

properly classified whether on territorial geographical or other reasonable basis it is not for the courts to interfere with the manner and method of making the classification" too supports the case of the respondents.

(4) Learned counsel for the petitioner, however, relies on a judgment of the Karnataka High Court in *Dr. Y. Shantha v. The Selection Committee for Post-Graduate Degree and Diploma Courses in Medical College and Others* (2), wherein denial of admission to a candidate who had sought admission to a particular course of study on the ground that she had already been admitted to another course was struck down as discriminatory and violative of Article 14 of the Constitution of India. The facts of that case have no bearing on the facts of the instant case.

(5) For the reasons recorded above, I see no merit in this petition and dismiss the same but with no order as to costs.

N.K.S.

Before J. V. Gupta, J.

SUJAN SINGH SADHANA,—Appellant.

versus

MOHKAM CHAND JAIN and others,—Respondents.

Regular First Appeal No. 152 of 1968.

September 23, 1982.

Transfer of Property Act (IV of 1882)—Section 54—Land Acquisition Act (I of 1894)—Sections 4, 6 and 16—Sale of immovable property by public auction—Agreement between bidders not to outbid each other with an understanding that one will sell to the other a portion of the purchased property—Such agreement—Whether against public policy—Agreement to sell a portion of the property executed between the parties but actual sale not effected—Suit for specific performance—Property acquired during the pendency of the suit and possession taken under section 16 of the Land Acquisition Act—Effect of acquisition proceedings on the suit—Degree for specific performance—Whether could be passed.

(2) AIR 1978 Karnataka 66.

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Held, that the principle of public policy cannot be made to apply in its result to a combination of persons who agreed not to bid against one another at a public sale held for forming out public revenues. The combination is not rendered illegal merely because Government is a party to the sale or that the proceeds of the sale would be credited to public revenues or that it might result in possible loss to the Government. Nor can the combination be regarded as other than innocent merely because it discouraged competition amongst the partners themselves. Similarly, if both the parties agreed not to outbid each other with the understanding that one of them will convey a portion of the property in favour of the other in case the bid was accepted and the sale-deed was duly executed thereafter, the agreement or understanding could not be said to be against any public policy. (Para 16).

Held, that a contract for sale of immovable property does not create any interest in or charge on such property. Such an agreement has not the effect of transferring any legal or equitable estate in favour of the party who has contracted for the purchase. This position is made clear by the last clause to section 54 of the Transfer of Property Act, 1882. Under the Indian law, such a person gets only a right to compel the other party to execute a sale-deed in respect of the property and unless and until such a sale-deed is actually brought into existence by act of party or under a decree of Court, the party who has contracted for the purchase cannot be said to have acquired ownership over the property. Thus, if it is once held that the agreement to sell, itself, does not create any interest over the property is acquired under the provisions of the interest over the property in dispute and if the property in dispute is acquired under the provisions of the Land Acquisition Act, 1894 then the plaintiff in a suit for specific performance cannot be held to be entitled to the compensation awarded by the Collector with respect to the suit property. The question of payment of compensation to the plaintiff would have arisen only if by an agreement of sale any charge was created on the suit property. The plaintiff's right on the suit property, if any, will arise only after the execution of the sale-deed in his favour. If, on account of certain eventualities, the agreement as such could not be legally enforced as having become impossible of its performance, then the question of allowing any compensation awarded with respect to suit property, does not arise on that basis. The cause of action under the agreement was to arise after the execution of the sale-deed. If prior to that the proceedings under the Land Acquisition Act had already started and in pursuance of those proceedings, the award for compensation was made during the pendency of the suit for specific performance and if possession had also been taken, the property gets absolutely vested in the State Government, and in such circumstances, the plaintiff is not entitled to the specific performance of the contract of sale. (Para 19).

Regular First Appeal from the decree of the Court of the Senior Subordinate Judge, Amritsar, dated the 24th day of April, 1968 granting decree in favour of the plaintiff and against the defendant for possession of 1/2 share in the property in question by way of specific performance of the agreement of sale conditional on his depositing into court within a period of 60 days here of a sum of Rs. 34,050.00 less his costs of the suit for payment to defendant. Failing this the claim of the plaintiff shall be deemed as dismissed with costs of the defendant. If the money is so paid within the specified time the defendant shall be obliged to execute a regular sale deed in this behalf conveying 1/2 share in the property in question in favour of the plaintiff and the plaintiff shall himself pay the stamp duty and other incidental expenses of the sale deed. A preliminary decree for rendition of accounts regarding the incomes and profits which have accrued to the defendant from this property from the date on which the defendant entered into possession thereof till the execution of the sale deed by him pursuant to this decree is also passed in favour of the plaintiff and against the defendant whatever money is then found due from the defendant to the plaintiff shall be paid by the former to the latter on his (plaintiff's) having paid necessary court fee in that regard.

Civil Misc. No. 460/C of 1975.

Application under section 151 C.P.C. praying that the suit of the plaintiff respondent be dismissed as no decree for specific performance of the contract can be granted now.

Ashok Bhan & Ajay Kumar Mittal, Advocates, for the Appellant.

D. N. Awasthy & A. C. Jain, Advocates, for the Respondents.

JUDGMENT

J. V. Gupta, J.—

(1) This is defendant's appeal, against whom a decree for possession by specific performance of an agreement of sale has been passed by the trial Court.

(2) The plaintiff-respondent filed a suit for possession by specific performance of the agreement of sale dated 27th of October, 1959 (Exhibit P-1) whereby the defendant is alleged to have agreed to sell one-half share in bungalow No. 51/5/13 situated at Court-Road, Amritsar, along with vacant land and outhouses appurtenant thereto. The suit property is an evacuee property which vested in

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the Custodian of Evacuee Properties and afterwards in the Central Government by virtue of the provisions of the Displaced Persons (Compensation and Rehabilitation) Act, 1954. The Central Government under the provisions of the said Act through the Local District Rent and Managing Officer put the property on auction-sale on 19th October, 1959. The parties are said to be displaced persons. According to the plaintiff, at one stage of the auction he and the defendant mutually agreed not to outbid each other and they both entered into a mutual understanding whereby the plaintiff was refrained from giving any further bid at that auction, and the defendant was thus to convey one-half share of the property in favour of the plaintiff in the event of acceptance of their bid and on the transfer of property in defendant's favour by the Central Government pursuant to the said auction sale. The plaintiff maintains that in pursuance of that mutual understanding he refrained himself from giving any further bid at the auction and the defendant gave a bid of Rs. 68,100 which was finally accepted by the authorities concerned.

(3) The plaintiff further states that afterwards on 27th of October, 1959, the defendant executed in his favour the agreement, a copy of which is also Exhibit P. 7 promising to convey one-half share in the property in his favour after the sale certificate had been given to the defendant by the Central Government under the provisions of the aforesaid Act. The agreement shows that the defendant was to furnish as consideration of the sale, verified claims in the aggregate amount of Rs. 68,100 out of which verified claim to the extent of 10 per cent had been made over by him to the Government by way of earnest money at the auction sale. The relevant terms and conditions of the agreement are as under :—

“(a) That Rs. 2,200 (Rupees two thousand and two hundred only) are being paid as an earnest money by the purchaser to the seller by cheque No. G-025218, dated 27th October, 1959 on the Allahabad Bank Ltd., Amritsar, and when the payment of Rs. 34,050 (Rupees thirty four thousand and fifty only) in the shape of verified claim or bonds shall be made by the purchaser to the seller and accepted by the department the sum of Rs. 2,200 paid as an earnest money shall be refunded.

(b) That the purchaser shall submit bonds or verified claim of Rs. 34,050 within the specified period to the seller

when demanded in writing by the seller, duly supported by the required formalities.

- (c) That in case the bid of the seller is not accepted by the sanctioning authority, the earnest money paid by the purchaser shall be refunded to him within a week from the intimation of rejection of the bid for which the purchaser shall be informed by the seller.
- (d) That if any default is found in the claim or bonds of the parties, each will be solely responsible for it.
- (e) That the sale-deed shall be executed by the seller in favour of the purchaser when demanded in writing within thirty days from the date the property is registered in the name of the seller and the intimation of the same shall be given to the purchaser by the seller in writing and all expenses pertaining to registration etc. for the sale of half share of bungalow shall be borne by the purchaser.
- (f) That the income, rents, taxes and profits, liabilities and losses of the abovementioned property shall be shared by the parties equally till the execution of the sale is completed."

The plaintiff further pleaded that he has always been ready and willing to perform his part of the agreement but the defendant illegally and without reasonable cause has repudiated the same and has not allowed him to share the profits accruing from this property as per terms of the agreement.

(4) According to the plaintiff, the earnest money of Rs. 2,200 was duly paid on 3rd of November, 1959, by obtaining a cash order of the same amount as the defendant has created some dispute about the encashment of the cheque dated 27th of October, 1959, which was given to him at the time of agreement Exhibit P-7. Subsequent thereto, two notices, Exhibit P-3, dated 21st November, 1959 and Exhibit P-9, dated 7th July, 1960, were given to the defendant calling upon him to perform his part of the agreement. Since the defendant never performed his part and rather tried to transfer the house in dispute, the plaintiff was obliged to file a suit on 27th of July, 1960 for injunction restraining the defendant to alienate the property in any manner. A copy of the plaint is

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Exhibit DA on the record and a copy of the written statement filed thereto is Exhibit P-12, and a copy of the judgment dated 6th December, 1960 is Exhibit P-13. The said suit was dismissed as it was pleaded by the defendant that the suit as such was not maintainable because so far he had not been granted the sale-certificate and thus no cause of action had accrued to the plaintiff.

(5) Before filing the present suit on 11th of February, 1966, the plaintiff again issued a notice dated 7th January, 1966 Exhibit P-14 calling upon the defendant to perform his part of the agreement. In paragraph 23 of the plaint it was stated that the cause of action arose to the plaintiff on 8th April, 1965 when the certificate of sale was issued to the defendant and on 10th January, 1966 when the defendant refused to abide by his commitments and render the accounts.

(6) In the last, a prayer was made that a decree for possession by specific performance of the contract dated 27th October, 1959, and for rendition of accounts from 27th October, 1959, till date, be passed in favour of the plaintiff against the defendant. It was further prayed that the defendant be ordered to fulfil his obligations as detailed in the agreement of sale dated 27th October, 1959, and get the sale-deed registered, deliver possession and receive its consideration as agreed or in cash. The plaintiff be granted such other reliefs to which he is entitled under law and equity.

(7) The defendant in his written statement took all possible pleas and objections. He denied having entered into an agreement as alleged by the plaintiff. He also denied that he and the plaintiff agreed at the auction-sale in question not to bid out each other and to let him alone to give bid at the auction sale. According to him, such an agreement would be against public policy and, therefore, void in the eyes of law. According to the defendant, the parties on 27th of October, 1959 discussed the sale of one-half portion of the property in dispute in favour of the plaintiff and a proposed agreement in that behalf was drafted but the same could not be concluded as to bind the parties. However, the defendant admitted that a cheque of Rs. 2,200 was given to him by the plaintiff but, nevertheless, it was mutually agreed between them that the proposed agreement was to take effect only if the said cheque had been honoured by the plaintiff's bankers. Since the said cheque was dishonoured, no binding agreement came into

existence between him and the plaintiff. The receipt of any cash bank order of Rs. 2,200 dated 3rd November, 1959 in lieu thereof sent by the plaintiff was denied.

(8) It was also pleaded that the agreement could not be enforced because, at the time of its execution, the defendant had no title or interest in the property in question, which vested, for all purposes, in the Central Government. In paragraph 7 of the Preliminary Objections in the written statement, it was averred that the property in suit stands acquired by the Amritsar Improvement Trust through the Collector, and, therefore, no suit for specific performance is legally maintainable nor can any such alleged agreement be specifically enforced. It was also denied that the plaintiff was ready and willing to perform his part of the agreement and, therefore, under these circumstances, the suit was liable to be dismissed.

(9) Under the replication filed on behalf of the plaintiff, the averments made in the plaint were reiterated. In reply to paragraph 7 of the Preliminary Objections in the written statement, it was stated that there has been no acquisition of the property in dispute and much less is there any bar to the specific performance being granted.

On the pleadings of the parties, the trial Court framed the following issues :—

- (1) Whether the mutual understanding as detailed in para No. 4 of the plaint was arrived at between the parties on 19th October, 1959, as alleged ?
- (2) Whether in pursuance of the said understanding the plaintiff refrained from bidding at the auction and eventually on 27th October, 1959, an agreement to sell 1/2 of the property as detailed in para No. 1 of the plaint was executed by the defendant in favour of the plaintiff? If so, what were the terms and conditions of the said agreement ?
- (3) Whether the plaintiff has been ready and willing to perform his part of the contract ?
- (4) Whether the defendant with an ulterior motive dishonestly and with a view to wriggle out of the commitments made some unauthorised additions at the foot

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- of the agreement without the plaintiff's consent and knowledge. If so, to what effect on the said agreement?
- (5) Whether the plaint does not disclose any cause of action for bringing a suit for possession by specific performance as alleged in para No. 2 of the preliminary objections ?
 - (6) Whether the suit merits dismissal as alleged in para No. 3 of the preliminary objections of the written statement ?
 - (7) Whether the agreement dated 27th October, 1959 is void for the reasons as detailed in paras Nos. 4 and 5 of the preliminary objections of the written statement ?
 - (8) Whether the plaintiff has committed breach of the terms of the agreement dated 27th October, 1959 ?
 - (9) Whether the suit for specific performance is not legally maintainable for the reasons as alleged in para No. 7 of the preliminary objections of the written statement ?
 - (10) Whether the agreement as aforesaid is unenforceable for the reasons as detailed in para No. 9 of the preliminary objections of the written statement ?
 - (11) Whether the agreement dated 27th October, 1959 cannot be specifically enforced for the reasons as detailed in para Nos. 8 and 10 of the preliminary objections of the written statement ?
 - (12) Whether the suit is within time ?
 - (13) Whether the present suit is barred under the provisions of Order 22, rule 2, C.P.C. ?
 - (14) Whether the plaintiff is entitled to the relief of specific performance ?
 - (15) Whether the defendant is liable to render accounts in respect of the rents and profits and expenditure in connection with the suit property, to the plaintiff ?
 - (16) Whether the plaintiff is guilty of laches and delay for the reasons as detailed in para No. 19 of the written statement on merits ?

(17) Whether the suit for specific performance is not legally maintainable as alleged in para No. 1 of the preliminary objections of the written statement ?

(18) Relief.

Issues Nos. 1 and 2 were discussed together by the trial Court and were decided in favour of the plaintiff. It was concluded thereunder that the defendant executed agreement exhibit D-1 and thereby agreed to convey one-half share in the property in favour of the plaintiff. Issue No. 7 was decided against the defendant and it was held that there was no inanity in the agreement in question on account of any vagueness of any of its terms. Issues Nos. 10, 4, 8 and 3 were discussed together and were decided in favour of the plaintiff and against the defendant. It was found thereunder that the plaintiff had always been ready and willing to perform his part of the agreement. Issues Nos. 6 and 11 were also discussed together and were decided against the defendant. According to the finding of the trial Court, the agreement in question clearly lays down that after the defendant had obtained the sale certificate in his name from the Government and the same has been registered by the Department he was then to execute a regular sale-deed in favour of the plaintiff. Under issue No. 9, which is the most material issue in the present case, it was held that even though the acquisition proceedings have been taken to acquire the property in dispute but since the possession has not been taken as yet by the Improvement Trust, the property still vests in the defendant and, therefore, the plaintiff is entitled to the decree prayed for and, in any case, the principles of equity require that the defendant shares with the plaintiff the amount of compensation to be received by him on account of the acquisition of the property by the Government. Under issue No. 12, the suit was held to be within time. Issues Nos. 13, 16, 14, 5 and 17 were decided against the defendant. Under issue No. 15, the trial Court came to the conclusion that the defendant must render accounts to the plaintiff and also pay to him one-half share of the profits and income which have accrued from this property. As a result of these findings, the plaintiff's suit for specific performance of the agreement was decreed. Along with it, a preliminary decree for rendition of accounts regarding the income and profits which have accrued to the defendant from this property from the date on which the defendant entered into possession thereof till the execution of sale-deed by him pursuant to this decree, was also passed in favour of the plaintiff and against the defendant. Dissatisfied with the same, the defendant has come up in appeal to this Court.

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(10) During the pendency of this appeal, the defendant-appellant filed Civil Miscellaneous Application No. 460-C of 1975, dated 10th February, 1975, in which it was stated that the Improvement Trust of Amritsar took possession of the house in dispute on 28th of October, 1973, in pursuance of the acquisition proceedings taken earlier and the compensation to the tune of Rs. 1,17,655.50 P. for the whole property has been deposited with the President, Land Acquisition Tribunal Amritsar, on 8th of February, 1978 and, therefore, under these circumstances, the specific performance of agreement has become impossible and the appellant is in no position to execute any sale-deed for the property in dispute in favour of the plaintiff as the property stands transferred in the name of the Improvement Trust. Notice of this application was given to the plaintiff-respondent and a detailed reply dated 1st of February, 1981, was filed thereto. The taking over of the possession by the Improvement Trust was not specifically denied though it was stated that it is still very much in dispute as to whether the Improvement Trust has been able to take actual physical possession or not. However, it was admitted that the award dated 26th August, 1967, has been made and since there was a dispute as to the payment of compensation, the same was deposited under section 31(2) of the Land Acquisition Act, 1894, with the Tribunal. However, the defendant-appellant filed along with the said civil miscellaneous application, a certificate from the Land Acquisition Collector, Amritsar Improvement Trust, dated 27th March, 1974, to the effect that the said amount of compensation was deposited and the possession of the house was delivered to the Trust on 28th October, 1973. This fact was never specifically denied by the plaintiff-respondent. The said civil miscellaneous application was directed to be heard with the main case,—*vide* this Court's order, dated 28th February, 1975 and thus the same will be dealt with subsequently in this order.

(11) I have heard the learned counsel for the parties and also gone through the relevant documents on the record. Learned counsel for the defendant-appellant contended that the agreement of sale dated 27th of October, 1959, was unenforceable as there was interpolation and the same was against public policy because the parties could not enter into any such agreement as alleged by the plaintiff. In any case, the plaintiff had not enough money in his Bank on the date of agreement and, therefore, the cheque was rightly dishonoured and on that account also, the agreement became inexecutable as per its terms.

(12) It was next contended that the plaintiff was not ready and willing to perform his part of the agreement. Even if the same was repudiated by the defendant, still the plaintiff was to show his readiness and willingness to perform his part. According to the learned counsel, the plaintiff has already sold his verified claim in the year 1961 whereas the sale certificate was issued in favour of the defendant on 3rd April, 1965 and the same was registered on 19th April, 1966. Thus, the plaintiff should have proved his readiness and willingness on these relevant dates to perform his part of the agreement. Moreover, according to the learned counsel, the defendant could not enter into any such agreement as to convey the title in the property in the year 1959 because he had no such title at that time in his favour. The title, if any, would have vested in the defendant-appellant on the execution of the sale-deed in his favour.

(13) It was lastly contended that the performance of the contract became impossible because the property in dispute was acquired under the Land Acquisition Act inasmuch as even possession had been taken by the Improvement Trust on 28th October, 1973, and, therefore, no decree for specific performance of the agreement could be passed under these circumstances. In any case, unless a sale-deed was executed in favour of the plaintiff, no title can be said to have passed to him and, therefore, he was not entitled to claim any rendition of accounts from the date of the agreement till the execution of the sale-deed, if any, as per clause (f) of the agreement Exhibit P. 7.

(14) As regards the point as to whether there was any interpolation or not in the agreement and, therefore, the same was not enforceable, I do not find any force in the contention raised on behalf of the appellant. From the evidence on the record, it is amply proved that the said interpolation was at the instance of the defendant. It does not bear the signature of the plaintiff nor was he said to be present at the time when the said clause was inserted. From the conduct of the defendant, it is quite evident that he has no regard for truth. He is capable of making any statement which may suit his interests. The trial Court has discussed the entire evidence in detail and the learned counsel for the appellant was unable to challenge the same. From the copy of the accounts book Exhibit PW-2/3, it is quite clear that the plaintiff had enough money in his account as to honour the cheque for a sum of Rs. 2200/-. The same was dishonoured as the signatures of the

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plaintiff did not tally. The finding of the trial Court on this matter that this was done by the defendant because the cheque was in his possession and the said interpolation was made with a purpose to repudiate the agreement on that account, is therefore, maintained.

(15) The contention of the learned counsel for the appellant that the said agreement was against public policy has also no force. In support of his contention, he relied upon *Chattamal Jethmal and others v. Rewachand and others* (1); *Parduman Chand v. Bawa Kashmira Singh and another* (2); and *Mohafazul Rahim v. Babu Lal* (3). On the other hand, learned counsel for the respondent cited *Chagwant Genuji Girme v. Gangabisan Ramgopal* (4); *Mahommad Isack alias Papa Saheb v. Doddapaneni Sreeramalu* (5); and *Ram Lal Misra v. Rajendra Nath Sanyal* (6).

(16) After hearing the learned counsel for the parties, and going through the case law cited at the Bar, I am of the considered opinion that the said agreement between the parties could not be said to be against public policy. In *Parduman Chand's case* (supra), what was held was that an agreement by the intending bidders at an auction forming a ring to share the profits resulting from the "knock out" is against public policy, which is not the position in the present case. . Such a matter has been discussed in *Bhagwant Genuji Girme's case* (supra) and held that a partnership formed solely with a view to take toll contracts at a public auction is in itself not illegal. The principle of public policy cannot be made to apply in its result to a combination of persons who agreed not to bid against one another at a public sale held for forming out public revenues. The combination is not rendered illegal merely because Government is a party to the sale or that the proceeds of the sale would be credited to public revenues or that it might result in possible loss to the Government. Nor can the combination be regarded as other than innocent merely because it discouraged competition amongst the partners themselves. Similarly, in the present case, if both the parties agreed not to outbid each other with the understand-

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- (1) AIR 1914 Sind 165.
 - (2) AIR 1943 Lahore 100.
 - (3) AIR 1949 Nagpur 113.
 - (4) AIR 1940 Bomb. 369.
 - (5) AIR 1946 Madras 289.
 - (6) AIR 1933 Oudh 124.

ing that the defendant will convey half of the property in favour of the plaintiff in case his bid was accepted and the sale-deed was duly executed in his favour could not be said to be against any public policy. Therefore, there is nothing wrong in the finding of the trial Court in this respect and the same is affirmed.

(17) It was next contended on behalf of the defendant-appellant that the plaintiff was never ready and willing to perform his part of the contract. In any case, there was no question of any repudiation on the part of the defendant because, according to the terms of agreement, he was required to execute the sale-deed in favour of the plaintiff from the date the property was registered in the name of the defendant. According to the learned counsel, though the sale certificate in favour of the defendant was issued on 3rd April, 1965, yet the same was registered on 19th April, 1966 whereas the present suit was filed on 15th February, 1966. Therefore, under these circumstances, the plaintiff has failed to prove his readiness and willingness at the relevant time even if there was any repudiation on the part of the defendant. In support of his contention, he referred to *Florrie Edridge and others v. Rustomji Danjibhoy Sethna* (7); *Saral Kumar Chatterjee v. Madhusudan Auddy and another* (8); *Smt. Raj Rani Bhasin and others v. S. Kartar Singh Mehta* (9); and *Durjyodhan Pater & others v. Padana Charan Dass* (10). Learned counsel for the plaintiff-respondent drew my attention to the notices issued to the defendant from time to time. The first notice is Exhibit P. 2, dated 4th of November, 1959. The second notice is Exhibit P. 3 dated 21st November, 1959 and the third notice is Exhibit P. 9, dated 17th July, 1960. After these notices, the plaintiff had to file a suit for injunction on 27th of July, 1960, which was dismissed on 6th of December, 1960,—*vide* Exhibit P-13, because the defendant had pleaded that no cause of action has arisen as yet to the plaintiff because no sale deed had been executed in favour of the defendant. The present suit was filed on 11th February, 1966. Before filing the present suit, again notice Exhibit P-14, dated 7th January, 1966, was given to the defendant calling upon him to perform his part of the contract. Moreover, immediately when the suit was decreed by the trial Court, the sale money was deposited in the trial Court within the

(7) AIR 1933 Privy Council 233.

(8) AIR 1964 Calcutta 556.

(9) AIR 1975 Delhi 137.

(10) AIR 1978 Orissa 5.

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time allowed. From all these facts and circumstances, according to the learned counsel for the plaintiff-respondent, it is quite evident that at all relevant times, the plaintiff had always been ready and willing to perform his part of the agreement. Thus, from the said documentary evidence, it has been rightly held by the trial Court that the plaintiff had always been ready and willing to perform his part of the agreement and, thus, the relevant issue was rightly decided in favour of the plaintiff.

(18) The most material issue in this appeal is as to what is the effect of the proceedings under the Land Acquisition Act, taken at the instance of the Improvement Trust for implementation of its scheme. It is the common case of the parties now that notification under sections 4 and 6 of the Land Acquisition Act, 1894, were issued in the year 1962 and the award was given by the Collector on 26th July, 1967, i.e., during the pendency of the suit in trial Court. Now, on 28th October, 1973; the possession has also been taken by the Improvement Trust as is evident from the certificate of the Land Acquisition Collector, Amritsar Improvement Trust, filed along with Civil Misc. Application No. 480-C of 1975, which has not been denied in the reply filed to the said application. This was the subject-matter of issue No. 9 before the trial Court. The trial Court took the view that since the possession had not been taken under section 16 of the Land Acquisition Act as yet, the property as such does not vest in the State Government and legally it still remains to be property of the owner. Reliance in this respect was placed on *State of Bihar v. Dr. G. H. Grant and another* (11) *Assam Railways and Trading Co. Ltd. v. Union of India and North Eastern Rly.*, (12). Under these circumstances, the plaintiff was held to be entitled to the decree for specific performance. In any case, according to the trial Court, the principles of equity require that the defendant shares with the plaintiff the amount of compensation to be received by him on account of the acquisition of the property by the Government. Learned counsel for the appellant vehemently contended that though this issue was wrongly decided by the trial Court yet, in any case, now during the pendency of this appeal even the possession had been taken over on 28th October, 1973 by the Improvement Trust by whom the property in dispute was acquired and, therefore, now it absolutely vests in the State

(11) AIR 1960 Patna 382.

(12) AIR 1965 Assam & Nagaland 12.

Government as provided under section 16 of the Land Acquisition Act and the defendant has no more any title or interest therein and hence performance of the agreement has been rendered impossible in view of these subsequent events. In support of this contention, he strongly relied on *Mohamad Abdul Jabbar and others v. Lalmia and others* (13); *T. V. Mochuvared and another v. P. Mariappa Gounder and others* (14), *Sardarilal and others v. Shrimati Shakuntla Devi* (15), and *A. N. Ranganatha Naidu v. SenthemaraI and others* (16). According to these judgments, a contract of sale of immovable property does not, of itself, create any interest in or charge on such property in view of the provisions of section 54 of the Transfer of Property Act, which is to the following effect:—

“ ‘Sale’ defined.—‘Sale’ is a transfer of ownership in exchange for a price paid or promised or part paid and part promised.

Sale how made.—Such transfer, in the case of tangible immovable property of the value of hundred rupees and upwards, or in the case of a reversion or other intangible thing, can be made only by a registered instrument.

In the case of tangible immovable property of a value of less than one hundred rupees, such transfer may be made, either by a registered instrument or by delivery of the property.

Delivery of tangible immovable property takes place when the seller places the buyer, or such person as he directs, in possession of the property.

Contract for sale.—A contract for sale of immovable property is a contract that a sale of such property shall take place on terms settled between the parties.

It does not, of itself, create any interest in or charge on such property.”

(13) AIR 1947 Nagpur 254.

(14) AIR 1954 Trav Cochin 10.

(15) AIR 1961 Pb. 378.

(16) AIR 1979 Madras 26.

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The learned counsel for the plaintiff-respondent tried to distinguish these authority by contending that the present agreement Exhibit is not simpliciter an agreement for sale. From the terms of the agreement, the learned counsel contended, it is quite evident that the parties were entitled to share equally income, rents, taxes, profits, liabilities and losses with respect to the property in dispute till the execution of the sale-deed was completed. These terms, according to the learned counsel, being an integral part of the whole agreement: creates a charge on the property in dispute and, therefore, the said agreement is not covered by the provisions of section 54 of the Transfer of Property Act. However, no case law has been cited by the learned counsel to support his contention.

(19) After going through the case law relied upon by the learned counsel for the appellant, I am of the considered opinion that the *ratio* of the said judgments is fully applicable to the facts of the present case. In *Mohamad Abdul Jabbar's case* (supra), it has been held that a contract for sale of immovable property does not create any interest in or charge on such property. Hence where property agreed to be sold is compulsorily acquired, the vendee suing for specific performance is not even entitled to the compensation money lying with the Collector. Similarly, in *T. V. Kochuvareed's case* (supra) the matter has been discussed in paragraphs Nos. 45 and 46 thereof. It has been observed therein that the plaintiff has, at best, only an agreement for sale in his favour. Such an agreement has not the effect of transferring any legal or equitable estate in favour of the plaintiff. This position is made clear by the last clause to section 54 of the Tansfer of Property Act where it is stated that a contract for sale of immovable property does not, of itself, create any interest in or charge on such property. In this respect, the Indian law is different from the English law which recognizes an equitable estate in favour of a party who has entered into a contract for the sale of immovable property. Under the Indian Law, such a person gets only a right to compel the other party to execute a sale-deed in respect of the property and unless and until such a sale-deed is actually brought into existence by act of party or under a decree of Court, the party who has contracted for the purchase cannot be said to have acquired ownership over the property. In *Sardarilal and others case* (supra), the provisions of section 54 of the Transfer of property Act were being considered. In paragraph 10 thereof it has been observed that this section also provides that a contract for the sale of immovable property is a contract that sale of such property shall take place on terms settled

between the parties but such a contract, does not of itself, create any interest in or charge on such property. Again in *A. N. Ranganathan Niadu's case* (supra), it has been observed in paragraph 12 of the report that it is well known that under Indian law an agreement to sell does not create any interest over immovable property. Thus, if it is once held that the agreement to sell, of itself, does not create any interest over the property in dispute, then the plaintiff cannot be held to be entitled to the compensation awarded by the Collector with respect to the suit property. The question of payment of compensation to the plaintiff would have arisen only if, by an agreement of sale, any charge was created on the suit property. The plaintiff's right in the suit property, if any, will arise only after the execution of the sale deed in his favour. If, on account of certain eventualities, the agreement as such could not be legally enforced as having become impossible of its performance, then the question of allowing any compensation awarded with respect to the suit property, does not arise on that basis. The clause (f) of the agreement Exhibit P-7 on the basis of which it is being contended on behalf of the plaintiff that the said agreement was not simpliciter an agreement but something more than that as it created a charge on the suit property, is also of no consequence. That clause is an integral part of the whole agreement and will come into play only if the agreement as such is capable of specific performance. If the agreement as such cannot be specifically enforced the said clause (f) of the agreement cannot be independently enforced and, therefore, under the present circumstances of the case, it cannot be held that the said agreement was not a simple agreement for sale alone. For all intents and purposes, it was an agreement for the sale of half of the suit property in favour of the plaintiff. The cause of action under the said terms of the agreement was to arise after the execution of the sale deed in favour of the defendant by the Rehabilitation Department, which was registered in favour of the defendant on 19th April, 1966. Prior to that, the proceedings under the Land Acquisition Act had already started and in pursuance of those proceedings the award for compensation was made on 26th July, 1967, during the pendency of this suit. Now, during the pendency of this appeal which is deemed to be the continuation of the suit, the possession had also been taken by the Improvement Trust on 28th October, 1973, and thus the property has absolutely vested in the State Government. Under these circumstances, the plaintiff is neither entitled to the specific performance of the contract of sale nor to any rendition of accounts as held by the trial Court in his favour.

Mohinder Singh v. State of Punjab and another (A. S. Bains, J.)

(20) For the reasons recorded above, this appeal succeeds, the judgment and decree of the trial Court are set aside and the plaintiff-respondent's suit for specific performance of the contract is dismissed with no order as to costs.

N.K.S.

Before S. S. Sandhawalia, C.J. & A. S. Bains, J.

MOHINDER SINGH,—Petitioner.

versus

STATE OF PUNJAB and another,—Respondents.

Civil Writ Petition No. 4351 of 1973.

September 28, 1982.

Punjab Land Reforms Act (X of 1973)—Section 5—Constitution of India—Articles 14, 19, 31-A, 31-B, Seventh Schedule, List I, Entries 1 and 2 and List II, Entry 18 and Ninth Schedule—Land Reforms Act included in the Ninth Schedule to the Constitution—Validity of the Act challenged on the ground of incompetence of the State Legislature to enact such a law—Such challenge—Whether could be gone into in view of Articles 31-A and 31-B—Land allotted as gallantry award not exempted from the operation of the Reforms Act—Grant of such a gallantry award—Whether a matter pertaining to the defence of India within the meaning of Entries 1 and 2 of List I of the Seventh Schedule—State Legislature—Whether competent to enact the law.

Held, that admittedly the Punjab Land Reforms Act, 1972 is included in the Ninth Schedule of the Constitution of India 1950 and is protected under Articles 31-A and 31-B from being challenged on the ground that it violates Articles 14 and 19 of the Constitution. Where, however, the Act is challenged not on the ground that it violates Articles 14 and 19 but on the ground that the Punjab Legislature was not competent to enact the same, the validity can be gone into.

(Para 2).

Held, that the object of the Punjab Land Reforms Act is the agrarian reform and to impart security of tenure, to make the tiller the owner and to trim large holdings setting sober ceilings, to create peasant proprietorship and to ensure even distribution of land. The *sine qua non* was the building up of a reservoir of land carved