



RSA No.966 of 1991(O&M)

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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

RSA No.966 of 1991(O&M)

Reserved on:07.03.2024

Pronounced on: 22.04.2024

Nachhattar Singh and another

.....Appellants

Versus

Jarnail Singh alias Jaila Singh

.....Respondent

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present: Mr. J.S. Bhatia, Advocate,
for the appellants.

Mr. J.S. Sidhu, Advocate,
for the respondent.

VINOD S. BHARDWAJ , J.

The plaintiffs are in the Regular Second Appeal against the judgment of reversal vide decree dated 31.10.1990 passed by the Additional District Judge, Faridkot in Civil Appeal No.171 of 26.10.1988 whereby he has set aside the judgment and decree dated 22.09.1988 passed by the Sub Judge Ist Class, Gidderbaha declaring the appellant to be owner in joint possession of land measuring 16 kanals in equal share. The question of law which arises for consideration is as to whether limitation for rectification of a document commences from the date of execution of document or from the date of detection of mistake of fact?



Briefly summarized the facts of the present case are that the appellants-plaintiffs filed a civil suit No.701-1 of 21.07.1986 before the Sub Judge Ist Class, Gidderbaha for seeking declaration to the effect that the plaintiffs are owners in possession of 16 kanals 0 marla land in equal shares as detailed in the head-note of the plaint situated in the revenue limits of village Gurusar, Tehsil Muktsar and suit for rectification of sale deed dated 09.05.1975 duly registered in the office of J.S.R. Gidderbaha on 13.05.1975 vide document No.251 Bahi No.1 Zilad No.2 page No.155 for a sum of Rs.23,000/- executed by the defendant in favour of the plaintiffs regarding land measuring 16 kanals detailed in the plaint.

The appellants-plaintiffs claimed that they are owners of the abovesaid land having purchased the same vide sale-deed dated 09.05.1975 duly registered on 13.05.1975 in the office of the Joint-Sub Registrar, Gidderbaha and possession thereof had also been delivered to them on the same day. The respondent-defendant had also recited in the sale-deed that if any wrong statement or incorrect fact is recorded in the sale-deed, the entire responsibility shall fall upon him. The appellants-plaintiffs claimed that despite being in possession of the land purchased by them, khasra girdawari had not been transferred in their names and that when they approached the revenue authorities for entering the mutation in their names and handed over the sale-deed to the Halqa Patwari, he refused to enter the mutation on the ground that Jarnail Singh @ Jaila Singh-defendant was owner of only the land bearing khasra No.221, killa No.14/2(3-12); 14/3(2-4) and 7/4(0-18) as a co-sharer and was not owner of the remaining land and had no concern with



the same. The appellants-plaintiffs thus came to know that the respondent-defendant Jarnail Singh @ Jaila Singh had executed a sale-deed with respect to some other land which was not owned by him and that then on becoming aware of the said fact, they contacted the respondent-defendant and apprised him about the same and requested that as per the terms & conditions of the sale-deed, he should give the land out of his other land and to carry out a necessary rectification thereunder. It was claimed that an assurance was given by the respondent-defendant to get a rectification of the same done, however, the needful was not done and that he eventually refused to accede to the request of the appellants-plaintiffs. Hence, the civil suit was filed on 21.07.1986.

On notice, a written statement was filed by the respondent-defendant who claimed that the suit was not maintainable and was barred by limitation and that it also suffered from non-joinder of necessary parties. It was stated that the possession of the alleged land was never handed over to the appellants-plaintiffs.

Replication to the written statement was filed reiterating the averments contained in the plaint. The following issues were thereafter framed:-

- “1. *Whether the plaint does not disclose any cause of action?*
OPD
2. *Whether the suit is not maintainable in the present form?*
OPD
3. *Whether the suit is bad for non-joinder of necessary parties?* *OPD*
4. *Whether the suit is time barred?* *OPD*



5. *Whether the plaintiffs are entitled to the declaration, as prayed for? OPP*
6. *Whether the plaintiffs are entitled to the rectification of the sale deed dated 9.5.75 registered on 13.5.75? OPP*
7. *Whether the plaintiffs are entitled to the joint possession of the suit land? OPP*
8. *Relief.”*

The appellants-plaintiffs led two witnesses i.e. Kala Singh s/o Kaka Singh, appellant-plaintiff as PW2 and examined one Basant Singh as PW1 and gave up Gurjant Singh as having been won over by the defendant. The respondent-defendant appeared as his own witness and did not tender any document.

Issue Nos.1, 2 and 4 to 7 were decided together by the Sub Judge Ist Class, Gidderbaha and it was held that execution of the sale-deed in favour of the appellants-plaintiffs is established and that since the respondent-defendant did not have any share in the joint khata bearing khewat Nos.807, 891, 906, 907, 934, 948 and 1021, the sale-deed was required to be appropriately rectified. The Sub Judge Ist Class, Gidderbaha thus decreed the suit in favour of the appellants-plaintiffs and held them entitled to the rectification of the sale-deed dated 09.05.1975(Ex.P1) and registered on 13.05.1975(Ex.P2).

The said judgment and decree dated 22.09.1988 passed by the Sub Judge Ist Class, Gidderbaha was challenged by the respondent-defendant by preferring an appeal before the District Judge, Faridkot.



During the pendency of the appeal, the appellants-plaintiffs also moved an application under Order 6 Rule 17 CPC for seeking permission to amend the plaint and to allege that the respondent-defendant had committed a fraud upon them by mentioning incorrect land details in the sale-deed, of which he was not the owner and that in view of Section 26 of The Specific Relief Act, 1963, the respondent is liable to get the sale-deed rectified and to alienate the correct land in favour of the appellants-plaintiffs. Reliance was also placed on Section 43 of the Transfer of Property Act. It was contended that the said amendment was done as the counsel engaged at the time of appeal was of the opinion that the amendment was necessary for the just and proper adjudication of the case and that the said plea was not incorporated in the plaint as an accidental mistake and also that the amendment was merely clarificatory. The said application was opposed by the respondent-defendant by contending that the amendment was not clarificatory and it would change the entire character of the suit and deserves to be dismissed. The plea sought to be added by way of an amendment would set up a different case and as the limitation for seeking rectification of the sale-deed on the ground of fraud had already expired, the amendment if allowed, would cause prejudice to the stand of the respondent-defendant. The said application was also dealt with by the Additional District Judge, Faridkot at the time of passing of the final judgment and decree and it was noticed that the request for amendment deserves to be disallowed as the amendment was not clarificatory in nature and in fact set up a new case altogether. There being no mention of any fraud in the sale-deed and the same was found only on an undertaking recorded in



the sale-deed by the vendor that he would be responsible for any loss occasioned to the vendees in the case of any defect in the title etc. It was noticed that the suit for rectification of a mistake could be instituted within a limitation period of three years from the date of execution of the instrument while on taking a plea of fraud, the limitation of three years shall commence from the date when such fraud comes to the notice. The Court noticed that the suit was instituted on 16.07.1986 and that it was claimed that the fraud came to their notice on 16.01.1986. Hence, the limitation for seeking rectification on the ground of fraud expired in January, 1989 whereas the present application for amendment was filed on 12.09.1990 i.e. after the expiry period of limitation.

While dealing with the issues on merits, the Additional District Judge, Faridkot allowed the appeal filed by the respondent-defendant and held that the appellants-plaintiffs are not entitled to the declaration merely because some of the land mentioned in the sale-deed executed by the respondent-defendant was not owned by him. It was held that there is nothing in the evidence to show as to what was the quality of land mentioned in the sale-deed and that of the land in respect whereof the declaration of ownership is being sought.

Further, even though it was claimed by the appellants-plaintiffs that a recital was incorporated in the sale-deed to rectify any mistake, however, there was no such stipulation in the sale-deed that the respondent-defendant had undertaken to give any other land of equal quality, if any discrepancy was noticed in the ownership. The obligation was only to



compensate the vendees for any loss that might be occasioned to them on account of any false statement made in the sale-deed. Once the respondent-defendant is not found to be owner of the entire land mentioned in the sale-deed, the remedy of the appellants-plaintiffs was not to seek transfer of some other land but to seek a refund of the proportionate sale price. It was thus held that the finding recorded by the Sub Judge Ist Class, Gidderbaha holding that the appellants-plaintiffs were entitled to the declaration and rectification of the sale-deed was incorrect. Further, it was also observed that the sale-deed(Ex.P1) was executed in the year 1975 and there is nothing on record to show that the appellants-plaintiffs had entered into possession of the land.

If there was any grievance or error apparent to the sale-deed, the limitation prescribed is for three years from the date of execution of a document and to seek declaration to the said effect. The suit was however filed after a period of 11 years of the execution of the sale-deed. The same was thus held to be time barred. The appeal was accordingly accepted vide judgment and decree dated 31.10.1990 and the judgment and decree passed by the Sub Judge Ist Class, Gidderbaha, was set aside and consequently, the suit was dismissed.

Aggrieved thereof, the present appeal has been filed.

Learned counsel for the appellants-plaintiffs has argued that the findings recorded by the Additional District Judge for allowing the appeal filed by the respondent-defendant are bad and liable to be set aside since there is no dispute with respect to the execution of the sale-deed(Ex.P1) in the year 1975 in favour of the appellants-plaintiffs for a sale consideration of



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Rs.23,000/-. Besides, there is no denial to the execution of the said document either in the written statement or at the stage of cross-examination of the witnesses examined by the appellants-plaintiffs. As a matter of fact, the respondent-defendant admitted to have received a sum of Rs.23,000/- while appearing as a defence witness and to the execution of the sale-deed and selling out 16 kanals of land. It was further stated by him that he does not have any other land or property which was wrong, hence, the description of the property wrongly mentioned in the sale-deed was liable to be rectified. A mere negligence on the part of the appellants-plaintiffs cannot be cited as a bar to deny the equitable relief to which they are lawfully entitled to and that the suit deserves to be decreed in view of Section 76 of the Specific Relief Act, 1963.

He has placed reliance on a judgment of Hon'ble Supreme Court in the matter of **Thangam and another Versus Navamani Ammal**, dated 04.03.2024 in Civil Appeal No.8935 of 2011 to contend that the failure to file parawise response and denial of the averments contained in the plaint cannot be construed as denial of the specific pleading and that the inferences would accordingly fall against the party which fails to deny to such specific relief.

Reliance was also placed on the judgment of Allahabad High Court in the matter of **Sartaj and another Versus Ayub Khan**, reported as **2019(8) ADJ 137**. The relevant extract thereof reads thus:-

“25. In the case in hand there is no whisper of fraud by either party to the impugned sale deed dated 19.12.1985. It is also noteworthy that where mistake is proved as a fact, in a case of



rectification, the plaintiffs negligence cannot be pleaded as a bar to relief.

26. It is crystal clear from the undisputed/admitted facts and evidence on record that there was a prior contract between Sri Jodha and Smt. Jal Devi on one side (first party) and Sri Sartaj and Sher Jaman Khan on the other (second party), according to which there was a prior complete agreement with common intention between the parties that land plot Khasra No.843-A and 843-B belonging to Sri Jodha and Smt. Jal Devi, the defendant-respondent nos.2 & 3, (devolved upon them on death of their father and mother Sri Govind and Smt. Ram Devi, respectively), is to be sold by them in favour of Sartaj and Sher Jaman Khan through registered sale deed and in furtherance of their common intention, the impugned sale deed dated 19.12.1985 was reduced into writing/executed by Sri Jodha and Smt. Jal Devi in favour of plaintiffs-appellants but due to mutual mistake at the time of framing and reducing the sale deed in writing, in place of vendors Sri Jodha and Smt. Jal Devi, names of their predecessors Sri Govind and Smt. Ram Devi were wrongly mentioned. Admittedly Sri Govind and Smt. Ram Devi were not alive at that time, and the impugned sale deed did not express real/correct intention of contract which did take place between the parties mentioned above.

27. In view of the discussions made above, I find that the precise terms of contract of sale had been orally agreed between plaintiff-defendants no.2 & 3 but due to mutual mistake as mentioned above the sale deed which was reduced into writing and registered did not express real intent of parties to contract of instrument in question. I am of the considered view that (i) the Additional Civil Judge, lower appellate court did not at all consider the material issues involved in the case and based its judgment on irrelevant considerations and findings recorded by



it are wrong, illegal and perverse, (ii) the Additional Civil Judge, lower appellate court committed illegality in rejecting the admitted facts by misreading and misappreciating the evidence on record and its decision with arbitrary and perverse findings is based on surmises and conjectures and (iii) Additional Civil Judge/lower appellate court acted wrongly, illegally and perversely in holding that there was no mutual mistake between parties to impugned sale deed dated 19.12.1985.

28. I am of the considered view that lower appellate court has acted wrongly, illegally, arbitrarily and perversely in allowing the appeal in toto and dismissing the suit of plaintiffs.”

Reliance was also placed on a Division Bench judgment of Orissa High Court in the matter of **Bidyadhar Mohanty and another Versus Ananta Hota and another**, reported as **1956 AIR (Orissa) 83**. The relevant extract thereof reads thus:-

“2. The plaintiffs case is that the defendants agreed to sell 1.10 acres of land appertaining(sic.) to Khata No. 94, in Plot No. 334/969 in Sambara Chaka in Mouza Anlapatta within the sub-division of Khandapara and received Rs. 300/- as consideration therefor. The defendants who took upon themselves the responsibility of executing a proper sale deed fraudulently inserted some other lands, which were of inferior quality, in the deed.

The plaintiff therefore prays for a declaration of his title to the lands agreed to be sold, and for possession of the same. The sale deed was executed by the defendants on 9-10-1948. The fraud was discovered on 27-1-1949 when the plaintiff got the sale deed from the Registration office. Soon afterwards he filed the suit, out of which this appeal arises.



3. *The defendants case is that they neither agreed to sell the lands in Sambara Chaka, nor had they received the sum of Rs. 1300/- as consideration from the plaintiff. They also denied that the plaintiff was put in possession of the lands in Sambara Chaka.*

4. *The question before the Courts was whether the registered kabala dated 9-10-1948 executed by the defendants correctly represents the intention of the parties and if it does not, what is the appropriate relief that should be granted to the plaintiff. Both the Courts below held that the defendants had in fact agreed to sell 1.10 acres of land in Sambara Chaka and that they received full consideration as alleged by the plaintiff.*

The trial Court directed the dismissal of the suit. Though it came to the finding that the sale deed was executed fraudulently, it refused to grant a declaration of title or confirmation of possession as, in its view, the contract between the parties could not be specifically enforced in the present suit.

The learned Additional District Judge, who heard the appeal, while recording his concurrence with the findings of the learned Munsif, held that the plaintiff was not under an obligation to seek a rectification of the sale deed and that the Court itself could grant the relief by way of putting him in possession in this very suit.

Accordingly, the point that has been urged before us in this second appeal is whether the plaintiff should be driven to file another suit for rectification of the sale deed in question, or whether in this very suit the Court can grant equitable relief by way of a declaration of the plaintiffs title to the lands which had actually been agreed to be sold.

Mr. Das, appearing for the defendants-appellants contended that as the second defendant is a minor no relief by way of specific performance should be granted to the plaintiff,



but in my opinion there is no substance in this plea when the concurrent findings of the two Courts is that the minor has been benefited by receipt of consideration money and has executed the sale deed along with defendant 1 conveying these properties.

5. It is well established that Courts of equity will interfere in cases of written agreements where there has been innocent omission or insertion of a material stipulation contrary to the intention of both parties. Where the contract has been executed and the defendant has done all that he was bound to do it would be wholly otiose to require the defendant to execute a fresh deed or rectify the deed that he has already executed.

There would be no use in reforming an agreement when it is wholly executed and nothing remains to be done by either party; and in such cases the relief that the Court grant must be absolute and unconditional -- Steele v. Haddock (1885) 156 ER 597 (A).

7. It will be found, therefore, that the Courts have consistently applied the equitable principle of giving relief to a party entitled to it, without driving him to file a separate suit for rectification of a mistake fraudulently inserted in a conveyance.”

It is further argued that the application submitted by the appellants-plaintiffs for seeking amendment in the plaint ought to have been allowed and the Additional District Judge, Faridkot fell in error to assume that the application was barred by limitation and that it was a substantive prayer. So far as the issue pertaining to limitation is concerned, the law has not distinguished between limitation pertaining to a mistake of a fact or fraud and that the limitation commences from the date when a mistake comes to the knowledge of the appellants-plaintiffs. He places reliance on the judgment of



this Court in the matter of **Charanjit Kaur Versus Kamla Devi and another,** reported as **1977 PLJ 344**. The relevant extract of the same reads thus:-

“2. In this second appeal, Shri J.V. Gupta, learned counsel for the appellant, argues that there was an averment in the plaint that the mistake came to be known to the plaintiff at the time when the mutation was sought about a year before the filing of the suit. P.W. 5 (plaintiff's husband) had also stated in his statement that the mistake came to their notice at the time when the mutation was sought. However, it was not specifically averred either in the written statement or suggested in the cross-examination of P.W. 5 that the plaintiff had come to know of the mistake earlier. Nor was there any evidence on the side of the defendants to impute earlier knowledge to the plaintiff. In the plaint, the averment was :-

"The plaintiff reported the matter of execution of deed dated 21.4.66 and requested the Tehsildar to attest mutation in her name. This mutation about a year back, was refused and it was then that this became known to the plaintiff in respect of the deed dated 14th October, 1959 and this knowledge of the mistake has given the plaintiff the cause of action to institute the present suit and the said deed consequently needs rectification."

In answer to this allegation in the plaint, the defendants stated in the written statement as follows:-

"That in reply to para No. 4 it is stated that the defendant No. 1 has got no knowledge regarding the sale of land by defendant No. 2 to plaintiff nor he has got any knowledge about the redemption. Attestation of the mutation is wrong and hence denied."



It is clear that there was no denial of the express averment in the plaint that the plaintiff came to know about the mistake only at the time when the mutation was sought. Similarly, the statement of P.W. 5, the husband of the plaintiff, in evidence, was also not challenged in cross-examination. There was, therefore, no evidence whatsoever on the basis of which the appellate Court could hold that the plaintiff must have known about the mistake at the time of the execution of the sale-deed in her favour. On the pleadings and on the evidence it must be held that the mistake came to be known to the plaintiff only at the time when mutation was sought.

3. Learned counsel for the respondent argued that the appropriate article of the limitation Act which was applicable was the residuary Article 113 which prescribed period of three years from the date when the right to sue accrued. In a case like the present, I am of the view that the right to sue accrues only when the mistake comes to the knowledge of the plaintiffs. Since the suit was filed within three years from the knowledge of the mistake, the suit is within time. In the result, the judgment and decree of the lower appellate Court are set aside and the judgment and decree of the trial Court are restored. The second appeal is allowed with costs. Appeal accepted.

Similar prayer was considered by the Madras High Court in the matter of Natarajan Asari Versus Pichamuthu Asari, reported as **1972 AIR (Madras) 192** as well as in the matter of N. Bhojan Versus S.B. Raju, reported as **2010(3) MadWN (Civil) 68**. The relevant extract thereof reads thus:-

“7. In the Plaint, the Respondent/Plaintiff has contented that he was in possession and enjoyment of the property, pursuant to



the Sale Deed, however, he came to know, about the wrong mentioning of the sub-division number of the land in sale the deed only in the first week of January 2003 and demanded the Appellant/Defendant to execute a rectification deed. However, the Appellant/Defendant failed to execute the rectification deed, but attempted to trespass into the property. Hence the Suit was filed by the Respondent/Plaintiff seeking the aforesaid relief.

8. The Appellant/Defendant has admitted the execution of the Sale Deed, Ex.P.A1 by him. Had the Sale Deed been obtained under threat and coercion or undue influence against the will of the Appellant/Defendant, he could have filed a Suit for the cancellation of the Sale Deed on the said ground. But no such suit was filed by the Appellant/Defendant against the Respondent/Plaintiff for cancellation of the Sale Deed. As per the Sale Deed the Respondent/Plaintiff is in possession and enjoyment of the property pursuant to the Sale Deed dated 23.07.1986. The learned Counsel for the Respondent/Plaintiff submitted that the Appellant/Defendant is estopped from raising a defence that he had executed the Sale Deed only as a collateral security for an amount borrowed from the Respondent/Plaintiff, against the averments made in the Sale Deed.

10. In the instant case, the Sale Deed dated 23.07.1986 was executed and registered in the presence of Sub-Registrar, who performed his official duty by registering the document. Registration of the Sale Deed by the Sub-Registrar is an official act and therefore, the Court has to presume legally that the official act of Registration has been regularly performed, until the contrary is proved. The Appellant has not disposed the fact that he went to the Registrar Office and signed in the Sale Deed dated 23.07.1986 in the presence of the Sub-Registrar. Had the



Sale Deed-Ex.A1 was executed, and registered by the Appellant under threat and coercion, the Appellant/Defendant could have filed a Criminal Complaint against the persons Respondents for the same or filed a Suit seeking cancellation of the Sale Deed. However, no such Suit was filed by the Appellant/Plaintiff. The defence raised by the Appellant herein was Ex.B1, a letter containing no date, said to have been written by the Respondent/Plaintiff before the Sub-Inspector of Police, Kotagiri Police Station. The letter said to have been sent to the Sub-Inspector of Police is not sufficient to cancel the Sale Deed, the registered document executed as per regular procedure by the Appellant herein, in the presence of witnesses.

11. According to the Appellant/Defendant the Sale Deed is a document executed for collateral purpose as alleged by the Appellant/Defendant in the Written Statement. The Appellant herein, has stated that the said letter Ex.B1, was sent by the Appellant to the Sub-Inspector of police, though the Sub-Inspector had no authority to decide a Civil dispute. Further in the said document no date or seal of the Police Station is available. Even if the date and seal of the Police Station are available, it would not be sufficient to declare the Sale Deed as a document executed for collateral purposes. Though the Appellant/Defendant has stated that Ex.A1 was executed for some collateral purposes, the Sale Deed - Ex.PA1, is not under challenge in the Suit with a specific prayer for cancellation of the Sale Deed. Admittedly, it is a registered document executed by the Appellant/Defendant and the execution of the document has been admitted by the Appellant. The Appellant/Defendant could not raise the plea of limitation as the relief sought for in the plaint is only for rectification of the sub-division of the Survey Number. The Respondent/Plaintiff has specifically stated,



that he came to know that the sub-division was wrongly stated in the Sale Deed and he approached the Appellant/Defendant to execute a Rectification Deed. As he was not inclined to execute the Rectification Deed, the Respondent/Plaintiff filed the Suit seeking mandatory injunction directing the Appellant/Defendant to execute a Rectification Deed in order to correct S. No. 447/15 in the place of 447/6-A in the Schedule of property of the Sale Deed dated 23.07.1986. In such circumstances, I am of the view that the Appellant/Defendant cannot raise the plea against the relief sought for, after having executing the Sale Deed for consideration. As it is only a Rectification Deed, I am of the considered view that the relief sought for by the Plaintiff is not barred by the limitation merely on the ground that the Sale Deed was executed 17 years back by him. There is no bar for seeking rectification of Sale Deed on the base of the error crept in the Sale Deed with regard to the sub-division of the Survey Number, in the absence of a plea of Defendant that some other property having the same number was sold by him to the Respondent/Plaintiff. Similarly there is no dispute with regard to the extend of the land or description of the property sold by the Appellant.

12. On the facts and circumstances, discussed above, this Court is of the view that the Suit is not barred by limitation and the relief sought for rectification of sub-division number and also for injunction is maintainable. Accordingly the substantial questions of law 1 and 2 are answered in favour of the Respondent/Plaintiff and against the Appellant/Defendant.

14. Similarly after executing the Sale Deed in favour of the Respondent/Plaintiff, as vendor, the title of the Respondent/Plaintiff cannot be questioned by the Appellant/Defendant. As the title has been established by the



Respondent/Plaintiff the relief seeking a decree to rectify the Survey Number in the Sale Deed dated 23.07.1986 is legally sustainable. The relief sought for by the Respondent/Plaintiff is only rectification of the correct Sub-Division Number in Sale Deed. Hence, the 5th substantial question, whether the Suit for rectification of Sale Deed is maintainable in the absence of consideration does not arise. As per the Sale Deed consideration was passed on the Respondent herein on the date of Sale Deed. The relief sought for by the Respondent/Plaintiff was only to rectify the error in mentioning the correct sub-division of the Survey Number in the Sale Deed, and therefore, no question of further consideration would arise.

15. *Admittedly the registered Sale Deed relating to the Suit was executed by the Revision Petitioner/Defendant. He has not filed any Suit for cancellation of the Sale Deed and the Petitioner has not raised any allegation that he had been made to sign under threat and coercion. He has also not pleaded that some other land was sold by him under the Sale Deed. Hence, it is crystal clear that the Appellant is raising only an untenable defence, since he had failed to mention the correct Sub-Division Number in the Sale Deed, executed by him, and also registered before the Sub-Registrar.*

16. *The Appellant/Defendant, who sold the property in favour of the Respondent after handing over the possession to the Respondent as per the averments of the Sale Deed-Ex.A1 is estopped from raising a contradictory plea and claim adverse possession. In the absence of a specific pleadings and evidence in support of the pleadings, the Appellant/Defendant is not entitled to claim adverse possession after the sale merely on the ground of stating a wrong Sub-Division Number in the Sale Deed executed by him in favour of the Respondent. Accordingly,*



the substantial questions of law 3 to 5 raised by the Appellant/Defendant are also answered against the Appellant and in favour of the Respondent herein.”

He further argues that after execution of the sale-deed in favour of the appellants-plaintiffs, the respondent-defendant could not question the title of the appellants-plaintiffs and the relief for seeking rectification of the khasra numbers in the sale-deed was legally sustainable. He also places reliance on the judgment of the Andhra Pradesh High Court in the matter of **Ronda Narapa Reddy Versus Ronda Suryanarayana Reddy**, reported as **2005(1) R.C.R. (Civil) 204** wherein it was held by the High Court that the Court may grant relief which was not even prayed for in the plaint, on the ground of equity and that while granting an equitable relief, technicalities should not defeat the substantial justice to be done in between the parties. The relevant extract of the said judgment reads thus:-

“17. It is no doubt true that there should be a plea and there should be a relief prayed for and normally in the absence of the same, such relief cannot be granted. But, here is a case where reasons had been recorded by both the Courts below, under what circumstances on the ground of equity the plaintiff is entitled to the relief of mandatory injunction also. Clear findings had been recorded that this relief is essential to undo certain acts, which were committed by the appellants subsequent to the granting of temporary injunction. It is needless to say that these are all findings based on facts, which cannot be disturbed in a second appeal. The only question canvassed is that in the absence of a specific prayer in relation to the relief of mandatory injunction, such relief suo motu cannot be granted. Here is a case where findings had been recorded by both the Courts below that in



violation of the order of the Court certain acts had been committed and to undo such unlawful acts committed, granting of the relief of mandatory injunction was held to be suitable relief in the peculiar facts and circumstances of the case. While granting the equitable relief like one involved in the present second appeal, technicalities should not defeat the substantial justice to be done in between the parties.”

Reliance is also placed on a judgment of Hon'ble the Supreme Court in the matter of **Puran Ram Versus Bhaguram and another**, reported as **2008(2) R.C.R. (Civil) 499** wherein it was held that the Court may allow an application for amendment in pleadings even where the relief sought for by way of an amendment is allegedly barred by limitation. But such an amendment sub-serves the ultimate cause of justice and avoids further litigation. It was contended that as per Section 26 of the Specific Relief Act, when through mistake of the parties or on account of fraud, when the agreement in writing does not express the real intention of the contracting parties, it is open to the parties to apply for amendment of the instrument and that the Court shall allow to amend the plaint at any stage of the proceedings. The relevant extract of the said judgment reads thus:-

“11. After closely examining the provisions made under Section 26 of the Specific Relief Act, 1963, we do not find any difficulty to hold that in a suit for specific performance of contract for sale, it is permissible to amend a part of the description of the suit property not only in the plaint but also in the agreement. Section 26 clearly says as to when a contract or other instrument can be rectified and provides that when through fraud or a mutual mistake of the parties, the agreement in



writing does not express their real intention, it is open to the parties to apply for amendment of the instrument. It provides that when such a situation arises, then-

- (a) either party or his representative in interest may institute a suit to have the instrument rectified, or*
- (b) the plaintiff may, in any suit in which any right arising under the instrument is in issue, claim in his pleading that the instrument be rectified.*

12. *A reading of these two conditions made under Section 26 of the Act would amply show that either party may institute a suit to have the instrument rectified or a party who has already filed a suit in which any right arising under the instrument is in issue may claim in his pleading that the instrument be rectified. So far as the facts of the present case are concerned, it cannot be doubted that the main issue in the suit for specific performance of the contract for sale was relating to the agreement for sale in which a part of the description of the suit property was wrongly given by mutual mistake and therefore, needed to be amended. Section 26, of course, says that it would be open to a party to institute a suit for correcting the description of the suit property, but the proviso to Section 26 clearly permits that where a party has not claimed any such relief in his pleading, the court shall at any stage of the proceeding allow him to amend the plaint on such terms as may be just for including such claim. From a plain reading of the provisions under Section 26 of the Act, there is no reason why the prayer for amendment of the agreement to correct a part of the description of the suit property from Chak No. 3 SSM to Chak No.3 SLM, later on converted to Chak No. 3 SWM could not be granted. In our view, it is only a correction or rectification of a part of the description of the suit property,*



which cannot involve either the question of limitation or the change of nature of suit. In our view, the suit shall remain a suit for specific performance of the contract for sale and a separate independent suit is not needed to be filed when the proviso to Section 26 itself clearly permits either party to correct or rectify the description of the suit property not only in the plaint but also in the agreement itself. So far as the question of limitation is concerned, the agreement was entered into on 12th of April, 1991 and the suit, admittedly, was filed within the period of limitation. Therefore, even if the amendment of plaint or agreement is allowed, that will relate back to the filing of the suit which was filed within the period of limitation. So far as the submission of the learned counsel for the respondent that the rectification of the agreement cannot be permitted is concerned, we are of the view that Section 26(4) of the only says that no relief for rectification of instrument shall be granted unless it is specifically claimed. However, proviso to Section 26, as noted herein earlier, makes it clear that when such relief has not been claimed specifically, the court shall at any stage of the proceeding allow such party to amend the pleading as may be thought fit and proper to include such claim. Therefore, we are not in agreement with the learned counsel for the respondent that section 26 would stand in the way of allowing the application for amendment of the agreement. The views expressed by us find support in a decision of the Madras High Court in Raipur Manufacturing Co., Ltd Vs. Joolaganti Venkatasubba Rao Veerasamy & Co [AIR 1921 Mad 664 [LQ/MadHC/1921/80]], wherein it was held that where in the course of a suit for damages for breach of contract, the plaintiff contends that there is a clerical error in the document embodying the contract, it is not always necessary that a separate suit should have been brought for rectification of the



document and it is open to the court in a proper case to allow the plaintiff to amend the plaint and ask for the necessary rectification. As noted herein earlier, the learned counsel for the respondent contended before us that the appellant could not get specific performance of the contract for sale unless he sued for rectification of the agreement for sale. We are unable to accept this contention of the learned counsel for the respondent for the simple reason that in this case, by filing the application for amendment in the suit for specific performance of the contract for sale, the appellant had sought the rectification of the agreement also. It is sufficient to observe that it was not necessary for the appellant to file a separate suit for that purpose as contended by the learned counsel for the respondent. It is open to the appellant to claim the relief of rectification of the instrument in the instant suit. The amendment, in our view, in the agreement was a formal one and there was no reason why such amendment could not be allowed.

13. *The other ground on which the High Court has refused to permit the appellant to amend the plaint is that if the amendment is allowed, the suit shall be converted into a suit for declaration. We are unable to accept this view of the High Court. In our view, the suit is a suit for specific performance of the contract for sale simplicitor and only a part of the description of the suit property in the agreement as well as in the plaint was sought to be corrected or amended by the appellant by filing the application for amendment of the plaint. If we are permitted to look into the description of the suit property from the original plaint as well as from the application for amendment, it would be clear that the description of the suit property has been kept intact excepting that instead of Chak No. 3 SSM, Chak No. 3 SLM, later on converted to Chak No. 3 SWM, has been sought to be*



replaced. Therefore, it is difficult to conceive that by such amendment, that is, instead of Chak No.3 SSM, if Chak No.3 SLM, later on converted to SWM is substituted, either the description of the suit property or the nature of the suit would change. This is only a change in a part of the description of the suit property, which was wrongly described by mutual mistake. Therefore, in our view, this change in a part of the description of the suit property in the plaint cannot convert the suit for specific performance of the contract to a suit for declaration. In any view of the matter, the relief claimed in the suit remained the same i.e. a decree for specific performance of the contract for sale and by amendment, no declaration has been sought for in respect of the instrument.”

Counsel for the respondent-defendant has reiterated his argument that the institution of a plaint was belated and that the same deserves to be dismissed. He places reliance on the judgment and decree of the Additional District Judge, Faridkot to substantiate his argument that the amendment was rightly not allowed by the Additional District Judge since it changed the nature of the suit and that the same was barred by limitation. It is also argued that as there was no stipulation in the sale-deed(Ex.P1) that the vendor was required to give his other land of equal quality if he was not found to be owner of the land mentioned in the sale-deed, hence, the only remedy available to the appellants-plaintiffs was to seek refund of the proportionate sale price rather than proceed transfer of some other land in the name of the respondent-defendant.



I have heard learned counsel appearing on behalf of the respective parties and have gone through the judgments and also the evidence relied upon by the respective parties.

The issue which comes up for consideration before this Court is as to whether the rectification in the sale-deed could have been sought for by the appellants-plaintiffs after a period of more than three years from the date of the execution of the sale-deed.

The plea of the appellant-plaintiff for amendment of the plaint under Order 6 Rule 17 CPC was declined on ground that it sought to incorporate a plea of fraud after a period of more than three years from the date when the fraud was undisputedly played and that the said plea cannot be allowed. Irrespectively, the suit of the appellants-plaintiffs was dismissed by the Additional District Judge, Faridkot on the ground that even though the sale-deed was executed in the year, 1975, however, the civil suit was instituted in the year 1986 and was thus barred by limitation.

Section 26 of the Specific Relief Act deals with the rectification of the instruments and provides that a party may seek such rectification when the instrument in question is not reflective of the intent of the contracting parties either due to fraud or due to mistake of parties. The prohibition against grant of such relief is only in an eventuality where such a relief of rectification of the instrument is not claimed. The Courts, while administering equitable relief may permit rectification of a mistake where the expression of the contract is contrary to the intention of the permit. When such a mistake is established, the Court can give relief of rectification. It



must not be lost sight that what is rectified is not the agreement but the mistaken expression of it and it only intends to bring the document in conformity with the real intent of the contracting parties. Section 26 of the Specific Relief Act, 1963 reads thus:-

“26. When instrument may be rectified.—(1) *When, through fraud or a mutual mistake of the parties, a contract or other instrument in writing [not being the articles of association of a company to which the Companies Act, 1956 (1 of 1956), applies] does not express their real intention, then—*

- (a) either party or his representative in interest may institute a suit to have the instrument rectified; or*
- (b) the plaintiff may, in any suit in which any right arising under the instrument is in issue, claim in his pleading that the instrument be rectified; or*
- (c) a defendant in any such suit as is referred to in clause (b), may, in addition to any other defence open to him, ask for rectification of the instrument.*

(2) If, any suit in which a contract or other instrument is sought to be rectified under sub-section (1), the court finds that the instrument, through fraud or mistake, does not express the real intention of the parties, the court may, in its discretion, direct rectification of the instrument so as to express that intention, so far as this can be done without prejudice to rights acquired by third persons in good faith and for value.

(3) A contract in writing may first be rectified, and then if the party claiming rectification has so prayed in his pleading and the court thinks fit, may be specifically enforced.



(4) No relief for the rectification of an instrument shall be granted to any party under this section unless it has been specifically claimed:

Provided that where a party has not claimed any such relief in his pleading, the court shall, at any stage of the proceeding, allow him to amend the pleading on such terms as may be just for including such claim.”

It is evident that the Section provides for such rectification in the event of fraud or mutual mistake of fact. The only possibility which can be inferred from the facts of the case is that either both the parties reached under a mutual mistake, however, if respondent knew of the same and did not inform, his intent became fraudulent. Thus under either circumstances, the instrument was not reflective of intent. The Section thus covers both eventualities and places them at par in so far as the consequences are concerned.

In the said background, it needs to be seen as to what is the mistake of fact which can be rectified and what are the essential pre-requisites of a rectification.

The essentials for rectification, as set out through various legal precedents, are that the relief of rectification is not granted unless a completed agreement is reached prior to the written instrument which is sought to be rectified is executed. If the negotiations leading up to the execution of the instrument were vague and inconclusive, it is impossible to ascertain what the parties actually intended, then only the instrument can be cited as indicative of the intent of the contracting parties.



Secondly, it has further held that both the parties must have intended that the intention remains unchanged up to the moment of the actual execution of the instrument.

Thirdly, the evidence of the mistake, common to both the parties, must be clear and the burden of proving thus lies on the party praying for rectification.

The mistake should be obvious and not the mere probability of mistake. The Courts require clear, distinct and unambiguous evidence to indicate the real intention of the parties. If the defendant can satisfy the courts that he understood the contract exactly in the sense which was expressed in the written instrument, no alteration is yet to be made.

Fourthly, the pre-requisite for rectification is the rectification of literal mistakes so as to enable the parties to act according to their intentions already revealed, clearly and unequivocally formed prior to the agreement.

The specific plea of the appellants-plaintiffs is that there was a mistake of fact and that the parties intended to execute a sale-deed pertaining to the land owned by the respondent-defendant was not specifically denied and a vague and evasive reply to all the averments in the plaint was given by stating that either they were denied for want of knowledge or that the same were incorrect. Thus, in the absence of a specific denial of an affirmative assertion, the vague and evasive reply cannot be construed to be rebuttal of a specific pleading by the plaintiffs. Further, there is no document brought on record that the mistake in question was unilateral or that the respondent-



defendant never intended to execute the sale-deed with respect to the land that actually stood in his name.

The case of the respondent-defendant may have been on a different footing in case he held any land in the said khasra numbers as well, however, as it transpired, the respondent-defendant did not hold any land in the abovesaid khewat/khasra numbers that were recorded in the sale-deed. Hence, it could not be construed that the respondent-defendant intended to transfer such other land which was described in the sale-deed. Besides, there is no evidence led by the respondent-defendant to the effect that the value, nature and quality of the land, which was owned by him in the actual khewat was different than the nature and quality of land which is described in the sale-deed. Besides, there is also no dispute or denial to the effect that the sale-deed was duly executed by the respondent-defendant in favour of the appellants-plaintiffs and he received the entire sale consideration in lieu thereof. The specific case of the appellants-plaintiffs is to the effect that actual physical possession of the land was delivered to him. The said factual aspect as recorded in the sale-deed was not accepted by the Additional District Judge, Faridkot on the self-serving testimony of the respondent-defendant.

It is also seen that the Additional District Judge, Faridkot proceeded on an assumption that the limitation for seeking rectification in instrument would commence with effect from the date when the instrument is executed and that it was only in the event of a fraud that the limitation of three years was prescribed from the date of detection of fraud. The said



foundation of the conclusions drawn by the Additional District Judge, Faridkot is incorrect. A mistake of fact or a fraud have been kept at parity in so far as institution of suit for seeking rectification in an instrument are concerned. The limitation prescribed for seeking rectification in executing instrument on account of a mistake is also a period of three years from the date when such mistake is detected and that it is not distinct from a fraud. The appellants-plaintiffs claimed that the mistake came to their notice in the month of January 1986 and the suit was instituted in July 1986 i.e. after six months of the said mistake having come to their notice. There is nothing on record on the basis whereof it can be held that the said mistake had come to the notice of the appellants-plaintiffs more than three years prior to the institution of the suit. The judgments relied upon by the counsel for the appellants-plaintiffs in this regard noticing the period of three years for rectification of mistake would thus be applicable.

Further, the respondent-defendant having received the entire sale consideration with respect to the land claimed by him to be owned by him and to be in his actual and exclusive physical possession, it would be inequitable and travesty of justice at this stage to rule in favour of the respondent-defendant and to hold that that he is entitled to capitalize on a mistake that occurred at the stage of execution of the sale-deed.

There being no evidence to suggest or to establish that the respondent-defendant never intended to sell the land owned by him or that he actually intended to sell the land reflected in the sale-deed and that the said fact was duly disclosed to the appellants-plaintiffs, it can be presumed that



the mistake in question was mutual and not a unilateral mistake. It is only after when the said mistake was noticed that the intent of the respondent-defendant became dishonest. It is also not a case set up by the respondent-defendant that the money transferred to him was in lieu of any other transaction and that the sale-deed had been obtained either by way of a fraud or on account of an undue influence, pressure or coercion on behalf of the respondent-defendant.

Further, there is every possibility that a Deed Writer entered wrong khasra numbers under a mistake of fact since the jamabandi brought before the Deed Writer may have a large number of co-sharers. Merely because the said mistake was not detected and the appellants-plaintiffs believed the entry to have been correctly recorded after comparing the same with the jamabandi, he should not be put to a disadvantage for the confidence reposed and trust on the Deed Writer as well as the vendor.

The judgments of Hon'ble Supreme Court have held that the decree ought to be granted and rectified when a mistake of fact has occurred and that the right of the vendee ought not to be defeated on a mere technicality or the subsequently acquired dishonest intentions of the vendor.

I find that no sufficient circumstances exist on the basis whereof it can be held that the parties never intended to execute a sale-deed with respect to the land owned by the respondent-defendant/vendor and that the nature and quality of the land owned by the respondent-defendant falling in khasra No.221, killa No.14/2(3-12); 14/3(2-4) and 7/4(0-18) was of any difference from the nature and value of the land as written in the sale-deed.

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Besides, to direct a refund of the proportionate amount at this stage would amount to vesting premium on a dishonest person which would not be the intent of law. The execution of the sale-deed and receipt of the sale consideration having not been denied and there being nothing on record on the basis whereof it can be perceived that the sale-deed was got executed with undue force or misrepresentation or fraud, a voluntary executed contract between the parties is required to be ordinarily given effect to.

Besides, I find myself in agreement with the judgments relied upon by the counsel for the appellants-plaintiffs and also the pre-requisites for rectification extracted above and that no sufficient grounds exist as to why the said relief ought to have been denied. Hence, the present appeal preferred by the appellants-plaintiffs is **allowed** and the judgment and decree dated 31.10.1990 passed by the Additional District Judge, Faridkot, are hereby **set aside** and the judgment and decree dated 22.09.1988 passed by the Sub Judge Ist Class, Gidderbaha, **are ordered to be restored.**

April 22, 2024
seema

(VINOD S. BHARDWAJ)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No