Before Arun B. Saharya, C.J. & V.K. Bali, J

SARWAN SINGH,—*Appellant*

versus

KANKAR SINGH & OTHERS,—*Respondents*

L.P.A. No. 335 of 1983

28th July, 2000

Specific Relief Act, 1963—S. 20—Letters Patent Appeal, 1919—Cl. X—Agreement to sell in favour of plaintiff—Vendor selling property to third party—Third party aware of prior agreement—Trial Court passing decree for specific performance—Reversal of findings by learned Single Judge—Such reversal based upon misreading, non-reading and misinterpreting the pleadings and evidence—Judgment of learned Single Judge set aside—Delay in disposal of case—No fault of plaintiff—Relief of specific performance granted.

Held, that while dealing with the appeal of the plaintiff against judgment of learned Single Judge, which is a judgment of reversal, this Court will be well within its jurisdiction to interfere with the findings of fact which are based upon misreading, non-reading and misinterpreting the pleadings and evidence that has been led by the parties.

(Para 23)

Further held, that the suit for specific performance was decreed by the trial Court on 31st May, 1973 and it is no fault of the plaintiff that hearing of the first appeal became possible only on 26th October, 1982 and Supreme Court remitted the case to this Court on 15th January, 1996. Still, however, defendants have to blame themselves for having gone ahead with the sale of land that was subject matter of an agreement to sell in favour of the plaintiff, even after they came to know of the same.

(Para 27)

P.S. Kang, Advocate,— *for the appellant*

Jasbir Singh, Advocate,—*for LRs of Respondent No. 1*

Ajay Mittal, Advocate, —*for respondents 2 and 3.*

JUDGMENT

V. K. Bali, J.

(1) This prolonged civil litigation, by now spanning over a period of about three decades, appears destined, as by now at least, to have fluctuating fate of the parties. The appellant (here-in-after referred to as plaintiff) successfully sought a decree for specific performance with regard to agreement dated 3rd March, 1971. Ex. P1, pertaining to 110 kanals, 13 marlas of land being 2213/7842 share of 392 kanals 3 marlas when his suit was decreed by the learned Senior Sub Judge on 31st May 1973. The learned Single Judge, however, in RFA No. 350 of 1973 that was preferred against the judgment and decree rendered by learned Senior Sub Judge, reversed the same, thus, dismissing the suit of the plaintiff. Letters Patent Appeal that came to be preferred by the plaintiff bearing No. 335 of 1983, did not find any favour with the Division Bench and same was dismissed on 4th March, 1991. Still aggrieved, plaintiff filed Civil Appeal No. 2057 of 1996 in the Supreme Court of India and *vide* order dated 15th January, 1996, order of DB, referred to above, was set aside and the matter was remitted to this Court for fresh disposal in accordance with law, without expressing any opinion on the correctness of the contentions urged by the parties, with the direction that matter be disposed of on its own merits. LPA No. 335 of 1983 by virtue of the orders passed by the Hon'ble Supreme Court dated 15th January, 1996 has, thus, been revived.

(2) In the backdrop of the fate of the case, in various courts, as mentioned above, it becomes necessary to mention the facts, if not in their entirety, then at least in sufficient details.

(3) Kankar Singh, the original owner of land measuring 110 kanals 13 marlas, which represented his share in the total land measuring 392 kanals 3 marlas, particulars whereof have been given in the plaint, situated in the revenue estate of village Wadala Kalan, District Kapurthala, agreed to sell his aforesaid share to Sarwan Singh plaintiff for a total consideration of Rs. 1,98,312 *vide* agreement dated 3rd March, 1971, on which date he received a sum fo Rs. 61,100 by way of advance from the plaintiff and undertook to execute and register the sale deed on receipt of balance sale consideration upto 28th February, 1972. One of the essential Clauses, which came to be incorporated in the agreement, would manifest that in the event of failure of plaintiff to perform his part of the contract, he was not only to incur forfeiture of money that was given to Kankar Singh by way of advance but was also to pay an equal amount by way of damages. In case of breach of terms of agreement by Kankar Singh, plaintiff could

get the sale deed executed and registered through Court. In the said suit that came to be instituted on 19th March, 1971, it was averred by the plaintiff that Kankar Singh, in violation of terms of the agreement, Ex. P1, had executed sale deed, Ex. DX in favour of Zoravar Singh and Davinder Singh, defendants 2 and 3 on 17th March, 1971, even though they were apprised of existence of a valid agreement of sale in his favour. This information came to be passed on to defendants 2 and 3 by making an application in writing before the Sub Registrar at the time when sale deed was presented for registration before him. It has been the case of the plaintiff so pleaded that at all material times he was ready and willing to perform his part of the contract and it is Kankar Singh, who, in breach of the agreement, Ex. P1, had alienated the property in favour of defendants 2 and 3. On the pleadings, as referred to above, plaintiff sought a decree for specific performance of agreement, Ex. P1 against defendants 1 to 3 and, in the alternative, also prayed for refund of the amount with an equal amount of damages, but only in the event, if for one reason or the other, the Court was not inclined to decree the suit for specific performance of the contract.

(4) Before we might, however, focus our attention on the pleadings as reflected in the two separate written statements filed on behalf of defendant Kankar Singh, who was arrayed as defendant No. 1 and vendees from him, i.e., defendants 2 and 3, it would be useful to extract some portion of the plaint as the same has a great deal of bearing upon the controversy in issue. The plaint is in Punjabi but we are reproducing some part thereof, as follows, by translating the same into English as best we can do, after putting the same to learned counsel for the parties.

> "That the plaintiff has been ready and willing to perform his part of contract by paying the remaining consideration amount and to get the sale registered every day and is ready and willing to do even now but defendant No. 1 became adamant to execute the sale in favour of defendants 2 and 3 with regard to land in dispute regarding which there was an agreement in favour of the plaintiff. When the plaintiff derived knowledge of the said sale, then he filed an application before the Sub Registrar along with agreement of sale and prayed that the land in dispute has already been agreed to be sold to the plaintiff and that the plaintiff has already paid an amount of Rs. 61,100 by way of advance and, therefore, defendant No. 1 be restrained from selling the land in dispute to defendants 2 and 3 and sale be not registered and application aforesaid was presented on 17th March, 1971 and that application and the agreement of sale were read over to the defendants by the

Sub Registrar but despite that defendant No. 1 sold the land for consideration of Rs. 1,88,144 on 17th March 1971 in favour of defendants 2 and 3".

(5) The averments made by the plaintiff in paragraph 2 of the plaint, as reproducted above, were simply denied by defendant No. 1. Para 2 of the written statement that came to be filed by defendant No. 1 reads thus:—

"Para No. 2 of the plaint is wrong. All allegations mentioned are emphatically controverted and denied."

(6) Insofar as defendants 2 and 3 are concerned, they have, however, controverted the specific averments of the plaintiff, as referred to above.

(7) All that needs to be mentioned more with regard to pleadings of the defendants is that they denied agreement in favour of plaintiff and naturally advance that might have been paid by him. They also controverted the assertion of the plaintiff that he was always ready and willing to perform his part of the contract. Insofar as defendants 2 and 3 are concerned, they took up separate and specific plea that they are bona fide purchasers for value and without any notice of the earlier agreement in favour of the plaintiff.

(8) On the pleadings of the parties, learned trial Court framed the following issues

1. Whether Kankar Singh executed agreement dated 3rd March, 1971 for the sale of the land, if so, on what terms?

2. Whether the plaintiff paid Rs. 61,100 as earnest money under the agreement to sell?

3. Whether the plaintiff was and continued to be ready and willing to perform his part of contract?

4. Whether defendant no. 1 committed any breach? If so to what effect.

5. Whether defendant no. 2 and 3 are transferees in good faith for consideration and protected under Section 41 TP Act?

6. Whether the plaintiff is entitled to decree for specific performance?

7. Whether the plaintiff is entitled to the refund of the earnest money?

8. Whether the plaintiff is entitled to damages, if so how much?

9. Relief'.

(9) The issues that have been reproduced above, would manifest that no separate issue with regard to pleadings of the plaintiff, as mentioned above and as controverted by defendants 2 and 3, was claimed by the parties. It is further significant to mention that even though not so specifically mentioned under any issue, but insofar as Issue No. 5 is concerned, onus to prove the same ought to have been upon defendants 2 and 3. After resultant trial, as mentioned above, learned Senior Sub Judge decreed the suit of the plaintiff for specific performance. The outcome of first appeal and further appeals, that came to be filed, has already been given in earlier part of the judgment. All that needs to be mentioned further is that when matter came to be disposed of by the Hon'ble Supreme Court, learned counsel for the plaintiff had referred to sale deed in favour of defendants 2 and 3 that was registered on 17th March, 1971 and argued that on the same day, and before the registration was effected, plaintiff had filed an application before the Sub Registrar stating that he had an earlier agreement in his favour and, therefore, the registration of the sale deed in favour of defendants 2 and 3 should not be effected. He further argued that on this application, an endorsement was made by the Registrar to the effect that though such an application has been filed, the parties to the sale deed insisted upon its registration and, therefore, he registered the same. It was also brought to the notice of the Hon'ble Supreme Court that Registrar was examined to prove the endorsement. It was also the case of plaintiff before the Hon'ble Supreme Court as has been mentioned in order dated 15th January, 1996, that it had been specifically averred by him that the application was filed before the Sub Registrar before the registration was effected and that such an endorsement was made. The counsel, after pointing out the facts, as detailed above, had further argued that the learned Single Judge was not right in saying that the averment in the plaint was a "vague plea' and that the finding of the learned Single Judge that the said document is a subsequent manipulation was based on no evidence. The counsel, who represented the contesting defendants before the Hon'ble Supreme Court, however, disputed the correctness of the submissions of learned counsel for the plaintiff and it was pointed out by him that when Zorawar Singh, defendant was in the witness box, said endorsement was not put to him. After observing, as has been mentioned above, the Hon'ble Supreme Court, thought it proper that order of Division Bench dismissing LPA No. 335 of 1983 should be set aside and matter be remitted to the High Court for fresh disposal in accordance with law. As mentioned above, the Hon'ble Supreme Court

did not express any opinion on the contentions raised by the parties and directed that the matter is to be disposed of on its merits.

(10) What is highlighted before us by learned counsel for the plaintiff with vehemence is that the findings of learned Single Judge that there were no pleadings or the same were vague with regard to plaintiff making an application before the Sub Registrar along with a copy of the agreement as also having been read over to the defendants, are factually incorrect or in other words, are an outcome of misreading or non-reading of the pleadings. It is further the case of the plaintiff, canvassed through his counsel that the findings of the learned Single Judge dealing with the circumstances, on the basis of which a finding on issue No. 5 has been returned in favour of defendants 2 and 3, is again an outcome of misreading or not at all reading the evidence that has come on records of the case as also that it is a case of drawing presumptions which can not legally sustain. The counsel for defendants 2 and 3, with equal vehemence, controverts all the submissions that have been made by learned counsel for the plaintiff and further submits that application dated 17th March, 1971, Ex. PW 4/1 moved by the plaintiff before the Sub Registrar and the endorsement, Ex. PW 4/2, on the back of same, said to have been made by Sub Registrar on the same day, were not genuine, having been fabricated later on.

(11) In view of the contentions of learned counsel for the parties, it becomes, in the first instance, absolutely necessary to find out as to on what grounds learned Single Judge returned findings on Issue No. 5 in favour of defendants 2 and 3. It is once again significant to mention that learned counsel for the parties have concentrated only on Issue No. 5 and further that the findings recorded by learned trial Judge on other issues are no more a subject matter of debate. An additional point with regard to grant of decree in a suit for specific performance being discretionary and on account of lapse of time, it should be granted or not, has also been argued by learned counsel for the parties.

(12) Having noticed the discordant pleas of learned counsel on Issue No. 5, time is now ripe to find out various grounds that prevailed with the learned Single Judge in reversing the findings on issue No. 5. The first circumstance that was taken as adverse to the cause of plaintiff by learned Single Judge was that he (plaintiff), when appeared as his own witness on 16th August, 1971, did not state in examination-in-chief if he had made any application to the Sub Registrar on 17th March, 1971 when the subsequent vendees were about to get the sale deed registered in their favour as also that the application and agreement of sale in his favour were read out by the Sub Registrar to the subsequent vendees and that he made an endorsement to that

effect on the back of the application. He also did not state in that statement that he appeared before the Sub Registrar on 17th March, 1971 before the sale deed was registered in favour of the subsequent vendees and in spite of his telling them that he had prior agreement of sale, they got the sale deed registered. His cross-examination continued on 19th August, 1971, yet he did not make any statement regarding his filling of said application and same having been read over by the Registrar to the defendants. when he was recalled and again made a statement on 26th may, 1973, which was two years and two months after the aforesaid story, he did rely upon an application, Ex. PW 4/1. His statement made on that date, as reproduced by the learned Single Judge, reads thus :—

> "Application Ex. PW 4/1 bears my signatures. I had given this application before the Sub Registrar. At first Shri Kankar Singh had entered into an agreement for sale of land in my favour. He, however, in violation of its terms, alienated the suit land in favour of Zorawar Singh and Davinder Singh. The application was read over to the parties and after that the Sub Registrar made his endorsement Ex. PW 4/2 on the same application and returned the same to me. Zorawar Singh and Davinder Singh and Kankar Singh were present in the office of the Sub Registrar when he read out the contents of the application."

(13) After reproducing part of the statement made by plaintiff on 26th May, 1973 learned Single Judge observed that the plaintiff did not state that he presented the application on 17th March, 1971. He also did not state that he presented the application on that date before the sale deed was registered in favour of the subsequent vendees. Learned Single Judge, however, yet observed that a reading of the application and the endorsement made thereon does show that the application was presented on 17th March, 1971 and the endorsement was also made on that date before the sale deed was registered and that it will have to be found out whether really the application was filed on 17th March, 1971 or it was prepared sometime later and was ante-dated and the endorsement thereon was made later on. Learned Single Judge further observed that if the applicant had been presented and endorsement made thereon on the date, it purports to be, *then in that case all these facts should have been specifically mentioned in the plaint which are missing.* (Emphasis supplied).

(14) Learned Single Judge also drew an adverse inference for non-examining Wazir Singh, who scribed application, Ex. PW 4/1 as also for non-production of entry regarding same in his register. The

next circumstance relied upon by learned Single Judge while returning a finding on issue No. 5 in favour of defendants 2 and 3 was that Zorawar Singh, one of subsequent vendees, made his statement as DW 6 on 9th, 10th and 13th of December, 1971 but the application, Ex. PW 4/1 or order passed by the Sub Registrar on its back, Ex. PW 4/2, were not put to him and further that in his examination-in-chief he had clearly stated that he had no knowledge or notice of the agreement by Kankar Singh in favour of the plaintiff. Again, essential part of the cause of plaintiff that when defendant no. 1 was getting the sale deed registered in favour of defendants 2 and 3 and plaintiff had informed the Sub Registrar regarding agreement to sell in his favour, was also not put to him. Learned Single Judge, however, observed that plaintiff did produce Bhagat Ram, Sub Registrar as PW 5 who made his statement on 23rd November, 1972 and proved application, Ex. PW 4/2 but discarded the same by observing that from the facts and circumstances of the case, it was clear that application Ex. PW 4/1 was got prepared much later after the sale deed was registered on 17th March, 1971 and that the plaintiff was not aware of the sale deed on the date it was executed and registered and came to know of the same later and prepared this document long thereafter to *support his vague plea raised in the plaint.* (Emphasis supplied). The purpose for which plaintiff might have been present in Tehsil office on 17th March, 1971 was also adversely commented upon by learned Single Judge and taken as one of the circumstances in returning findings in favour of defendants 2 and 3 on Issue No. 5.

(15) Having heard learned counsel for the parties and going through the records of the case with their assistance, we are of the firm view that learned Single Judge misread and misinterpreted the pleadings and evidence that was led by the parties, thus, resulting into drawing presumptions which can not legally sustain. While dealing with the plea of plaintiff that intimation with regard to prior agreement in his favour was given to defendants at a time when Kankar Singh was getting the sale deed registered in favour of defendants 2 and 3 by moving an application in writing, which was read over to the defendants by none other than the Sub Registrar, has been styled by the learned Single Judge, at one place to be 'missing' and at another place as 'vague'. Para 2 of the plaint, as translated into English, has since already been reproduced by us in the earlier part of judgment. It has specifically been pleaded therein that when plaintiff derived knowledge of the said sale (sale in favour of defendants 2 and 3), he filed an application before the Sub Registrar along with agreement of sale and prayed that the land in dispute has already been agreed to be sold to him and that he had already paid an amount of Rs. 61,100 by way of advance

and, therefore, defendant No. 1 be restrained from selling the land in dispute to defendants 2 and 3 and sale be not registered. It has also been specifically pleaded that application was presented on 17th March, 1971 and that application and agreement of sale were read over to the defendants by the Sub Registrar but despite that defendant no. 1 sold the land for consideration of Rs. 1,88,144 on 17th March, 1971 in favour of defendants 2 and 3. We are of the considered view that the pleadings with regard to prior agreement in favour of plaintiff and same having been brought to the notice of defendants were more than adequate. The said pleadings were neither 'missing' nor 'vague' as opined by the learned Single Judge. We have gone through the application, Ex. PW 4/1 that was given by the plaintiff to the Sub Registrar, Kapurthala. Not only that in paragraph 2 of the plaint every relevant factor disclosing prior agreement in favour of plaintiff and information thereof to the defendants has been mentioned, but the same is also in tune with the said application. There is a mention of prior agreement in favour of plaintiff in the application, Ex. PW 4/1 wherein reference of the very land, subject matter of sale in favour of defendants 2 and 3 as also the amount, on which the same was offered to the plaintiff and advance that he had already paid, has also been made. It has also been mentioned that the plaintiff had come to know that Kankar Singh was going to sell same very land in favour of Zoravar Singh and Davinder Singh. By way of note, there is also a mention in the said application that a copy of agreement in favour of plaintiff is being annexed with the application. In view of what has been said above, the findings of the learned Single Judge that the pleadings with regard to prior agreement in favour of plaintiff and information thereof having been given to defendants, is either 'missing' or 'vague' needs to be set aside.

(16) We find considerable merit in the contention of learned counsel for the plaintiff that there was no necessity at all for the plaintiff to have led evidence in affirmative in support of his pleadings that intimation of prior agreement in his favour was given to the defendants and, therefore, adverse inference drawn on that count by the learned Single Judge and then returning a finding that application and endorsement made thereon by the Sub Registrar, were ante-dated, could not be sustained. The law of pleadings, as culled out from order VI Rule 2 of the Code of Civil Procedure would manifest that every pleading shall contain only a statement in a concise form of the material facts on which the party pleading relies for his claim or defence, as the case may be, but not the evidence by which they are to be proved. Plaintiff, as would be clear from the provisions contained in Order VII Rule 1 (e) had to plead facts constituting cause of action and when it

arose. By virtue of the provisions aforesaid, the plaintiff could well be content to only state existence of a prior agreement in his favour and the breach thereof by pleading that Kankar Singh had sold the property in favour of defendants 2 and 3 and further that he was always ready and willing to perform his part of contract. These pleadings would have constituted a sufficient cause of action. As would be clear from the provisions contained in Order VIII Rule 2 CPC, the defendant must raise by his pleadings all matters which show the suit not to be maintainable, or that the transaction is either void or voidable in point of law, and all such grounds of defence as, if not raised, would be likely to take the opposite party by surprise; or would raise issues of fact not arising out of the plaint, as, for instance, fraud, limitation, release, payment, performance, or facts showing illegality. Further, as per the provisions of Rules 3, 4 and 5 of Order VIII, it shall not be sufficient for a defendant in his written statement to deny generally the grounds alleged by the plaintiff. He must deal specifically with each allegation of fact of which he does not admit the truth, except damages and further pleadings. If not denied specifically or by necessary implication, allegations of fact shall be taken to be admitted except as against a person under disability. On the pleadings of the parties, issues arise when a material proposition of fact or law is affirmed by the one party and denied by the other. Material propositions are those propositions of law or fact which a plaintiff must allege in order to show a right to sue or a defendant must allege in order to constitute his defence, as would be clear from the provisions of Order XIV, Rules 1 and 2. Each material proposition affirmed by one party and denied by the other shall form the subject of a distinct issue and the Court, on the first hearing of the suit, shall, after reading the plaint and written statements, if any, and after hearing the parties or their pleaders, ascertain upon what material propositions of fact or of law the parties are at variance and shall thereupon proceed to frame and record the issues on which the right decision of the case appears to depend, as would be clear from Rules 3 and 5 of Rule XIV. It is too well settled that onus to prove an issue of fact is upon a party, who asserts or denies the said factor and proof of which is necessary either for success of plaint or for that matter, of defence.

(17) After framing of issues, plaintiff has the right to begin unless the defendant admits the facts alleged by him. On the day fixed for hearing of the suit or on any other day to which the hearing is adjourned, the party having the right to begin shall state his case and produce his evidence in support of the issues which he is bound to prove. The other party shall then state his case and produce his evidence, if any, and may then address the court generally on the whole

case. The party beginning may then reply generally on the whole case. Where there are several issues, the burden of proving some of which lies on the other party, the party beginning may, at his option, either produce his evidence on those issues or reserve it by way of answer to the evidence produced by the other party; and, in the latter case, the party beginning may produce evidence on those issues after the other party has produced all his evidence, and the other party may then reply specially on the evidence so produced by the party beginning; but the party beginning will then be entitled to reply generally on the whole case. The procedure, as mentioned above, emanates from Order XVIII Rules 1, 2 and 3 C.P.C.

(18) In view of what has been said above, it is apparent that insofar as plaintiff is concerned, it was enough for him to have pleaded a valid prior agreement of sale in his favour and the breach thereof and in a suit for specific performance he had also necessarily to plead his being ready and willing to perform his part of the contract. Defendants 2 and 3, with a view to succeed in their plea of being *bona fide* purchasers for value and without notice of prior agreement in favour of the plaintiff giving rise to Issue No. 5 could succeed in defeating the claim of plaintiff on the dint of their pleadings and it is in this seriatim that the evidence in affirmative or rebuttal had to be led. Insofar as pleadings are concerned, no doubt true, that whereas the plaintiff has given all necessary ingredients constituting cause of action with a view to obtain decree for specific performance in his favour, defendants too have likewise pleaded sufficient cause to defend the case of plaintiff by pleading that they are *bona fide* purchasers for value and without prior notice of the agreement in favour of the plaintiff. What has happened, however, in the present case is that the learned Single Judge has drawn an adverse inference against the plaintiff for his not leading evidence by way of his own statement in affirmative with regard to his having disclosed prior agreement in his favour to the defendants. After going through the related provisions of the Code of Civil Procedure, dealing with pleadings, framing of issues, onus to proof thereof as also the manner in which evidence is to be led, this Court is of the firm opinion that the pleadings of prior agreement in favour of plaintiff and intimation thereof having already been passed over to the defendants was not a necessary ingredient of the plaint. The plaintiff could have well instituted a suit disclosing cause of action by stating that there was an agreement in his favour which had been breached by defendant No. 1 when he sold the same very land, subject matter of agreement in his favour, to defendants 2 and 3 and that he was always ready and willing to perform his part of the contract. Defendants 2 and 3 could, however, defend the cause of plaintiff by

pleading that they were *bona fide* purchasers with consideration and without notice of the prior agreement in favour of the plaintiff and even if the plaintiff was to plead intimation of prior agreement in his favour in his replication, no adverse inference could at all be drawn against him. However, insofar as facts and pleadings of the present case are concerned, plaintiff specifically pleaded in para 2 of the plaint that there was an agreement to sell in his favour, an intimation whereof had been given to the defendants. Likely, no adverse inference could be drawn against the plaintiff for his not leading evidence in affirmative insofar as his own statement is concerned with regard to existence of a prior agreement in his favour, intimation whereof had been given to the defendants. As mentioned above, onus of issue No. 5, even though not specifically placed by the trial Court while framing the issues, was and continues to be on defendants 2 and 3. Plaintiff, after defendants led evidence on Issue No. 5, would have been well within his right to lead evidence in rebuttal on the said issue and this is what has been precisely done in the present case. As mentioned above, no specific issue was claimed by the parties with regard to existence of a prior agreement in favour of plaintiff and intimation thereof having been given to the defendants. Presumption, thus, drawn by the learned Single Judge against the plaintiff and then further going on to conclude that application, Ex. PW 4/1 and endorsement made thereon, Ex. PW 4/2 by the Sub Registrar, were ante-dated can not legally sustain.

(19) Reverting to the facts of this case, it may be reiterated that it may be true and as has been found by the learned Single Judge that plaintiff when he appeared as his own witness on 16th August, 1971, did not state in his examination-in-chief if he had made any application to the Sub Registrar on 17th March, 1971 when the subsequent vendees were about to get the sale deed registered in their favour as also that the application and agreement of sale in his favour were read out by the Sub Registrar to the subsequent vendees and that he made an endorsement to that effect on the back of the application and further that despite his telling the defendants that he had a prior agreement in his favour, sale was registered, it would not have made any difference on the merits of the case. Naturally, if he had not made any statement in his examination-in-chief, there was no occasion for the defendants to have cross-examined him on that point. Statement of plaintiff made on 26th May, 1973, reference whereof has been given by the learned Single Judge as well, was made in rebuttal when defendants had already led evidence and part of the statement of plaintiff has been reproduced above. A reading of the statement of plaintiff, as reproduced above, in our view, was sufficient inasmuch as all material facts with regard to prior agreement and intimation thereof

had been stated by the plaintiff. The learned Single Judge had criticised the statement of plaintiff when he stated in his cross-examination that he was just sitting in the Tehsil office when he came to know about registration of sale deed in favour of defendants 2 and 3. We are, however, of the view that once his presence in Tehsil, where sale was registered in favour of defendants 2 and 3 and his making an application before the Sub Registrar is proved to the hilt, it could not possibly be said that he was not there since he had come to know about the sale being registered in favour of defendants no. 2 and 3 when he was sitting in Tehsil office. It requires to be mentioned that even the learned Single Judge has returned a finding that a reading of the application and the endorsement made thereon does show that application was presented on 17th March, 1971 and the endorsement was also made on that date before the sale deed was registered. We may, however, hasten to add that in a village, when the people are known to each other and the transaction is of big chunk of land for a substantial consideration, they do come to know of the activities of each other.

(20) The next circumstance, on the basis of which the learned Single Judge returned a finding that application, Ex. PW 4/1 and endorsement, Ex. PW 4/2 were ante-dated is that when defendant Zoravar Singh apppeared as his own witness (DW6) on 9th, 10th and 13th of December, 1971, application, Ex. PW 4/1 and endorsement made thereon by the Sub Registrar,—*vide* Ex. PW 4/2 were not put to him, particularly when the witness had already stated in his examination-in-chief that he had no knowledge or notice of the agreement by Kankar Singh in favour of plaintiff. The essential part of the case of the plaintiff that when defendant no. 1 was getting the sale deed registered in favour of defendants 2 and 3 and plaintiff had informed the Sub Registrar regarding agreement to sell in his favour was also not put to him. We are, however, of the view that this finding of the learned Single Judge is also factually incorrect. All that this witness stated in his examination-in-chief was that he had no knowledge or notice of any agreement in favour of plaintiff by Kankar Singh and plaintiff did not object to the attestation of the sale deed by the Sub Registrar nor he produced any order in his presence. The evidence of this witness could not be concluded on 9th December, 1971 and cross-examination was deferred. The witness appeared for his further cross-examination on 10th December, 1971. Once again, evidence of this witness could not be completed on the date fixed, i.e., 10th December, 1971 and he was recalled for further cross-examination on 13th December 1971. This witness was more thoroughly cross-examined on 13th December, 1971 and a reading of his cross-examination would clearly reveal that it

was specifically put to him that plaintiff attended the Tehsildar office when sale deed was registered. This suggestion, of course, was denied by him. It was further suggested that Tehsildar had read out the order but he insisted in getting the sale deed registered despite orders. Again, of course, he denied the said suggestion. Once again, he denied the suggestion that any notice of any agreement by Kankar Singh in favour of plaintiff of the land in dispute was given. Insofar as first two dates of his examination and cross-examination are concerned, no doubt this witness was not given any suggestion with regard to prior agreement in favour of the plaintiff, application having been moved by the plaintiff and Tehsildar making endorsement thereon, but we are of the firm view that no adverse inference on that count could be drawn against the plaintiff when cross-examination of this witness was still continuing and, as mentioned above, on the last date of his cross-examination, essential part of the case with regard to agreement of sale in favour of plaintiff and making of an application before the Sub Registrar was certainly put to this witness. It is true that instead of endorsement, word mentioned in the suggestion is 'order' but it is too apparent that parties were alive as to whether reference was to an endorsement made by the Sub Registrar or to any order passed by him.

(21) The major circumstances, taken into consideration by the learned Single Judge, on the basis of which findings have been returned on issue no. 5 in favour of defendants 2 and 3 and against the plaintiff, have, thus, been found to be actually incorrect. The surviving forth circumstance that the deed writer, who drafted the application, Ex. PW 4/1 and register showing entry of drafting the said application having not been produced in Court, would not make any dent in the case of plaintiff. The application having been filed by the plaintiff, same having been read over to the defendants and endorsement thereon having been made by the Sub Registrar, was proved to the hilt by statement of PW 5 Bhagat Ram, Sub Registrar.

(22) What further really knocks out the case of defendants with regard to their having no prior intimation of the agreement in favour of the plaintiff and further finding of the learned Single Judge that application, Ex. PW 4/1 and endorsement thereon, Ex. PW 4/2 were ante-dated, is the stark fact that present suit came to be instituted on 19th March, 1971, just leaving only one day in between registration of sale deed in favour of defendants 2 and 3 and filing of suit, wherein, as mentioned above, specific averment with regard to prior agreement and its intimation to the defendants was made. If this fact had not been pleaded in the plaint at all, some plausible argument was perhaps available to the defendants with regard to application and endorsement

having been made later in point of time but this having been so specifically pleaded in the plaint and that too within just two days, completely nails the story of defendants 2 and 3 with regard to application and endorsement having been fabricated.

(23) From the discussion made above, we are of the view that contentions of learned counsel for the plaintiff, as noted above, deserves to be accepted. We are quite conscious that what we are dealing with is primarily a question of fact, but, in our view, while dealing with the appeal of plaintiff against judgment of learned Single Judge, which is a judgement of reversal, this Court will be well within its jurisdiction to interfere with the findings of fact which are based upon misreading, non-reading and misinterpreting the pleadings and evidence that has been led by the parties. It shall be permissible both while dealing with an appeal under Section 100 of the Code of Civil Procedure or, for that matter, under Clause X of the Letters Patent.

(24) The discussion made above should have normally concluded this matter as all through it has been debated on crucial issue, i.e., Issue No. 5 but, as mentioned above, before this Court, grant of specific relief being a discretionary one and time of about 30 years having elapsed, has also been pressed into service by learned counsel for defendants 2 and 3, on the basis of Section 20 of the Specific Relief Act, 1963. The jurisdiction to decree a specific performance is no doubt discretionary but it is clear from reading of Section 20 itself that discretion of Court is to be sound and reasonable and no arbitrary, guided by judicial principles and capable of correction by a court of appeal. By virtue of sub-section (2) of Section 20, in certain circumstances, the Court can be said to have properly exercised its discretion not to decree specific performance but the counsel for defendants 2 and 3 is unable to bring this case within clauses (a), (b) or (c) of sub-section 2 of Section 20. All that he, however, contends is that it would be inequitable to enforce specific performance at this late stage and further that it would result into hardship to defendants 2 and 3. On the basis of provisions contained in Section 20 alone, we, however, do not find any inequity or hardship having been meted to defendants 2 and 3. Explanation II of Section 20 of the Specific Relief Act reads thus :—

> "The question whether the performance of a contract would involve hardship on the defendant within the meaning of clause (b) shall, except in cases where the hardship has resulted from any act of the plaintiff, subsequent to the contract, be determined with reference to the circumstances existing at the time of the contract".

(25) It would be a case of hardship, if at all any, which has resulted from the act of defendants 2 and 3 themselves and further that one has to see the circumstances as thay were available at the time of contract. If the circumstances existing at the time of contract alone have to be looked into, the time lag between filing of suit and passing of decree for specific performance becomes totally meaningless.

(26) Mr. Ajay Mittal, learned counsel for defendants 2 and 3, for his contention, as referred to above, however, relies upon a judgment of this Court in *Sohan Lal and Another* v. *Smt. Shanti Devi and Others* (1). The facts of the case aforesaid decided by learned Single Judge of this Court would reveal that a suit for specific performance filed by the plaintiff in that case was dismissed by the trial Court and findings of the said court were affirmed by the first appellate Court. The findings on the core issue entitling the plaintiff to a decree for specific performance were returned against him. The entire judgment deals with merits of the case. Only in last three lines, all that has been said is as follows :—

> "Even otherwise it will be inequitable to enforce the alleged agreement to sell dated 30th December, 1960 in the year 1990 after the expiry of thirty years. It will result in immense hardship to the successors-in-interest of the vendor".

(27) The facts of this case, in our view, are distinguishable from the facts of the case in hand. It may be recalled that in the present case suit for specific performance was decreed by the trial Court on 31st May, 1973 and it is no fault of the plaintiff that hearing of the first appeal became possible only on 26th October, 1982 and Supreme Court remitted the case to this Court on 15th January, 1996. Still, however, in the present case, defendants have to blame themselves for having gone ahead with the sale of land that was subject matter of an agreement to sell in favour of the plaintiff, even after they came to know of the same.

(28) Division Bench judgment of this Court in *Smt. Harnam Kaur and Others* v. *Jagtar Singh* (2) on which too reliance has been placed, it appears, also can not come to the rescue of defendants 2 and 3. The facts of the aforesaid case would reveal that suit was filed by plaintiff in the year 1972 wherein no prayer for relinquishement was made. Out of total land, subject matter of sale, 46 kanals 3 marlas of land could not possibly be sold. Despite the settled law that in such an event, plaintiff was to relinquish the claim to non-alienable part of

(1) 1991 PLJ 518
(2) 1991 PLR 618

land and yet offer to pay the entire money as evidenced in the agreement to sell, plaintiff sought decree of the entire land and offered to relinquish the non-alienable land only during the course of hearing of the appeal. He succeeded in getting a decree for specific performance with regard to a part of land but when he was confronted that such a decree could not be passed, he endeavoured to relinquish the non-alienable part of land, as mentioned above, during the course of appeal. The Court came to a firm conclusion that "on facts decree for specific performance could not be granted". While dealing with Section 20 of the Specific Relief Act, it was observed that "we are, therefore, of the view that by the efflux of time and on the basis of default committed by the appellant, he has forfeited his right to the discretionary and equitable relief of specific performance". In the present case, plaintiff can not at all be confronted with any default having been committed by him. Quite to the contrary, it is the conduct of defendants 2 and 3 which needs to be criticised or adversely commented upon.

(29) A Single Bench of this Court in *Ram Dass* v. *Ram Lubhaya* (3), held that "where a contract is proved in accordance with law and party has acted without undue delay and has pursued his remedy in accordance with law without infringing the settled canon of equity, the grant of specific relief by enforcing the contract would certainly be a relief which equity would demand". We are in complete agreement with the view expressed by the learned Single Judge and, in particular, the observations which are reproduced below:—

> "A lawful agreement being proved and judicial conscience of the court being satisfied the equity would demand enforcement of an agreement rather than granting an alternative relief of damages to the plaintiff. It need not be reiterated that equity must give relief where equity demands. Equities *huguam liti ancillatur ubi* remedium protest dare is a clear illustration which has been duly accepted by the Indian Courts. The time taken by the Courts in deciding suit or appeals would normally be not permitted to work to the disadvantage of the party to the lis. Acts of the Courts shall cause prejudice to none was so stated by the Hon'ble Apex Court in the case of Atma Ram Mittal v. Ishwar Singh Punia, AIR 1988 SC, 2031".

(30) A Single Bench of this Court in *Lt. Colonel Jaswant Singh* v. *Daljit Singh* (4), held that "where in a suit for specific performance of agreement to sell, a valid and binding contract is found to be in existence, the defendant is required to fulfil his part of the contract

(3) 1998(2) PLR 326
(4) 1998(3) PLR 495

and unless there is a fault on the part of the plaintiff, the relief of specific performance can not be denied to him on the ground of payment of damages to him and it could not be said that damages would suffice".

(31) Mr. Kang, learned counsel for the plaintiff also relies upon *Parkash Chandra* v. *Angadlal and Others* (5). *Babu Lal* v. *M/s Hazari Lal Kishori Lal and Others* (6) and *Jawahar Lal Wadhwa and Another* v. *Haripada Chakroberty* (7). There is no need to give any details of these judgments as we are fully satisfied, in the facts and circumstances of this case, that plaintiff does deserve a decree for possession of land, fully detailed in the plaint, by way of specific performance of agreement, Ex. P1 dated March 4, 1971. So ordered. Defendants 2 and 3 along with defendant No. 1 are, thus, directed to execute and get the sale deed registered in favour of the plaintiff with regard to the suit land. Naturally, plaintiff would pay the balance sale consideration as evidenced by agreement, Ex. P1. Impugned judgment passed by learned Single Judge is set aside and the one passed by the trial Court is restored and, thus, the appeal succeeds.

(32) In view of fluctuating fate of the parties in every Court, except when Letters Patent Appeal arising from the Single Bench judgment of this Court was initially dismissed by Division Bench of this Court, parties would bear their own costs throughout.

S.C.K.

Before K.S Kumaran & N. K.Sud, JJ

KAMAL BHATIA & OTHERS,—*Petitioners*

versus

STATE OF PUNJAB & OTHERS,—*Respondents*

C.W.P. No. 16765 of 1999

19th September, 2000

Constitution of India, 1950—Art. 226—Information-cum-Admission Brochure for the Lateral Entry Engineering Test (LEET), 1999—Part B, Cls. 3.9 & 4.5—Information-cum-Admission Brochure for the Common Entrance Test (CET), 1999—Part B, Cl. 4.5—Punjab Government revising fee structure for the candidates admitted to the 1st year of the degree course—University issuing

(5) AIR 1979 S.C. 1241
(6) AIR 1982 S.C. 818
(7) AIR 1989 S.C. 606