IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Civil Suit No.4 of 2008
Reserved on : 08.11.2023
Decided on : 12.01.2024

Darshan Singh ...Plaintiff

Versus

Sadh Ram ...Defendant

Coram

The Hon'ble Mr. Justice Virender Singh, Judge.

Whether approved for reporting?[1] Yes.

For the plaintiff	:	Ms. Devyani Sharma, Senior Advocate assisted by Mr. Basant Pal Thakur, Mr. Anirudh Sharma & Mr. Shivam Sharma, Advocates.
For the defendant	:	Mr. Bhupender Gupta, Senior Advocate with Mr. Ajeet Pal Singh Jaswal & Mr. Vedhant Ranta, Advocates.

Virender Singh, Judge.

Plaintiff-Darshan Singh has filed the suit for specific performance of contract dated 22.10.2005, against the defendant, with regard the land measuring 7 kanals 13 marlas, comprised in Khewat Khatauni No.59/65, Khasra No.173/105, as per Jamabandi for the years 2001-2002, situated in Mauza Gogharwal, Pargana and Tehsil

[1] *Whether Reporters of local papers may be allowed to see the judgment? Yes.*

Nalagarh, District Solan, H.P., (hereinafter referred to as 'the suit land').

2. In addition to this, the plaintiff has sought the relief of Permanent Prohibitory Injunction, restraining the defendant from selling, transferring, alienating or encumbering and changing the nature of the suit land.

3. The suit has been filed on the ground that defendant had entered into the agreement with the plaintiff, who is agriculturist, regarding the sale of the suit land for a sum of Rs.20,00,000/- per bigha, for a total consideration of Rs.1,02,00,000/-.

4. The terms and conditions of the agreement were reduced into writing on 22.10.2005 and, at that time, the plaintiff had paid a sum of Rs.15,00,000/-, as earnest money. As per the terms and conditions of the agreement to sell, the plaintiff was required to pay a sum of Rs.5,00,000/- on 22.4.2006 and the balance amount of sale consideration i.e. Rs.82,00,000/-, was to be paid on or before 22.08.2006.

5. As per those terms and conditions, plaintiff had paid a sum of Rs.5,00,000/-, to the defendant on

22.4.2006 and this fact was documented, in the presence of two witnesses, namely, Dharam Pal and Negi Ram. On 22.8.2006, the plaintiff had paid a sum of Rs.5,00,000/- and the execution and registration of sale deed was extended up to 22.2.2007.

6. On 27.5.2006, the defendant got issued, a legal notice and thereafter, another notice on 26.8.2006, which was duly replied by the plaintiff on 27.9.2006, by mentioning that the intention of the defendant has become dishonest, as, he had already received a sum of Rs.25,00,000/-, out of the total sale consideration of Rs.1,02,00,000/- and the last date of execution of the sale deed has been extended upto 22.2.2007.

7. A request has also been made to the defendant, in the notice-cum-reply, dated 27.9.2006, to remain present on 22.2.2007, to execute and register the sale deed, in favour of the plaintiff, after receiving the balance sale consideration. The said notice-cum-reply, has been replied, by the defendant, through his counsel, in which, it has been admitted that the defendant had received a sum of Rs.15,00,000/-, as earnest money. However, remaining

Rs.10,00,000/-, which were paid by the plaintiff and duly acknowledged by the defendant, on 22.4.2006 and 22.8.2006, were disputed.

8. It is the further case of the plaintiff that plaintiff filed a suit for Permanent Injunction against the defendant in the Court of learned Civil Judge (Junior Division), Nalagarh, however, the said suit was dismissed, as withdrawn on 15.2.2007, as, the suit for specific performance and injunction, was to be filed, in the High Court, being the value of the property more than one crore.

9. It is the further case of the plaintiff that the plaintiff, with the balance sale consideration, remained present on 22.02.2007, and was ready and willing to get the sale deed executed and registered in his favour, but, the defendant did not turn up.

10. According to the plaintiff, he was ready and willing to perform his part of the contract, but, the defendant, on one pretext or the other, is delaying the execution and registration of the sale deed, despite the fact that he has received a sum of Rs.25,00,000/-. In this regard, the plaintiff has relied upon the endorsement made

in the original agreement to sell, executed on 22.4.2006 and 22.8.2006.

11. Cause of action is stated to have been accrued in favour of the plaintiff on 22.10.2005, the date of execution of the agreement to sell, thereafter on 22.4.2006, when Rs.5,00,000/- was paid, thereafter, on 22.8.2006, when the defendant had received another sum of Rs.5,00,000/- and on 22.02.2007, on which date, the defendant was requested to execute and register the sale deed.

12. On the basis of the above facts, the plaintiff has sought the relief as claimed in the plaint.

13. When put to notice, the suit has been contested by the defendant, by filing the written statement, in which, the defendant has taken the preliminary objections, with regard to the fact that the plaintiff has not approached to the Court with clean hands and he is guilty of suppression of material facts. The suit is stated be false, frivolous, vague and vexatious. The plaintiff is estopped from filing the present suit, on account of his own act and conduct. The plaintiff has filed Civil Suit bearing No.325 of 06,

which was withdrawn on 15.09.2007, without reserving any right to file afresh, as such, plaintiff is estopped from filing the present suit. The present suit is barred by the provisions of Order 2 Rule 2 of the Code of Civil Procedure, as the plaintiff has relinquished his claim pertaining to the present relief, intentionally. The agreement dated 22.10.2005, has been stated to be rescinded by the defendant, after giving due opportunity to the plaintiff to perform his part of the contract, as, the time being essence of the contract. In this regard, notice dated 27.5.2006 was served upon the plaintiff, giving him reasonable opportunity to perform his part of contract, and further subsequent notice, dated 26.8.2006, giving another opportunity to the plaintiff, but, the plaintiff had failed to comply with the terms of the notice and also failed to perform his part of contract, as per the agreement dated 22.10.2005.

14. Apart from this, another preliminary objection has been taken that the plaintiff has not approached the Court with clean hands as he has made the manipulations and additions in the agreement to sell dated 22.10.2005,

by forging certain conditions, by making entries at the back of the agreement, regarding payment of the alleged earnest money of Rs.5,00,000/-, on 22.4.2006 and another entry of Rs.5,00,000/-, on 22.08.2006. In this regard, the defendant has also issued a notice dated 27.5.2006, to the plaintiff, which was duly served upon him. In the said notice a specific demand has been made to pay a sum of Rs.5,00,000/-, within one week, from the date of the receipt of the notice and the said demand has not been accepted.

15. The suit has further been contested on the ground that the defendant has no cause to have demanded Rs.5,00,000/-, through his notice dated 27.5.2006. The suit is not valued for the purpose of Court fee or jurisdiction and the plaintiff is not entitled to the relief.

16. On merits, execution of the agreement dated 22.10.2005, has not been disputed. It has also not been disputed that the defendant had agreed to sell the suit land for a sum of Rs,1,02,00,000/- and received a sum of Rs.15,00,000/-, by way of earnest money, at the time of execution of the said agreement to sell dated 22.10.2005.

He has denied rest of the conditions, with regard to alleged payment of Rs.5,00,000/- on 22.04.2006 and on 22.08.2006. He has also denied that the last date for execution and registration was extended upto 22.2.2007. The notice dated 27.5.2006, was not replied intentionally. Rest of the contents of the plaint have been denied, as such, a prayer has been made to dismiss the suit.

17. Plaintiff filed the replication, denying the preliminary objections, as well as, the contents of the written statement, by virtue of which, the suit has been contested, on merits, by reasserting that of the plaint.

18. From the pleadings of the parties, following issues were framed vide order dated 11.09.2008:-

1. *Whether the plaintiff is entitled to a decree performance of for specific agreement dated 22.10.2005 for the suit land as alleged? OPP.*

2. *Whether the plaintiff is entitled to alternative relief of damages as prayed for by him? OPP.*

3. *Whether the suit of the plaintiff is barred by the provisions of Order 2 Rule 2 of the Code of Civil Procedure in view of the fact that the plaintiff has earlier filed civil suit No. 325/06 before the Civil Judge (Senior Division), Nalagarh, relinquished his claims as prayed for in the present suit*

and withdrew the suit without reserving his right to file a fresh suit on the same cause of action? OPD.

4. *Whether the agreement dated 22.10.2005 was rescinded by notice dated 27.5.2006 and there is no subsisting contract between the parties as such the suit requires to bo dismissed? OPD.*

5. *Whether the plaintiff has manipulated/ altered the agreement by making additions, alterations and interpolations to the agreement dated 22.10.2005 as alleged and is not entitled to the reliefs as prayed for by him in the plaint? OPD.*

6. *Whether the plaintiff is estopped by his acts, deeds, conduct and acquiescence from filing the present suit? OPD.*

7. *Relief.*

19. Thereafter, the parties to the lis were directed to adduce evidence.

20. For the reasons to be recorded hereinafter, my findings, on the aforesaid issues, are as under:

Issue No.1 : Yes.

Issue No.2 : No.

Issue No.3 : No.

Issue No.4 : No.

Issue No.5 : No.

Issue No.6 : No.

Relief : Suit of the plaintiff is decreed as per operative part of the judgment.

REASONS FOR FINDINGS:

Issues No.1 and 5.

21. Both these issues are inter-linked and interconnected, as, the same set of evidence is required to be discussed, as such, both are taken up together.

22. The onus to prove issue No.1 is on the plaintiff, whereas, onus to prove issue No.5 is on the defendant. In order to prove these issues, plaintiff Darshan Singh appeared in the witness box as PW-1, and deposed that on 22.10.2005, agreement Ext.PW1/A was entered into between him and defendant Sadh Ram, whereby, the suit land was agreed to sell, for a sum of ₹1,02,00,000/- (rupees one crore and two lac only). At that time, this witness has paid a sum of ₹15,00,000/- (rupees fifteen lac only) to the defendant, as, advance sale consideration. It has also been stipulated in the agreement Ex.PW-1/A, that ₹5,00,000/- (rupees five lac only) were to be paid to the defendant on 22.4.2006 and the remainder sale consideration of ₹82,00,000/- (rupees eighty two lac only) was to be paid by this witness on 22.8.2006. Those terms

were complied with, by paying a sum of 5,00,000/- (rupees five lac only), to the defendant on 22.4.2006, in the presence of witnesses Negi Ram and Shri Dharam Pal. The said fact was documented on the reverse side of page-1 of agreement Ext.PW1/A. Thereafter, a further sum of ₹5,00,000/- (rupees five lac only) were paid by plaintiff to the defendant on 22.8.2006, in the presence of the aforesaid Negi Ram and Dharam Pal and the time limit for payment of the remaining sale consideration of ₹77,00,000/- (rupees seventy seven lac only) was extended up to 22.2.2007. In this regard, endorsement mark 'B' has been made, on the reverse side of page-2 of agreement Ext. PW1/A. It was also agreed that the sale deed would be executed, after payment of the remaining sale consideration of 77,00,000/- (rupees seventy seven lac only) on 22.2.2007. This witness further deposed that on 27.5.2006 and 26.8.2006, defendant had issued two notices, Ext.PW1/B and Ext.PWI/C, respectively. Those notices were replied by composite reply-cum-notice dated 27.9.2006 Ext.PW1/D to the defendant. The said reply was responded by the defendant by way of notice dated

18.10.2006 Ext.PW1/E, unilaterally canceling Ext.PW1/A, with the further stipulation for forfeiture of the earnest money paid by plaintiff to the defendant. Thereafter, suit for permanent prohibitory injunction was filed against the defendant in the Court of learned Civil Judge (Senior Division), Nalagarh, District Solan, H.P. However, this suit was later on withdrawn and the present suit for specific performance of agreement Ext.PW1/A was filed, before this Hon'ble Court. Lastly, plaintiff has expressed his intention that he was and is always ready and willing to perform his part of agreement Ext.PW1/A. He has made the defendant liable for not performing his part of contract.

24. In the cross-examination, he has deposed that agreement Ext. PW1/A was executed at Nalagarh in the Tehsil complex. The non-judicial papers were purchased by the defendant, through Shri Dharam Pal. Advance earnest money of ₹15,00,000/- (rupees fifteen lac only) was paid by this witness to the defendant, at the time of execution of agreement Ext.PW1/A, in the Tehsil office, in cash in the denomination of ₹100/- and ₹500/-. The defendant had himself come to the Tehsil office for execution of agreement

Ext.PW1/A, which was witnessed by Shri Dharam Pal and Shri Rajeev Kumar.

25. This witness has also admitted that the remainder sale consideration of ₹82,00,000/- (rupees eighty two lac only) was to be paid by 22.8.2006, after that the sale deed was to be executed. He has also admitted that the defendant had issued notice dated 27.5.2006 Ext.PW1/B, calling upon him to pay the balance sale consideration of ₹82,00,000/- (rupees eighty two lac only) and get the sale deed registered.

26. This witness has denied the suggestion that endorsements encircled in red and marked 'A' and 'B' on the back sides of pages 1 and 2 of agreement Ext.PWI/A were got incorporated later on and the same do not bear thumb impressions of the defendant. He has admitted that the defendant and the witnesses have not put the date/line in their own hands below their signatures/thumb impressions on endorsements encircled in red and marked 'A' and 'B' on the back side of pages 1-2 of agreement Ext.PW1/A. Volunteered that the dates on the respective endorsements are duly mentioned therein. Both sum of

₹5,00,000/- (rupees five lac) each were paid to the defendant by this witness, on 22.4.2006 and 22.8.2006 as per the aforesaid endorsements, in cash, in the presence of Shri Negi Ram and Shri Dharam Pal. The above amount was paid by this witness partly, out of the funds lying with him and partly by getting amount withdrawn from the bank i.e. State Bank of Patiala, branch Manpura, Nalagarh. However, he has not annexed any proof as to show the withdrawal of the amount from the Bank and has shown his voluntariness that if he has been directed to do so, he could produce the relevant voucher from the bank.

27. This witness has voluntarily stated that at the time of payment of remaining sale consideration, execution of the sale deed, was extended on 22.8.2006 itself. He has denied that neither he had met the defendant on 22.8.2006 nor had made any payment of ₹5,00,000/- (rupees five lac) to him on that date and had instead got manipulated endorsement.

28. This witness has also admitted that in pursuance of notice dated 26.8.2006 Ext.PWI/C, he had not attended the Tehsil office at Nalagarh as, on the one

hand, the date for execution of sale deed had already been extended up to 22.2.2007 vide endorsement encircled in red and marked 'B' on the back side of page-2 of the agreement Ext.PWI/A and, on the other hand, this witness had sent reply to the notice dated 26.8.2006 Ext.PW1/C to the defendant through his counsel vide composite reply-cum-notice dated 27.9.2006 Ext.PW1/D.

29. This witness has also admitted that he had not attended the Tehsil Office on 13.9.2006, for the reasons already stated earlier. He has also admitted that though vide reply dated 18.10.2006 Ex.PW1/E, the defendant had informed that the aforesaid payment of ₹5,00,000/- (rupees five lac) on 22.4.2006 and ₹5,00,000/- (rupees five lac) on 22.8.2006 was not received by him and he was present in the Tehsil office on two occasions on 22.8.2006 and 13.9.2006, but, on both dates, this witness did not come forward to execute the agreement. He has denied the suggestion that no such payment was made by him on these two occasions.

30. PW-2 Rajeev Kumar, has deposed that agreement dated 22.10.2005 Ext.PW.1/A was entered into

between the plaintiff and the defendant, whereby, the latter had agreed to sell suit land, measuring 7 kanal and 13 marlas to the former for a total consideration of ₹1,02,00,000/- (rupees one crore and two lac only), out of which, a sum of ₹15,00,000/- (rupees fifteen lac only) was paid by the plaintiff to the defendant, as advance sale consideration at the time of execution of agreement Ext.PW.1/A. Agreement Ext.PW.1/A bears signatures of the plaintiff and thumb impression of the defendant. He and Sh. Dharam Pal were the witnesses to agreement Ext.PW-1/A. Interestingly, this witness has not been cross-examined by the learned counsel for the defendant.

31. PW-3 Dharam Pal has deposed that plaintiff and defendant had entered into the agreement Ext.PW1/A. On 22nd April 2006, plaintiff had paid a sum of Rs.5,00,000/-(Rupees five lacs only) to the defendant, vide endorsement Ext.PW3/A, which was made on the backside of the first page of agreement Ext.PW1/A. This witness has identified his signature on Ext.PW3/A, as well as, signatures of defendant and another witness Negi Ram. Vide endorsement Ext.PW3/B a further sum of

Rs.5,00,000/-(Rupees five lacs only) was paid by the plaintiff to the defendant on 22nd August 2006 and time for execution and registration of sale deed was extended upto 22nd February, 2007. The endorsement Ext.PW3/B was signed by this witness and another witness Negi Ram, as well as, by the defendant.

32. In the cross-examination, this witness has deposed that Sadh Ram is resident of village Thanthowal, which is at a distance of about 13-14 Kilometers from his village. Plaintiff Darshan Singh is resident of village Kharooni, which is about at a distance of 4 Kilometers from his village. Darshan Singh is not related to this witness. Plaintiff Darshan Singh is contractor by profession and is doing the business of borewell etc. Negi Ram is resident of village Rauttanwala, which is about 6-7 Kilometers away from his village. Negi Ram is known to this witness, for the last 10-12 years. He is a retired person. Agreement Ext. PWI/A was typed at Tehsil office, Nalagarh. Negi Ram is not related to plaintiff Darshan Singh.

33. This witness does not know whether Negi Ram was doing some work of plaintiff or not. This witness was called by plaintiff, when Ext.PW3/A was executed. However, defendant had also called him on that day, as he was witness to agreement Ext.PW1/A. Endorsement Ext. PW3/A was typed by petition writer at Tehsil Office, Nalagarh, but, he does not know his name.

34. This witness was called to Tehsil Office Nalagarh on the morning of 22nd April, 2006, from his shop, which he is running at Bus Stand Bhud. Village Bhud is about 13-14 Kilometers from Tehsil Office, Nalagarh. When Ext.PW3/B was executed, this witness was called by plaintiff, as well as, defendant to Tehsil Office Nalagarh on the morning of 22nd August 2006 at about 8/8.30 a.m. However, this witness does not know as to who called Negi Ram. Sadh Ram is illiterate. This witness has no business dealings with Darshan Singh.

35. This witness has denied that no payment was made in his presence to the defendant when Ext.PW3/A and Ext.PW3/B were executed. He has also denied the suggestion that thumb impressions of defendant were

obtained on the reverse of agreement on the same day, when agreement Ext.PW1/A was executed. He has also denied that those thumb impressions were misused by fabricating the endorsements Ext.PW3/A and Ext.PW3/B.

36. To rebut this evidence, the defendant has examined DW-1, Suresh Pathik, who has brought the record of Civil Suit No. 325-1 of 2006, titled Darshan Singh Vs. Sadh Ram. Written statement Ex. DW-1/A has been proved by this witness.

37. Defendant Sadh Ram, while appearing as DW-1, has deposed that plaintiff Darshan Singh is known to him. Both of them had entered into an agreement to sell the suit land in a sum of ₹1.2 crores. The agreement was reduced into writing, which is Ex.PW-1/A. On the day of execution of the agreement, an amount of ₹15,00,000/- was received by this witness, as advance. The sale deed was agreed to be executed within ten months from the execution of the agreement. The balance sale consideration was agreed to be paid on the date of execution of the sale deed. Nothing, except ₹15,00,000/-, however, was paid to him by the plaintiff towards sale

consideration. He is illiterate and he even does not know to put signatures and rather put thumb mark. The plaintiff neither turned up for execution of the sale deed nor he had paid the balance sale consideration. Shri K.S. Kaundal, Advocate was engaged by this witness, in this case, to defend him, who has served the plaintiff with notices Ex.PW1/B and Ex.PW-1/C.

38. On the expiry of the period of ten months, this witness went to Tehsil for the purpose of getting the sale deed executed. The plaintiff, however, did not turn up till evening. Thereafter, he has marked his presence by way of affidavit Ex.DW-1/A. The legal notice of execution of the sale Ex.DW-1/B has not been responded by the plaintiff nor payment of balance sale consideration was made. Thereafter, this witness remained present in the Tehsil Office on 13.9.2006 and vide affidavits Ex.DW-1/B and EX.DW-1/C, he has marked his presence in the Tehsil office. Negi Ram S/o Shri Khushi Ram of village Rohatawala and Dharampal S/o Shri Salig Ram of village Kishanpura, both are not known to him. No payment of

₹5,00,000/- each, on two occasions was made by the plaintiff in their presence.

39. According to this witness, except for putting his thumb impression on agreement Ex.PW-1/A, this witness did not put his thumb impression on any other document executed with plaintiff. Since, the plaintiff has failed to make the payment of balance sale consideration and also to turn up for execution of the sale deed, as such, the agreement with him, according to this witness, comes to an end. After execution of the agreement Ex.PW-1/A, the plaintiff never met him again. However, he has filed a suit against this witness in the Court of Civil Judge at Nalagarh.

40. In the cross-examination, this witness has admitted that plaintiff is known to him from the day, when, agreement Ex.PW-1/A was executed. Prior to this, this witness was not having any acquaintance with the plaintiff. Documents Ex.DW-1/A to Ex.DW-1/C, do not bear his thumb impression. He has denied that on 22.4.2006, plaintiff has paid ₹5,00,000/- to him in the presence of S/Shri Negi Ram and Dharam Pal. This witness has also

denied that on 22.10.2006 a further sum of ₹5,00,000/- was paid by Darshan Singh, plaintiff to him and thereafter the time for execution of the sale deed was extended upto 22.2.2007. He has also feigned ignorance whether reply Ex.PW-1/D to legal notice was received by him or not. He has also admitted that replies Ex.PW-1/E of Ex.PW-1/D, were sent to plaintiff. This witness has admitted that he did not turn up on 22.2.2007 to Tehsil office Nalagarh.

41. DW-2 Chhaju Ram has deposed that he was posted as Clerk, in the office of Executive Magistrate (Tehsildar), Nalagarh for the last four months. On the basis of the record, he has deposed that as per Entry No. 655 made on 22.4.2006, affidavit of Shri Sadh Ram s/o Shri Gopi, r/o village Thanthowal, Tehsil Nalagarh, District Solan was got attested and has been entered. The said affidavit is Ext.DW1/A, which, as per the record, has been attested by Executive Magistrate (Tehsildar), Nalagarh.

42. This witness has also deposed that another affidavit Ext.DW1/B of aforesaid Shri Sadh Ram was also attested by the Executive Magistrate, Nalagarh on

13.9.2006, which was entered at serial No.768 of the register.

43. In the cross-examination, this witness has admitted that Sadh Ram has not put his thumb impression on the affidavits in his presence. This witness has also admitted that he was not posted in the office of Executive Magistrate in the year 2006, when these affidavits were attested.

44. DW-3 Aseem Sharma, Advocate has deposed that he was appointed as Notary Public in October 2004 and is continuing, as such, till date. He has deposed that as per the record, on 13.9.2006, he has attested the affidavit of one Shri Sadh Ram s/o Shri Gopi of village Thanthowal, Tehsil Nalagarh, District Solan, H.P. and entered the said affidavit at serial No. 565 of his register. The affidavit Ext.DW1/C is the same affidavit which was attested by him. Sadh Ram is not personally known to this witness, however, he was identified to him by Shri Gurdass Singh, Lambardar of village Radiyali, Tehsil Nalagrh.

45. This is the entire oral evidence adduced by the parties.

46. So far as the documentary evidence is concerned, agreement to sell is Ex.PW-1/A, endorsements on the backside of the agreement is Ex.PW-3/A and Ex.PW-3/B, legal notices issued by Sadh Ram, are Ex.PW-1/B and Ex.PW-1/C, Notice-cum-reply is Ex.PW-1/D, reply to notice is Ex.PW-1/E, Copy of Civil Suit is Ex.PW-1/F, Copy of Application under Order 39 Rules 1 and 2 CPC is Ex.PW-1/G, Affidavit of Sadh Ram is Ex.DW-1/A to Ex.DW-1/C.

47. This is the entire documentary evidence adduced by the parties.

48. In this case, factual position, with regard to the execution of the agreement to sell dated 22.10.2005, Ex.PW-1/A, has not been disputed. As per this document, the total sale consideration of the suit land was Rs.1,02,00,000/-. On the day, when, the agreement to sell was executed i.e. 22.10.2005, earnest money of Rs.15,00,000/- was paid by the plaintiff and there was stipulation that Rs.5,00,000/- were to be paid on or before 22.4.2006 and remaining amount of Rs.82,00,000/- was to be paid till 22.8.2006. Meaning thereby, the last date for

execution and registration of the sale deed has been fixed by the parties on 22.08.2006.

49. In the said document, there are conditions that in case, second party i.e. plaintiff, fails to get the sale deed executed or fails to make the payment, as per the agreement, in that eventuality, his earnest money is agreed to be forfeited.

50. Except the execution of the document Ex.PW-1/A, the defendant has denied the receipt of the payment of Rs.5,00,000/- each, on two occasions i.e. 22.4.2006 and 22.8.2006. As per the stand of the plaintiff, agreement was executed on 22.10.2005. However, on 22.4.2006, he has paid the amount of Rs.5,00,000/-, as per the agreement Ex.PW-1/A and the said factum is stated to have been documented, vide document Ex.PW-3/A, which is on the backside of the first page of document Ex.PW-1/A. The same has been witnessed by Negi Ram and Dharam Pal.

51. The last date for the execution and registration of the sale deed has been fixed as 22.8.2006. On 22.08.2006, as per the stand of the plaintiff, after receiving the payment of Rs.5,00,000/-, the last date for execution

and registration of sale deed has been extended from 22.8.2006 to 22.2.2007. This fact has been documented vide document Ex.PW-3/B, which is on the backside of the second page of the agreement Ex.PW-1/A.

52. On 27.5.2006, the defendant got issued a legal notice to the plaintiff, in which, he has highlighted the fact that the plaintiff had not paid the amount of Rs.5,00,000/-, on or before 22.4.2006 and through this notice, the defendant has given another opportunity to the plaintiff to make the payment of Rs.5,00,000/- within the period of one week from the date of receipt of notice.

53. In this notice, the stipulation has been mentioned that the time has been made essence of the contract, through this notice. Meaning thereby, initially, the time was not essence of the contract.

54. Once, it has been intimated by the defendant to the plaintiff that the time has been made essence of the contract, through the notice Ex.PW-1/B, then, it can be held that the terms and conditions of the agreement Ex.PW-1/A governs the *inter se* relationship of the parties qua sale of the suit land.

55. Through the notice, nothing can be added or deleted from the document Ex.PW-1/A, which had admittedly been mutually executed by both the parties to the lis.

56. There is nothing on the file to justify as to how the terms and conditions of the agreement Ex.PW-1/A could be altered by way of notice, which was issued on 27.5.2006. Relevant portion of the notice Ex.PW-1/B, is being reproduced as under:-

> *"I, therefore, call upon you through this notice and request you to please make the payment of Rs.5.00 lacs (Rs.five lacs only) through an account payee bank draft in favour of my client, within period of seven days from the receipt of this notice, failing which, the agreement dt.22.10.2005 shall stand rescinded/terminated and the earnest money so paid by you shall stand forfeited and my client will be at liberty to transfer the aforesaid land to any other person and you will loose all the claims in the property and money, as the time has been made as an essence of contract by way of giving you another opportunity through this notice."*

57. Not only this, on 26.8.2006, another notice was got issued by defendant Sadh Ram, against the plaintiff Darshan Singh, copy of which is Ex.PW-1/C, in which, it has been mentioned that as per the agreement, Ex.PW-

1/A, last date for execution and registration of sale deed was fixed on 22.8.2006. On that day, since, the plaintiff did not turn up, as such, the defendant got marked his presence. In para 3 of the notice, it has again been mentioned that time has been made essence of contract dated 22.10.2005 and giving another opportunity to the plaintiff to perform his part of contract. Through this notice, the date of execution of the sale deed has been extended unilaterally, as 13.9.2006, by calling upon him to appear on that day on 11.00 a.m.

58. The notices dated 26.8.2006 and 27.5.2006, were replied by the plaintiff, by calling upon him to remain present on 22.2.2007 to execute and register the sale deed, after receipt of the remaining sale consideration. Copy of the notice is on the file as Ex.PW-1/D. The said notice has been replied by the defendant on 18.10.2006, vide reply Ex.PW-1/E, in which, for the first time, the defendant has denied the alleged payment, which was made on 22.4.2006 and 22.8.2006. It has also been mentioned that the defendant never agreed to extend the time for execution and registration of the sale deed beyond 22.8.2006.

Acceptance of the earnest money as Rs.15,00,000/- has also been admitted in this case.

59. In this factual background, this Court is of the view that the time was never the essence of the contract. The terms and conditions of the mutually executed document cannot be altered by issuing the notice and unilaterally inserting the condition that the time has been made essence of the contract.

60. If the facts and circumstances of the present case, as discussed above, are seen in the light of the decision of the Hon'ble Supreme Court in ***Saradamani Kandappan Vs. S. Rajalakshmi and others, (2011) 12, Supreme Court Cases 18,*** then, this Court has no hesitation to hold that the time has never been made essence of the contract. Relevant paragraphs 25 to 43 are reproduced, as under:-

> *"25. The legal position is clear from the decision of a Constitution Bench of this Court in Chand Rani v. Kamal Rani, (1993) 1 SCC 519, wherein this Court outlined the principle thus: (SCC p. 525, para 19)*
>
> > *"19. It is a well-accepted principle that in the case of sale of immovable property, time is never regarded as the essence of the contract. In fact, there is a presumption*

against time being the essence of the contract. This principle is not in any way different from that obtainable in England. Under the law of equity which governs the rights of the parties in the case of specific performance of contract to sell real estate, law looks not at the letter but at the substance of the agreement. It has to be ascertained whether under the terms of the contract the parties named a specific time within which completion was to take place, really and in substance it was intended that it should be completed within a reasonable time. An intention to make time the essence of the contract must be expressed in unequivocal language."

26. Relying upon the earlier decisions of this Court in Gomathinayagam Pillai v. Pallaniswami Nadar, AIR 1967 SC 868, and Govind Prasad Chaturvedi v. Hari Dutt Shastri [1977 (2) SCC 539], this Court further held that fixation of the period within which the contract has to be performed does not make the stipulation as to time the essence of the contract. Where the contract relates to sale of immovable property, it will normally be presumed that the time is not the essence of the contract. Thereafter this court held that even if time is not the essence of the contract, the Court may infer that it is to be performed in a reasonable time : (i) from the express terms of the contract; (ii) from the nature of the property and (iii) from the surrounding circumstances as for example, the object of making the contract. The intention to treat time as the essence of the contract may however be evidenced by circumstances which are sufficiently strong to displace the normal presumption that time is not the essence in contract for sale of land.

27. In Chand Rani v. Kamal Rani, (1993) 1 SCC 519, Clause 1 of the agreement of sale

required the balance consideration to be paid as under:

> *"Rs. 98,000/- will be paid by the second party to the first party within a period of ten days only and the balance Rs.50,000 at the time of registration of the sale deed....".*

This Court held that time regarding payment of Rs. 98,000 was the essence, on the following reasoning: (Chand Rani case, SCC p. 530, para 29)

"29. The analysis of evidence would also point out that the plaintiff was not willing to pay this amount unless vacant delivery of possession of one room on the ground floor was given. In cross-examination it was deposed that since income-tax clearance certificate had not been obtained the sum of Rs. 98,000 was not paid. Unless the property was redeemed the payment would not be made. If this was the attitude it is clear that the plaintiff was insisting upon delivery of possession as a condition precedent for making this payment. The income-tax certificate was necessary only for completion of sale. We are unable to see how these obligations on the part of the defendant could be insisted upon for payment of Rs. 98,000. Therefore, we conclude that though as a general proposition of law time is not the essence of the contract in the case of a sale of immovable property yet the parties intended to make time as the essence under Clause 1 of the suit agreement."

28. <u>The intention to make time stipulated for payment of balance consideration will be considered to be essence of the contract where such intention is evident from the express terms or the circumstances necessitating the sale, set out in the agreement. If for example, the vendor discloses in the agreement of sale, the reason</u>

for the sale and the reason for stipulating that time prescribed for payment to be the essence of the contract, that is, say, need to repay a particular loan before a particular date, or to meet an urgent time bound need (say medical or educational expenses of a family member) time stipulated for payment will be considered to be the essence. Even if the urgent need for the money within the specified time is not set out, if the words used clearly show an intention of the parties to make time the essence of the contract, with reference to payment, time will be held to be the essence of the contract.

(self emphasis supplied)

29. Let us consider the terms of the agreement of sale in this case to find out whether time was the essence. The standard agreements of sale normally provide for payment of earnest money deposit or an advance at the time of execution of agreement and the balance of consideration payable at the time of execution/registration of the sale deed. In the absence of contract to the contrary, the purchaser is bound to tender the balance consideration only at the time and place of completing the sale [see clause (b) of section 55(5) of Transfer of Property Act, 1882 'TP Act' for short]. In this case we find that there is a conscious effort to delink the terms relating to payment of balance price (clauses 4, 5 and 6) from the term relating to execution of sale deed (clause 7) and making the time essence only in regard to the payment of the balance sale consideration. There is also a clear indication that while time would be the essence of the contract in regard to the terms relating to payment of balance price, time would not be the essence of the contract in regard to the execution of the sale deed.

30. The intention making time essence of the contract for payment of balance price is clear from the following :

(a) clause 4 requires the balance consideration to be paid in three installments that is Rs.1,00,000 on or before 28.2.1981; Rs.1,00,000 on or before 6.4.1981; and Rs.75,000 on or before 30.5.1981;

(b) Clause 5 makes it clear that if any of the abovementioned dates of payment is subsequently declared as a holiday, then the next immediate working day shall be the date of payment. This shows a clear intention that payment should be made on the stipulated dates and even a day's delay was not acceptable unless the due date was declared to be a holiday;

(c) Clause 6 specifically stipulates that the payments on due dates is the essence of the contract and in case of failure on the part of the purchaser the vendors shall cancel the agreement.

31. On the other hand, if we look at the terms relating to performance of sale, there is a clear indication that time was not intended to be the essence, for completion of the sale. Clause 3 provides that the execution of sale deed shall depend upon the second party (purchaser) getting satisfied regarding the title to the lands, so also the nil encumbrance. It is significant that the said clause does not say that payment of balance consideration shall depend upon the purchaser getting satisfied regarding title or nil encumbrances. Clause 7 provides that the sale deed shall be executed at the convenience of the purchaser, as and when she wants them to be executed either in her name or in the name of her nominee or nominees. Clause 12 provides that if the second party (purchaser) finds the title of the properties to be unsatisfactory or

unacceptable, the vendors shall be put on notice about her intention not to conclude the sale and in such an event, if the vendors fail to satisfy the purchaser regarding their title, the vendors shall pay to the purchaser within three months from that date, all monies advanced by the purchaser till then. It is thus evident from clause 12 also that the payments of balance sale price in three instalments on the specified due dates were not dependent upon the further examination of title or the satisfaction of the purchaser about the title.

32. It is clear that the purchaser on the basis of whatever initial examination she had taken of the documents, had unconditionally agreed to pay the amounts in three instalments of Rs.1,00,000 on or before 28.2.1981; Rs.1,00,000 on or before 6.4.1981 and Rs.75,000 on or before 30.5.1981; and if the purchaser was not thereafter satisfied with the title or found the title unacceptable and if the vendors failed to satisfy her about their title when she notified them about her dissatisfaction, the vendors had to refund all payments made within three months. Thus it is categorically made clear in the agreement that time regarding payment of balance price was the essence of the contract and such payment was not dependent upon the purchaser's satisfaction regarding title.

33. Apart from the above, the plaintiff in her evidence admitted that time for performance was the essence of the contract vide the following questions and answers:

> *Question : The payment of the due date and in case of failure on the part of the party of second part, the party of the first part shall cancel the agreement. Is this in the agreement or not?*
>
> *Answer : Yes. The dates and the title are important.*

Question : Do you know that everywhere in this agreement one thing is made clear that time is the essence of the agreement ?

Answer. Yes. Time is the essence of the contract and also the title must be proved in the agreement.

Her evidence also shows that she apparently did not have the funds to pay the balance of Rs.75,000 due on 6.4.1981 and Rs.75000/- due on 30.5.1981 as was evident from the Bank pass book. It was therefore possible that being not ready to perform the contract in terms of the agreement, the appellant had invented a modification in the terms of the agreement.

34. The learned Single Judge and the Division Bench have recorded a concurrent finding that the time was the essence of the contract and that no change was agreed in respect of the agreement terms as alleged by the appellant. The appellant is unable to place any material which calls for reversal of the said findings. Therefore it has to be held that time regarding payment stipulated in clauses (4), (5) and (6) of the agreement of sale was the essence of the contract and failure of the appellant to adhere to it, justified cancellation of the agreement by the respondents.

An aside regarding the principle "time is not of the essence" for future consideration

23. It is of some interest to note that the distinction between contracts relating to immovable properties and other contracts was not drawn by section 55 of Contract Act (or any other provisions of Contract Act or Specific Relief Act, 1963). Courts in India made the said distinction, by following the English law evolved during the nineteenth century. This Court held that time is not of the essence of the contracts relating to immovable properties; and that notwithstanding default

in carrying out the contract within the specified period, specific performance will ordinarily be granted, if having regard to the express stipulation of the parties, nature of the property and surrounding circumstances, it is not inequitable to grant such relief. [vide Gomathinayagam Pillai (supra), Govind Prasad Chaturvedi (supra) and Indira Kaur v. Sheo Lal Kapoor, 1988 (2) SCC 188 and Chand Rani (supra) following the decision of Privy Council in Jamshed Khodaram Irani v. Burjorji Dhunjibhai, AIR 1915 PC 83 and other cases]. Of course, the Constitution Bench in Chand Rani made a slight departure from the said view.

36. The principle that time is not of the essence of contracts relating to immovable properties took shape in an era when market value of immovable properties were stable and did not undergo any marked change even over a few years (followed mechanically, even when value ceased to be stable). As a consequence, time for performance, stipulated in the agreement was assumed to be not material, or at all events considered as merely indicating the reasonable period within which contract should be performed. The assumption was that grant of specific performance would not prejudice the vendor-defendant financially as there would not be much difference in the market value of the property even if the contract was performed after a few months. This principle made sense during the first half of the twentieth century, when there was comparatively very little inflation, in India. The third quarter of the twentieth century saw a very slow but steady increase in prices. But a drastic change occurred from the beginning of the last quarter of the twentieth century. There has been a galloping inflation and prices of immovable properties have increased steeply, by leaps and bounds. Market values of properties are no longer stable or steady.

We can take judicial notice of the comparative purchase power of a rupee in the year 1975 and now, as also the steep increase in the value of the immovable properties between then and now. It is no exaggeration to say that properties in cities, worth a lakh or so in or about 1975 to 1980, may cost a crore or more now.

37. The reality arising from this economic change cannot continue to be ignored in deciding cases relating to specific performance. The steep increase in prices is a circumstance which makes it inequitable to grant the relief of specific performance where the purchaser does not take steps to complete the sale within the agreed period, and the vendor has not been responsible for any delay or non-performance. A purchaser can no longer take shelter under the principle that time is not of essence in performance of contracts relating to immovable property, to cover his delays, laches, breaches and 'non-readiness'. The precedents from an era, when high inflation was unknown, holding that time is not of the essence of the contract in regard to immovable properties, may no longer apply, not because the principle laid down therein is unsound or erroneous, but the circumstances that existed when the said principle was evolved, no longer exist. In these days of galloping increases in prices of immovable properties, to hold that a vendor who took an earnest money of say about 10% of the sale price and agreed for three months or four months as the period for performance, did not intend that time should be the essence, will be a cruel joke on him, and will result in injustice. Adding to the misery is the delay in disposal of cases relating to specific performance, as suits and appeals therefrom routinely take two to three decades to attain finality. As a result, an owner agreeing to sell a property for Rs.One lakh and received

Rs.Ten Thousand as advance may be required to execute a sale deed a quarter century later by receiving the remaining Rs.Ninety Thousand, when the property value has risen to a crore of rupees.

38. It is now well settled that laws, which may be reasonable and valid when made, can, with passage of time and consequential change in circumstances, become arbitrary and unreasonable. In Rattan Arya v. State of Tamil Nadu, (1986) 3 SCC 385, this Court held: (SCC pp. 389-90, para 4)

"4. ...We must also observe here that whatever justification there may have been in 1973 when Section 30(ii) was amended by imposing a ceiling of Rs. 400 on rent payable by tenants of residential buildings to entitle them to seek the protection of the Act, the passage of time has made the ceiling utterly unreal. We are entitled to take judicial notice of the enormous multifold increase of rents throughout the country, particularly in urban areas. It is common knowledge today that the accommodation which one could have possible got for Rs. 400 per month in 1973 will today cost at least five times more. In these days of universal day to day escalation of rentals any ceiling such as that imposed by Section 30(ii) in 1973 can only be considered to be totally artificial and irrelevant today. As held by this court in Motor General Traders v. State of A.P. (1984) 1 SCC 222, a provision which was perfectly valid at the commencement of the Act could be challenged later on the ground of unconstitutionality and struck down on that basis. What was once a perfectly valid legislation, may in course of time, become discriminatory and liable to challenge on the ground of its being violative of Article 14."

(emphasis supplied)

39. In Malpe Vishwanath Acharya v. State of Maharashtra, (1998) 2 SCC 1, a three Judge Bench of this Court considered the validity of determination of standard rent by freezing or pegging down the rent as on 1.9.1940 or as on the date of first letting, under sections 5(10)(B), 7, 9(2)(b) and 12(3) of the Bombay Rents, Hotel and Lodging House Rates Control Ac, 1947. This court held that the said process of determination under the Act, which was reasonable when the law was made, became arbitrary and unreasonable in view of constant escalation of prices due to inflation and corresponding rise in money value with the passage of time. This Court held: (SCC pp.22-23, paras 29 & 31)

> *"29. Insofar as social legislation, like the Rent Control Act is concerned, the law must strike a balance between rival interests and it should try to be just to all. The law ought not to be unjust to one and give a disproportionate benefit or protection to another section of the society. When there is shortage of accommodation it is desirable, nay, necessary that some protection should be given to the tenants in order to ensure that they are not exploited. At the same time such a law to be revised periodically so as to ensure that a disproportionately larger benefit than the one which was intended is not given to the tenants.....*
>
> * * *
>
> *31. Taking all the facts and circumstances into consideration, we have no doubt that the existing provisions of the Bombay Rent Act relating to the determination and fixation of the standard rent can no longer be considered to be reasonable."*

40. The principle underlying the said decisions with reference to statutes, would on

the same logic, apply to decisions of courts also.

41. A correct perspective relating to the question whether time is not of the essence of the contract in contracts relating to immovable property, is given by this court in K.S. Vidyanadam and Others vs. Vairavan, (1997) 3 SCC 1 (by Jeevan Reddy J. who incidentally was a member of the Constitution Bench in Chand Rani). This Court observed: (SCC pp. 7 & 9, paras 10-11)

> *"10. It has been consistently held by the courts in India, following certain early English decisions, that in the case of agreement of sale relating to immovable property, time is not of the essence of the contract unless specifically provided to that effect. ... in the case of urban properties in India, it is well-known that their prices have been going up sharply over the last few decades - particularly after 1973. ...*
>
> *11. ... We cannot be oblivious to the reality - and the reality is constant and continuous rise in the values of urban properties - fuelled by large scale migration of people from rural areas to urban centres and by inflation. Indeed, we are inclined to think that the rigor of the rule evolved by courts that time is not of the essence of the contract in the case of immovable properties - evolved in times when prices and values were stable and inflation was unknown - requires to be relaxed, if not modified, particularly in the case of urban immovable properties. It is high time, we do so."*
>
> *(emphasis supplied)*

42. Therefore there is an urgent need to revisit the principle that time is not of the essence in contracts relating to immovable properties and also explain the current

position of law with regard to contracts relating to immovable property made after 1975, in view of the changed circumstances arising from inflation and steep increase in prices. We do not propose to undertake that exercise in this case, nor referring the matter to larger bench as we have held on facts in this case that time is the essence of the contract, even with reference to the principles in Chand Rani and other cases. Be that as it may.

43. Till the issue is considered in an appropriate case, we can only reiterate what has been suggested in K.S. Vidyanadam (supra) :

(i) The courts, while exercising discretion in suits for specific performance, should bear in mind that when the parties prescribe a time/period, for taking certain steps or for completion of the transaction, that must have some significance and therefore time/period prescribed cannot be ignored.

(ii) The courts will apply greater scrutiny and strictness when considering whether the purchaser was 'ready and willing' to perform his part of the contract.

(iii) Every suit for specific performance need not be decreed merely because it is filed within the period of limitation by ignoring the time-limits stipulated in the agreement. Courts will also 'frown' upon suits which are not filed immediately after the breach/refusal. The fact that limitation is three years does not mean a purchaser can wait for 1 or 2 years to file a suit and obtain specific performance. The three year period is intended to assist purchasers in special cases, as for example, where the major part of the consideration has been paid to the vendor and possession has been delivered in part performance, where equity shifts in favour of the purchaser."

61. Similar view has also been taken by the Hon'ble Apex Court in ***Swarnam Ramachandran & Another Vs. Aravacode Chakungal Jayapalan, (2004) 8 Supreme Court Cases, 689.*** Relevant paragraph 12 of the judgment is reproduced as under:-

> *"12. That time is presumed not to be of essence of the contract relating to immovable property, but it is of essence in contracts of reconveyance or renewal of lease. The onus to plead and prove that time was the essence of the contract was on the person alleging it, thus giving an opportunity to the other side to adduce rebuttal evidence that time was not of essence. That when the plaintiff pleads that time was not of essence and the defendant does not deny it by evidence, the Court is bound to accept the plea of the plaintiff. In cases where notice is given making time of the essence, it is duty of the Court to examine the real intention of the party giving such notice by looking at the facts and circumstances of each case. That a vendor has no right to make time of the essence, unless he is ready and willing to proceed to completion and secondly, when the vendor purports to make time of the essence, the purchaser must be guilty of such gross default as to entitle the vendor to rescind the contract."*

62. Now, coming to the alleged stand of the plaintiff that on 22.4.2006, he has paid a sum of Rs.5,00,000/- and the said fact has been documented vide document Ex.PW-3/A and according to him, on 22.8.2006, by making the

payment of Rs.5,00,000/-, the last date for execution and registration of the sale deed has been extended from 22.8.2006 to 22.2.2007. The said fact is documented vide document Ex.PW-3/B of document Ex.PW-1/A. The agreement to sell Ex.PW-1/A, between the parties is a typed document.

63. In the pleadings, the execution of these two documents Ex.PW-3/A and Ex.PW-3/B, has been denied. The tone and tenor of cross-examination of PW-3, Dharam Pal, who is one of the attesting witnesses to the agreement to sell Ex.PW-1/A, as well as, PW-3/A and PW-3/B, that the thumb impression, over these documents Ex.PW-3/A and Ex.PW-3/B has not been disputed, as, the following suggestions have7 been made to this witness:-

> *"It is incorrect to suggest that thumb impressions of defendant were obtained on the reverse of agreement on the same day when agreement Ext.PWI/A was executed. It is incorrect to suggest that taking advantage of thumb impression on reverse side of the agreement we later on fabricated endorsements Ext.PW3/A and Ext.PW3/B."*

64. Meaning thereby, thumb impressions over Ex.PW-3/A and Ex.PW-3/B, have not been disputed. Defendant Sadh Ram, in this case, has also made feeble

attempt to disown his thumb impressions over the admitted document Ex.PW-1/A by saying that the same does not bear his thumb impressions.

65. In para 7 of the plaint, the plaintiff, in unequivocal terms, has pleaded that he had been and is willing to perform his part of the contract. The dispute now revolves around the fact as to whether the plaintiff had paid a sum of Rs.5,00,000/-, each, on 22.4.2006 and thereafter on 22.8.2006. The last date for execution and registration of the sale deed, as per agreement Ex.PW-1/A, was extended upto 22.2.2007. The plaintiff has examined Shri Dharampal, as the attesting witness of document Ex.PW-3/A and Ex.PW-3/B.

66. Interestingly, this witness was also the attesting witness to agreement to sell dated 22.10.2005 Ex/PW-1/A. This witness has been cross-examined at length by the learned counsel appearing for the defendant. He has denied each and every suggestion, which has been put to him by learned counsel appearing for the defendant to demolish the case of the plaintiff. As stated above, it has been suggested to him that the thumb impressions, which

were allegedly taken on the backside of the agreement to sell Ex.PW-1/A, were misused. When the defendant appeared in the witness-box as DW-1, he has not uttered these material facts.

67. This witness has denied the execution of these two documents. Evasive denial, as made by him, if seen in the light of the manner, in which, the cross-examination of PW-3 was done, the execution of these two documents, is duly proved in this case.

68. Another fact, which also assumes significance in the present case, is that the material fact, which has been suggested to PW-3, qua misuse of the thumb impressions of the defendant, which was allegedly taken on the back side of the page 1 and 2 PW-1/A, is not found mentioned in the reply dated 18.10.2006, which was got issued by the defendant. Copy of the suit for permanent prohibitory injunction filed by the plaintiff Darshan Singh before the Court of learned Civil Judge (Senior Division), Nalagarh, is on record as Ex.PW-1/F. This document has been admitted by the defendant.

69. In the said suit also in para 2, the payment, which was made on two occasions, by the plaintiff has duly been mentioned. Situation would have been otherwise, had the factum of filing of suit simply been admitted by denying its contents. When the document has been admitted by the defendant, then, he cannot claim that the document is admitted partly.

70. So far as much relied document i.e. Ex.DW-1/A to Ex.DW-1/C, with regard to the marking of the attendance of the defendant before the Executive Magistrate, Nalagarh, is concerned, these documents nowhere helps the case of the defendant, as it is the specific case of the plaintiff that the last date for execution and registration of the sale deed was extended from 22.8.2006 to 22.2.2007.

71. Prior to 22.2.2007, by issuing the notice, on 18.10.2006, the defendant has intimated the plaintiff regarding the forfeiture of the earnest money. Once, this notice has been replied by the defendant, then, there was no occasion for him to appear before the Registering Authority on 22.2.2007.

72. In view of the discussion hereinabove, plaintiff has proved that he has paid a sum of Rs.25,00,000/- (twenty five lacs only), as earnest money, towards part payment of the sale consideration. Defendant has failed to prove that the plaintiff has manipulated/altered the agreement by making additions, alterations and interpolations to the agreement dated 22.10.2005. As such, issue No.1 is decided, in favour of the plaintiff, whereas, issue No.5 is decided against the defendant.

Issue No.2.

73. In view of the findings given under issues No.1 and 5, the plaintiff is held entitled to the relief of specific performance of agreement Ex.PW-1/A, this issue has become redundant.

Issue No.3.

74. Plaintiff, in this case, has filed the suit for permanent prohibitory injunction before the Court of learned Civil Judge (Senior Division), Nalagarh and later on, on 15.9.2007, the said suit was dismissed as withdrawn.

75. Admittedly, the relief of specific performance of agreement, in the said suit, has not been claimed and as per the stand taken by the plaintiff in para 5, the said suit was withdrawn from the said Court on the ground that the relief of specific performance cannot be claimed as value of the property was more than one crore.

76. The contents of para 5 of the plaint have been denied by the defendant, by taking the plea that the suit was dismissed as withdrawn, without obtaining permission to file a fresh suit, as such, as per the objections taken by the defendant, the suit of the plaintiff is barred by the provisions of Order 2 Rule 2 CPC. Copies of the plaint and application under Order 39 Rules 1 and 2 CPC, have been placed on record by the plaintiff himself. Those documents are on the file as Ex.PW-1/F and Ex.PW-1/G.

77. Para 6 of the said plaint is reproduced as under:-

> *"6. That the cause of action for filing the present suit arose to the plaintiff on 22.10.2005, when the defendant being owner of the suit land entered into an sale agreement with the plaintiff and further has received part sale consideration and lastly on 28.9.2006, when he threatened him to*

alienate the encumber the suit land and the same is recurring one."

78. In view of the stand taken by the plaintiff in para 6 before the Civil Court at Nalagarh, one thing is clear that the plaintiff is seeking injunction, restraining the defendant from alienating the suit land. The relief of specific performance has not been claimed. The suit property was agreed to be sold by the defendant for a sum of Rs.1,02,00,000/-. Meaning thereby, the suit for specific performance could not have been filed before the Court, before which, the suit for permanent prohibitory injunction has been filed. As such, it cannot be held that the plaintiff could seek the relief of specific performance from the Court, where the suit for injunction was filed.

79. In order to attract the bare provisions, as contained under Order 2 Rule 2 CPC, it is for the defendant to prove that plaintiff could not sought the relief of specific performance, which has been sought in the present case.

80. Situation would have been otherwise, had the relief of specific performance been sought by the plaintiff in the suit, which had been filed before the Court of learned

Civil Judge (Senior Division) Nalagarh. The same could have not been granted to the plaintiff, even if the same had been claimed in the suit, filed at Nalagarh, due to the pecuniary jurisdiction of the said Court.

81. In para 3 of the plaint, filed before the Court of learned Civil Judge (Senior Division), Nalagarh, plaintiff has specifically mentioned that the relief of specific performance of the contract could only be claimed after 22.2.2007 i.e. the last date fixed for execution and registration of the sale deed.

82. Considering the bare provisions of Order 2 Rule 2 CPC, the stand as taken by the plaintiff in the earlier suit, is to be seen as a whole.

83. If the facts and circumstances of the present case are seen in the light of the decision of Hon'ble High Court of Lahore, in ***Sardari Mal* versus *Hirde Nath & Others, AIR 1925 LAH. 459,*** then the contentions, which has been raised by the defendant is liable to be rejected. Relevant para 7 of the judgment is reproduced, as under:-

> *"7. I do not think it necessary to decide whether or not the cause of action in the two suits is the same, for it is quite clear that a suit for a permanent injunction did not lie. The plaintiff*

was not entitled to come to the Courts for such a relief in respect of the present cause of action. This is quite clear from the provisions of Section 56 (1) of the Specific Belief Act, which provides that "an injunction cannot be granted when equally efficacious relief can certainly be obtained by any other usual mode of proceeding. except in case of breach of trust." The usual mode of proceeding on breach of a contract for the sale of lands is to bring a suit for specific performance of the contract. The plaintiff, therefore, was not entitled to two reliefs in respect of the breach of a contract. one by way of injunction and the other by specific performance. He was entitled only to the one relief, namely, a suit for specific performance, in which he could have added a claim for compensation. Order 2, Rule 2, therefore is no bar to the present suit. A number of cases have been cited by Counsel, but I do not think it necessary to discuss them. It seems to me that no authority is required for the proposition that a plaintiff, who sues for a relief which the Courts cannot grant him, is not debarred from subsequently bringing a suit in respect of a relief which the Courts can grant him. There is certainly nothing in Order 2, Rule 2, to the contrary."

84. Similar view has also been taken by the Hon'ble Apex Court in ***Inbasegaran & Another Versus S. Natarajan (dead) through LRs 2015 (1) Civil Court Cases, 39.*** Relevant paragraphs 26 and 27 of the judgment are reproduced as under:-

"26. In the light of the principles discussed and the law laid down by the Constitution Bench as also other decisions of this Court, we are of the firm view that if the two suits and the relief

claimed therein are based on the same cause of action then only the subsequent suit will become barred under Order 2, Rule 2 of the CPC. However. when the precise cause of action upon which the previous suit for injunction was filed because of imminent threat from the side of the defendant of dispossession from the suit property then the subsequent suit for specific performance on the strength and on the basis of the sale agreement cannot be held to be the same cause of action. In the instant case, from the pleading of both the parties in the suits, particularly the cause of action as alleged by the plaintiff in the first suit for permanent injunction and the cause of action alleged in the suit for specific performance, it is clear that they are not the same and identical.

27. Besides the above, on reading of the plaint of the suit for injunction filed by the plaintiff, there is nothing to show that the plaintiff intentionally relinquished any portion of his claim for the reason that the suit was for only injunction because of the threat from the side of the defendant to dispossess him from the suit property. It was only after the defendant in his suit for injunction disclosed the transfer of the suit property by the Housing Board to the defendant and thereafter denial by the defendant in response to the legal notice by the plaintiff, the cause of action arose for filing the suit for specific performance."

85. Considering the fact that the relief of specific performance, on the date when, the suit for injunction was filed could not have been claimed by the plaintiff, as such the said provisions are not applicable. As such, issue No.3 is decided against the defendant.

Issue No.4.

86. Once, it has been proved that the last date for execution and registration of the sale deed has been extended from 22.8.2006 to 22.2.2007, then the agreement to sell dated 22.10.2005, cannot be rescinded by the notice dated 27.5.2006. As such, issue No.4 is also decided against the defendant.

Issue No.6.

87. There is nothing on the record to show that the plaintiff is estopped by his acts, deeds, conduct and acquiescence from filing the present suit. As such, issue No.6, is also decided against the defendant.

Relief.

88. In view of the findings on all the issues above, the suit of the plaintiff is decreed with cost. The defendant is directed to perform, his part of the agreement Ex.PW-1/A, by executing and registering the sale deed, at the expenses of the plaintiff, qua the suit land, in favour of the plaintiff, within a period of three months from today, on

receipt of the balance sale consideration of Rs.77,00,000/- (seventy seven lacs only).

Decree sheet be prepared accordingly.

(Virender Singh)
Judge

January 12, 2024*(ps)*