the aforesaid findings and further citing from various judgments of this Court as also the Supreme Court, it was held by the Civil Judge that the contentions of the plaintiffs were duly proved and as such, the pivotal issue as to their entitlement to the relief of possession of the suit property by specific performance of the agreement of sale dated 18.01.2004

was to be decided in their favour.

Consequently, the suit was decreed as such.

16. In the first appeal filed by the present appellant, the Additional District Judge also, after noticing the same facts and pleadings on either side, as also the evidence led, first expressed his doubt as to why the late defendant would have signed a blank agreement after admittedly accepting a draft of Rs.5,00,000/- from Satpal, who had told him that he can fetch Rs.1.5 crores for his plot.

It was also found that the said demand draft was duly deposited in his Bank, as proved by the statement of the Manager of the bank, DW3 Anil Vashisht, who also proved the vouchers, Exs. DG and DH, which showed that a draft of Rs.5,00,000/- and Rs.20,000/- in cash had been deposited by Jai Singh, in his account. The contention of the present appellant, that some other person had deposited the demand draft and the money into his grand-uncles' account, was not found to have been substantiated, in view of the fact that Jai Singh had admitted to having accepted the draft in his written statement itself. Hence, it was opined by that Court that the demand draft was obviously deposited, as was Rs.20,000/- of the Rs.50,000/- given in cash to Jai Singh, with him perhaps retaining Rs.30,000/- for his personal use.

17. The facts that Jai Singh had also sworn an affidavit, Ex.DA, on the date of the agreement and had also applied to the second defendant (the Urban Development Authority) for an NOC to transfer the plot, vide an application Ex.DE, were also found to be established from the evidence. It was further found that the authority vide its letter dated 25.01.2005 (Ex.PW2/F/Ex. DC), had called upon Jai Singh to deposit the amount

outstanding against his industrial plot, to the tune of Rs.1,37,500/- which was also seen to be compounding fee for the unauthorised construction raised on the plot.

Jai Singh was found to have replied to the aforesaid letter on 11.03.2005 (Ex.PW2/G), stating therein that he was short of funds and therefore, the matter with regard to issuance of the NOC be kept pending.

Further noticing that in this reply (to the 2nd defendant-PUDA), Jai Singh had not mentioned that a fraud had played upon him or that he was no more interesting in selling the plot, for which purpose he was seeking the NOC, the first appellate Court concluded that it would show that the late defendant was only providing himself enough time to rethink the matter.

Thus, it was held that it further proved that he had consciously entered into the sale agreement in question and that it was not obtained from him by way of any fraud. It was further noticed that the agreement runs into three pages of fine print, each bearing the signatures of Jai Singh, with the reverse of the first page also containing a revenue stamp across which Jai Singh had appended his signatures.

18. Hence, merely the fact that the DSP in his enquiry report had made out a case of fraud but with no FIR thereafter lodged, the report of the DSP alone was held to be not evidence enough to hold that a fraud had been perpetuated on Jai Singh.

The learned first appellate Court also found it to be strange that the DSP did not enquire from Jai Singh with regard to the NOC applied for by him, or the affidavit executed by him, or even whether any civil litigation was pending between the parties. Hence, it was held that with the SSP, Mohali, i.e. the competent authority, not having directed any registration of the FIR on the

basis of the enquiry report, the allegation of fraud and cheating stood “dissolved”.

19. Consequently, on the aforesaid reasoning, the judgment of the learned Civil Judge, decreeing the suit of the plaintiffs, was upheld by the lower appellate Court, dismissing the first appeal filed by the present appellant.

20. Before this Court, though as many as 15 questions have been framed by learned counsel for the appellant, shown to be substantial question of law, 14 out of the 15 questions are actually with regard to mis-appreciation of the evidence by the Courts below, with only the second question actually being a substantial question of law, which reads as follows:-

“Whether the decree of specific performance can be granted to the plaintiff/purchaser only on the basis of willingness and readiness of the plaintiff-respondents without assessing the hardship of the deceased defendant and appellant and the provisions of Section 16 and 20 of Specific Relief Act?”

Of course, if the appreciation of the evidence by the Courts below is found to be wholly perverse by this Court, that would be ground for interference, by holding that itself to be a substantial question of law, but in the present case, as would be seen, no such perversity has been found by this Court in the conclusion arrived at by both the Courts below, in decreeing the suit of the respondents-plaintiffs. Hence, before going on to whether the question of law framed above should be answered in favour of the appellant or not, the reasoning adopted by the Courts below on the basis of the evidence led before them, may be looked at to see as to whether there is any perversity therein.

21. Before this Court, Mr. Vivek Suri, learned counsel appearing for the appellant, first reiterated the facts stressing upon the issue that the late Jai Singh, being an almost 85 year old man, was taken undue advantage of, especially with he being a widower with no children, living alone. Thus, seeing him to be the owner of a large property in a prime location, property dealers indulged his fondness for liquor and took advantage of it. Mr. Suri pointed to the enquiry report given by the Deputy Superintendent of Police, referred to hereinabove, to support that argument.

He submitted that a decree of specific performance being a wholly discretionary relief, this Court would therefore exercise its jurisdiction to set aside the judgments and decrees of the Courts below, so that at least the legal representative of the late Jai Singh can derive the benefit of the property left behind by his grand-uncle.

22. Mr. Suri next submitted that even from the date of the agreement, i.e. 18.10.2004, about 12 years have elapsed and for that reason alone too, this Court would not decree a suit for specific performance as has been done by the Courts below, in view of the fact that much water has flown as regards the market prices of the plot in question.

He next submitted that the late defendant specifically having stated in his written statement that this was the only plot he possessed, which though earmarked for an industrial purpose, was also being used as his residence, and that he had no other property, there thus being hardship to the late first defendant, a decree of specific performance would not be issued by this Court even in terms of Section 20 (2)(b) of the Specific Relief Act, 1963.

23. In support of his arguments, Mr. Suri relied upon various judgments of the Supreme Court, including **A.C. Arulappan v. Smt. Ahalya**

Naik 2001(4) RCR (Civil) 109 and Bal Krishna and another v. Bhagwan Das and others 2008 (2) RCR (Civil) 732.

Learned counsel for the appellant first pointed to paragraph 7 of *A.C. Arulappans'* judgment, wherein it was held that merely because it is lawful to grant specific relief, the Court need not actually grant it, provided the discretion is not exercised in an arbitrary or unreasonable manner.

In *Bal Krishnas'* case, it was held that to claim the relief of specific performance, the plaintiff himself has to prove his readiness and willingness to perform all essential terms of the contract, failing which the relief cannot be granted to him.

On this aspect, Mr. Suri submitted that other than paying Rs.5,00,000/-, which also is a disputed fact, with the specific stand of the defendant being that though he had accepted the draft, however, it was not deposited by him (as later deposed by the present appellant), the fact still remains that even as per the disputed agreement, Rs.55,50,000/- was to be paid as consideration which has never been even attempted to be paid. Hence, learned counsel submitted that the respondents-plaintiffs in any case cannot be entitled to the discretionary relief.

Mr. Suri next had relied upon the judgment in Satya Jain and others v. Anis Ahmed Rushdie and others 2013(1) RCR (Civil) 369, wherein also it has been held that the twin factors to decide whether to grant the discretionary relief or not to the plaintiff would be, first, the principle of fairness and reasonableness as per the peculiar facts of any given case and second, efflux of time and escalation of the price of the property, though if the plaintiffs are in no way responsible for the delay in the decision of the case, then even such efflux of time and escalation of price cannot be a valid ground

to deny the relief of specific performance, as that would eventually amount to penalising the plaintiffs for no fault of their own.

24. In reply to the aforesaid arguments, Ms. Munisha Gandhi, learned senior counsel appearing for the respondents-plaintiffs, first submitted that the impugned judgments and decrees are wholly based on concurrent findings of fact which this Court in second appeal would not disturb, especially as there is no question of law at all involved in the appeal.

Going on to the facts of the case, the learned senior counsel submitted that deceased Jai Singh even in his written statement never denied having received Rs.5,00,000/- as part of the total sale consideration and as such, all averments to the contrary on behalf of his legal representative, cannot be accepted.

Mrs. Gandhi next drew attention to the fact that even as per the agreement Ex.P1, the vendor had to obtain the necessary documents from the second defendant, i.e. the Punjab Urban Development Authority, in order to execute the sale deed, for which purpose notice was duly sent by the plaintiffs to the late Jai Singh, which also he had admitted in his written statement to have been received by him.

25. Learned senior counsel next pointed to the cross-examination of the appellant as DW1, from the record of the Court of the learned Civil Judge, to submit that his contentions with regard to knowledge of the events was obviously wholly without any basis, he having admitted that he lives at Ludhiana and virtually knew nothing of his grand-uncles' drinking habits.

In fact, on this issue, Mrs. Gandhi also submitted that the actual relationship of the appellant with the late defendant no.1 was never fully proved, with him simply stating that he was the grand-son of the sister of Jai

Singh.

Similarly, learned senior counsel pointed to the evidence already referred to hereinabove, from the judgments of the Courts below, to submit that upon the bank draft for a sum of Rs.5,00,000/- having admittedly been received by Jai Singh, it was duly deposited in his account as proved by the Bank Manager who deposed in that regard, with even the documents to that effect having been duly led by way of evidence by the plaintiffs.

26. She next referred to the fact that simply because the market value of the property may have increased during the pendency of the litigation, that would not be ground enough to deny the plaintiffs their right to the property in terms of the agreement, they having been ready and willing to perform their part of the contract from the very beginning, as was obvious from the fact that they sent a legal notice even before the date fixed for executing the sale deed, i.e. before 18.01.2005 and thereafter, upon the late defendant no.1 not having honoured his part of the contract, in having instituted the civil suit within two months thereafter, i.e. on 24.03.2005. Thus, due to mere pendency of the litigation, for no fault of the plaintiffs, learned senior counsel submitted that they could not be penalized, as held even in the judgment in *Satya Jains'* case (supra).

In this context, learned senior counsel relied upon a judgment of a co-ordinate Bench in **Santa Singh v. Binder Singh and others** 2006(4) Civil Court Cases 608 (P&H), wherein it was held that once the readiness and willingness of the plaintiff to execute the agreement was duly proved, the relief of specific performance should not be denied to him.

27. Further, referring to the readiness and willingness of the respondents-plaintiffs to execute their part of the contract through out, she

submitted that in the execution proceedings instituted by the plaintiffs, in the competent Court, for execution of the decree, the entire amount of the consideration had been deposited, which could be seen both from the fact that even in the application for stay filed by the appellant (CM No.7692-C of 2015), it had been admitted that the amount had been deposited, though it was claimed that it was not the full amount, and this Court, vide its order dated 21.07.2015, had directed that the amount deposited before the executing Court be deposited in a fixed deposit, so that interest could gather upon the amount, during the pendency of this appeal.

Hence, learned senior counsel submitted that the plaintiffs could do no more than what they have, to prove their readiness and willingness to perform their part of the contract.

28. In rebuttal to the aforesaid contentions, Mr. Suri, learned counsel for the appellant, first pointed to the application stated to have been filed by the late Jai Singh, Ex.PW2/A, to the Punjab Urban Development Authority, seeking a NOC for transfer of the plot to plaintiffs no.2, 3 and 4.

Learned counsel pointed to clause 11 of the said printed application form, pertaining to detail of deposits, which as per learned counsel, proved that Jai Singh, who had no bank account with the Union Bank of India, never paid any money towards the transfer application. (The said entry in the form shows that a process fee of Rs.2000/- was paid vide a bank draft dated 20.10.2004, drawn on the Union Bank of India, Mohali).

He next contended that the affidavit and indemnity bond of the plaintiffs, i.e. Tara Wati, Deepak Gupta and Rajat Gupta, were executed on the date of the agreement of sale itself, i.e. on 18.10.2004. Hence, he contended that if that were so, there would be no reason to execute an

agreement in the name of the first plaintiff, i.e. Prem Chand Gupta and not with these three persons themselves, which 'put a lie' to the whole story of the plaintiffs, with regard to the agreement having been actually executed with Jai Singh, and that the stamp paper was actually signed by him. In other words, learned counsel contended that the stand of the appellant and the late defendant no.1, to the effect that actually blank papers were got signed from Jai Singh, stood proved from the fact that the agreement Ex.P1 is shown to be executed only between Jai Singh and the first plaintiff, Prem Chand Gupta, whereas the affidavit and indemnity bond, Exs.PW2/B and PW2/C, are executed by plaintiffs no.2, 3 and 4, whereas they themselves could have also entered into the agreement rather than the first plaintiff, on that date (18.10.2004).

Hence, as per learned counsel, that very fact proves that actually Jai Singh had not signed the agreement consciously and therefore, the appeal deserves to be allowed with the judgments and decrees of the Courts below set aside.

29. Having considered the arguments raised before this Court, the evidence pointed to by learned counsel, as also the judgments of the learned Courts below, I am of the opinion that though the last part of the learned counsel for the appellants' arguments is not wholly illogical, however, the entire circumstances put together do not point to the fact that the late Jai Singh, defendant no.1, had not actually entered into the agreement with the plaintiffs in a conscious state of mind.

This is for the reason that, firstly, in the written statement filed by Jai Singh in his life time, he admitted to having received a demand draft of Rs.5,00,000/- from Satpal, to whom in fact he even offered to return the

amount, as stated in the last line of the written statement.

The question only is therefore, whether the agreement was executed by Jai Singh in a fully conscious state of mind, or, as alleged in his written statement, in a state of intoxication. Though obviously the possibility of that could not perhaps otherwise be ruled out, especially as he was living all by himself and was an old man, further stating that he had only vision in one eye, however, the fact that he did not file any complaint to the police for a period of about one and half years after the agreement was signed by him, and, as held by the courts below, even in the application made by him on 11.03.2005 to the Punjab Urban Development Authority, he only stated that he was not in a financial position to pay the compounding fee of Rs.1,02,000/- demanded by the authority vide its letter dated 25.01.2005, points to the fact that there was no fraud played on him. This is further fortified by his admission to having received the legal notice issued on behalf of the plaintiffs on 01.01.2005, reminding him to get the formalities completed with the Urban Development Authority. Hence, if upon receipt of the legal notice also, he would have realised that he had been duped while he was under the influence of liquor, in the opinion of this Court, he would not have waited till 11.07.2006 to lodge a complaint before the Senior Superintendent of Police. Without a doubt, the report of the Deputy Superintendent of Police has been found, even by the Courts below, to be to the effect that the late Jai Singh had been defrauded by the plaintiffs and Satpal and Darshan Singh. Yet, I agree with the reasoning of those Courts, holding that simply on the basis of that report, the factum of Jai Singh having been duped cannot be accepted; both, for the reasons already discussed immediately hereinabove, to the effect that even after receipt of the notice he kept quiet for one and half years and also, in

the application made in March 2005, to the Urban Development Authority, after receipt of the notice, he made no mention of the fact that he had never applied for transfer of the plot or that he had been duped in doing so. Further, the fact that the report of the DSP was obviously never accepted by the SSP and consequently, no FIR was ever registered right till the death of Jai Singh, I agree with reasoning of the Courts below.

30. Coming to the argument of Mr. Suri, learned counsel for the appellant, to the effect that since the affidavit and indemnity bond executed by plaintiffs no.2,3 and 4 are also seen to be dated 18.10.2004, whereas the agreement is shown to have been executed only in favour of Prem Chand Gupta, i.e. father-in-law/grand-father of the other plaintiffs, in the opinion of this Court, not too much significance can be attached to that argument in the light of the circumstances already discussed, as whether the said defendants were actually present at the time of the signing of the agreement or not has not been pointed to by the learned counsel. Thus, possibly the affidavit and the indemnity bond may have been got executed on the same date at a different point of time; but even presuming that they were all present then, what this Court cannot ignore is the fact that the agreement is scribed on three sheets of stamp paper of a value of Rs.100/- each, seen to be signed at the bottom of two pages by the late Jai Singh and at exactly the correct place, i.e. on the typed line meant for the signature of the vendor, on the 3rd page. The whole document is obviously computer-typed in 'Gurmukhi' and with even the reverse of the first page of the stamp paper seen to be signed by the late Jai Singh, with a revenue stamp also containing a (not so legible) signature, but seemingly that of Jai Singh, with his fully legible signature also appended below the revenue stamp, there would be no reason for this Court to doubt the

correctness of factual findings of the courts below. The stamp paper is also seen to be signed by two witnesses, i.e. PW4 Darshan Singh and the other property dealer who got the transaction executed, i.e. Satpal, of whom Darshan Singh duly testified in favour of the plaintiffs.

It is also seen to be signed by Rajinder Kumar Gupta on all three pages, for the first plaintiff, Prem Chand Gupta, who as per the testimony of aforesaid Darshan Singh, had refused to sign it on the ground that he could not read 'Gurmukhi'.

In any case, as to who signs on the agreement for the prospective vendee is not material, but what is material is as to whether the vendor actually signed the agreement.

As regards that fact, having seen the agreement itself and the reasoning given by the Courts below, as also having seen the pleadings from the record, I find no perversity in the findings of those Courts.

31. As a matter of fact, as a Court of second appeal, this Court would not be required to go into the actual evidence led before the two Courts below, but for the fact that the findings of those courts have been contended to be wholly perverse by the appellant in this second appeal. Hence, for determination of the correctness or falsehood of that contention, it was necessary to examine the records, as have been pointed to by learned counsel for the parties before this court.

32. As regards the contention of learned counsel for the appellant that the application made to PUDA, Ex.PW2/A, shows no processing fee etc. paid from Jai Singhs' account, it is to be noticed that this application is seen to be signed by Jai Singh with no date again on it, but in Clause 11 a process fee of Rs. 2,000/- has been shown to be paid by a bank draft dated 20.10.2004,

drawn on the Union Bank of India, Mohali. Nothing from the cross-examination of the witnesses has been shown to this Court to suggest that Jai Singh did not have a bank account in the said bank at Mohali, where he was obviously a resident in the plot itself, with him having stated even in his written statement that he was residing there. Hence, this Court cannot accept the contention of learned counsel, simply on an averment in that regard made before this Court, in second appeal. Secondly, even if it is to be presumed that the process fee was actually paid by any of the plaintiffs, from their bank, that does not alter the fact that Jai Singhs' signatures are available at three places on the application, two of them being at exactly the place where the applicant/transferror is required to be signed. Hence, no evidence having been led at all by the appellant to the effect that such signatures were actually obtained under the influence of liquor, which from the signatures also does not actually suggest so, the contention cannot be accepted, for this reason, as also in view of what has already been discussed.

33. Lastly, coming to the argument that even if this Court does not find any error in the finding of fact with regard to the agreement having been executed, the decree of specific performance would still not be sustainable, on the ground of hardship, both by virtue of the fact that the late defendant had specifically averred that this was his sole residential-cum-industrial property, and that 12 years have gone by since the agreement was entered into, I find no ground to interfere even in terms of Section 20(2)(b) of the Specific Relief Act.

This would be for the reason that, firstly, during the life time of the late Jai Singh, he obviously continued to reside in the said property with the litigation on going till right now, and the present appellant, in the opinion

of this Court, cannot claim such hardship, of being an owner of solely the said property, he not being a direct descendent of Jai Singh. Admittedly, even as per the appellants' contention, he is the grand-son of the sister of Jai Singh. Hence, hardship on grounds of no other property being available with him, is not something which he can plead, (and in fact, he himself is not seen to have pleaded it), especially as all legal heirs of Jai Singh would obviously be entitled to the consideration amount to be paid by the respondents-plaintiffs, pursuant to the decree of specific performance issued in their favour. Hence, the plea of hardship on that account is rejected.

Further, Jai Singhs' written statement contains an averment that he is the owner of 4000 sq. yards. The suit plot is stated to be 1250 sq. yards. Hence, in my opinion, the hardship claimed is not substantiated, even qua Jai Singh.

34. Coming to the issue of escalation of prices, I again agree with the learned senior counsel appearing for the respondents-plaintiffs, that the plaintiffs have been duly diligent at every stage to perform their part of the contract, including sending a legal notice 18 days prior to the date fixed for execution of the sale deed and thereafter, having instituted a suit within slightly more than two months thereof, on 18.01.2005.

Further, even before the Court seized of execution proceedings, they are shown to have deposited the amount that they were directed to by that court, and it was only on account of the fact that this Court, vide its order dated 21.07.2015, had stopped disbursement of the amount to the appellant, that it was not so disbursed. Hence, the ratio of *Satya Jains'* case would in fact operate in their favour and not against them.

35. In view of the aforesaid discussion, I find no ground to interfere

with the concurrent judgments of and the decrees issued by the Courts below.
Consequently, this appeal is dismissed with costs of Rs.15,000/- to be paid by
the appellant.

February 07, 2017
dinesh

(AMOL RATTAN SINGH)
JUDGE

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