Jagan Nath

Vs

Jagdish Rai and Others

Civil Appeal No. 385 of 1987

(S. B. Majmudar, M. Jagannadha Rao JJ)

28.04.1998

JUDGMENT

S. B. MAJMUDAR, J. –

1. This appeal on grant of special leave to appeal under Article 136 of the Constitution of India is moved by the original plaintiff whose suit for specific performance of the suit agreement came to be decreed by the trial court but got dismissed by a learned Single Judge of the High Court and which dismissal in turn was confirmed by a Letters Patent Bench of the High Court. We will refer to the appellant as plaintiff and the respondents concerned as defendants, for the sake of convenience, in the latter part of this judgment. We may also mention that pending this appeal original Defendant 2 has sold the suit property to one Yash Pal, son of Shri Hans Raj who is sought to be joined as party Respondent 4 by IA No. 3 moved by the plaintiff. Similar application is moved by the said purchaser pendente lite being IA No. 4. Both these IAs are granted. Consequently the subsequent purchaser has become Respondent 4 in this appeal. He will be treated as Defendant 4.

2. A few relevant facts leading to this appeal are required to be noted at the outset with a view to appreciating the grievance of the plaintiff.

Background facts

3. The suit house consisting of 5 rooms, a verandah and courtyard measuring 7 marlas out of the entire property consisting of 14 marlas situated at Moga town earlier falling within the district of Faridkot and now included in the newly formed Moga District in the State of Punjab belonged to Defendant 1 Jagdish Rai. The said property was mortgaged by Defendant 1 in favour of one Rajinder Singh by a registered usufructuary mortgage deed Ex. D-3 dated 26-7-1973 for a sum of Rs. 5000. Thereafter Defendant 1 entered into the suit agreement Ex. P-1 dated 28-9-1973 in favour of the plaintiff. As per the said suit agreement Defendant 1 agreed to sell his right, title and interest in the suit property for a sum of Rs. 60,000. In the said agreement it was provided that Defendant 1 will execute the registration deed by 30-12-1973 in favour of the plaintiff. The said agreement recited that Defendant 1 was the sole owner of the house which was in his exclusive possession and that it was free from all encumbrances of government or non-government or any mortgage. By a subsequent agreement dated 26-12-1973 Defendant 1 Jagdish Rai got the time for execution of the sale deed under the suit agreement extended up to 30-6-1974. The said extension agreement is Ex. P-2. It was recited therein that under the agreement of 28-9-1973 the date of execution of the registration of the house was fixed up to 30-12-1973. But because he was unable to get the sale deed executed by 30-12-1973 the date of the execution of the sale deed was extended by mutual agreement up to 30-6-1974. Thereafter Defendant 1 Jagdish Rai entered into a sale deed for Rs.

20,000 conveying his right, title and interest in one half of the suit property which in turn was a part of 14 marlas and which was joint with his brother, in favour of Jagir Singh, son of Kapur Singh. The said sale deed is at Ex. D-1 dated 23-1-1974. The said sale deed recited that the entire house consisted of 14 marlas. It was joint with his brother and consequently one-half share of Defendant 1 consisted of 7 marlas which was earlier mortgaged for Rs. 5000. Out of that one-half share of Defendant 1 further one-half thereof, that is, 1/4th of the entire house to the extent of 3 1/2 marlas was being sold to Jagir Singh for a sum of Rs. 20,000. The document recited that out of Rs. 10,000 earnest money of Rs. 5000 was received by Defendant 1 and the balance of Rs. 5000 was retained by the purchaser for paying off the mortgagee and the balance of Rs. 10,000 would be received by Defendant 1 at the time of execution of the document before the Sub-Registrar, Moga. The said Jagir Singh was joined as Defendant 3 in the suit from which the present proceedings arise. Defendant 3 Jagir Singh in turn sold the 1/4th share in the entire house of 14 marlas, which he had purchased from Defendant 1, by entering into a sale deed in favour of Defendant 2 on 27-3-1974 for a sum of Rs. 21,000. The said document is Ex. D-4. Thus by the said sale deed Defendant 2 purchased 3 1/2 marlas out of the suit property from Defendant 3. As noted earlier, the suit agreement in favour of the plaintiff covered 7 marlas being 1/2 share of Defendant 1 in the entire house originally consisting of 14 marlas. The remaining 3 1/2 marlas of the suit property was subsequently purchased by Defendant 2 from Defendant 1 by a registered sale deed dated 2-4-1974 for a consideration of Rs. 30,000. The said document is Ex. D-2. It was thereafter that the plaintiff filed Civil Suit No. 211 of 1974 in the Court of Sub-Judge, Ist Class, Moga for specific performance of the suit agreement joining Defendant 1 Jagdish Rai, the original owner of the property of 7 marlas being his 1/2 interest in the entire house. He joined Defendant 2 who had by then become the full owner of entire 7 marlas of Defendant 1's share in the suit house and which came to be conveyed to him by two documents, Exs. D-4 and D-2 respectively. As noted earlier, the intermediate purchaser of 1/4th share of Defendant 1 admeasuring 3 1/2 marlas of the suit property was joined as Defendant 3 and the present purchaser of the entire right, title and interest of Defendant 2 in the suit property pending this appeal and who is joined as Respondent 4 herein is to be treated as Defendant 4. In the aforesaid suit the plaintiff contended that he was ready and willing to perform his part of the suit agreement and, therefore, Defendant 1 was bound to convey all 7 marlas of the suit property covered by the agreement in favour of the plaintiff by executing appropriate sale deed and by putting the plaintiff in possession of the suit property. It was also contended that Defendant 2 and Defendant 3 were not bona fide purchasers for value without notice and, therefore, appropriate decree for specific performance was required to be passed also against them, especially against Defendant 2 who was by the time of the suit representing the entire interest of Defendant 1 in the suit property which was passed on to him pursuant to the aforesaid intermediate transactions of sale prior to the suit. It was alternatively prayed that a decree for Rs. 10,000 as damages be passed in favour of the plaintiff and against the defendant.

4. The suit was contested by the defendants. Defendant 2 being a minor was represented by his guardian Kishan Chand, his father who contested the suit on his behalf. The learned trial Judge after framing issues and recording evidence came to the conclusion that Defendant 1 had agreed to sell the house in dispute to the plaintiff on the terms given in the agreement Ex. P-1, that the plaintiff was ready and willing to perform his part of the agreement and that Defendant 2 was not a bona fide purchaser of the suit property for value without notice and that the plaintiff was entitled to specific performance of the agreement. The learned trial Judge, therefore, decreed the plaintiff's suit for specific performance of the agreement against Defendants 1 and 2. In addition to the aforesaid decree for specific performance Defendant 1 was also called upon to pay to the plaintiff Rs. 10,000 as damages as stipulated in the agreement Ex. P-1, as according to the learned trial Judge Defendant

1 had gone back upon the agreement and had not executed the sale deed according to the terms of the agreement. Defendant 1 was also asked to bear the cost of the suit.

5. The aforesaid decree passed by the trial court in favour of the plaintiff on 21-10-1976 resulted in two appeals before the High Court of Punjab and Haryana at Chandigarh. One appeal was moved by Defendant 1 while another companion appeal was moved by Defendant 2. The learned Single Judge of the High Court noted in para 3 of his judgment that the main controversy between the parties in these appeals was as to whether Lalit Mohan, Defendant 2, was a bona fide purchaser without notice or not and whether the plaintiff was entitled to the relief for specific performance of the agreement to sell or not. The findings of the trial court on other issues in favour of the plaintiff were not challenged by the appellants in the High Court. So far as the aforesaid point for determination was concerned the learned Single Judge of the High Court came to the conclusion on reappreciation of the evidence that Defendant 2 was a bona fide purchaser for value without notice and hence specific performance could not be granted against him. However, the decree for damages of Rs. 10,000 as passed by the trial court against Defendant 1 was required to be confirmed.

Accordingly both the appeals were allowed. Judgment and decree of the trial court were set aside and the plaintiff's suit was decreed against Defendant 1 Jagdish Rai for recovery of Rs. 10,000 as damages only. Interest was awarded to the plaintiff on the aforesaid amount at 6% p.a. from the date of the decree of the trial court till its realisation. The aforesaid decision was rendered by the learned Single Judge of the High Court on 31-10-1985. The plaintiff carried the matter in letters patent appeal before a Division Bench of the High Court. The Division Bench of the High Court by its order dated 3-4-1986 held that no case for interference was made out by the plaintiff and hence appeal was dismissed. That is how the dissatisfied plaintiff has filed the present appeal on grant of special leave by this Court.

Rival contentions

6. Learned Senior Counsel, Shri Rajinder Sachar, appearing for the plaintiff, vehemently contended that the burden of proof was very heavy on Defendant 2 for showing that he was a bona fide purchaser for value without notice and that burden was not legally discharged by him. That the evidence on record clearly indicated that with a view to frustrate the plaintiff's agreement and in full know thereof Defendant 2 had entered into the transactions of sale in his favour and, therefore, the solitary contention canvassed in appeal by these contesting defendants should have been answered by the learned Single Judge against the defendants and in favour of the plaintiff and the decree passed by the trial court ought to have been confirmed. In support of his contentions Shri Sachar took us through the relevant documentary and oral evidence on record of this case to which we will make a reference hereinafter. He also invited our attention to one decision of this Court and two decisions of the Privy Council to which also we will make a reference at an appropriate stage in the latter part of this judgment.

7. Refuting these contentions Shri M. L. Verma, learned Senior Counsel appearing for the newly-added Respondent 4-Defendant 4, who in substance is the only contesting party at the present stage as he is the owner of the suit property having purchased the same pending these proceedings, submitted that his predecessor-in-interest Defendant 2 was rightly held as bona fide purchaser for value without notice by the learned Single Judge of the High Court and that finding was rightly upheld by the Division Bench of the High Court. That the finding is based on pure appreciation of evidence and is not perverse or uncalled for and hence in exercise of our powers under Article 136 of the Constitution of India we may not interfere with the said pure finding of fact. He further

submitted that he has purchased this property pending this appeal when there was no injunction against the original defendants especially Defendant 2 restraining him from dealing with his property or disposing of it. He, however, fairly stated that as the transaction is pending this appeal on the principle of lis pendens he would be liable to answer the claim of the plaintiff and to satisfy the claim of the plaintiff if ultimately the plaintiff succeeds on merits. However, Shri Verma submitted that Defendant 4 has purchased the property by parting with hard-earned money of Rs. 1,20,000 and odd in 1993. That according to him the situation in Punjab at that time was very uncertain due to terrorism. That Defendant 4 had purchased the property in question after making inquiries from the present appellant who agreed that he had no interest in the property as the litigation had already taken 20 years. This submission was made on the basis of the averments made in para 6 of IA No. 4 moved by him for being joined as a party in this appeal invoking provisions of Order XXII Rule 10 Code of Civil Procedure. Shri Verma submitted that though the copy of this IA was served on the learned counsel for the appellant, no counter has been filed. He next submitted, placing reliance on relevant aspects of the evidence both documentary and oral to which he invited our attention, that in any case Defendant 4's predecessor-in-interest Defendant 2 was clearly shown to be a bona fide purchaser for value without notice of the plaintiff's agreement. That the learned Single Judge of the High Court had held on appreciation of evidence that Defendant 2's father was a sitting tenant and as he had purchased the suit property in two instalments there was no occasion for him to enter into this transaction if he had known about the suit agreement. He lastly contended that in any case this being equity jurisdiction the plaintiff who is in a very affluent condition as seen from the evidence and having a number of immovable properties in the town while Defendant 4 is having the only suit house for his residential purposes which he is occupying since more than five years, this Court may not exercise powers under Article 136 of the Constitution of India for upsetting the decision of the High Court in favour of his predecessor-in-interest Defendant 2. Shri Sachar, learned Senior Counsel for the plaintiff, in rejoinder reiterated his contentions in support of the appeal.

Points for determination

8. In the light of the aforesaid rival contentions the following points arise for our consideration :

1. Whether the decision of the learned Single Judge of the High Court as confirmed by its Division Bench in letters patent appeal to the effect that Defendant 2 was a bona fide purchaser for value without notice, is erroneous and liable to be set aside.

2. Even if the finding on Point 1 is against the contesting defendants whether the plaintiff is entitled to a decree for specific performance in the facts and circumstances of the case.

3. What final order ?

We shall deal with these points seriatim.

Point 1

9. The aforesaid resume of facts makes it very clear that the real question in controversy between the parties which now survives for consideration is whether Defendant 4's predecessor-in-interest Defendant 2 was a bona fide purchaser for value without notice of the suit agreement. If the answer to this question is in the affirmative nothing further would survive in this appeal.

10. In order to appreciate the rival contentions centering round this limited controversy it is necessary to note the well-settled legal position governing the same. Section 19 of the Specific Relief Act, 1963 lays down that :

> "19. Except as otherwise provided by this Chapter, specific performance of a contract may be enforced against -
>
> (a) either party thereto;
>
> (b) any other person claiming under him by a title arising subsequently to the contract, except a transferee for value who has paid his money in good faith and without notice of the original contract;"

We are not concerned with other sub-clauses of Section 19. It is not in dispute between the contesting parties that Defendant 2 was partly claiming through Defendant 1 who is a party to the suit agreement and was partly (sic claiming) through Defendant 3 who in his turn was claiming through Defendant 1 who was admittedly party to the suit agreement. As ultimately the entire suit property came to be vested in Defendant 2 prior to the date of the suit, the moot question examined by the trial court as well as by the appellate court as to whether Defendant 2 was a transferee for value without notice of the original contract requires resolution in the light of the evidence on record. It is well settled that the initial burden to show that the subsequent purchaser of suit property covered by earlier suit agreement was a bona fide purchaser for value without notice of the suit agreement squarely rests on the shoulders of such subsequent transferee. In the case of Bhup Narain Singh v. Gokul Chand Mahton (AIR 1934 PC 68 : 38 CWN 393 : 61 IA 115) the Privy Council relying upon earlier Section 27 of the Specific Relief Act of 1877 which is in pari materia with Section 19(1)(b) of the present Act, made the following pertinent observations at p.70 of the Report in this connection :

> "Section 27 lays down a general rule that the original contract may be specifically enforced against a subsequent transferee, but allows an exception to that general rule, not to the transferor, but to the transferee, and therefore it is for the transferee to establish the circumstances which will allow him to retain the benefit of a transfer which prima facie, he had no right to get :"

However, it has to be kept in view that once evidence is led by both the sides the question of initial onus of proof pales into insignificance and the court will have to decide the question in controversy in the light of the evidence on record. Even this aspect of the matter is well settled by a decision of the Privy Council in the case of Mohd. Aslam Khan v. Feroze Shah (AIR 1932 PC 228 : 37 CWN 71 : 59 IA 386) wherein it was observed with reference to the very same question arising under Section 27(b) of the earlier Specific Relief Act of 1877 that :

> "It is not necessary to enter upon a discussion of the question of onus where the whole of the evidence in the case is before the Court and it has no difficulty in arriving at a conclusion in respect thereof.
>
> Where a transferee has knowledge of such facts which would put him on inquiry which if prosecuted would have disclosed a previous agreement, such transferee is not transferee without notice of the original contract within the meaning of the exception in Section 27(b)."

11. Under these circumstances, therefore, it becomes necessary for us to quickly glance through the relevant evidence on record, both oral and documentary, which was considered by the trial court in the first instance and which was reconsidered by the first appellate court of the learned Single Judge of the High Court subsequently in the appeals moved by the contesting defendants. We have already noted the sequence of events reflected by the relevant documents on record dealing with the suit property from time to time. We have to keep in view the salient fact that Defendant 1's one-half interest in the suit property consisting of 7 marlas was already subjected to a usufructuary mortgage in favour of Rajinder Singh as per Ex. D-3 dated 26-7-1973. When this registered usufructuary mortgage deed was executed by Defendant 1 in favour of the mortgagee the suit agreement had not seen the light of day. The said mortgage document clearly recites that Defendant 1 had mortgaged one-half share in the entire suit house of 14 marlas, meaning thereby, entire 7 marlas which subsequently got covered by the suit agreement in favour of the plaintiff. The usufructuary mortgage was for a consideration of Rs. 5000. It is interesting to note that though the suit property was subjected to usufructuary mortgage and it was clearly recited in the mortgage deed that possession was handed over to the mortgagee from the date of the document, when we turn to the suit agreement Ex. P-1 we find that the very same mortgagor Jagdish Rai, Defendant 1 while entering into the suit agreement in favour of the plaintiff and agreeing to sell his right, title and interest in the suit property for Rs. 60,000, had the cheek to mention that the house was free from all encumbrances and mortgages and he was the sole owner of the house which was in his exclusive possession. It is, therefore, clear that in order to lure the plaintiff to agree to purchase the house for a consideration of Rs. 60,000 Defendant 1 made a wrong statement in the said agreement. Shri Sachar, learned Senior Counsel for the plaintiff, was right in his submission that the suit agreement never informed the plaintiff that the suit house was already burdened by way of usufructuary mortgage in favour of Rajinder Singh only two months back. He was also right when he contended that a recital was made therein that Defendant 1 was in exclusive possession thereof, meaning thereby, the fact that the very same suit property was under usufructuary mortgage with the mortgagee Rajinder Singh was suppressed from the plaintiff by Defendant 1. Be that as it may, Shri Sachar submitted that he does not dispute the burden of the said mortgage on the suit property and was prepared to stand by the suit agreement even subject to the burden of the said mortgage. However, that will not be the end of the matter. It becomes almost at once clear that recital in the agreement to sell to the effect that Defendant 1 was in exclusive possession at the time of the suit agreement in favour of the plaintiff was clearly a false recital. So far as the plaintiff is concerned he also cannot get away from the fact that on the very same suit property which was agreed to be sold to him under the suit agreement there was a burden of usufructuary mortgage as per Ex. D-3 which was a registered document and which would obviously visit the plaintiff with the notice of such encumbrance. It is this agreement which came to be extended by mutual consent because Defendant 1 was not in a position to execute the sale deed by 30-12-1973 and consequently the time for execution of the sale deed was extended up to 30-6-1974 as seen from Ex. P-2.

12. It is in the light of the aforesaid events that we have to see as to what happened after Ex. P-2 was executed. The documentary evidence shows that Defendant 1 who had got time up to 30-6-1974 to execute the sale deed and get the balance of money from the plaintiff pursuant to the suit agreement appeared to be in great financial need and wanted early money. That resulted in his entering into two transactions by which he sold the very same suit property of 7 marlas in two instalments. Firstly he sold 3 1/2 marlas for Rs. 20,000 by Ex. D-1 in favour of Defendant 3 Jagir Singh. This Defendant 3 by earning a profit of Rs. 1000 sold the very same 3 1/2 marlas purchased by him from Defendant 1 to Defendant 2 on 27-3-1974, as seen from Ex. D-4. Defendant 1 on his part sold the remaining 3 1/2 marlas consisting of the other 1/4th interest in the suit property, which

had remained with him, to Defendant 2 by sale deed Ex. D-2 for Rs. 30,000 on 2-4-1974. Thus it appears that before the time limit of 30-6-1974 for executing the sale deed as per the suit agreement Ex. P-1 read with Ex. P-2 expired Defendant 1 who appeared to be in great need of money sold off in two instalments the very same suit property for a total amount of Rs. 50,000, thus, suffering a loss of Rs. 10,000 in the bargain. The learned Single Judge of the High Court rightly placed strong reliance on this circumstance to show that as Defendant 1 had sold the property in two instalments which ultimately came in the hands of Defendant 2 as the full owner who had parted with the total consideration of Rs. 51,000. In the process Defendant 1 suffered a loss of Rs. 10,000. Had Defendant 1 stood by the suit agreement he would have got Rs. 60,000, instead he sold the property earlier in two instalments getting only Rs. 50,000. Learned Senior Counsel Shri Sachar for the plaintiff submitted that it is easy to visualise that the sale price mentioned in the document may not reflect the real amount and there may be some underhand dealing between the parties. It is difficult to appreciate this contention for the simple reason that to none of the witnesses examined in the case was such a case put up. Even that apart, such contention was never canvassed before any of the courts below. Therefore, such a contention based on pure imagination or supposition of the learned Senior Counsel not backed up by any evidence on record cannot be countenanced. We must, therefore, proceed on the basis that Defendant 1 after having entered into suit agreement in favour of the plaintiff in September 1973 and having got the time for execution of the sale deed thereunder extended up to 30-6-1974 was in such a great need of money that he had to part with the suit property in two instalments by selling it off having suffered a loss of Rs. 10,000 in the bargain. When such was the dire necessity and need of Defendant 1 it is obvious that he would see to it that no whisper about the suit agreement would ever be made to the prospective purchaser-parties to Exs. D-2 and D-1. It becomes at once probable to visualise that if Defendant 1 had even whispered about the suit agreement the prospective purchasers would have backed out being scared of the future litigation which they would have been required to undergo. Therefore on the broad test of probabilities in the light of the aforesaid events duly reflected by the relevant documents on record it becomes clear that the first purchaser from Defendant 1, namely, Jagir Singh Defendant 3 as per Ex. D-1 and also Defendant 2 who purchased the other half of the suit property from Defendant 1 as per Ex. D-2 entered into these sale transactions with Defendant 1 without knowing that the suit property which they were purchasing was subject to any subsisting prior agreement to sell in favour of the plaintiff. The conclusion to which the learned Single Judge of the High Court reached as aforesaid remains well sustained on the touchstone of probabilities on the record of the case and calls for no interference in the present proceedings.

13. But leaving aside this documentary evidence which has the aforesaid tell-tale effect let us now turn to the oral evidence with a view to finding out whether the appreciation thereof by the learned Since Judge of the High Court and as confirmed by the Division Bench of the High Court in letters patent appeal suffers from any gross error which requires to be rectified in the present proceedings. In order to prove the execution of the suit agreement Plaintiff Witness 1 Nahur Chand, Advocate was examined by the plaintiff. As there is no dispute regarding the execution of the suit agreement the evidence of the said witness is not of much relevance so far as the present dispute is concerned. The second witness examined by the plaintiff was Amrit Lal, son of Sadhu Ram, PW 2. He was an attesting witness to the suit agreement. Evidence of this witness also falls in line with the evidence of PW 1 and concerns the execution of the suit agreement. Therefore, it is equally irrelevant for deciding the present controversy. Bharat Mittal, PW 3 is a witness for proving the extension of the period for execution of the sale deed as per Ex. P-2. In his cross-examination it has been brought about that there was a dispute between Defendant 1 and his brother regarding the property in dispute and as such the date for execution of the sale deed was extended. The evidence of this witness shows

that Defendant 1 was not in a position to execute the sale deed in favour of the plaintiff pursuant to the suit agreement within the time limit, i.e., December 1973 because of the dispute with his brother as his brother was having 1/2 undivided share in the entire house of 14 marlas out of which Defendant 1 was having ownership of 7 marlas which was covered by the suit agreement Ex. P-1. Evidence of this witness, therefore, justifies the subsequent conduct of Defendant 1 in trying to dispose of the suit property and get ready money as soon as possible so that he could dispose of his 1/2 undivided interest in the property and walk away with the cash consideration of at least Rs. 50,000 even after suffering a loss of Rs. 10,000 by not waiting to comply with the suit agreement till June 1974. Subsisting dispute between Defendant 1 and his brother might have prompted Defendant 1 to hurriedly sell off his undivided interest in the suit property without waiting till 30-6-1974. PW 4 Shri Jagan Nath, Advocate was an attesting witness to the extension document Ex. P-2. In cross-examination the witness stated that Kishan Chand, guardian of minor Defendant 2 was not present at the time of the execution of agreement Ex. P-2. He had no talk with Kishan Chand regarding the execution of agreement Ex. P-2. This supports the case of Defendant 2's guardian Kishan Chand that he never knew about the suit agreement or its extension Ex. P-2. The plaintiff's next witness is Surinder Kumar PW 5 who was the scribe of suit agreement Ex. P-1. In his cross-examination he stated that he did not remember if Kishan Chand, guardian of minor Defendant 2 was present at the time of execution of agreement Ex. P-1. He could not say if he had any talk regarding the execution of agreement Ex. P-1 with Kishan Chand. The evidence of PW 5 runs parallel to the evidence of PW 4 and clearly indicates that the guardian of Defendant 2 was not in know of either the suit agreement Ex. P-1 or the extension agreement Ex. P-2. Evidence of PW 6 Prem Kishan does not throw any light on this moot question. The plaintiff himself was examined as PW 7. In his examination-in-chief he nowhere stated about Defendant 2 through his guardian having any knowledge about the suit agreement. Shri Sachar, learned Senior Counsel for the plaintiff, in this connection submitted that as initial burden to prove this issue was on Defendant 2 the plaintiff could lead only rebuttal evidence in this connection after Defendant 2's evidence was led on this aspect. We will refer to the rebuttal evidence later on. Suffice it to say that when the plaintiff came to the witness-box as PW 7 in the first instance nowhere in his examination-in-chief did he even whisper about the latter transactions by Defendant 1 in favour of Defendants 2 and 3 to have been entered into by them with knowledge of the plaintiff's agreement though he had joined Defendants 2 and 3 in the suit on that basis. In this connection it is interesting to refer to para 8 of the plaint which reads as under :

> "8. The plaintiff has learnt that Defendant 1 has transferred the house to Shri Lalit, s/o Kishan Chand of Moga Mandi, 1/2 share and one Jagir Singh, 1/2 share. Then Jagir Singh transferred 1/2 share purchased by him in favour of Shri Lalit Mohan, s/o Kishan Chand of Moga Mandi, Defendant 2. These transactions have been effected without consideration with notice of the agreement of sale in favour of the plaintiff. Moreover these transactions are fraudulent. Shri Lalit Mohan is minor, Kishan Chand, father of Lalit Mohan was in the run for the purchase of the house in dispute but he failed and now defendants and Kishan Chand have conspired to harm the plaintiff."

Despite this clear case put up by the plaintiff in his plaint when he entered the witness-box as PW 7 he did not think it fit even to whisper about the transactions of Defendants 2 and 3 being entered into with the knowledge of suit agreement to sell in favour of the plaintiff. In cross-examination the plaintiff stated that the house was lying vacant at the time of the execution of the agreement and that Defendant 1 was living in a different house. He had no talk with the father or brother of Defendant 1. This statement of the plaintiff in his cross-examination is patently false for the simple reason that

Defendant 1 had already entered into a registered usufructuary mortgage deed two months prior to the suit agreement and consequently the house would never have been vacant at the time of the execution of the agreement to sell as it would have been in possession of either the usufructuary mortgagee or any tenant on his behalf. But in any case it would never be lying vacant at the time of the execution of the suit agreement. It must, therefore, be held that the plaintiff tried to make a totally false case in his cross-examination on this aspect and did not appear to have any regard for truth. It is in that light that we have to appreciate what he stated in the last four lines of his cross-examination when he deposed that he did not even talk to anybody regarding the transaction in dispute. In December 1973 when he had a talk with Kishan Chand, only two persons were present at that time. The said statement of his, to say the least, is totally laconic. Once having said that he did not remember if he had any talk with anybody regarding the transaction in dispute, it is difficult to appreciate how in the next breath he could say that he had a talk with Kishan Chand. It is also pertinent to note that he had no courage to mention that the said talk pertained to the suit agreement. But even that apart in December 1973 when the extension agreement Ex. P-2 was entered into, Defendant 2's father was not present as clearly admitted by PW 4 Jagan Nath in his cross-examination to which we have made a reference earlier. Thus the plaintiff's aforesaid version regarding the talk with Kishan Chand as revealed from the last lines of his cross-examination stands completely falsified by his own witness Jagan Nath, PW 4 and also by his own laconic statement aforesaid. It is also obvious that this version of the plaintiff does not stand the test of probability for the simple reason that if that were so, Defendant 2 through his guardian would not have entered into two suit transactions piecemeal as reflected by the documents to which we have made a reference earlier especially when it was in the interest of Defendant 1 not to divulge about the suit agreement to these prospective purchasers as that would have sabotaged his efforts to sell off his property and to encash his interest in the suit property even by suffering a loss of Rs. 10,000, as noted earlier. Defendant 1 was examined as DW 1. In his cross-examination he stated that a partition suit was pending between him, his brother and his father and that was compromised on 2-1-1974 or 3-1-1974. It appears that only thereafter did he sell off a part of the suit property to Jagir Singh and thereafter another part to Defendant 2. D-2 W-1 Vidya Parkash, son of Dev Raj was an attesting witness to sale deed Ex. D-2 by which Defendant 1 sold his remaining 1/2 interest in the suit property to Defendant 2 for Rs. 30,000. The witness stated that at the time of the document Kishan Chand was in the possession of the house. The witness denied the suggestion that he was tendering false evidence on account of his relationship with Kishan Chand. Witness Jagtar Singh D-2 W-2 was an attesting witness to Ex. D-1 as well as to sale deed Ex. D-4. D-2 W-3 Sardara Singh was an attesting witness to Ex. D-1. As these transactions are not in dispute we need not dilate on evidence of these witnesses. Kishan Chand was examined as D-2 W-5. He is the guardian of Defendant 2. On the question about his knowledge of the suit agreement he stated in his examination-in-chief that he was not aware of any transaction between the plaintiff and Defendant 1. Jagan Nath, the plaintiff or any person never talked to him about agreement of sale in favour of the plaintiff. This statement of his in his examination-in-chief is not at all challenged in the cross-examination on behalf of the plaintiff. He had stated in his examination-in-chief that he had taken the house in dispute before sale as a tenant. Earlier he took the house from Defendant 1 Jagdish Rai and later he started paying rent to mortgagee Rajinder Singh. It has to be kept in view that Rajinder Singh was the mortgagee in possession under usufructuary mortgage Ex. D-3 as noted earlier. Therefore, his version that earlier he was a tenant of Defendant 1 and thereafter started paying rent to the mortgagee in possession Rajinder Singh stands well corroborated by the registered mortgage deed Ex. D-3. In his cross-examination it was brought out that no rent note was executed by him in favour of Jagdish Rai, Jagir Singh Defendant 3 or Rajinder Singh, the mortgagee in possession. But he reaffirmed that he used to pay Rs. 50 as rent, but the payment of rent was not entered in his account books. Learned Senior

Counsel Shri Sachar vehemently contended in the light of this evidence that this witness cannot be believed about his alleged tenancy of the suit property as he had nothing to show that he had paid rent of Rs. 50 per month to any of the aforesaid persons. There was no documentary evidence in this connection. It has to be kept in view that this house was said to be occupied by the witness Kishan Chand as a residential premises. He was not carrying on any business in the said premises. No such case is put up by even the plaintiff. Therefore, merely because he had not entered the payment of Rs. 50 in his account books it would not be a clinching circumstance for disproving Defendant 2's father's tenancy. On the contrary in his cross-examination he reiterated that he used to pay Rs. 50 to Rajinder Singh as the house was under mortgage with him. As noted earlier, this part of his statement is fully corroborated by the clinching documentary evidence of usufructuary mortgage Ex. D-3 in favour of Rajinder Singh which had seen the light of day months prior to the suit agreement in favour of the plaintiff. Our attention was invited by Shri Sachar, learned Senior Counsel for the plaintiff, to the further evidence in cross-examination of witness Kishan Chand to the effect that it is correct that he was anxious to purchase the house prior to the agreement but he did not know when the agreement was executed. It is difficult to appreciate how the said statement contraindicates his theory of being a tenant of the suit house or that it visits him with the knowledge of the suit agreement. When he had clearly stated that he did not know when that agreement took place, his statement that he was anxious to purchase the house prior to the agreement only shows that he was anxious to purchase even prior to the date on which the suit agreement came to be executed. That has reference to the time of execution of such agreement and has nothing to do with the knowledge about the suit agreement with Defendant 2's guardian, as tried to be suggested by Shri Sachar for the plaintiff. In the light of this evidence, therefore, learned Single Judge was right in his view that Defendant 2's father was a sitting tenant of the suit house and because he was anxious to purchase the house he purchased the same in two instalments, as seen earlier. Shri Sachar, learned Senior Counsel for the plaintiff, in this connection submitted that if Defendant 2 was held to be a sitting tenant of the house it would be obvious, as held by the trial court, that he would come to know about the suit agreement as the plaintiff had stated that he had visited the suit house at the time of the execution of the suit agreement. It is difficult to appreciate this contention for the simple reason that when the plaintiff stated in his deposition as PW 7 that he had visited the house which was lying vacant at the time of the execution of the agreement, his said version is found to be a false one, as discussed earlier. It is well established on record that as the suit house was not vacant by the time the suit agreement was executed as it was already under usufructuary mortgage of Rajinder Singh, the plaintiff's version that when he visited the house it was vacant has to be held to be a concocted one. Consequently it must be held that witness Kishan Chand was right when he contended that he was a sitting tenant of the house who was paying rent earlier to Defendant 1 and thereafter to the usufructuary mortgagee Rajinder Singh and that the statement of the plaintiff that he visited the house at the time of the suit agreement was not believable. Consequently there was no occasion for Defendant 2's father to ever come in contact with the plaintiff prior to his sale transaction. On the contrary his version that he had no talk with the plaintiff regarding the said transaction nor did he talk about the same prior to his purchase as deposed to in his examination-in-chief had remained unchallenged in his cross-examination and, therefore, this version of his was rightly accepted by the learned Appellate Judge. When we turn to the rebuttal evidence of plaintiff PW 7 we find that he has tried to make out a new case which was not deposed to by him even earlier. In his rebuttal evidence he stated that the day he went to see the house in dispute it was Jagdish Rai who had the keys with him and had shown the house after opening the door. This version of his is completely falsified by the fact that the house was in possession of usufructuary mortgagee or his tenant Defendant 2 and the keys thereof could never have been with Defendant 1. It, therefore, becomes clear that the witness had no regard for truth. His further evidence in rebuttal

that he talked three times with Kishan Chand about having entered into agreement with Defendant 1 regarding purchase of the house is clearly falsified by the fact that earlier when he entered the box he never whispered about the same. Not only that, but in cross-examination at the stage of rebuttal evidence he stated that he did not remember about his having talked with his counsel about his aforesaid talk with Kishan Chand. The plaint was, however, written at his instance. Neither in the plaint nor in his earlier deposition he had ever stated to that effect. It is difficult to appreciate how he missed to state this vital aspect of the matter to his advocate earlier when he got his plaint drafted and also at the stage of his earlier evidence on oath. It, therefore, becomes clear that at the stage of rebuttal he tried to make out a new case which was neither pleaded by him nor deposed to earlier and it was clearly an afterthought and a false version. In the light of the aforesaid oral evidence, therefore, the conclusion reached by the learned Single Judge of the High Court that Defendant 2 through his guardian was a bona fide purchaser for value without notice of the suit agreement, stands well established. The documentary as well as oral evidence leave no room for doubt that the aforesaid findings are well sustained on the record of the case and call for no interference in the present appeal.

14. Learned Senior Counsel Shri Sachar for the plaintiff, however, was right when he contended that the learned Single Judge of the High Court was in error when he took the view that because Kishan Chand was a sitting tenant, he had a better right to purchase the property. Such a right of preemption obviously was not even pleaded by Defendant 2, nor was it supported by learned Senior Counsel Shri Verma for the contesting defendant, Defendant 4. Learned Senior Counsel Shri Sachar was also right when he contended that the learned Single Judge was in error when he took the view that because the time for execution of the sale deed had expired on 30-12-1973 there was nothing wrong in Defendant 1 selling off the property in January 1974 onwards. Shri Verma, learned Senior Counsel for the respondents, fairly stated that the said reasoning of the High Court cannot be sustained in the light of Ex. P-2 extending the time up to 30-6-1974. But the said errors demonstrated by learned Senior Counsel Shri Sachar for the plaintiff from the judgment of the learned Single Judge of the High Court cannot shake the main foundation of the finding reached by the learned Appellate Judge, namely, that Defendant 2's father Kishan Chand was bona fide purchaser of the suit house without notice of the suit agreement.

15. Learned Senior Counsel for the appellant also invited our attention to the written statement of Defendant 1, especially para 6 thereof, wherein it is stated that the plaintiff had committed breach of contract, market had come down and due to the fact that there was an agreement between the plaintiff third persons were not willing to pay the market value. As a matter of fact Defendant 1 suffered a loss of Rs. 10,000 on account of breach of contract on behalf of the plaintiff. Learned Senior Counsel for the appellant on the basis of these averments of Defendant 1 in his written statement, submitted that when Defendant 1 himself had come with a case that third parties were not willing to pay market value because of the agreement of Defendant 1 with the plaintiff it would be obvious that a third party like Defendant 2 must have knowledge about the agreement. It is difficult to appreciate this contention. Whatever Defendant 1 might have stated in the written statement, at the stage of his evidence before the Court when Defendant 1 examined himself as DW 1 no such case was put to him on behalf of the plaintiff. Nor did he state to that effect in his evidence. Not only that, similar case was not even put to Defendant 2's guardian Kishan Chand when he was examined as D-2 W-5. Therefore, the bald assertion of Defendant 1 in the written statement merely remained as such. It was next contended that when Defendant 1 sold a part of the suit property for Rs. 20,000 to Jagir Singh as per Ex. D-1 on 23-1-1974 it was most unnatural for Jagir Singh to sell the very same property within two months on 27-3-1974 as per Ex. D-4 to Defendant 2 by getting a profit only of Rs. 1000 and, therefore, all these documents appear to be a part of a common

conspiracy to frustrate the plaintiff's agreement. We fail to appreciate how this contention can at all be advanced by learned Senior Counsel for the appellant to foist knowledge of the plaintiff's agreement with Defendant 1 on Defendant 2. Whether Jagir Singh was justified in selling within two months the property purchased by him by getting a profit only of Rs. 1000 or not, is a circumstance which has no bearing on this moot question. On the contrary it suggests that at the relevant time when Defendant 2 was a sitting tenant, Jagir Singh might have been persuaded to sell off the property purchased by him by getting a profit of only Rs. 1000. That also indicates that the price of property might not have got higher escalation in those days and the real estate market appeared to have remained almost steady. To say the least it is an equivocal circumstance which cannot conclusively establish that Defendant 2 had knowledge of the plaintiff's agreement when he entered into this transaction with Jagir Singh. It is of course true, as rightly pointed out by learned Senior Counsel for the appellant Shri Sachar, that the time-limit for execution of the sale document as per the plaintiff's agreement with Defendant 1 which was to expire on 30-12-1973 was extended at the request of the vendor Defendant 1 up to June 1974. But that would not necessarily show that when Defendant 1 entered into sale deed in favour of Defendant 2 as per document Ex. D-2 dated 2-4-1974, Defendant 2 must have got knowledge about the plaintiff's agreement by that time. Nor would it show that Defendant 1 when he sold the half of its interest in the suit property to Jagir Singh as per Ex. D-1 on 23-1-1974 he would have conveyed to Jagir Singh that there was already an agreement entered into by Defendant 1 with the plaintiff. On the contrary, as seen earlier, it is probable that he would never convey this fact either to Jagir Singh or to Defendant 2 as then they would get scared and would not like to enter into sale transactions and pay consideration money to Defendant 1 pursuant to those two sale documents. Consequently even on the touchstone of broad probabilities it is difficult to appreciate how it could be said that Defendant 2 must have got knowledge of the suit agreement when he purchased part of the suit property from Defendant 1 or that his vendor Jagir Singh had knowledge about the suit agreement when Defendant 1 sold his half interest in the suit property to the said Jagir Singh.

16. Before parting with the discussion on this point, we may refer to a decision of this Court in the case of Govinddas (Dr.) v. Shantibai ((1973) 3 SCC 418 : AIR 1972 SC 1520). In para 14 of the Report Sikri, C.J., while appreciating the evidence in the said case has made the following observations : (SCC p.423)

> "14. It will be noticed that the evidence is contradictory and we have to decide whose version is more acceptable. The learned counsel for the appellants contended that the onus of proof was very light on the appellants and they had discharged it by entering the witness-box and stating that they had no knowledge. We are unable to agree with him that in the circumstances of this case the onus was light on the appellants. The circumstances that tell heavily against the version of the appellants are these. First, all the parties are residents or have shops in the same vicinity and in places like this it is not probable that the appellants would not come to know of the execution of the agreement (Souda Chitthi) of the plaintiff. Secondly, the haste with which the sale deed in favour of the appellants was executed was unusual. It is more usual for an agreement to be executed in such cases rather than arrive at an oral agreement on one day and have the sale deed executed the next day and registered the following day. For some reason the appellants were in a hurry to get the deed registered. What was the reason ? In view of all the circumstances we are inclined to accept the evidence of Hem Raj Chouhan, and corroborated by Hayat, that Goverdhandas knew of the execution of the agreement with the plaintiff on 1-3-1960."

It is difficult to appreciate how the aforesaid observations of this Court can be of any avail to the learned Senior Counsel for the plaintiff in the peculiar facts of this case to which we have made a detailed reference earlier. In the aforesaid case because the parties were residents and having shops in the same vicinity it was found not probable that the appellant could not come to know about the execution of the agreement. It was also observed that the appellant was in a great hurry to sell without an agreement to sell. In the light of the said evidence before this Court the conclusion was reached that the evidence of Hem Raj Chouhan and corroborated by Hayat that the appellant knew of the execution of the agreement had to be accepted. This Court also placed reliance on the further evidence in that case as noted in para 15 of the Report that the appellants were seen measuring the shops and the property in dispute and their denial that they did not measure the property in dispute was futile. It becomes at once clear that the aforesaid decision was rendered by this Court on its own peculiar facts and cannot be of any universal application. As we have noted earlier the facts of this case are entirely different and the tell-tale circumstances emerging on record of this case clinchingly point out against the plaintiff and in favour of Defendant 2 so far as this point is concerned. Point 1 is accordingly answered in the negative against the plaintiff-appellant and in favour of the respondents, especially Respondent 4.

Point 2

17. In view of our finding on Point 1 against the plaintiff this point does not survive for consideration.

Point 3

18. Before parting with this appeal it may be mentioned that Shri Verma, learned Senior Counsel for Defendant 4 in order to buy peace and to put an end to this litigation fairly stated on behalf of Defendant 4 that even though the plaintiff has been awarded damages of Rs. 10,000 against Defendant 1 by the learned Single Judge and which decree has been confirmed by the Division Bench of the High Court, Defendant 4 would not mind in paying an amount of Rs. 1,00,000 to the plaintiff to avoid heartburning, if any, for the plaintiff. We appreciate this fair stand taken by learned Senior Counsel for Defendant 4 and accordingly while disposing of this appeal and confirming the judgment and order passed by the learned Single Judge and the Division Bench of the High Court, grant additional benefit to the plaintiff-appellant by way of fair concession from Defendant 4 to the effect that Defendant 4 shall pay an amount of Rs. 1,00,000 to the plaintiff towards full and final satisfaction of his claim for damages in the present case in lieu of decree for specific performance. This will be in addition to the decree of Rs. 10,000 by way of damages with interest already awarded to the plaintiff. Appeal stands dismissed subject to the modification that the plaintiff's suit will also stand decreed to the extent of Rs. 1,00,000 against Defendant 4. Appeal disposed of accordingly. In the facts and circumstances of the case there will be no order as to costs.