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

Date of decision : 11.02.2025

1 **RSA No.3982 of 2000 (O&M)**

Sukhdev Singh ...... Appellant

Versus

Shri Prem Mitter and ors. …... Respondents

2 **RSA No.3471 of 2001 (O&M)**

Prem Mitter ...... Appellant

Versus

Sukhdev Singh …... Respondent

3 **RSA No.31 of 2003 (O&M)**

Prem Mitter ...... Appellant

Versus

Sukhdev Singh …... Respondent

4 **RSA No.3929 of 2009 (O&M)**

Sukhdev Singh ...... Appellant

Versus

Jaspal Singh …... Respondent

5 **RSA No.2361 of 2024 (O&M)**

Sukhdev Singh ...... Appellant

Versus

Prem Mitter …... Respondent

6 **RSA No.2359 of 2024 (O&M)**

Sukhdev Singh ...... Appellant

Versus

Prem Mitter …... Respondent

CORAM : HON'BLE MR.JUSTICE PANKAJ JAIN

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Present :- Mr. G.S. Nagra, Advocate
for the appellant(s) in
RSA-3982-2000, RSA-3929-2009,
RSA-2359-2024 and RSA-2361-2024 and
for the respondent(s) in RSA-3471-2001 & RSA-31-2003.

Mr. Kanwaljit Singh, Senior Advocate
With Mr. Sukhwinder S. Chatrath, Advocate
for the respondent(s) in RSA-3982-2000 &
for the appellant(s) in RSA-31-2003 & RSA-3471-2001.

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PANKAJ JAIN, J. (ORAL)

CM-6813-C-2001 in RSA-3471-2001

This is an application seeking condonation of delay of 108 days in re-filing the present appeal.

For the reasons recorded in the application, this Court is satisfied that the applicant-appellant has shown sufficient cause to condone the delay in filing the appeal.

Application is allowed. Delay of 108 days in re-filing the appeal is condoned.

CM-55-C-2003 in RSA-31-2003

This is an application seeking condonation of delay of 150 days in re-filing the present appeal.

For the reasons recorded in the application, this Court is satisfied that the applicant-appellant has shown sufficient cause to condone the delay in filing the appeal.

Application is allowed. Delay of 150 days in re-filing the appeal is condoned.

<u>RSA-3982-2000</u>

1 Mr. Sukhwinder S. Chatrath, Advocate, puts in appearance on behalf of the respondent(s) in RSA-3982-2000 and for the appellant(s) in RSA-31-2003 & RSA-3471-2001 and has filed his vakalatnama(s) respectively in Court today. The same are taken are taken on record.

2 Plaintiff is in appeal. Plaintiff filed suit for specific performance of agreement to sell dated 02.11.1988. Defendant No.1 filed suit seeking decree of permanent injunction restraining plaintiff from dispossessing him from the suit land. The two cross suits bearing Civil suit No.455 of 1995, filed by Sukhdev Singh seeking decree of specific performance and Civil Suit No.209 of 1994 filed by Prem Mitter seeking decree of permanent injunction were disposed off by a common judgment.

3 Suit filed by Sukhdev Singh Civil Suit bearing No.455 of 1995 is being taken as the main *lis*. Facts are being culled out from the same. For convenience parties hereinafter are referred to by their original position in the suit i.e. the appellants as plaintiff and the respondents as defendants.

4 Sukhdev Singh-plaintiff claimed agreement to sell executed by defendants in their favour dated 02.11.1988 for a land measuring 66 kanals

12 marlas. It was claimed that the defendants agreed to sell the said land in his favour for a valuable consideration of Rs.2,04,784/- and received an earnest money of Rs.40,000/- with the promise to get the sale deed executed in his favour on or before 28.06.1989. He claims further extension after the defendants claimed that the land could not be transferred in his name. It is also claimed that further amount of Rs.5,000/- was paid and the possession was delivered to him. It is further claimed that the parties agreed to get the sale deed executed on or before 31.07.1989. On 31.07.1989 plaintiff appeared before Tehsil Office, Ajnala along with balance sale consideration to get the sale deed registered. However, defendants failed to come present. Plaintiff got his presence marked.

5 Defendant No.1 again approached plaintiff on 29.09.1989. He represented to the plaintiff that the land could not be transferred in his name and sought further extension. Further extension was granted and an amount of Rs.5,000/- was again paid by the plaintiff to defendant No.1. Plaintiff further claims to have paid another amount of Rs.50,000/- to defendant No.1 on 24.04.1991 and claims that the parties agreed to get the sale deed executed on or before 14.08.1991. On 13.08.1991 the date was further extended to 14.12.1991. On 13.12.1991 again the parties agreed to extend the date by 13.02.1992. Plaintiff claims that defendant No.1 again received an amount of Rs.10,000/-vide cheque dated 13.12.1991. He claims to have been present in the office of Sub Registrar Ajnala on 13.02.1992. However defendant No.1 failed to come present. It is further case of the plaintiff that defendant No.1 again received a sum of Rs.5,000/- by way of cheque dated

04.09.1992 and Rs.10,000/- by way of cheque dated 16.11.1992 and Rs.7,000/- by another cheque. Rs.5000/- on 01.07.1993 by way of cheque, Rs.10,000/- again by way of cheque, Rs.6,000/- in cash and finally Rs.7,000/- on 10.11.1993.

6 Plaintiff claims that defendant No.1 received a total amount of Rs.1,60,000/- from him by 10.11.1993 and agreed to execute the sale deed in favour of plaintiff as and when the land is transferred in his name. Plaintiff claimed that the land has now been transferred in the name of defendant No.1 and he failed to execute sale deed in his favour despite the plaintiff always being ready and willing to perform his part. Suit was contested by defendant No.1. He denied of having executed agreement to sell in favour of plaintiff. Receipt of earnest money was also denied. Defendant No.1 claimed the agreement to sell to be a forged and fabricated document and claimed that the plaintiff is in illegal possession of his land for last more than two years.

7 After consolidation of suits, the issues of both the suits were reframed and recasted. The following issues were framed vide order dated 22.09.1998 :-

> *"1) Whether the defendant No.1 and on behalf of the defendant No.2 and 7 executed an agreement to sell dated 2-12-88 ?OPP.*
> *2) Whether the plaintiff is entitled for the specific performance of the agreement and injunction prayed for ?OPP.*
> *3) Whether the plaintiff has been ready and willing to perform his part of the contract? OPP*
> *4) Whether the suit is not maintainable in the present form? 0PD.*

> *5) Whether the plaintiff has got no locus standi to file the present suit ?OPD.*
> *6) Whether the suit is bad for non-joinder of the necessary parties ?0PD.*
> *7) If issue No.1,2 & 3 are not proved, whether the defendant is entitled to recover the possession of the suit property ?OPD.*
> *8) Whether the agreement dated 2-11-88 is against public policy ?OPD.*
> *9) Relief.*"

8 The Court of the first instance while returning findings came to the conclusion that the execution of agreement to sell stands proved. Readiness and willingness of the plaintiff to get the sale deed executed in his favour stands established. The possession of the plaintiff stands proved from the revenue record. Repelling the plea raised by defendant No.1 regarding condition in the allotment letter issued in his favour by State of Punjab under the Punjab Package Deals Properties (Disposal) Rules, 1976 created bar on his right to transfer, Court of First instance decreed the suit in favour of the plaintiff. Plaintiff was held entitled to get the sale deed executed and registered in his favour from the defendants on payment of balance sale consideration. Defendants were given two months' time to execute the sale deed in favour of the plaintiff. Trial Court dismissed the suit filed by defendant No.1 seeking decree of permanent injunction observing as under :-

> *"19. In view of my findings on the abovesaid issues, suit of the plaintiff for specific performance bearing No.455 of 1995 is decreed with proportionate cost to the effect that the plaintiff is*

entitled to get the sale deed executed and registered in his favour from the defendants on payment of balance sale consideration payable to the defendants by the plaintiff in respect of suit property fully detailed in the head note of plaint as per jamabandi for the year 1989-90 and the defendants are restrained permanently from alienating the suit land in any manner and the possession of the plaintiff over the suit property is confirmed. The defendants are given two months time to execute the sale deed in favour of plaintiff and are directed to receive the balance sale consideration and to get the sale deed registered in the office of Sub-Registerar Ajnala within the period of two months from the passing of the judgment failing which the plaintiff shall be at liberty to get the sale deed executed and registered in his favour upon deposit of balance sale consideration in favour of defendant through process of court whereas the consolidated civil suit No.209 of 1994 filed by Defendant No.1. against the present plaintiff Sukhdev Singh is hereby dismissed without costs."

9 Dissatisfied defendant No.1 preferred appeals against the judgment and decree passed by the Court of the first instance. Lower Appellate Court though held that it stands established and proved that defendant received a sum of Rs.1,60,000/- towards earnest money in respect of agreement to sell Ex. P-6 but relied upon condition imposed in the allotment letter Ex.D-1 to hold that the defendants had no title over the suit land at the time of execution of the agreement to sell and are bound by the condition not to transfer the suit land and are thus liable to pay back the amount received. Modifying the decree passed by the Court of the first instance, Lower Appellate Court granted plaintiff alternate relief to recover

an amount of Rs.1,60,000/- along with interest @12% per annum with effect from 01.10.1989 till the date of recovery. Appeal preferred in Civil suit No.209 of 1994 was allowed. However, Civil Appeal No.68 of 1999 preferred by respondent-defendant No.1 in a suit for permanent injunction was ordered to be dismissed.

10 Learned counsel for the plaintiff while assailing the impugned judgment and decree passed by the Lower Appellate Court submits that defendant No.1 was allotted evacuee agricultural land vide certificate dated 21.04.1993. While allotting land, defendant No.1 and other allottees were barred from transferring land for 20 years without realizing that the provision with respect to restriction from transferring the land already stood deleted by way of notification dated 20.01.1979.

11 In order to hammerforth his contention he relies upon ratio of law laid down by this Court in the case of ***Smt. Sarbjit Kaur and LRs of Mohinder Singh Since deceased & ors. Vs. Mohinder Singh and another 2008(4) RCR (Civil) 458.***

12 Learned senior counsel appearing for defendants, however submits that the agreement to sell sought to be imposed by way of present *lis* is dated 02.11.1988. Thus, it will not be in the interest of justice to grant decree of specific performance after more than 37 years.

13 I have heard learned counsel for the parties and have gone through records of the case.

14 In view of the ratio of law laid down by the Constitution Bench of Supreme Court in ***Pankajakshi (dead) through LR's v. Chandrika, 2016***

(6) SCC 157 substantial question of law may not be framed in a second appeal before Punjab and Haryana High Court. However, the finding of fact recorded, cannot be interfered with even in terms of Section 41 of Punjab Act. The court may interfere only when there is question of law involved though it may not be substantial question of law.

15 The three issues that arise for consideration of this Court are :-

> *i) Effect of covenant containing restriction on the rights of the allottees to alienate or part with the land in the certificate dated 22.04.1993.*
>
> *ii) Whether the effect of ban can be pleaded by vendor having denied benefit from agreement to sell.*
>
> *iii) The effect of pendency of lis for 37 years.*

15 (i) So far as issue regarding the covenant contained in the allotment letter relied upon by the Lower Appellate Court to deny relief of specific performance to the plaintiff is concerned, it will be apt to peruse covenant itself. The same reads as under :-

> *"The heirs of the allottee shall not be entitled to lease, transfer, sell mortgage with possession otherwise alienate or part with the land as transferred wholly or Partially in any manner, in favour of any person for a period of 20 (twenty) years from the date of transfer, provided that the land may be pledged in favour of government or semi-government, corporation or co-operative Financing institution(s) or commercial Bank(s) for securing loan effecting improvements in the land.*
>
> *If the heirs of the allottee violate any of the conditions mentioned in the sale certificate, the tehsildar (Mahal) or the Naib tehsildar (Mahal) shall be competent to cancel the sale,*

forfeit the amount already aid and resume paid the land after giving due notice.”

It is not denied that the aforesaid covenant as contained in the transfer certificate has its genesis in the Punjab Package Deals Properties (Disposal) Rules, 1976 framed under Section 18 of the Punjab Package Deals Properties (Disposal) Act, 1976. The precise issue came up before this Court in the case of ***Smt.Sarbjit Kaur (supra),*** this Court while dealing with the issue elaborately observed as under :-

“12. In respect of the second question, it is argued that ban of 10 years in respect of sale is in direct conflict with Sections 10 and 11 of the Transfer of Properties Act, which are reproduced below :-

"10. Condition restraining alienation. - Where property is transferred subject to a condition or limitation absolutely restraining the transferee or any person claiming under him from parting with or disposing of his interest in the property, the condition or limitation is void, except in the case of a lease where the condition is for the benefit of the lessor or those claiming under him; provided that the property may be transferred to or for the benefit of a women (not being a Hindu, Muhammadan or Buddhist), so that she shall not have power during her marriage to transfer or charge the same or her beneficial interest therein.

11. Restriction repugnant to interest created. - Where, on a transfer of property, an interest therein is created absolutely in favour of any person, but the terms of the transfer direct that such interest shall be applied or enjoyed by him in a particular manner, he shall be entitled to receive and dispose of such interest as if there were no such direction.

Where any such direction has been made in respect of one piece of immoveable property for the purpose of securing the beneficial enjoyment of another piece of such property, *nothing in this section shall be deemed to affect any right which the transferor may have to enforce such direction or any remedy which he may have in respect of a breach thereof".*

13. Learned counsel has further relied upon decisions in the case of ***Jagir Singh and another v. Chanchal Singh, 1984 SLJ 471, Puran Chand v. Jagat Ram, 1986(2) PLR 485 and Manohar Shiv Ram Swami v. Mahadeo Guruling Swami, AIR 1988 Bombay 116, Smt. Lilawati and others v. Firm Ram Dhari Suraj Bhan and another, AIR 1971 Punjab & Haryana 87 and B. Anjaneyulu v. V.G. Raghunathan 1995 (1) Civil Court Cases 291****. It is further argued that for the purposes of creating such a ban, there has to be a legislative support which has not been shown by the plaintiff. Moreover, it has been argued that the document mark A which is a conveyance deed provides that in case of sale prior to 10 years, the land shall be resumed, but it does not provide that it cannot be sold at all. Therefore, the plea of 10 years ban is not available to the plaintiff.*

14. In the end, learned counsel for the appellants has argued that in case, it is found by this Court that the plaintiff had given authority to defendant No. 1. in respect of alienation of the suit land, then the same made by him would not be void as held by the first Appellate Court and in that eventuality, the suit filed only for possession without praying for declaration of cancellation of sale deed on payment of ad valorem Court fee is not maintainable in view of the Full Bench decision of this Court in the case of ***Niranjan Kaur v. Nirbigan Kaur, AIR 1981 Punjab and Haryana 368.***

15. Mr. Munishwar Puri, learned counsel for respondent No. 1/plaintiff submitted that the decision of the Lahore High Court in the case of Mt. Jan (Supra) and of this Court in the case of Nand Kaur (Supra) are fully applicable to the facts of this case and submitted that defendant No. 1. was only empowered through Ex. D2 for the purpose of management of the suit land and had no power to alienate the same. It was further argued that he could have sold the *property only if the sale was imminent for the management of the land. It is further highlighted that the allotment of land to the plaintiff was conditional as the same could not have been sold within the period of ban of 10 years. Therefore, the sale cannot be recognized. It is further submitted that so far as the maintainability of the suit is concerned, since the sale deeds executed by defendant No. 1 in favour of defendant nos. 2 and 3 are without any legal authority, the same are void and for that purposes, suit for declaration for cancellation of sale deed is not required and a simple suit for possession is maintainable.*

16. I have heard learned counsel for the parties and have perused the record with their assistance.

17. Insofar as the first question is concerned, the plaintiff has mentioned in para No. 3 of the plaint that on 17.2.1981, two documents were got executed which were general power of attorney and an agreement to sell. Document Ex. PW2/A refers to that agreement to sell vide which the plaintiff himself wanted to sell the property to defendant No. 1. Therefore, he had the intention to sell the property in dispute. The authorities relied upon the first Appellate Court and cited before this Court by learned counsel for the respondent are in the case of Mt. Jan (Supra) and Smt. Nand Kaur's case (Supra), wherein it has been held that where authority given for specific purpose followed by general purpose , then it has to be construed to have been given for special purpose, are of no avail to the respondent in view of the later decision of this Court in the case of Harmeet Kaur's Case (Supra) in which the following observations have been made :-

> *"After hearing learned counsel for the parties and examining the records of the case with their assistance, I find no merit in the contention of learned counsel as noted above. I have gone through the power of attorney Ex. DW5/1 as also findings of the appellate Court on the precise point as has been raised by learned counsel for the plaintiff, wherein it has been clearly observed by the learned Additional District Judge that the*

contents of the power of attorney would cloth him with the following powers :-

a) Power to give the disputed land on lease

b) Power to mortgage the disputed land

c) Power to sell the disputed land

No, doubt, the power of attorney contains the initial recital with regard to management of land but the powers to lease, mortgage and sale have also been specifically given to the concerned attorney. It may be recalled, at this stage, that it was a case of general power of attorney and that being so, the judgment relied upon by learned counsel in support of his contention in the ***Prince Line Ltd. v. The Trustees of the Port of Bombay, AIR 1950 Bombay 130*** *that where the special powers are followed by general words, the general words are to be construed as limited to what is necessary for the proper exercise of the special powers and as enlarging these powers only when necessary for the carrying out of the purposes for which the authority is given would be of no assistance to learned counsel for the plaintiff".*

18. In my view, the aforesaid later decision in Harmeet Kaur's Case (Supra) answers the question in favour of the appellants that once power of attorney has been proved to have been duly executed which contains power to sell, then, defendant No. 1 as a power of attorney who was given specific power, was entitled to sell the land.

19. So far as the second question is concerned, counsel for the respondent has failed to show any statutory force in respect of the ban imposed for 10 years. In fact, under Rule 4 (1) of part II of the Punjab Package Deal Properties (Disposal) Rules, 1976 (framed under Section 18 of the Punjab Package Deal Properties (Disposal) Act, 1976, the widows of disabled soldiers etc. killed in Chinese Aggression of 1962 were entitled for allotment of land up to limit of 10 ordinary acres of cultivable land @ to be fixed by the State Government. The aforesaid rule is reproduced below:-

4.(i) Allotment of land in rural area to permanently disabled *soldiers widows etc. of the soldiers killed in action - (i) permanently disabled soldiers, widows or parents or children of the soldiers killed in the Chinese aggression of 1962 and Pakistan aggression 1965, shall be entitled to the allotment on payment of the cultivable land as far as possible up to the limit of 10 ordinary acres inclusive of their own holding, if any, at such rate per standard acre as may be fixed by the State Government from time to time;*

(ii) If any widow or a soldier killed inaction has remarried before the allotment of the land, she shall lose her right to get the allotment and in that case, allotment shall be made in the name of her children from the deceased soldier and in case, the widow is issueless, the allotment shall be made to the parents of the killed soldiers irrespective of the fact, whether or not, they have submitted separate applications by the prescribed date. In such a case, the application submitted by a widow, by the prescribed date, shall be deemed to have been duly submitted in time by the children or the parents of the deceased soldier, as the case may be :

Provided that in the case of the minor children of the deceased soldier, the allotment of land shall be made through their guardian.

(iii) If any allottee of land, who was a widow, remarries within a period of 10 years from the date of allotment, the land allotted to her shall be liable to be cancelled by the Tehsildar (Sales) or Naib Tehsildar (Sales) after due notice even if full price thereof had been paid and the area thus received shall be allotted to the children of the deceased soldier, if any, through their guardian or to the parents of the deceased soldier, as the case may be.

(iv) The price of the land shall be recovered in 20 half yearly interest free instalments; the first instalment equivalent to 5 percent of the price, payable at the time of allotment of the land by the Tehsildar (Sales) or Naib Tehsildar (Sales). The

next instalment shall be payable at the end of the first crop after the expiry of one year from the date of allotment.

(v) No allottee shall be permitted to sell or alienate in any manner, the land allotted to him or her before the expiry of a period of ten years, even if the full price had been paid.

(vi) In the event of default in the payment of any instalment by an allottee, he shall be liable to pay interest at the rate of 7 percent per annum for the over due period and in the extent of default of two successive instalments, the Tehsildar (Sales) or Naib Tehsildar (Sales) shall be competent to cancel the allotment, resume the land and forfeit the money already paid :

Provided that no order shall be made against any person until after the issue of a notice, in writing to the person calling upon him to show cause within such time, as may be specified in the notice, why such order should not be made.

(2) Deed of conveyance to be executed:- Where any land is allotted to any person under this chapter and full price thereof has been realized, a Deed of Conveyance shall be executed in form specified in Appendix 'A' to these rules. However, by notification dated 20.1.1979 published in the Punjab Gazettee Legislation, dated 16.2.1979, clause (v)of the above rules whereby ban imposed for sale up to 10 years was deleted and clause (vi) Supra was renumbered as clause (v) and was reframed. The amended rule (4) is reproduced below :-

4. In the said rules, in rule 4, in sub-rule (1), -

(i) for clause (i), the following clause shall be substituted, namely "(i) Permanently disabled soldiers, widows or parents or children of the soldiers killed in the Chinese Aggression of 1962 and Pakistan Aggression of 1965 and widows of the personnel of the Armed Forces, Border Security Force and Punjab Armed Police killed in the Indo-Pakistan Conflict of 1971, shall be entitled to the allotment on payment of the

cultivable land as far as possible, upto the limit of ten ordinary acres inclusive of their own holdings, if any, at such rate, per standard acre as may be fixed by the State Government from time to time. For the purpose of valuation of land, ordinary acres shall be converted into standard acres, in accordance with the prescribed scale.";

(ii) in clause (ii), for the words " inaction, has remarried", the words and figures " the Chinese aggression of 1962 or Pakistan aggression of 1965 remarries a person other than real brother of her deceased husband, shall be substituted;

(iii) for clauses (v) and (vi), the following clause shall be substituted, namely :-

"(v) in the event of default in the payment of any instalment by an allottee, he shall be liable to pay interest at the rate of seven per cent per annum for the over due period and in the event of default of two successive instalments, the Tehsildar (Sales) or Naib-Tehsildar (Sales) shall recover the amount of defaulted instalments with interest as arrears of land revenue".

20. Since the Conveyance Deed mark A was issued by Tehsildar (Sales) on 09.12.1981 long after deletion of original clause (iv) of Rule 4 (1) of 1976 rules, vide amended rules of 1979, there is no statutory force of imposing the ban.

15(ii) Coming on to the second issue with regard to availability of the plea with the vendor, the issue stands answered by Section 43 of the Transfer of Property Act, 1882 which reads as under :-

"43. Transfer by unauthorised person who subsequently acquires interest in property transferred.*—Where a person 3 [fraudulently or] erroneously represents that he is authorised to transfer certain immovable property and professes to transfer such property for consideration, such transfer shall, at the option of the transferee, operate on any interest which the transferor may acquire in such property at any time during* *which the contract of transfer subsists.*

Nothing in this section shall impair the right of transferees in good faith for consideration without notice of the existence of the said option."

The provision embodies the doctrine of feeding the estoppel. The same applies when a transferor having no interest in the property transfers the same but subsequently acquires interest in the said property. The law empowers the transferor to claim benefit out of such subsequent acquisition of property by the transfer. Even though the principle will have no applicability where the transfer is invalid being forbidden by law or contrary to public policy as envisaged under Section 23 of the Contract Act, 1872. However, in view of the fact that the Rules imposing such condition stand repealed in 1979, that is much prior to issuance of transfer certificate in favour of the vendor, the transfer cannot be held to be forbidden by law or contrary to public policy. Supreme Court in the case of ***Jumma Masjid Vs. Kodimaniandra Deviah, AIR 1962 SC 847*** while explaining the import of the provision held as under :-

"7. Section 43 of the Transfer of Property Act runs as follows :-

"Where a person fraudulently or erroneously represents that he is authorised to transfer certain immovable property and professes to transfer such property for consideration, such transfer shall, at the option of the transferee, operate on any interest which the transferor may acquire in such property at any time during which the contract of transfer subsists.

Nothing in this section shall impair the right of transferees in good faith for consideration without notice of the existence of the said option."

Considering the scope of the section on its term, it clearly applies whenever a person transfers property to which he has no title on a *representation that he has a present and transferable interest therein, and acting on that representation, the transferee takes a transfer for consideration. When these conditions are satisfied, the section enacts that if the transferor subsequently acquires the property, the transferee becomes entitled to it, if the transfer has not meantime been thrown up or cancelled and is subsisting. There is an exception in favour of transferees for consideration in good faith and without notice of the rights under the prior transfer. But apart from that, the section is absolute and unqualified in its operation. It applies to all transfers which fulfil the conditions prescribed therein, and it makes no difference in its application, whether the defect of title in the transferor arises by reason of his having no interest whatsoever in the property, or of his interest therein being that of an expectant heir.*

xxx xxx xxx

12. So far we have discussed the question on the language of the section and on the principles applicable thereto. There is an illustration appended to Section 43 and we have deferred consideration thereof to the last as there has been a controversy as to how far it is admissible in construing the section. It is as follows :-

"A, a Hindu, who has separated from his father B, sells to C three fields, X Y and Z, representing that A is authorised to transfer the same. Of these fields Z does not belong to A, it having been retained by B on the partition; but on B's dying A as heir obtains Z. C, not having rescinded the contract of sale, may require A to deliver Z to him."

In this illustration, when A sold the field Z to C he had only a spes successionis. But he having subsequently inherited it, C became entitled to it. This would appear to conclude the question against the appellant. But it is argued that the illustration is repugnant to the section and must be rejected. If the language of the section clearly excluded from its purview transfers in which the transferor had only such interest as is specified in Section 6(a), then it would *undoubtedly not be legitimate to use the illustration to enlarge it. But far from being restricted in its scope as contended for by the appellant, the section is, in our view, general in its terms and of sufficient amplitude to take in the class of transfers now in question. It is not to be readily assumed that an illustration to a section is repugnant to it and rejected. Reference may, in this connection, be made to the following observations of the Judicial Committee in* ***Mahomed Syedol Ariffin V. Yeoh Ooi Gark (1916) 43 IA 256: [1916]2 AC 575]*** *as to the value to be given to illustrations appended to a section, in ascertaining its true scope :*

"It is the duty of a court of law to accept, if that can be done, the illustrations given as being both of relevance and value in the construction of the text. The illustrations should in no case be rejected because they do not square with ideas possibly derived from another system of jurisprudence as to the law with which they or the sections deal. And it would require a very special case to warrant their rejection on the ground of their assumed repugnancy to the sections themselves. It would be the very last resort of construction to make any such assumption. The great usefulness of the illustrations, which have, although not part of the sections, been expressly furnished by the Legislature as helpful in the working and application of the statute, should not be thus impaired."

In view of above, this Court finds that in view of Section 43 of the Transfer of Property Act, 1882 in the light of deletion of the Rule 4 by the 1979 notification, the Lower Appellate Court erred in declining main relief to the plaintiff and holding him entitled only for the alternate relief relying upon covenant contained in the sale certificate which had no force in the eyes of law.

15(iii) Coming on to the third issue with respect to delay involved in the present *lis*, this Court is guided by ratio of law laid down by Supreme Court in the case of ***Satya Jain (D) Thr. LRs and others Vs. Anis Ahmed Rushdie (D) Thr. LRs & ors., 2013 AIR Supreme Court 434***, wherein it was held as under :-

> *"27. The ultimate question that has now to be considered is whether the plaintiff should be held to be entitled to a decree for specific performance of the agreement of 22.12.1970. The long efflux of time (over 40 years) that has occurred and the galloping value of real estate in the meantime are the twin inhibiting factors in this regard. The same, however, have to be balanced with the fact that the plaintiffs are in no way responsible for the delay that has occurred and their keen participation in the proceedings till date show the live interest on the part of the plaintiffs to have the agreement enforced in law.*
>
> *28. The discretion to direct specific performance of an agreement and that too after elapse of a long period of time, undoubtedly, has to be exercised on sound, reasonable, rational and acceptable principles. The parameters for the exercise of discretion vested by Section 20 of the Specific Relief Act, 1963 cannot be entrapped within any precise expression of language and the contours thereof will always depend on the facts and circumstances of each case. The ultimate guiding test would be the principles of fairness and reasonableness as may be dictated by the peculiar facts of any given case, which features the experienced judicial mind can perceive without any real difficulty. It must however be emphasized that efflux of time and escalation of price of property, by itself, cannot be a valid ground to deny the relief of specific performance. Such a view has been consistently adopted by this Court. By way of illustration opinions rendered in* ***P.S. Ranakrishna Reddy v. M.K. Bhagyalakshmi, 2007 (2) RCR (Civil) 290*** *and more recently in* ***Narinderjit Singh v. North Star Estate Promoters Ltd., 2012 (3)***

> ***RCR (Civil) 16*** *may be usefully recapitulated.*
>
> *29. The twin inhibiting factors identified above if are to be read as a bar to the grant of a decree of specific performance would amount to penalizing the plaintiffs for no fault on their part; to deny them the real fruits of a protracted litigation wherein the issues arising are being answered in their favour. From another perspective it may also indicate the inadequacies of the law to deal with the long delays that, at times, occur while rendering the final verdict in a given case. The aforesaid two features, at best, may justify award of additional compensation to the vendor by grant of a price higher than what had been stipulated in the agreement which price, in a given case, may even be the market price as on date of the order of the final Court.*
>
> *30. Having given our anxious consideration to all relevant aspects of the case we are of the view that the ends of justice would require this court to intervene and set aside the findings and conclusions recorded by the High Court of Delhi in R.F.A.No.11/1984 and to decree the suit of the plaintiffs for specific performance of the agreement dated 22.12.1970. We are of the further view that the sale deed that will now have to be executed by the defendants in favour of the plaintiffs will be for the market price of the suit property as on the date of the present order. As no material, whatsoever is available to enable us to make a correct assessment of the market value of the suit property as on date we request the learned trial judge of the High Court of Delhi to undertake the said exercise with such expedition as may be possible in the prevailing facts and circumstances."*

16 Similar sentiment resonates in ***Zarina Siddiqui Vs. A.Ramalingam @ R.Amarnathan, 2014 SCC Online SC 862*** wherein the Supreme Court in order to balance the equities observed as under :-

> *"37. As held by this Court time and again, efflux of time and*

escalation of price of the property by itself cannot be a valid ground to deny the relief of specific performance. But the Court in its discretion may impose reasonable conditions including payment of additional amount to the vendor. It is equally well settled that the plaintiff is not to be denied specific performance only on account of phenomenal increase of price during the pendency of litigation.

38. The defendant-respondent alternatively pleaded in the written statement that even at the relevant time the price of the suit property was Rs.3,00,000/- when the said agreement was executed for Rs.40,000/- only. But on the other hand it has come in evidence that against Rs.40,000/-, the plaintiff-appellant has paid a total amount of Rs.65,000/-.

39. Be that as it may, in the facts and circumstances of the case and considering the phenomenal increase in price during the period the matter remained pending in different courts, we are of the considered opinion that impugned order under appeal be set aside but with a condition imposed upon the appellant (plaintiff) to pay a sum of Rs.15,00,000/- (Rupees Fifteen Lacs) in addition to the amount already paid by the appellant to the respondent. On deposit in trial court of aforesaid amount by the appellant, for payment to the respondent, within three months from today, the respondent shall execute and register the sale deed in favour of the plaintiff in respect of the suit property. In the event the aforesaid condition of deposit of Rs.15 lacs is fulfilled within the time stipulated hereinabove but the defendant fails to comply with the direction, then the appellant shall be entitled to execute the decree in accordance with the procedure provided in law."

17 Keeping in view the aforesaid fact in order to balance the equities the Court proposed during the hearing that the plaintiff may pay an amount of Rs.25.00 lakhs over and above the sale consideration to the vendors. Mr. G.S.Nagra, Advocate on instructions from Mr. Gurdeepak

Singh S/o Sukhdev Singh submits that the plaintiff agrees to pay the aforesaid amount.

18 In view thereof, the present appeal is allowed.

19 Judgment and decree passed by the Lower Appellate Court is set aside. Decree passed by the Trial Court is ordered to be maintained with the modification that in addition to the balance sale consideration, the plaintiff shall pay further amount of Rs.25.00 lakhs to the respondents.

RSA-3471-2001 (O&M), RSA-31-2003 (O&M), RSA-3929-2009 (O&M), RSA-2359-2024 (O&M) and RSA-2361-2024 (O&M)

1 In view of detailed judgment passed in RSA No.3982 of 2000 titled as ***Sukhdev Singh Vs. Shri Prem Mitter & ors.,*** the present appeals are dismissed. No costs.

2 Pending miscellaneous applications, if any, also stand disposed off.

3 Photocopy of this order be placed on the connected files.

(PANKAJ JAIN)
JUDGE

11.02.2025
Pooja Sharma-I

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No