

RAJASTHAN HIGH COURT

Jagir Singh

Vs.

Ranjeet Singh

Spl. Appeal (Civil) No. 56 of 1996
(V. K. Bali and Ajay Rastogi, JJ.)

15.09.2005

JUDGEMENT

V. K. Bali, J.

1. The significant questions of law that need adjudication in the context of the contentions as have been raised by the learned counsel appearing for the parties are as to whether mere denial of agreement dated 31-1-1977 executed between the plaintiff and defendant No. 1, which has been held proved by both the Courts, would shift the onus on plaintiff of proving that defendant Nos. 2 to 8 were *bona fide* purchasers for value with consideration and without notice of any earlier agreement with the plaintiff, or that the initial onus of the issue being on defendant Nos. 2 to 8 they had to lead some satisfactory evidence and further that determination of this question also depended upon attending facts and circumstances of the case. Another question that needs to be determined would be that if agreement dated 20-1-1977 (Ex. A-1) set up by defendant Nos. 2 to 8 is a forged and concocted document, would it be not *per se* or read with other circumstances not enough to conclude that defendants No. 2 to 8 had knowledge of agreement dated 31-1- 1977 and the plea of *bona fide* purchasers for value raised by them shall have to be rejected. Other significant question that also arises is as to whether the plaintiff would not be entitled to a decree for specific performance in view of the provisions contained in Section 20 of the Specific Relief Act even though the agreement in his favor is proved but a period of 27 years has gone by in litigation.

2. The facts, in so far as the same are necessary for determination of the questions of law framed above, reveal that Jagir Singh, the plaintiff- appellant herein, filed a suit for possession by way of specific performance of an agreement dated 31-1-1977 with

regard to the land measuring 58 Bighas 6 Biswas situated in Village Chainpura, Tehsil Kishanganj for consideration of Rs. 55,000/-, out of which Rs. 20,000/- were paid as earnest money at the time of execution of the agreement itself. When, however, Ranjeet Singh, owner of the land, refused to execute the sale deed with regard to the agreement referred to above and when Jagir Singh came to know that Ranjeet Singh had sold the very land subject matter of agreement with him, to defendant Nos. 2 to 8, he filed the suit for specific performance. Defendant-respondents, while taking various pleas in opposing the cause of the plaintiff, also set up a prior agreement of sale between Ranjeet Singh and defendant Nos. 2 to 8, dated 20-1-1977 (Ex. A.1) on the basis of which they claimed precedence in purchasing the land, over the plaintiff. They also pleaded that they were *bona fide* purchasers for value and for consideration and without notice of any agreement to sell in favor of the plaintiff. On the foretasted two fold defense projected by them, learned trial Court framed besides others, Issue Nos. 4, 6 and 12 reproduced below.

4. Whether the defendant No. 1 had no right to sell the disputed agricultural land to the defendant Nos. 2 to 8 ?

6. Whether the plaintiff is entitled to a decree of specific performance against all the defendants.

12. Whether the defendant No. 1 Ranjeet Singh executed an agreement to sale in favors of defendant Nos. 2 to 8 on 20-1-77 in respect of the land in dispute; its effect on the suit?

3. Learned trial Court returned findings on issues reproduced above in favors of the defendants thus resulting into dismissal of the suit by judgment dated 3-1-1986. This constrained the plaintiff to file an appeal which came up before the learned single Judge of this Court, who while hearing the matter, framed following two questions for consideration:

"1. Whether the agreement dated 20-1-1977 (Ex. A.1) executed by the defendant No. 1 in favor of the defendant Nos. 2 to 8 is forged and was prepared afterwards in order to escape the suit ?

2. Whether the defendant Nos. 2 to 8 had knowledge about the agreement Ex. A.1 dated 31-1-1977 executed between the plaintiff and the defendant No. 1 but in spite of that they got the sale deed of this land executed and registered in their favors and they are not *bona fide* purchasers?

4. The first question framed by the learned single Judge, as reproduced above, was answered in favors of the plaintiff and therefore, finding of learned trial Judge on Issue No. 12 was reversed. Findings on Point No. 2, reproduced above, were however, returned in favor of the defendants, thus resulting into confirming the findings of the learned trial Judge on Issue Nos. 4 and 6. Aggrieved of the two judgments recorded by the learned trial Court and the first appellate Court, as mentioned above, plaintiff has filed this special appeal.

5. Whereas Mr. R. K. Agrawal, learned counsel for the plaintiff, vehemently contends that findings on point No. 2 framed by the learned single Judge ought to have been returned in favor of the plaintiff Mr. Mehta, learned counsel representing the defendants, on the other hand, contends that not only that the findings recorded on Point No. 2 framed by the learned single Judge should be upheld but the findings of the learned single Judge on Point No. 1 need be reversed.

6. Before we delve upon the questions of law, as mentioned above, it would be appropriate to first deal with the contention of Mr. Mehta pertaining to point No. 1 framed by the learned single Judge, findings on which have been returned in favor of the appellant reversing findings returned under appropriate issues mentioned above by the learned trial Judge.

7. The point as framed by the learned single Judge needs to be determined first, for the reason that in case the findings on the same are returned in favor of the defendant Nos. 2 to 8, there will be perhaps no need to determine question of law as framed above, as in that case, the suit shall have to be dismissed.

8. Mr. Mehta may be right in urging that even though no appeal has been filed on behalf of the respondent Nos. 2 to 8 challenging findings on point No. 2 and on the issues, on the basis of which Point No. 2 was framed by the learned single Judge nor any cross-objections have been filed, the respondent Nos. 2 to 8 would still be within their rights to seek reversal of findings on Point No. 2 under the provisions of Order 41, Rule 22, Civil Procedure Code. There cannot be any dispute with the proposition as advanced by the learned counsel as mentioned above. Respondent Nos. 2 to 8 even though might have not filed any appeal or cross-objections with regard to the issues that might have been determined against them, could still defend the judgment under appeal, even on the points, findings on which might have been returned against them.

The contention raised by Mr. Mehta that findings on point No. 2 deserve to be reversed, however, does not appear to be based on any good grounds. Learned Distt. Judge while dealing with Point No. 2, subject-matter of Issue No. 12, observed that agreement Ex. A.1 has since been proved on the basis of statements made by DW-5 Kewal Singh and DW-6 Mohan Singh. After holding so, learned trial Judge proceeded to observe that no evidence had been adduced by the plaintiff in this regard which would go to prove that the said document was not executed earlier. The contention of the plaintiff that the factum of agreement was not mentioned in the sale deed Ex. 21, was held to be of no consequence. Learned trial Judge also observed that study of evidence adduced by the parties would show that the agreement in question was not made afterwards.

9. Learned single Judge, on the other hand, took into consideration number of circumstances in coming to the conclusion that the agreement dated 20-1-1977 was forged simply with a view to defeat the suit for specific performance. Learned single Judge, took into consideration normal human conduct of no sane person agreeing to receive lesser consideration than that might have been offered to him earlier in point of time. It may be mentioned that the plaintiff had executed agreement dated 31-1-1977. He was to purchase land subject matter of dispute for consideration of Rs. 55,000/-. This document has been proved and findings with regard to its due execution and payment of advance by him have been returned by both the Courts. If the vendor had agreed to sell his land vide agreement Ex. A-1 dated 30-1-1977 for Rs. 60,000/- there was no question for him to have agreed to sell the same very land for a lesser amount of Rs. 55,000/-. Learned single Judge also took into consideration payment of only Re. 1/- as earnest money at the time when agreement dated 20-1-1977 was executed. As mentioned above, it has been proved that the plaintiff had indeed paid an amount of Rs. 20,000/- to the vendor at the time of execution of agreement dated 31-1-1977 and the Court before has even ordered refund of this sum, against which no appeal has been filed. Learned single Judge thus took pertinent notice of payment of only Re. 1/- as compared to payment of Rs. 20,000/- when two agreements mentioned above were executed. Learned single Judge also took into consideration the fact that agreement Ex. A-1 had been executed on a plain paper and not on a stamp paper and further that in the sale deed, there was no reference of the agreement dated 20-1-1977.

10. In our considered view, whereas the judgment recorded by the trial Judge on point

No. 1 subject matter of discussion on Issue No. 12, is totally perfunctory and an outcome of non-consideration of material evidence and circumstances, learned single Judge while upsetting the findings on Issue No. 12, rightly took into consideration the aforementioned circumstances. We are in complete and respectful agreement with the reasons given by the learned single Judge in arriving at the conclusion that agreement Ex. A.1 is a forged document. Men may lie, but circumstances do not and fraud, we may mention, is secret in its origin and its inception and cannot normally be proved by direct evidence. The same is, by and large, proved by circumstantial evidence. Means adopted for the success of fraudulent motive have to be inferred from the circumstances placed before the Court. Each circumstance may in itself be not enough and therefore, all circumstances taken together may reveal a fraudulent or dishonest plan. Execution of the agreement Ex. A.1 on plain paper in contrast to agreement Ex. 1 dated 31-1-1977 which was on a stamp paper, payment of only Re. 1/- at the time of execution of Ex. A.1 as compared to payment of Rs. 20,000/- at the time of execution of agreement Ex. 1, no mention of the agreement Ex. A.1 in the sale deed and further payment of total consideration of Rs. 60,000/- and not Rs. 59,999/- in the sale deed are such circumstances which unmistakably point towards agreement Ex. A.1 being an outcome of forgery and fraud. Wholly unnatural conduct of executing agreement for a sum of Rs. 60,000/- on 20-1-1977 and then agreeing to sell the same very land for lesser amount of money completely nails agreement Ex. A.1. Fraud and forgeries are seldom proved by direct evidence. The plea with regard to fraud had to be examined in view of the attending circumstances. Whereas learned Distt. Judge singularly failed in taking into consideration the attending circumstances, learned single Judge, in our view, rightly took into consideration the said circumstances and came to right and just conclusion that agreement Ex. A.1 was an outcome of forgery and there is absolutely no scope for reversing the findings recorded by the learned single Judge on point No. 2 subject matter of issue No. 11.

11. Having rejected contention of Mr. Mehta with regard to Point No. 1, time is now ripe to deal with shifting of onus of burden of proving Issues No. 4 and 6 regarding which learned single Judge framed the question as to whether defendant Nos. 2 to 8 had knowledge about agreement dated 31-1-1977 executed between the plaintiff and defendant No. 1 and in spite of that they got the sale deed of this land executed and registered in their favor and that they are not *bona fide* purchasers.

12. Settlement of issues on law and facts is dealt with by the Civil Procedure Code, Order 14 Rule 1, Civil Procedure Code mentions that issues arise when a material

proposition of fact and law is affirmed by one party and denied by the other. Material propositions are those propositions of law or fact upon which the plaintiff must allege in order to show a right to sue or the defendant must allege in order to constitute defense. Each material proposition formed by one party and denied by other shall form the subject of a distinct issue. It is too well settled that onus to prove a particular fact is on the plaintiff on the basis of which he claims a right and any fact on the basis of which his adversary wishes to defeat his right has to be proved by the defendant. In the present case, the right of the plaintiff emanates from the agreement dated 31-1-1977 which the plaintiff had necessarily to prove. This right of the plaintiff was sought to be defeated *inter alia* on the ground that the defendant Nos. 2 to 8 had no knowledge of the said agreement and that they had purchased the property subject matter of dispute by a subsequent sale deed by paying money in good faith. If the plaintiff was perhaps not to prove due execution of the agreement, there would have been no necessity at all for the defendant Nos. 2 to 8 to prove that they had no notice of agreement to sell dated 31-1-1977 and that they had purchased the property for a value paid by them in good faith. Onus to prove that they were purchasers for value without notice of agreement of sale was upon the defendant Nos. 2 to 8. The question is as to whether this onus was discharged by simply pleading in the written statement that they had no knowledge of the agreement dated 31-1-1977 and had purchased the property by *bona fide* paying sale consideration or by simply so pleading, the onus of the issues aforesaid had shifted upon the plaintiff.

13. For the proposition that onus of proving prior notice is discharged by denial in the pleadings, Mr. Mehta relied upon judgements in *Lekh Singh v. Dwarka Nath*,¹ *Ramdeni Singh v. Gumani Raut*,² *Dhadi Dalai v. Basudeb Satpathy*,³ and *Ram Lakhan v. Ram Govind*,⁴ In *Lekh Singh v. Dwarka Nath* (supra) the Division Bench relied upon a judgement of the Calcutta High Court in *Hem Chandra De v. Amiyabala de*,⁵ wherein it was held that onus of such a negative issue is ordinarily discharged by a denial and by negative evidence and in that case, both the defendants had gone into the witness box and denied that they had any such knowledge and the trial Court had accepted this evidence. Division Bench further observed that they saw nothing in the circumstances to show that the conclusion arrived at by the Court below was wrong. In *Ramdeni Singh v. Gumani Raut* (supra), the Division Bench after placing reliance upon its earlier decision in *Dharamdeo Singh v. Ram Prasad Sah* (1918) 4 Pat LW 152 : 44 IC 470 : (AIR 1918 Patna 526 (1)) and another judgement of Calcutta High Court in *Hem Chander De v. Amiyabala* (supra) held that onus was upon the defendants to

prove that they were transferees for value without notice of the original contract and very little evidence on the part of the defendants of want of knowledge of the plaintiff's contract would have discharged this onus and shifted the onus on the plaintiff but in that case defendant No. 2 who gave his evidence did not even say on oath that he was not aware of the plaintiff's contract.

14. In *Dhadi Dalai v. Basudeb Satpathy* (AIR 1961 Orissa 129) (supra), learned single Judge while placing reliance upon a judgement of the Privy Council in *Bhup Narain Singh v. Gokul Chand Mahton* ⁶ and judgment of Patna High Court in *Ramchander Singh v. Asghari Begam* ⁷ held that "in the present case, defendant No. 1 pledged his own oath that he had no notice of the earlier agreement for sale, and no apparent justification has been indicated to disbelieve the said denial. If by any positive act he was to prove his honesty of intention, he has established that he made enquiries from the registration office about any existing encumbrance, and he further got the suit land identified by an amin, prior to the purchase. So, the contention, that the purchaser has not been able to discharge the onus, has to be rejected."

15. In *Ram Lakhan v. Ram Govind* (AIR 1977 Allahabad 358) (supra), a learned single Judge of the Allahabad High Court observed that two fold requirement of the provisions of the Section 19(b) of the Specific Relief Act, 1963 was that the transferee should have paid money in good faith and he should have done so without notice of the original contract.

16. Mr. R. K. Agrawal, learned counsel appearing for the appellant, on the other hand, relies upon judgement of Lahore High Court in *Kanhaya Lal v. Devi Dass*, ⁸ and a judgement of the Supreme Court in *Dr. Govinddas v. Shrimati Shantibai*, ⁹ in support of his contention that defendants No. 2 to 8 who sought to take advantage of exception had to affirmatively prove that they had purchased property for value for consideration without notice of agreement in favour of defendants. In *Kanhaya Lal v. Devi Dass* (supra) the Court after referring to Section 27 of the Specific Relief Act, 1877 which is *pari materia* Section 19(b) of the Specific Relief Act, 1963, held as follows:

"There cannot be any question that, when once the plaintiff has proved an agreement to sell arrived at between him and the vendor, it is for the vendee, in order to defeat the plaintiff's claim, to prove that he paid the money to the defendant vendor under the sale deed in his favor in good faith and without

notice of the prior contract. And it is one of the recognized canons of jurisprudence that a person, who seeks to take advantage of an exception, has to prove affirmatively that his case falls within the scope of that exception. This is principle which lies at the root of a number of precedents which laid down that in these cases, it is for the vendee to prove want of notice."

(Emphasis added)

17. In *Govinddas v. Shanti Bai* (AIR 1972 Supreme Court 1520) (supra) Hon'ble Supreme Court after examining the circumstances in which mere denial of earlier agreement was made, observed as follows (para 14 of AIR) :

"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 this by entering in 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 lied 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 favor 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 in 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 Hemraj Chouhan, and corroborated by Hayat, that Goverdhandas knew of the execution of the agreement with the plaintiff on March 1, 1960".

18. We have given our thoughtful consideration to the rival contentions of the learned counsel appearing for the parties.

19. The provisions contained in Order 14, Civil Procedure Code, the language employed in Section 19(b) of the Specific Relief Act, 1963 and the conspectus of

judicial decisions cited before us, guide us to hold that mere denial alone would not be sufficient to shift the onus upon the plaintiff to prove that his adversary i.e. defendant had no notice of earlier agreement and that he had paid the sale consideration to the vendor in good faith. If mere denial is to shift onus of issue upon the plaintiff, then burden initially placed upon the defendant would stand discharged by mere denial without leading any evidence whatsoever. This would run counter to the basic procedural rules envisaged in Order 14, Civil Procedure Code and in particular, that a defendant must prove fact on the basis of which he endeavors to oust the plaintiff in seeking his right and mere denial thus would absolve the defendant in establishing a fact alleged by him which cannot be the law of pleadings and onus of proving the issue. Pleadings cannot partake the character of evidence. If what Mr. Mehta urges is accepted, mere denial in the written statement would partake character of evidence which again cannot be accepted. We are further of the opinion that onus of issue pertaining to no knowledge of earlier agreement and sale consideration paid in good faith would keep on shifting as onus of any issue keeps on shifting in all civil cases. As to the quantity and quality of evidence which would make the onus shifted to other party, however, shall depend upon facts and circumstances of each case. We are further of the considered opinion that discharging onus of the issue aforesaid would primarily depend upon the attending circumstances. In so far as oral evidence is concerned, the same from both sides would be negative in nature. Defendants would not normally be able to lead positive and direct evidence to show that they had no knowledge of the earlier agreement of sale in favor of the plaintiff. Plaintiff too would not be able to lead positive and direct evidence to show that the defendant had knowledge of the contract in his favor. Once it is a case of oath versus oath and at the most evidence of interested parties in leading negative evidence the issue shall have to be determined, by and large, on preponderance of circumstantial evidence. It is on that anvil that the issue had to be determined. We would have delved further on the issue but after authoritative pronouncement of the Supreme Court in *Govinddas v. Shanti*¹⁰ it will be only burdening the judgment. Supreme Court in *Govinddas* (supra) has clearly made a mention of circumstances that related to the inferences which were against the version of the appellants in the said case. The circumstances relied upon by the Hon'ble Supreme Court were that the parties were residents or had shops in the same vicinity and in place like this it was not probable that the appellants would not come to know of the execution of the agreement. Other circumstances taken into consideration was the haste with which the sale deed came out in favor of the appellants. It is in view of the circumstances only that the Supreme Court was inclined

to accept evidence of Hemraj Chouhan which was corroborated by Hayat that Govinddas knew of the agreement executed on March 1, 1960. In view of the authoritative pronouncement of the Supreme Court in Govinddas (*supra*), the contention raised by Mr. Mehta, based on the judgments relied upon by him, that denial in pleadings would shift onus of the proof upon the plaintiff has to be repelled.

20. Coming to the pleadings, evidence and the circumstances in the present case, what the Court finds is that when the plaintiff filed the suit, he *inter alia* mentioned that at the time of execution of agreement in his favor, defendant No. 1 Ranjeet Singh had handed over possession of some land to him. He also pleaded sale made in favor of defendant Nos. 2 to 8 vide sale deed dated 21-2-1977 was illegal. He further pleaded in para 8 that defendants No. 2 to 8 and their relations knew full well that there was agreement in favor of the plaintiff with regard to land measuring 58 Bighas 6 Biswas and that he had already paid an amount of Rs. 20,000/- to defendant No. 1. He also pleaded that in fact, relatives of defendant Nos. 2 to 8 namely Sri Mangal Singh, Sri Avatar Singh, Sri Tarsen Singh and Sri Tara Singh were annoyed with the plaintiff and they never wanted the plaintiff to purchase this land and they got this land sold to defendant Nos. 2 to 8. Defendant Nos. 2 to 8 in the written statement that they filed denied plaintiff taking possession of any land on 31-1-1977. They further pleaded that they were in possession of the land from 20-1-1977 and at the time when possession was handed over to them, relatives of plaintiff were also present. They also pleaded that they had no knowledge of any agreement dated 31-1-1977 between the plaintiff and defendant No. 1 and they were *bona fide* purchasers.

21. Learned counsel appearing for the parties have not brought to our notice any evidence that might have been led by the parties beyond the pleadings of the respective parties as detailed above. What thus straightway transpires is that defendant Nos. 2 to 8 even though denied knowledge of agreement, between plaintiff and defendant No. 1 both in pleadings and when he made statement, there were neither any pleadings nor any evidence with regard to any enquiries that might have been made or any effort that might have been made to find out whether defendant No. 1 had entered into any agreement or sold land to anybody else before selling it to them. Making of enquiries may not be the requirement of Section 19 to plead exception for granting a decree of specific performance but the same, in our view, is a relevant circumstance in returning the finding whether a person claiming right to purchase on the basis of subsequent contract has paid money in good faith or not. Obviously, if on

enquiries that were to be made a person was to come to know about the earlier contract, he could not be termed to be a person with subsequent contract having paid money in good faith. Lack of pleadings and evidence with regard to making any enquiries regarding clear title of the vendor or there being no encumbrances or no prior rights apart, what really clinches the issue, are circumstances which have not been taken into consideration either by the learned trial Judge or the learned single Judge. Agreement dated 31-1-1977 (Ex. 1) has been proved to its hilt. Plaintiff had paid an amount of Rs. 20,000/- at the time when he executed agreement and as per recitals made in the agreement and statement made by him in the Court, possession of part of land, which was lying vacant, was taken by him. It is reasonable to infer that a person who had paid more than 1/3rd of the amount of total consideration would have taken possession of vacant land at least. If that be so, it was not difficult for the defendants to have known in a small place where they were residing that rights of some other parties already intervened. Parting of possession to defendant Nos. 2 to 8 at the time of execution of agreement in their favor cannot be accepted even if agreement Ex. A.1 dated 20-1-1977 might have been proved as, in our view, no one would part with his possession on payment of Re. 1/- only. Parties to this litigation are residents of same village and in small place with scanty population it is not probable that defendants No. 2 to 8 would not come to know of the execution of the agreement with the plaintiff of a big chunk of land. It may be recalled that this is the precise circumstance which was taken into consideration by the Hon'ble Supreme Court in *Govinddas v. Shanti* (AIR 1972 Supreme Court 1520) (supra) while rejecting the plea of the appellant in the said case that he did not know that there was an earlier agreement in favor of the plaintiff.

22. The next circumstance which speaks volumes of hollowness of the plea raised by the defendant Nos. 2 to 8 is fabrication of agreement dated 20-1- 1977. We are of the firm view that if it was straightforward and *bona fide* plea raised on behalf of defendant Nos. 2 to 8 that they did not have prior knowledge of agreement dated 31-1-1977, they would have not depended upon a forged document in opposing the cause of the plaintiff.

23. Learned trial Judge and the learned single Judge, did not advert to these salient features of the case and rather, decided the issue in favor of defendant Nos. 2 to 8 by simply observing that the onus to prove the issue on mere denial by defendant Nos. 2 to 8 on an earlier agreement had shifted upon the plaintiff and evidence led by him

was discrepant. Findings recorded as aforesaid, in our opinion, are wholly illegal and cannot be sustained. We have already held that the onus to prove the issue would not shift on mere denial in the pleadings. That being so, defendant Nos. 2 to 8 had to lead some evidence which is clearly lacking in the present case. Onus to prove the issue had thus not shifted upon the plaintiff. That apart, the issue had to be determined on the basis of circumstances as well which were not taken into consideration either by the learned trial Judge or the learned single Judge. Forging of agreement Ex. A.1 set up by defendant Nos. 2 to 8 read with other circumstances leads to the only conclusion that defendant Nos. 2 to 8 had knowledge of said agreement.

24. Mr. Mehta, learned counsel appearing for the defendants in course of arguments had also urged that concurrent findings of fact recorded by the two Courts should not normally be disturbed in second appeal. We are in agreement with the contention of the learned counsel but present case is one where Distt. Judge or the learned single Judge of this Court determined the issue on the basis of evidence led by the parties. What we find is that the learned single Judge under the impression that onus to prove the issue was upon the plaintiff or the same had shifted upon the plaintiff on mere denial of the agreement in favor of the plaintiff simply discussed statements of some of the witnesses examined on behalf of the plaintiff and finding some discrepancies therein returned findings on the issue in favor of the defendants. It is a case of patent illegality and not of returning findings of fact based upon evidence. We have already held above that defendants had to lead some evidence to prove that they had no knowledge of the agreement in favor of the plaintiff which alone could have shifted onus to prove issue upon the plaintiff. Learned Courts below also did not take into consideration the circumstances pointing towards hollowness of the plea of the defendants that they had no knowledge of the agreement in favor of the plaintiff. The twin questions framed by us in the earlier part of the judgment thus need to be answered in favor of the plaintiff.

25. The surviving question is with regard to the non-entitlement of the plaintiff to a decree for specific performance in view of provisions contained in Section 20 of the Act of 1963 as a period of 27 years has gone by in litigation only and the price of the property, as suggested by Mr. Mehta, learned counsel appearing for the respondents, has increased fifty times more if not hundred times than it was at the time of sale. In so far as escalation of price of land is concerned, defendant Nos. 2 to 8 should not forged that they are in possession for last about 28 years. They could not be in

possession of the suit land as they had no right to purchase it in view of right of the plaintiff to purchase the same in view of legally and validly executed agreement dated 31-1-1977. Defendant Nos. 2 to 8 have thus illegally retained possession and tried to protect the same on forged document. In the circumstances, simply if the price of land has increased, no advantage could be given of the same to the defendant Nos. 2 to 8. Further, the plaintiff who paid amount of Rs. 20,000/- way back in 1977 has not only been deprived of his money but also benefit of the land that would have naturally accrued to him if he was to retain possession of the same.

26. There cannot be any dispute about the proposition that grant of decree for specific performance is discretionary as is also made out from the provisions contained in Section 20 of the Act of 1963 and it is not necessary to grant a decree for specific relief if it may appear to be inequitable or may cause hardship to the other side. However, in facts and circumstances of the present case, we do not find it inequitable to grant decree to the plaintiff nor we find that the same would cause any hardship to defendant Nos. 2 to 8. Plaintiff, on knowledge of sale made in favor of defendant Nos. 2 to 8 filed the suit on 17-5-1977 and proved his agreement dated 31-1-1977. He also proved that he had paid an amount of Rs. 20,000/- at the time of execution of the agreement. There is not even any allegation that he was instrumental in delaying finalization of suit. Learned Subordinate Judge, however, took almost nine years in finalizing the proceedings of the suit. The matter then remained pending before the learned single Judge for a period of ten years. So is also true with regard to the pendency of the second appeal. At no stage, the plaintiff has been shown to be at fault in delaying the proceedings, be it suit, first or second appeal. Plaintiff herein has a perfect case. The agreement, as mentioned above, stands established. He paid advance money which was substantial amount at the relevant time. He filed the suit within 4-5 months from the date he came to know that he had been cheated by a combined fraud of defendant Nos. 1 and 2 to 8. Defendants, on the contrary, endeavored to knock him out by forging the document. Would discretionary relief be denied to a citizen only because his lis has remained pending for nearly three decades in various Courts for which only the judicial system in the country has to be blamed ? Would a citizen lose his case simply because the system has failed ? We are of the considered view that no citizen seeking his rights can be thrown out and thus denied his statutory or fundamental right simply because the judicial system in the country has taken years before finalization of his case. In so far as hardship to defendant Nos. 2 to 8 is concerned, surely, those who come with unclean hands and mislead the Court and try

to outwit their adversary by putting in forged documents, cannot claim equity in comparison to the plaintiff who *bona fide* intended to purchase the property in dispute and acted strictly in terms of the agreement. Defendant Nos. 2 to 8 do not deserve any equity in their favour and, therefore, merely 28 years have gone by it would not lead to defeat the right of plaintiff. In *Kanhaya Lal v. Devi Dass (AIR 1931 Lahore 227)* (supra) while dealing with Section 27 and the plea pertaining to specific relief being discretionary in nature, which should not be granted if it was inequitable to do or was to cause hardship in the context of connivance between the seller and subsequent purchasers held as follows :

"There cannot be any question that, when once the plaintiff has proved an agreement to sell arrived at between him and the vendor, it is for the vendee, in order to defeat the plaintiff's claim, to prove that he paid the money to the defendant-vendor under the sale deed in his favor in good faith and without notice of the prior contract. And it is one of the recognized canons of jurisprudence that a person, who seeks to take advantage of an exception has to prove affirmatively that his case falls within the scope of that exception. This is principle which lies at the root of a number of precedents which laid down that in these cases, it is for the vendee to prove want of notice."

(Emphasis added)

27. In view of the discussion made above, we allow this appeal and set aside order dated 3-1-1986 passed by the trial Judge and confirmed by the learned single Judge by his order dated 8-7-1996. Consequently, we grant decree for specific performance of the agreement of sale, dated 31-1-1977 in favor of the plaintiff and against the defendant Nos. 1 to 8. Plaintiff would deposit Rs. 35,000/- (the remaining consideration under agreement dated 31-1-1977) before the Executing Court and defendant Nos. 1 to 8 would execute sale deed in favor of the plaintiff within four weeks from the date of deposit of amount by the plaintiff. In case the defendant Nos. 2 to 8 may refuse to execute the sale deed in favor of the plaintiff, the Executing Court would appoint a Commissioner who would act on behalf of defendant Nos. 1 to 8 and get the sale deed registered in favor of the plaintiff. Plaintiff shall also be entitled to possession of the suit land. The amount deposited by the plaintiff shall be paid to defendant Nos. 2 to 8. In view of the fluctuating fate of parties, they shall, however, bear their own costs.

Appeal allowed.

Cases Referred.

1. AIR 1929 Lahore 249 (DB)
2. AIR 1929 Patna 300 (DB)
3. AIR 1961 Orissa 129
4. AIR 1977 All 328
5. AIR 1925 Cal 61
6. AIR 1934 PC 68
7. AIR 1957 Patna 224
8. AIR 1931 Lahore 227
9. (1973) 3 SCC 418: (AIR 1972 SC 1520)
10. (AIR 1972 SC 1520)