

RAVINDER NATH SAHNI V. PODDAR CONSTRUCTION CO. PRIVATE LIMITED,

2014 PLRonline 0109 (Del.)

Delhi High Court

Justice : Rajiv Sahai Endlaw

RAVINDER NATH SAHNI V. PODDAR CONSTRUCTION CO. PRIVATE LIMITED

RFA 60/2013

18.07.2014

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. All the four appeals impugn the common judgment and decree dated 08.11.2012 of the Court of Additional District Judge (Central) 01, Tis Hazari Courts, Delhi in, (i) CS No.174/2011 (Unique ID No.02401C5180392004) filed by Ravinder Nath Sahni (hereinafter called "Sahni") against M/s Poddar Construction Co. (P) Ltd. (hereinafter called "Poddar") and Ms. Sabina Jajodia (hereinafter called "Jajodia") inter alia for specific performance of an Agreement of Sale of immovable property and for cancellation of the sale subsequently effected by Poddar in favour of Jajodia; and, (ii) in CS No.182/2011 (Unique ID No.02401C6136542004) filed by Jajodia against Sahni for possession of the property sold by Poddar to Jajodia.

2. By the said judgment; (i) Sahni has been denied the relief of specific performance and has instead been granted the relief of compensation against Poddar; (ii) Sahni has been directed to, against receipt of compensation from Poddar, deliver the possession of the property to Poddar; (iii) the Sale Deed of the said property executed by Poddar in favour of Jajodia has been cancelled; (iv) Poddar has been directed to refund the sale consideration received from Jajodia to Jajodia; and, (v) the suit for possession filed by Jajodia has been dismissed.

3. Notices of the appeals were issued and vide interim order dated 20.03.2013, the operation of the impugned judgment and decree stayed. The appeals were on 16.07.2013 admitted for hearing. The counsel for Sahni and the senior counsels for Poddar and Jajodia have been heard.

4. Sahni, on 19.04.1988 instituted his suit for specific performance of Agreement of Sale of immovable property, only against Poddar. However subsequently Jajodia was impleaded as a party and the amended plaint filed and as per the last amended plaint dated 21.01.1994, the case of Sahni was:

(i) that Poddar and its associates were the owners of a number of pieces of agricultural land on either side of National Highway No.8 in the village of Kapashera within the Union Territory of Delhi; Sahni also happened to acquire tracts of land, either in his own name or in the name of his wife and son, in the vicinity of lands of Poddar;

(ii) that in 1981 one tract of land measuring 1.013 acres bearing Khasra Nos.757 & 758 was sold by an associate company of Poddar to Sahni;

(iii) thereafter in July, 1984 Poddar offered for purchase to Sahni the remaining tracts of land ad measuring about 12 acres held by Poddar;

(iv) five agreements were accordingly entered into between Sahni and Poddar and

associate companies of Poddar;

(v) that the subject suit pertained to the Agreement for Sale by Poddar of a plot of land having an area of 2.01 acres, bearing Khasra Nos.692 (1-01), 693 (4-6) and 694 (4-6) of village Kapashera, for consideration of Rs.4,70,000/-;

(vi) that out of the total sale consideration of Rs.4,70,000/-, Sahni paid to Poddar a sum of Rs.10,000/- on 11.08.1984 and a Receipt-cum-Agreement was executed;

(vii) that further consideration of Rs.15,000/- was paid on 01.07.1987;

(viii) that possession of the plot was handed over to Sahni in pursuance of Agreement to Sell and has been with Sahni since then;

(ix) Sahni has since enclosed the plot with wire fencing and part boundary and has constructed superstructure of a farm house on the basis of a duly sanctioned plan and has also been growing crops on part thereof;

(x) that subsequently it was found that the land subject matter of all the five Agreements was mortgaged with Oriental Bank of Commerce (OBC) and huge amounts were payable to the said bank and owing where to the transaction could not be completed; in fact Sahni arranged to pay huge monies directly to the bank and also persuaded the bank to release the land; for the said reason, registration in pursuance of three agreements (out of five) could take place only on 10.08.1987 i.e. exactly three years after the agreements; as far as the fourth agreement was concerned, out of total consideration of Rs.5,65,000/- thereunder, a sum of Rs.5,00,000/- was paid between 1984 to 1985 and the balance Rs.65,000/- was to be paid at the time of registration which the associate company of Poddar had promised to do shortly;

(xi) that in the year 1987, the alignment of National Highway No.8 was changed and fell very close to the land subject matter of the subject agreement with the result that the value thereof appreciated and Poddar started dilly-dallying; last such request was made to Poddar on 13.04.1988 and whereafter the suit was filed;

(xii) that the suit land had also remained subject matter of attachment issued by the Court in a suit filed by OBC against Poddar and during the subsistence of the attachment, Poddar in collusion with Jajodia and in order to defeat Sahni's claim purported to transfer the subject land benami in the name of Jajodia for a paltry consideration of Rs.2,50,000/- although the agreement with Sahni was for Rs.4,70,000/-;

(xiii) that the said transfer by Poddar to Jajodia was sham and Sahni was not bound thereby and was entitled to have the agreement in his favour performed and for which he had been ready and willing; and,

(xiv) that accordingly, in the suit, besides claiming the relief of specific performance, declaration that Sahni was not bound by the Sale Deed executed by Poddar in favour of Jajodia and the relief of cancellation of the said Sale Deed and for direction to Jajodia to sign the Sale Deed in favour of Sahni was also claimed.

5. Poddar contested the suit by filing written statement, on the grounds:

(a) that there was no enforceable [contract](#); the receipt executed did not constitute an enforceable contract as the amount accepted thereunder was subject to execution of a formal agreement to sell and till the same was executed, there was no binding and enforceable contract;

(b) that the agreement dated 11.08.1984 of which specific performance was claimed was terminated by Poddar vide his letter dated 09.03.1985 as Sahni had defaulted in making the payment of balance consideration of Rs.4,60,000/- and also failed to execute agreement to sell inspite of repeated requests and demands made by Poddar and the earnest money of Rs.10,000/- was forfeited;

(c) that Sahni had not been ready and willing to perform his obligations in terms of the receipt dated 11.08.1984;

(d) denying that the possession of the plot was handed over to Sahni in pursuance of the agreement;

(e) denying that any of the lands subject matter of the five agreements had been mortgaged with OBC and denying that the delay in execution of the Sale Deed with regard to three out of the five agreements was because of Poddar and attributing the said delay to Sahni;

(f) denying that Sahni had ever approached for execution of the Sale Deed;

(g) that in terms of the Receipt-cum-Agreement dated 11.08.1984 Sahni was to pay the balance consideration within 60 days of obtaining income tax and urban land ceiling clearance certificates and under all circumstances within six months of the date of the Receipt-cum-Agreement and which Sahni had failed to do;

(h) that income tax clearance and clearance from Urban Land Ceiling could not be obtained until and unless formal agreement of sale was executed and submitted to the Income Tax and Urban Land Ceiling authorities; for that purpose Poddar had been repeatedly requesting Sahni to execute a formal agreement but Sahni had been avoiding the same on one pretext or the other;

(i) that a letter dated 20.02.1985 was served on Sahni in this regard and upon Sahni still failing to discharge his obligations, final opportunity was given vide letter dated 09.03.1985 and by which it was also made clear that upon the failure of Sahni, the agreement shall stand terminated and the earnest money of Rs.10,000/- will be forfeited;

(j) despite said letter, Sahni did not come forward;

(k) that Sahni had indulged in criminal trespass and the structure raised by him on the land was illegal;

(l) the payment alleged by Sahni of Rs.15,000/- in pursuance to the agreement was denied; and,

(m) that Poddar had delivered possession to Jajodia upon execution of the Sale Deed in her favour.

6. Though Sahni filed replication to the aforesaid written statement but since neither counsel during the hearing adverted thereto, need is not felt to refer to the same.

7. The impugned judgment records that Jajodia contested the suit claiming to be a bona fide purchaser without notice of the Agreement to Sell alleged by Sahni in his favour.

8. It was further the case of Jajodia and as also pleaded in the suit filed by her for possession;

(l) that Poddar had vide Agreement to Sell dated 12.04.1985 agreed to sell 1.80 acres of land out of the aforesaid 2.01 acres of land to Jajodia for a sale consideration of Rs.2,30,000/- out of which Rs.1,00,000/- was paid vide cheque dated 11.04.1985 and the

balance Rs.1,30,000/- was payable at the time of execution of the Sale Deed;

(II) that on 28.05.1986, a Sale Deed in respect of the said 1.80 acres of land was executed by Poddar in favour of Jajodia and against payment of balance sale consideration of Rs.1,30,000/- by cheque;

(III) simultaneously with the execution of the Sale Deed, Jajodia was put into possession of the plot and was the absolute owner thereof;

(IV) that Jajodia, in or about March-April, 1988, also got the said 1.80 acres of land mutated in the revenue records in her name; and, (V) that on or about 02.04.1988, it was found that certain construction had been illegally raised by Sahni on a part of the said land and of which complaint was made and the suit for possession of the said land filed.

9. The following issues were framed on 02.08.1995 in Sahni's suit for specific performance:

"1. Whether the plaintiff is entitled to the relief of specific performance on the facts and circumstances of the case? OPP

2. Whether the suit is barred by limitation?

3. Whether the suit for specific performance is not maintainable as alleged in preliminary objections of the written statement of the defendant No.1?

4. Whether the agreement dated 11.08.1984 was terminated by the defendant No.1?

5. Whether the defendant No.2 is a bona fide purchaser for valuable consideration in pursuance of the instrument dated 28.05.1986 and had no notice of the agreement dated 11.08.1984 and if so what is the effect?

6. Whether the plaintiff is entitled to a decree of cancellation cancelling the instrument dated 28.05.1986 in favour of defendant No.2?

7. Whether the plaintiff in suit No.1241/1988 is entitled to relief of possession?

8. Relief."

No separate issues are found to have been framed in Jajodia's suit.

10. The learned Additional District Judge (ADJ), in the impugned judgment, has found / observed / held:

(A) that the suit of Sahni for specific performance of the agreement to sell was within time, for the reason of:

(i) though the receipt / agreement was dated 11.08.1984 and the suit had been instituted on 19.04.1988 but since the receipt-cum-agreement provided for Poddar to obtain permission under the Income Tax Act and other laws and which had not been obtained, the balance sale consideration could not have been paid and specific performance could not have been obtained;

(ii) limitation would have started from the date of obtaining the permission;

(iii) though the parties had fixed upper period of six months from the date of agreement, however obtaining the income tax clearance was the pivot of the agreement without fulfillment of which it could not have been performed; Poddar had in receipt dated 31.07.1987 of Rs.15,000/- stated the same to be in continuation of the receipt dated 11.08.1984 thereby acknowledging its liability within the meaning of Section 18 of the Limitation Act, 1963; and,

(iv) that though Sahni had not specifically, within the meaning of Order 7 Rule 6 of the

[CPC](#), pleaded extension of period of limitation by the said receipt dated 31.07.1987 but since the case of Sahni had been well understood by Poddar and Jajodia, no prejudice had been suffered by Poddar and Jajodia thereby.

(B) the objection of Poddar and Jajodia that no specific performance of the receipt dated 11.08.1984 could be claimed was meritless inasmuch as the receipt contained the full enforceable agreement between Sahni and Poddar; (C) that there was no obligation of Sahni under the said receipt to execute any formal agreement and Poddar also had not made any grievance in this regard while executing the subsequent receipt dated 31.07.1987 for Rs.15,000/-; (D) Sahni in his cross examination had admitted that a formal agreement to sell was essential for obtaining clearance in Form 34A of the Income Tax laws and which indicated that there was something more than what meets the eye;

(E) that the parties were trying to outwit each other qua the execution for a formal agreement to sell; (F) that the demand of Poddar on Sahni to execute a formal agreement to sell would not have put any burden on the shoulder of Sahni and was not onerous to Sahni; (G) there was no justifiable reason put forward by Sahni for non compliance with the demand of Poddar for execution of formal agreement to sell;

(H) the correspondences exchanged showed that Sahni had tried to enlarge the scope of the agreement dated 11.08.1984 by incorporating various conditions which did not exist in the original agreement;

(I) Poddar while executing the receipt dated 31.07.1987 did not mention that the income tax clearance could not be obtained on the basis of receipt dated 11.08.1984 or that he had already on 09.03.1985 cancelled the agreement;

(J) it did not stand established that agreement evidenced by receipt dated 11.08.1984 had been terminated at any stage; on the contrary, acceptance of Rs.15,000/- vide receipt dated 31.07.1987 showed subsistence and continuance of the agreement dated 11.08.1984;

(K) the onus of proving that Jajodia was a bona fide purchaser for value without notice of the agreement in favour of Sahni was on Jajodia; Jajodia had not appeared herself as a witness; she was a minor at the time of purchase and was represented by her father who had also not appeared as a witness; (L) that the attorney of Jajodia who appeared as a witness had not represented Jajodia elsewhere and did not have any knowledge about the transaction;

(M) it thus emerged that Jajodia did not make any attempt to find out who was the owner of the surrounding properties; (N) that the attorney of Jajodia had admitted the existence of fence and superstructure on the property;

(O) that it was a case of no evidence on the part of Jajodia; (P) there was no way Jajodia could not have had knowledge of the agreement of sale by Poddar in favour of Sahni; (Q) on the face of it, the transaction of Jajodia with Poddar did not inspire confidence inasmuch as Poddar had sold the property to Jajodia for a consideration half the consideration agreed to with Sahni;

(R) the transaction between Poddar and Jajodia per se appeared to be collusive inasmuch as Poddar in his written statement had reserved the right to seek possession of the property and which was not understandable if he had sold the property to Jajodia; such

averments could have crept into pleadings only if Poddar was still the real owner of the property;

(S) the transaction between Poddar and Jajodia was thus a sham and camouflage;

(T) relief of specific performance is not a matter of right, but a discretionary relief;

(U) Sahni had not proved his readiness and willingness to perform his obligations under the receipts dated 11.08.1984 or 31.07.1984; it was incumbent upon him to prove that he had the requisite finances at the contemporaneous time and which he had failed to prove;

(V) un-cooperative conduct of Sahni in signing a formal agreement to facilitate obtaining of Income Tax Clearance Certificate also pointed out to the fact that he was gaining time to muster the funds;

(W) Sahni's getting possession of the land was also shrouded in mystery and neither the receipts nor the subsequent correspondences recorded the factum of his being in possession of the land in terms of the agreement to sell; (X) on the face of it, physical possession of the land had not been handed over to Sahni under the agreement; (Y) however on a collective assessment of the conduct of the parties, Sahni was more sinned against than sinning; thus in totality of the facts and circumstances, Sahni was not entitled to a decree for specific performance but compensation in lieu thereof; and, (Z) such transaction between Poddar and Jajodia was an outcome of collusion and fraud and with a view to defeat the claim of Sahni; thus the documents of such transactions were liable to be cancelled;

Accordingly, the reliefs aforesaid were granted.

11. Sahni is aggrieved from non-grant of relief of specific performance.

12. Poddar is aggrieved from the grant of relief to Sahni, against it, of compensation. It is also its contention, that it having sold the land to Jajodia, the direction, for delivery of possession of land to Poddar, is misconceived.

13. Jajodia is aggrieved from the direction for cancellation of documents with respect to the land executed by Poddar in her favour and from non- grant of the relief of compensation of the land against Sahni.

14. Before I record the contentions of the counsels, notice may be taken of certain admitted documents, the language whereof has a vital bearing on the adjudication herein.

15. The receipt dated 11.08.1984 executed by Poddar is as under:

"RECEIPT:

Received with thanks from Mr. Ravinder Nath Sahni son of Shri S.N. Sahni 803, Akashdeep, Barakhamba Road, New Delhi the sum of Rs.10,000/- (Rupees ten thousand only) vide cheque No.182710 dated 11.08.1984 on Punjab and Sind Bank, New Delhi towards advance for the sale of 2.01 acres agricultural land bearing Khasra Nos.692 (1 - 10), 693 (4 - 6); 694 (4 - 6) situated in Village Kapashera, Tehsil Mehrauli, New Delhi including facilities, fencing, appurtenances with sanction plan and 60 feet wide road, user free of cost agreed to be sold for Rs.4,70,000/- (Rupees four lac seventy thousand only). The seller will obtain income tax, urban land clearance and declaration of clear title within six months. The buyer will pay the balance consideration within six months or within 60 days of obtaining income tax, urban land and title clearance certificate at the time of execution and registration of sale deed. Otherwise advance will be forfeited. The sale deed

in favour of nominee or nominees or buyers.

For PODDAR CONSTRUCTION CO (P) LTD.

Sd/-

New Delhi Dated 11.08.1984”

16. The letter dated 09.03.1985 (all counsels agreed that the date thereon of 09.02.1985 is to be read as 09.03.1985) of Poddar to Sahni is as under:

“PODDAR CONSTRUCTION CO. (P) LTD.

HS-27, KAILASH COLONY MARKET, NEW DELHI-110048 Phone: 6418651, 6415398 Ref.No.PCC/FH/85/9 Date 9th Feb., 1985 Mr. R.N. Sahni 809, Akashdeep Building, Barakhamba Road, New Delhi -110001 FARM LAND 2.01 ACRES AT VILLAGE KAPASHERA, NEW DELHI.

Dear Sir, Please refer to our letter No.PCC/FH/85/19 dated 20th Feb., 1985 send under registered acknowledgment due and duly received by you on 26th Feb., 1985. Alongwith the said letter, we had forwarded to you a draft agreement to sell and invited your comments in respect thereof. Despite the stipulated period having expired without any reply from your end and by way of good gesture and without prejudice to our rights, we once again request you to comply with our demand within four days from the date of the receipt of this notice and in particular attend our office within stipulated period and execute the agreement to sell and make payment of the amount of Rs.4,60,000/- and failing response from your side it shall be deemed that you are not ready and willing on your part to execute the agreement and make payment as demanded herein and therefore without any further notice to you the land will be allotted to suitable buyers and earnest money of Rs.10,000/- forfeited entirely at your risk and costs.

Thanking you, Yours faithfully, For PODDAR CONSTRUCTION CO.(P) LTD.

Sd/-

(DIRECTOR)”

17. Poddar wrote a letter dated 28.07.1987 to Sahni as under:

“Shri R.N. Sahani, You are requested to please pay a sum of Rs.15,000/- to the bearer of this chit.

Thanking you, Sd/-

28.7.87”

18. The receipt dated 31.07.1987 executed by Poddar of Rs.15,000/- is as under:

“RECEIPT:

Received a sum of Rs.15,000/- in cash (Rupees fifteen thousand only) in continuation of the receipt dated 11.08.1984 from Mr. R.N. Sahni son of Shri S.N. Sahni resident of 803, Akashdeep, New Delhi against farm land measuring 2.01 acres bearing Khasras No.692 (1-01), 693 (4-6), 694 (4-6) on Rajokri Road, Kapashera, New Delhi. If the above farm land under any circumstances could not be registered in favour or sold in favour of Mr. R.N. Sahni an alternative land measuring 2.01 acres out of 6.5 acres of land sold to Mr. Rahul Kushwaha son of Shri S.J. Khushwaha located on the main highway NH-8 out of the Khasra No.868/1, 847, 846/2, 887, 848, 849/1, 869/1 or 853.

Thanking you For PODDAR CONSTRUCTION CO (P) LTD.

31.07.87 Sd/-

31.7.87 (Manager)”

19. The counsel for Sahni has argued:

(aa) that the language of the receipt dated 11.08.1984 does not contemplate execution of any further Agreement to Sell and provides for payment of balance sale consideration on execution of Sale Deed only, after the various permissions had been received;

(bb) that between the receipt dated 11.08.1984 and the letter dated 09.03.1985 supra of termination, there is no communication between Sahni and Poddar and no demand from Poddar for execution of agreement to sell;

(cc) that the demand in the letter dated 09.03.1985 for execution of agreement to sell is in contravention of the terms and conditions of the agreement dated 11.08.1984 of sale as evidenced from the receipt of the same date;

(dd) that there was no termination of the agreement dated 11.08.1984 after the receipt dated 31.07.1987 and till the suit was instituted in April, 1988;

(ee) that in April, 1985, in a suit filed by OBC against Poddar for recovery of monies, Poddar was restrained from selling the said land;

(ff) Sahni in February, 1987 paid approximately Rs.6,00,000/- to OBC to have the stay vacated and thereafter sale deeds in respect of four out of the total five agreements were executed;

(gg) that Poddar had in the written statement dated 17.08.1988 while averring that Sahni had trespassed on to the land, reserved his right to regain possession of the land; Sahni thereafter amended the plaint; Poddar in the written statement to the said amended plaint deleted the said plea of reserving right to regain possession of the land and which he was not entitled to delete and thus remains bound by the said plea and which shows that Poddar, inspite of executing the sale deed dated 28.05.1986 in favour of Jajodia, was still treating himself as the owner and the sale deed in favour of Jajodia was a sham, only to defeat the claims of OBC and of Sahni; neither Jajodia nor her father had stepped into the witness box to defend the sale;

(hh) that no complaint of trespass was ever made out;

(ii) that construction on the land was raised by Sahni in early 1988;

(jj) Poddar thereafter also did not ever mention of the sale deed dated 28.05.1986 in favour of Jajodia and merely kept it with itself for use if required;

(kk) that it was for Jajodia to prove that she was a bona fide purchaser for value and which onus had not been discharged;

(ll) that a public notice was also got published by Sahni in newspaper “Hindustan Times” on 23.10.1985 and Jajodia ought to have knowledge of the claim of Sahni to the said land therefrom also;

(mm) that Sahni was also growing crops on the said land and Jajodia ought to have had notice therefrom also;

(nn) that due diligence is an important ingredient of a bona fide purchase and if no due diligence is carried out, the purchaser cannot be bona fide and Jajodia having not led any evidence of due diligence, cannot be said to be a bona fide purchaser; (oo) that the cancellation / termination dated 09.03.1985 of the agreement dated 11.08.1984 is in contravention of the agreement and is thus of no avail;

(pp) that Poddar, at the time when Sahni in March, 1987 paid a sum of approximately Rs.6,00,000/- to OBC to have the stay on sale vacated also, did not claim cancellation and allowed Sahni make payment to OBC; thus cancellation even if any on 09.03.1985 was given a go bye;

(qq) once Sahni had got sale deeds in pursuance to three out of five agreements executed on 10.08.1987, he could not be held guilty of being not possessed of funds as has been done by the learned Additional District Judge;

(rr) that though Sahni had been compelled to institute a suit for specific performance of the fourth agreement also but Poddar had subsequently consented thereto and the sale deed in pursuance thereto also has since been executed; (ss) Poddar in his cross examination has admitted to the fencing of the land by Sahni as well as to existence of superstructure though he claimed that he did not know to whom it belonged; (tt) that the sale deed executed by Poddar in favour of Jajodia is a sham transaction also because no proof of any payment from Jajodia to Poddar has been submitted and the sale deed also does not contain any particulars of payment; (uu) that possession of the land subject matter of the other four agreements also stood delivered to Sahni; (vv) that the land subject matter of the agreement dated 11.08.1984 is surrounded by other lands of Sahni; and, (ww) Poddar had not even made a claim for possession and the learned Additional District Judge could not have directed delivery of possession to Poddar, without a claim therefor.

20. The senior counsel for Poddar has argued:

(i) that Poddar had handed over possession of land to Jajodia in pursuance of the sale deed and does not admit possession of Sahni of any time prior thereto;

(ii) that initially five receipts, all similar to the receipt dated 11.08.1984, were executed; shortly thereafter, against substantial payment, formal agreements to sell in pursuance to three of the receipts were executed and which recorded delivery of possession in pursuance thereto;

(iii) Sahni vide a letter dated 05.02.1985 to Poddar (proved as Ex.PW1/D1 at page 1437 of the Trial Court record) stated that Poddar was to fence the land subject matter of agreement dated 11.08.1984 and which was indicative of possession having not been delivered in pursuance to the agreement / receipt dated 11.08.1984;

(iv) Poddar in his reply dated 20.02.1985 (proved as Ex.P4 at page 1447 of the Trial Court record) denied that he was to fence the land and further stated that the demands of Sahni in the letter dated 05.02.1985 supra were contrary to the agreement to sell and also enclosed to the said letter, a draft of the agreement to sell which was required to be executed and which draft provided for possession to be delivered on execution thereof, further confirming that possession was to be delivered only upon execution of formal agreement to sell;

(v) Sahni in his response dated 11.03.1985 (proved as Ex.PW1/7 at page 1461 of the Trial Court record) to the termination letter dated 09.03.1985 again called upon Poddar to do things which Poddar was not required to do including fencing of the land (I may mention that the letter dated 11th March, 1985 of Sahni purports to be in response to letter dated 11 th March, 1985 of Poddar; however there is no letter dated 11th March, 1985 of Poddar

on record);

(vi) that similar letters dated 09.03.1985 with respect to two out of the total five agreements were also issued and in response where to on 12.03.1985 formal agreements to sell with respect to those were executed but Sahni failed to execute the agreement to sell with respect to the said agreement;

(vii) that the said other agreements to sell, of which one for 1.7 acres of land was for Rs.2,25,000/- only, is also indicative of Sahni and Poddar having indulged in suppression of actual sale consideration and which also takes the wind out of argument of Sahni of the sale by Poddar in favour of Jajodia being sham for the reason of consideration thereof being much less than the consideration for which Sahni had agreed to purchase the land;

(viii) that the sale consideration paid by Jajodia to Poddar is at par with the sale consideration paid by Sahni under the other agreements;

(ix) that in the other three transactions, possession was handed over to Sahni under a formal agreement to sell against payment of substantial part of the sale consideration; thus the case of Sahni, of the possession under the subject transaction having been handed over on receipt of Rs.10,000/- only, is unbelievable;

(x) that Sahni having himself pleaded five separate transactions, cannot now attempt to club the same;

(xi) Sahni, while pleading payment of Rs.15,000/- did not refer to the letter dated 28.07.1987 of Poddar demanding the same or the receipt dated 31.07.1987 executed by Poddar therefor; rather the payment of Rs.15,000/- was mentioned to have been made on 01.07.1987 and not on 31.07.1987;

(xii) Sahni having made a false plea of delivery of possession in pursuance to agreement to sell, is not entitled to the discretionary relief of specific performance;

(xiii) that similarly the plea taken, of the land subject matter of all the five transaction being mortgaged was false; there was only a stay against sale thereof;

(xiv) Sahni is not entitled to the relief of specific performance also for the reason of concealment of letters dated 20.02.1985 and 09.03.1985;

(xv) there is no explanation of Sahni as to why, when he signed formal agreement to sell after the receipt with respect to four out of the five transactions, he did not do so with respect to the subject transaction;

(xvi) that the plea of mortgage is also false to the knowledge of Sahni inasmuch as the title documents of the land in favour of Poddar and its associate companies had in pursuance to the formal agreements to sell been handed over to Sahni; (xvii) that the payment made by Sahni to OBC was only of the balance amount due under the four other transactions and not of the subject transaction;

(xviii) however Sahni with a mala fide intention, while making payment to OBC under cover of his letter dated 03.02.1987, also included the price of the land of the subject transaction qua which no payment was being made;

(xix) that Sahni was required to make payment of the balance sale consideration under the four other agreements within one month thereof and had delayed the said payment also but notwithstanding the same Poddar accepted the delayed payment being made directly to the bank and did not cancel those agreements;

(xx) that there is no plea of Sahni, of Jajodia being aware of the agreement with Sahni;

(xxi) that Poddar is not to be blamed for the institution of the suit for specific performance by Sahni with respect to the fourth agreement to sell; the balance payable thereunder was of Rs.3,15,000/- out of which only Rs.2,50,000/- had been paid to the bank and Sahni had not come forward to pay the balance Rs.65,000/-, still Poddar conceded to the suit for specific performance upon payment of Rs.65,000/-;

(xxii) the demand of Poddar on Sahni in the letter dated 20.02.1985 was only to do what had not been done in four other transactions and which Sahni had failed to do; (xxiii) that the receipt dated 31.07.1987 was filed only in the year 1989;

(xxiv) that Poddar had in his written statement denied the payment of 01.07.1987 and not the payment of 31.07.1987;

(xxv) Sahni had asked Poddar to persuade Jajodia to transfer the subject land to Sahni and Poddar had executed the receipt dated 31.07.1987 in this context and for this reason only in the said receipt mention is made of alternate land sold by Poddar to Rahul Kushwaha also inasmuch as Poddar had thereunder agreed to attempt to have either the land sold to Jajodia or to Rahul Kushwaha transferred to Sahni;

(xxvi) Sahni in his cross examination had admitted that a formal agreement to sell was necessary for obtaining income tax clearance;

(xxvii) that in fact the form for obtaining income tax clearance was also to be signed by Sahni as purchaser;

(xxviii) that since Sahni defaulted in doing so, he is not entitled to specific performance;

(xxix) that Poddar had terminated the agreement on 09.03.1985 and the receipt dated 31.07.1987 could not revive the non existent agreement; the receipt dated 31.07.1987 can at best be a fresh agreement and of which specific performance had not been claimed;

(xxx) that the limitation provided in Article 54 of the Schedule to the Limitation Act for a suit for specific performance is three years which expired on 09.03.1988 and the suit filed on 19.04.1988 was barred by time;

(xxxi) that Sahni is not entitled to the relief of specific performance also for the reason of, though having disclosed in the plaint five transactions, having concealed that in other four transactions formal agreement to sell was executed against receipt of substantial consideration;

(xxxii) that though Sahni kept on corresponding with Poddar after the termination letter dated 09.03.1985 also but the same is with respect to other transaction;

(xxxiii) that since Sahni, inspite of having been called upon vide letter dated 09.03.1985 to execute the formal agreement to sell, did not come forward, Poddar had no option but to first enter into an agreement to sell with Jajodia and thereafter execute the sale deed;

(xxxiv) that the period of six months mentioned in the receipt dated 11.08.1984 expired in February, 1985 and Poddar could not have waited endlessly;

(xxxv) that Sahni has not challenged the cancellation of 09.03.1985;

(xxxvi) Sahni in the cross examination of Rajiv Poddar had suggested that he had no authority from Poddar and if the said version of Sahni is accepted, then the receipt dated 31.07.1987 executed by Rajiv Poddar cannot be an acknowledgment of liability on behalf of Poddar;

(xxxvii) that no acknowledgment of liability by receipt dated 31.07.1987 has been pleaded; and,

(xxxviii) that once the learned Additional District Judge had held that Sahni was not ready and willing, no damages / compensation as awarded could have been awarded.

21. The senior counsel for Jajodia, while adopting the arguments of Poddar, has argued;

(A) that there is no pleading for extension of the period of limitation. Reliance is placed on Kalyan Mal v. Ahmad Uddin Khan AIR 1934 Privy Council 208 and on Shiv Shiv Tewari v. Ganesh Prasad Misra AIR 1978 Allahabad 117 to contend that if the plaintiff's right of action is apparently barred under the statute of limitation, it is his duty under Order 7 Rule 6 of the CPC to state specifically in the plaint the grounds of exemption allowed by the Limitation Act upon which he relies to exclude its operation and that the provisions of Order 7 Rule 6 of the CPC are mandatory;

(B) that the receipt dated 31.07.1987 which is not pleaded could not have been relied upon by the learned District Judge for extending the period of limitation;

(C) that there is absolutely no basis in the impugned judgment for holding the sale deed by Poddar in favour of Jajodia as bogus and sham;

(D) that the cheque numbers of the payments made by Jajodia to Poddar are mentioned in the endorsements made by the Sub Registrar on the sale deed;

(E) that as on 31.07.1987 Poddar had no title to the land and thus could not have given any acknowledgement or commitment with respect thereto;

(F) that in receipt dated 31.07.1987, Poddar has received Rs.15,000/- either for the subject land or the land sold to Rahul Kushwaha; the same is thus a new agreement in substitution of the agreement dated 11.08.1984 of Poddar with Sahni. Reliance is placed on Subhadra Rani Pal Choudhary v. Sheirly Weigal Nain (2005) 5 SCC 230 to contend that when the plaintiff is not found entitled to the relief of specific performance, there is no question of awarding damages in lieu thereof to the plaintiff;

(G) reliance is placed on Azhar Sultana v. B. Rajamani (2009) 17 SCC 27 laying down that if the plaintiff has failed to establish readiness and willingness to perform her part of the contract, the question whether the subsequent purchasers were bona fide purchasers without notice does not arise for consideration; and, (H) that the conduct of the parties shows a distinction being made by the parties between a receipt and an agreement to sell; in view thereof even though a receipt in certain cases may be enforceable but in this case ought not to be made enforceable.

22. The counsel for Sahni in rejoinder has contended:

(I) that even as per the receipt dated 11.08.1984, the sale was to be completed within six months or within 60 days of the receipt of permissions and limitation is thus not to be counted from the end of six months from 11.08.1984;

(II) Sahni in his cross examination had clarified that though an agreement to sell is necessary to obtain Income Tax Clearance Certificate but the receipt was an agreement;

(III) that the sale deed in favour of Jajodia was to defeat the claim of the bank and Jajodia has no interest in the property and for this reason only did not even appear as a witness;

(IV) that since permissions had admittedly not been obtained till now, the question of suit being barred by time does not arise; (V) that the cancellation dated 09.03.1985 never

became final; (VI) that though arguments on the basis of payments under the other contracts have been made but those payments have not been proved;

(VII) Poddar, after 09.03.1985 has neither in the correspondence nor while making Sahni pay to the bank, relied on the cancellation; (VIII) that though in arguments mortgage is being denied but the same is admitted by Poddar in para No.11 of the written statement; (IX) that it was the case of Poddar in para No.12 of the written statement that the other four agreements between the parties were not relevant and Poddar is thus now not entitled to argue on the basis of other four agreements and not entitled to contend that the modality followed qua those, be followed in the subject transaction also;

(X) that since permissions have not been obtained till date, the stage for examining the readiness and willingness of Sahni has not been reached till now;

(XI) that there was no delay on the part of Sahni in paying the balance amounts under the other four agreements inasmuch as the same were payable on execution of the sale deed and execution whereof was held up for the reason of stay obtained by OBC;

(XII) that in fact the entire stretch of land is one and the possession of the subject land also was delivered along with the possession of the other four parcels under the other agreements; (XIII) Poddar never raised objection to fencing by Sahni; (XIV) there is no basis for the direction in the impugned judgment for delivery of possession to Poddar who is not even claiming the same;

(XV) reliance is made on *Sarita Rani v. Deepak Raj* JT 2000 (10) SC 270 to contend that the onus to prove that she was the bona fide purchaser for value without notice of earlier agreement, was on Jajodia;

(XVI) Rajiv Poddar, who as Director of Poddar, has signed the sale deed in favour of Jajodia, in cross examination stated that he was never a Director;

(XVII) that the agreement to sell in favour of Jajodia is of 1.80 acres of land;

(XVIII) sale deeds executed subsequently with respect to 2.01 acres of land does not refer to an earlier agreement to sell; and, (XIX) that the subject land is surrounded by other land of Sahni and it was incumbent upon Jajodia to make enquiries.

23. The senior counsel for Jajodia has in sur-rejoinder referred to various provisions of the Income Tax laws regarding obtaining of permission and to *Rameshwar Singh v. Hari Narayan Singh* AIR 1984 Patna 277 to contend that the subsequent purchaser can merely deny knowledge and which has been done by Jajodia in the pleadings and the onus to prove such knowledge is on the party asserting the same.

24. All the counsels have after the close of hearing also submitted written synopsis of their submissions with copies to the other counsels.

25. The counsel for Sahni in his written synopsis of submissions has in addition, referred/contended:

(a) that the learned ADJ has decided all the issues in favour of Sahni save that instead of granting the relief of specific performance has granted the relief of compensation;

(b) that the financial capability of Sahni is proved from payment by Sahni to Oriental Bank of Commerce and by further payment of Rs.15,000/- vide Receipt dated 31st July, 1987, though no payment was due at that time;

(c) that there was no covenant for execution of any further Agreement to Sell and

Poddar, while asking for execution of further Agreement to Sell unlawfully demanded payment of the entire balance sale consideration;

(d) that there is no requirement for enclosing a copy of the Agreement to Sell while applying for permission from the Income Tax Department to execute the Sale Deed;

(e) that even if Sahni is in unauthorized occupation of land; the learned ADJ could not have directed Sahni to hand over possession;

(f) that the jurisdiction of the Civil Court for directing recovery of possession of agricultural land is barred by Section 185 of the Delhi Land Reforms Act, 1954. Reliance in this regard is placed on: Harminder Khullar v. Swaran Kanta Juneja 202 (2013) DLT 222 to contend that such a plea can be raised at any time;

(g) reliance is also placed on:-

(i) Sarita Rani v. Deepak Raj JT 2000 (10) SC 270 laying down that without the person setting up the plea of being a bona fide purchaser entering the witness box, the plea cannot be upheld;

(ii) Nanak Builders and Investors Pvt. Ltd. v. Vinod Kumar Alag AIR 1991 Delhi 315 and C.I.T. Punjab, Haryana, J&K, H.P. and Union Territory of Chandigarh v. Panipat Woolen and General Mills Co. Ltd., Chandigarh (1976) 2 SCC 5 to contend that a document titled as Receipt and having all essential ingredients of an Agreement is specifically enforceable;

(iii) Sargunam v. Chidambaram (2005) 1 SCC 162 to contend that failure to mention the Agreement to Sell in the Sale Deed is fatal to a plea of bona fide purchaser for value without consideration;

(iv) Subhra Mukherjee v. Bharat Coking Coal Ltd. (2000) 3 SCC 312 laying down that a party setting up the plea of bona fide and genuineness of the transaction has the onus to prove the same and the onus is not on the party alleging it to be sham;

(v) Jagan Nath v. Jagdish Rai (1998) 5 SCC 537 laying down that initial burden to show that the subsequent purchaser of the suit property covered by earlier suit agreement was a bona fide purchaser for value without notice of the suit agreement lies on such subsequent transferee;

(vi) Joginder Singh v. Nidhan Singh AIR 1996 Punjab and Haryana 120 laying down that mere denial of notice of prior agreement is not sufficient;

(vii) Janki Vashdeo Bhojwani v. Indusind Bank Ltd. (2005) 2 SCC 217 on the scope of power to depose on behalf of principal;

(viii) R.K. Mohammed Ubaidullah v. Hajee C. Abdul Wahab (2000) 6 SCC 402 laying down that a purchaser of immovable property must make enquires about the nature of possession and title on the basis of which a person other than the owner is in possession on the date of the subsequent purchase and that if such an enquiry is not made, it would mean that the purchaser willfully refrained from making the enquiry and such purchaser cannot establish his bona fides as a purchaser in good faith;

(ix) Dr. Govinddas v. Smt. Shantibai (1973) 3 SCC 418 where the factum of the parties being residents of or having shops in the same vicinity and the haste with which the Sale Deed was executed was held to be relevant to determine, whether such purchaser was a bona fide purchaser for value without notice of prior Agreement to Sell;

(x) Ram Niwas v. Smt. Bano (2000) 6 SCC 685 where a purchaser abstaining from

making enquiry into the real nature of position of the possession was held to be having notice of the earlier Agreement to Sell;

(xi) *Dhadi Dalai v. Basudeb Satpathy* AIR 1961 Orissa 129 on the ingredients to establish the plea of being a bona fide purchaser for value without notice of the earlier Agreement to Sell;

(xii) *Kedar Nath v. Ram Parkash* 76 (1998) DLT 755 FB to contend that the deletions made by Poddar in the written statement to the amended plaint are unauthorized and the written statement as originally filed admitting possession of Sahni of the land has to be read;

(xiii) *V.B. Dharmyat v. Shree Jagadguru Tontadrya* (1999) 6 SCC 15 to contend that a receipt constitutes a legal, valid, binding and concluded contract;

(xiv) Judgment dated 29th February, 2008 of this Court in CS(OS) No.1194/2006 titled *M/s Round The Clock Stores Ltd. v. M/s Aggarwal Entertainment Private Limited* to contend that a receipt can constitute a binding contract; and,

(xv) *Chief Engineer, Hydel Project v. Ravinder Nath* (2008) 2 SCC 350 to contend that objection to the jurisdiction of the Court can be raised at any time.

26. I have considered the rival contentions.

27. I will first deal with the entitlement of Sahni to the relief of specific performance of the Agreement to Sell of immovable property.

28. In the judgment under appeal, (i) the claim for specific performance has been held to be within time; (ii) Sahni as purchaser has been found to be not ready and willing to perform his part of the Agreement to Sell; (iii) Sahni has been held to have not proved that he had requisite finances at the contemporaneous time to pay the balance sale consideration and Sahni has been found to have been gaining time to muster funds; and, (iv) Sahni has been held to have taken a false plea of the possession of the property agreed to be sold having been delivered to him in pursuance to the Agreement to Sell.

29. Though on the aforesaid findings, the claim of Sahni for the relief of specific performance ought to have been dismissed, but the learned Addl. District Judge, holding Sahni to have been more sinned against than sinning, though has denied the relief of specific performance to Sahni but has nevertheless granted the relief, of compensation for breach of contract, to Sahni against Poddar.

30. In my view, the learned Addl. District Judge erred in doing so. Once Sahni had been held to be not entitled to the relief of specific performance, the question of granting relief to Sahni of compensation did not arise. The occasion, of granting the relief of compensation in lieu of specific performance, arises when the plaintiff though is found entitled to the relief of specific performance, is not to be granted the said relief owing to certain other factors.

31. The learned Addl. District Judge has thus clearly erred in, inspite of finding Sahni to have been not ready and willing to perform his part of the Agreement and having taken a false plea of the possession of the property agreed to be sold having been delivered to him in pursuance to the Agreement and thus not entitled to the relief of specific performance, still awarding compensation to Sahni against Poddar for breach of contract. Once Sahni had been held to be not ready and willing, the question of Poddar being in breach did not arise.

32. The next question is, whether there is any merit in the challenge by Sahni to the

denial by the learned Addl. District Judge of the relief of specific performance.

33. I will first take up the aspect of limitation. Though the learned Addl. District Judge has held the suit for specific performance filed by Sahni to be within time but that finding is challenged by Poddar and Jajodia.

34. The learned Addl. District Judge has held the claim for specific performance to be within time, (i) for the reason that limitation would have begun to run from the date when the permissions for sale would have been obtained; and, (ii) for the reason of the receipt dated 31st July, 1987 for Rs.15,000/- and in less than one year wherefrom the suit was filed.

35. The period of limitation for instituting a suit for specific performance of an Agreement to Sell of immovable property is governed by Article 54 of the Schedule to The Limitation Act, 1963 which provides the limitation of three years commencing from the date fixed for performance, or if no such date is fixed, when the plaintiff has notice that performance is refused. The Agreement dated 11th August, 1984 of which specific performance is claimed, did indeed fix a date for performance by providing “the seller will obtain income tax, urban land clearance and declaration of clear title within six months” and “the buyer will pay the balance sale consideration within six months or within 60 days of obtaining income tax, urban land and title clearance certificate at the time of execution and registration of the sale deed”. I have in *Arun Nirula v. K.N. Jain* MANU/DE/4035/2013 held that merely because the Agreement provides for a time within which, after receipt of permissions, the Sale Deed will be executed, does not make the Agreement to Sell, fall in the first category provided in Article 54 i.e. Agreements which fix a date of performance. It was held that once the Agreement does not fix a date for obtaining the permission, mere fixing of time for execution of Sale Deed after the permissions are obtained would not amount to fixing a time for completing the sale inasmuch as in such cases there is no identifiable date by which the Agreement is to be performed. It was yet further held that for an Agreement to Sell to fall in the first category in Article 54, either the agreement should fix a calendar date for performance or the date fixed should be ascertainable with an event certain to happen. However, in the present case, the Agreement to Sell besides fixing the time for payment of balance sale consideration of 60 days from the date the seller obtained the various permissions, also was for the said permissions to be obtained by the seller within six months from the Agreement dated 11th August, 1984. The said stipulation for six months for obtaining the permissions in my view, amounted to fixing a date for performance. I have held so in *Sushila Devi v. Adeline D. Lall* MANU/DE/4528/2013 where also the Agreement to Sell provided for a period of six months for execution of Sale Deed after the requisite permissions were obtained and SLP (Civil) No. 5254/2014 whereagainst was dismissed in limine on 14th March, 2014. Mention may also be made of *Ahmmadsahab Abdul Milla v. Bibijan* (2009) 5 SCC 462 where a three Judges Bench of the Supreme Court to which the question, whether the use of the expression “date” used in Article 54 is suggestive of a specified date in the calendar or need not be ascertainable in the face of the contract deed and may be ascertainable on the happening of a certain contingent event specified in the contract was referred, held that the expression “date fixed for the performance” is a crystallized notion and means that there is a definite date for doing a particular act. In the present case, Sahni and Poddar by stipulating the period of six months for obtaining of

permissions and execution of Sale Deed, clearly fixed a date of six months from 11 th August, 1984 for performance of the remaining obligations under the Agreement to Sell.

36. The question which also arises is, whether the time fixed for performance can be said to be beyond six months also i.e. on the expiry of 60 days from whenever the seller obtained the permissions. This question has arisen because the Agreement does not provide “whichever is earlier”. It is perhaps so because the document was drafted by the parties themselves and indeed is handwritten and without legal assistance.

37. A document has to be interpreted as would have been deemed to be understood and intended by the parties executing the same. The Supreme Court in *Central Bank of India Ltd. v. Hartford Fire Insurance Co. Ltd.* AIR 1965 SC 1288 held that it is the Court’s duty to give effect to the bargain of the parties according to their intention and when that bargain is in writing the intention is to be looked for in the words used unless they are such that one may suspect that they do not convey the intention correctly; if the words are clear, the Court must give effect to the plain meaning of the words. Similarly, in *Keshav Kumar Swarup v. Flowmore Private Limited* (1994) 2 SCC 10 it was held that in interpreting a document the intention of the parties has to be ascertained from the intention asserted therein. If the intent of the parties to the document dated 11th August, 1984 was for the sale to be completed within 60 days of obtaining of permissions, whenever the said permissions may be obtained, whether within one year or two years or more, there was no need for the parties to also stipulate the period of six months. If the Agreement is interpreted as making the date of specific performance dependent upon the date of obtaining the permission, the provision for payment of balance sale consideration within six months would become otiose. It is the settled principle of interpretation of contracts that a document is to be interpreted so as not to make any part of it redundant. Reference in this regard may be made to *Delhi Development Authority v. Durga Chand Kaushish* (1973) 2 SCC 825 reiterating that it is a settled rule of interpretation that if there be admissible two constructions of a document, one of which will give effect to all the clauses therein while the other will render one or more of them nugatory, it is the former that should be adopted. An exhaustive discussion on this subject on a review of plethora of case law is to be also found in the judgment of High Court of Bombay in *Board of Control for Cricket in India v. Punjab National Bank* MANU/MH/2116/2012 where it was concluded that the Court ought to adopt an interpretation which gives full effect to the purport and intent of the document and which gives full and complete effect to the commercial efficacy of the document and does not render any portion of that document otiose or void.

38. The document dated 11th August, 1984, the relevant part whereof is re-produced hereinabove fixed the time of six months for the seller i.e. Poddar to obtain the permissions. The document fixed the same time of six months for payment of the balance sale consideration but alternatively provided that the sale consideration be paid within 60 days of the permissions being obtained. It also makes clear that the balance sale consideration was payable against execution and registration of Sale Deed. The only purport, in my view of providing for the said alternative was that if the permissions to be obtained by the seller were obtained much earlier than six months, the buyer was to become liable to pay the balance sale consideration even earlier than six months.

39. Applying the principles of law aforesaid, there can be no manner of doubt that the time fixed for performance was six months from 11 th August, 1984 i.e. expiring on 10th February, 1985 and the period of limitation of three years would begin to run from that date and would expire on 10 th February, 1988. The suit was filed on 19th April, 1988 and is thus clearly barred by time.

40. The non-obtaining by the seller Poddar of the permissions within the said period of six months, for whatsoever reason it may be, would not in my view extend the commencement of the period of limitation of three years. Sahni as buyer, from non-obtaining of permissions which the seller Poddar had agreed to obtain within six months, ought to have been put to notice that the seller Poddar was refusing to perform his part of the Agreement and the suit ought to have been instituted within three years therefrom. It is no ground that because without such permissions Sale Deed could not be executed, limitation does not begin to run. It has been held in *Vishwa Nath Sharma v. Shyam Shanker Goela* (2007) 10 SCC 595, *K. Raheja Constructions Ltd. v. Alliance Ministries* 1995 Supp. (3) SCC 17 and *Van Vibhag Karamchari Griha Nirman Sahkari Sanstha Maryadit v. Ramesh Chander* (2010) 14 SCC 596 that even where such permissions are to be obtained, the decree for specific performance can be passed directing the seller to take the said permissions and the decree for specific performance is to be made subject to the grant of said permissions.

41. Though normally in regard to contracts relating to sale of immovable properties, time is not considered to be the essence of the contract unless such an intention can be gathered either from the express terms of the contract or impliedly from the intention of the parties as expressed by the terms of the Agreement, however the Supreme Court in *Saradamani Kandappan v. S. Rajalakshmi* (2011) 12 SCC 18 held that precedents from an era, when high inflation was unknown, holding time to be not of the essence of the contract in regard to immovable properties, may no longer apply because the circumstances that existed when the said principle was evolved, no longer exist. It was held that, the principle that time is not of the essence of contracts relating to immovable properties took shape in an era when market value of immovable properties were stable and did not undergo any marked change even over a few years; however there has been a galloping inflation and prices of immovable properties have increased steeply, by leaps and bounds; market values of properties are no longer stable or steady. The Supreme Court further held that such steep increase in prices is a circumstance which makes it inequitable to grant the relief of specific performance where the purchaser does not take steps to complete the sale within the agreed time and in such circumstances a purchaser can no longer take shelter under the principle that time is not of essence in performance of contracts relating to immovable property. It was yet further held that it will be a cruel joke on a vendor, who took an earnest money of say about 10% of the sale price and agreed for three months or four months as the period for performance, to hold that he did not intend that time should be the essence and such an interpretation will result in injustice to such a vendor.

42. In the facts of the present case, the seller Poddar on the expiry of the agreed period of six months, by letters dated 9th February, 1985 and 20th February, 1985 clearly informed the buyer Sahni of being in breach and of the amount paid of Rs.10,000/- being

forfeited. We need not go into the question, whether Poddar was right in taking the said stand or not. Even if Poddar was wrong in taking the said stand, Sahni from the said letters dated 9th February, 1985 and 20th February, 1985 and receipt whereof is not denied, was in the know of Poddar being not ready and willing to perform his part of the Agreement to Sell. For this reason also, in my view the cause of action for instituting a suit for specific performance accrued to Sahni on receipt of the said letter also and the suit is filed beyond three years therefrom also. Even if the stand of Poddar in the said letters were to be wrong, Sahni was required to approach the Court within the period of limitation in this regard. Sahni having not done so, clearly has missed the bus.

43. Sahni, in the plaint, has set-up the case, of the date of performance having been deferred owing to the property agreed to be sold being mortgaged with Oriental Bank of Commerce (OBC) and owing to the said property being attached by the Court. However no evidence to prove such mortgage or attachment has been led. On the contrary Sahni claims to have sent letters dated 22nd February, 1985 (Ex. PW-1/2), 26th February, 1985 (Ex.PW-1/5), 11th March, 1985 (Ex.PW-1/7), 20th May, 1985 (Ex.PW-1/10) calling upon Poddar to complete the transaction and reminding Poddar that the sale was to be completed within six months. The same falsifies the stand of Sahni of the time for completion of sale having been extended for the reason of the property being mortgaged or attached. I may highlight that Sahni does not claim to have paid any part of the agreed sale consideration of Rs.4,70,000/- to OBC on behalf of the Poddar. The claim of Sahni, of the land subject matter of all five transactions being mortgaged with OBC is also belied from the title documents in favour of Poddar/its associates being handed to Sahni at the time of execution of detailed Agreement to Sell in such of the five transactions in which it was executed.

44. That takes me to the document dated 31st July, 1987, being the receipt admittedly issued by Poddar of Rs.15,000/-. The learned Addl. District Judge has held the claim for specific performance to be within limitation owing to the said document also, holding the said payment of Rs.15,000/- to be in continuation of the original Agreement dated 11th April, 1984.

45. A perusal of the plaint does not show Sahni to have pleaded such an acknowledgement of liability to perform the Agreement dated 11 th April, 1984. The learned Addl. District Judge has also noticed the same but has held that the same can be implied. No error can be found with the said reasoning. However what is peculiar is that Sahni did not even plead the document dated 31st July, 1987 and merely pleaded a payment of Rs.15,000/- on 1st July, 1987. Even if the same were to be overlooked, what falls for adjudication is the entitlement of Poddar to on 31st July, 1987 make such an acknowledgment of liability after having, vide Sale Deed dated 28th May, 1986, sold the property to Jajodia.

46. In the receipt dated 31st July, 1987 Poddar unequivocally stated the same to be “in continuation of the receipt dated 11 th August, 1984” and against the subject property but further stated “if the above farm land under any circumstances could not be registered in favour or sold in favour of Shri R.N. Sahni an alternative land measuring 2.01 acres out of 6.5 acres of land sold to Mr. Rahul Khushwaha son of Shri S.J. Khushwaha located on

the main highway NH-8 out of the Khasra No.868/1, 847, 846/2, 887, 848, 849/1. 869/1 or 853". The issuance of the said receipt dated 31 st July, 1987 proved as Ex.PW-1/30 is also preceded by a handwritten note of Poddar addressed to Sahni requesting Sahni to pay the sum of Rs.15,000/- to the bearer thereof and which has been proved as Ex.PW-1/34. Therefrom it is proved that the said payment of Rs.15,000/- was in pursuance to some talk between Poddar and Sahni in pursuance whereof the said sum of Rs.15,000/- was payable by Sahni to Poddar and to collect which amount Poddar sent the bearer of Ex.PW-1/34 to Sahni to collect the amount. Sahni in his evidence has failed to depose as to what the said talk was. Poddar in his examination- in-chief has deposed that Sahni at that time had asked Poddar to persuade Jajodia to transfer the land in favour of Sahni or to sell some other land sold by Poddar to Khushwaha to Sahni and the payment of Rs.15,000/- was in pursuance thereto. The suggestions put by Sahni in cross examination of Poddar to the effect that Sahni was not aware of the Sale Deed in favour of Jajodia with respect to the land are unbelievable. If the conversation in pursuance to which the said sum of Rs.15,000/- was agreed to be paid was of transfer of the subject land in favour of Sahni, the question of the receipt agreeing to transfer alternative land if the subject land could not be registered in favour of Sahni would not have arisen. It is not the case of Sahni that Sahni protested against such language of the receipt dated 31 st July, 1987. Had Sahni not been aware of the possibility of Poddar, inspite of receiving the said sum of Rs.15,000/- being unable to transfer the land agreed to be sold on 11th August, 1984, Sahni would have immediately protested about the contingency mentioned in the receipt.

47. I am therefore of the opinion that the document dated 31 st July, 1987 cannot be said to be an acknowledgment of liability by Poddar to sell the property as agreed to be sold on 11th August, 1984 to Sahni, for the period of limitation to be counted therefrom.

48. The document dated 31st July, 1987 whereunder Poddar received Rs.15,000/- in addition to Rs.10,000/- received earlier for sale of subject property to Sahni, does not reiterate the Agreement dated 11th August, 1984. It constitutes a new agreement between Sahni and Poddar, of promise to sell the land agreed to be sold on 11th August, 1984 and if the same were not possible, alternative land. The suit from which this appeal arises is for specific performance of the document dated 11th August, 1984 and not for specific enforcement of the document dated 11 th August, 1984 read with the document dated 31st July, 1987. In my view, Sahni having agreed to, in the alternative purchase land sold by Poddar to Mr. Rahul Kushwaha, has disentitled himself from seeking specific performance of Agreement to Sell subject land.

49. There is also the aspect of the entitlement of Poddar on 31 st July, 1987 to acknowledge liability to sell property agreed to be sold on 11 th August, 1984; Poddar as aforesaid prior to 31st July, 1987, on 28th May, 1986 had already sold the property to Jajodia and thus was not in a position to make any commitment to Sahni with respect thereto.

50. As far as the reasoning given by the learned Addl. District Judge of the sale in favour of Jajodia being sham and fictitious and Poddar, notwithstanding the execution and registration of the Sale Deed in favour of Jajodia, continuing to be the owner of the land is concerned, the plea in the plaint was of the transfer by Poddar in favour of Jajodia being

“benami” for the reason of being for a paltry consideration of Rs.2.5 lacs though the Agreement to Sell in favour of Sahni was for consideration of Rs.4.70 lacs. Though the plea of benami is prohibited by the Benami Transactions (Prohibition) Act, 1988 and the Ordinance preceding the same, which came into force on 19th May, 1988 however the present suit was instituted prior thereto, on 19th April, 1988. The plea of Sahni, of Poddar, notwithstanding the execution and registration of the Sale Deed in favour of Jajodia, continuing to be the benami owner for the reason of insufficiency of consideration, is in fact not a plea of benami. It is not the case of Sahni that no consideration was paid for the Sale Deed or that the consideration paid of Rs.2.5 lacs also was routed from Poddar to himself only. It is the settled principle of law that insufficiency of consideration is not a ground for voiding a sale as is being sought to be done. Reference if any required in this regard can be made to Hari Ram v. K.L. Gandhi 110 (2004) DLT 190 and Bela Kapoor v. Vandana Kapoor MANU/DE/0734/2013. Also, no issue whatsoever on the said aspect was claimed; else such a plea even otherwise is not maintainable under Sections 91 & 92 of the Indian Evidence Act, 1872.

51. I therefore conclude on the aspect of limitation against Sahni and in favour of Poddar. The suit filed by Sahni for specific performance of the Agreement Dated 11th August, 1984 of sale of immovable property is held to be time barred. The impugned judgment of the learned Addl. District Judge to the said extent is set aside.

52. Though the aforesaid is sufficient for dismissal of the suit for specific performance filed by Sahni and for setting aside of the decree in favour of Sahni and against Poddar for compensation / damages for breach of contract but I find Sahni, on merits also, to be not entitled to the relief of specific performance. Sahni, as aforesaid approached the Court with a case for specific performance pleading that possession of the immovable property agreed to be sold by Poddar to him was handed over to him in pursuance to the Agreement to Sell dated 11th August, 1984. The learned Addl. District Judge has found the said claim of Sahni to be false. The grant of the relief of specific performance is a discretionary one. The Supreme Court as far back as in Madamsetty Satyanarayana v. G. Yelloji Rao AIR 1965 SC 1405 held that under Section 22 of the Specific Relief Act, 1963 relief of specific performance is discretionary, though not arbitrary and discretion must be exercised in accordance with sound and reasonable judicial principles; diverse situations may arise which may induce a Court not to exercise the discretion in favour of the plaintiff. The said situations were left undefined with the reiteration the discretion is not arbitrary but has to be sound and reasonable and to be guided by judicial principles. The same principle was reiterated in R.C. Chandiok v. Chuni Lal Sabharwal (1970) 3 SCC 140 where it was however observed that the conduct of the plaintiff is an important element for consideration in exercise of discretion. Similarly in Lourdu Mari David v. Louis Chinnaya Arogiaswamy (1996) 5 SCC 589, finding the plaintiff in a suit for specific performance to have in the plaint set-up a false case of possession of the property having been delivered to him in pursuance to the Agreement of Sale and further finding the plaintiff to have in the plaint set-up a plea of having informed the subsequent purchaser of the prior Agreement to Sell and which plea was not proved and yet further having claimed a payment which was not made and which plea was also found to be false, held that a party who seeks to avail of the equitable

jurisdiction of the Court and specific performance being equitable relief, must come to the Court with clean hands and a party who makes false allegations does not come with clean hands and is not entitled to the equitable relief. I have in *Rajender Singh Dabas v. Smt. Ramjano* MANU/DE/3004/2013 finding the plaintiff in that case also to be guilty of having taken false pleas and having fabricated document held such plaintiff to be disentitled to the relief of specific performance for this reason only.

53. The counsel for Sahni has however challenged the said finding of the learned Addl. District Judge of Sahni having not been put in possession of the property agreed to be sold in pursuance to the Agreement to Sell. I will now proceed to deal with the said challenge. At the outset, it may be stated that the document dated 11th August, 1984 does not record that Sahni in pursuance thereto had been put into possession of the property as would have ordinarily been done had that been the agreement of the parties. It cannot be lost sight of that Sahni, as on 11th August, 1984, out of the total agreed sale Consideration of Rs.4.70 lacs had paid only Rs.10,000/- which constitutes 2.127% of the total consideration. Experience of life of such transactions shows that possession of the property agreed to be sold is not handed over till, if not the entire, substantial part of the sale consideration is paid.

54. I have perused the testimonies also in this regard and do not find Sahni to have proved being in possession of the property immediately after 11th August, 1984. The argument of the counsel for Sahni is that the subject property is agricultural land governed by the provisions of the Delhi Land Reforms Act, 1954 and Delhi Land Revenue Act, 1954. If that is so then possession of such agricultural land would have been recorded by the Revenue Authorities also on six monthly basis. No evidence of Sahni being so in possession has been led. Though Sahni examined the halka patwari of the area but only on the aspect of the change in khasra number of the subject land. Though he deposed that he commenced construction on the land in the year 1986, however no proof thereof also has been led. In cross examination, he claimed that possession of the entire land subject matter of all five Agreements aforesaid was handed over to him but admitted that possession of land subject matter of two other Agreements, with respect to which detailed Agreements to Sell were executed on 10th August, 1984, was as per the said Agreements. The said Agreements record the factum of possession having been handed over in pursuance thereto. It is thus not as if the parties were not conscious of the factum of delivery of possession being required to be formally recorded in the documents being executed by them. The parties chose to record the factum of delivery of possession in the two detailed Agreements to sell both dated 10th August, 1984 executed just one day prior to the subject Agreement dated 11 th August, 1984. Presumption is that the delivery of possession of the land agreed to be sold under five different Agreements was recorded wherever possession was so handed over and not so recorded where possession was not handed over. In this regard it may also be noticed that under the two Agreements to Sell dated 10th August, 1984 in pursuance to which possession was so delivered, substantial sale consideration had been paid by Sahni to Poddar.

55. Sahni, in cross examination further admitted that there is no document in writing about the possession. The matter is put beyond the pale of controversy from the

contemporaneous correspondence to which attention was invited by the senior counsel for Poddar and to which the counsel for Sahni had no response. Sahni nowhere in the plethora of correspondence relied upon by him has mentioned the factum of having been so put in possession in pursuance to the Agreement to Sell. Sahni vide his letter dated 5th February, 1985 (Ex.PW-1/D1) asked Poddar to provide fencing and polls all around the land as he claimed that Poddar had agreed to do. If possession of the land had been given on 11th August, 1984, the question of Poddar fencing the land would not have arisen. Poddar, in the letters aforesaid alleging failure of Sahni to perform his part of the agreement and cancelling the agreement and forfeiting Rs.10,000/-, did not ask Sahni to deliver back possession of the land as would have been the case had possession been delivered in pursuance to the Agreement to Sell. Similarly Sahni also in response thereto nowhere stated that he was in possession of the land in part performance thereof or that Poddar was not entitled to terminate the agreement for that reason.

56. The falsity of Sahni in pleading delivery of possession in pursuance to the agreement is thus writ large. However the fact remains that Sahni is in possession. It is obvious that Sahni has illegally trespassed on to the property agreed to be purchased by him.

57. The said fact alone would disentitle Sahni from the relief of specific performance.

58. The aspect of readiness and willingness of Sahni to perform his part of the Agreement to Sell has also as aforesaid been decided by the learned Addl. District Judge against Sahni and in favour of Poddar. I have perused the documentary and oral evidence on record in this respect also and do not find any merit in the challenge by Sahni thereto and concur with the reasoning given by the learned Addl. District Judge.

59. It is the admitted position that the parties had about the same time entered into five Agreements qua sale of immovable property; qua three of such transactions, the parties entered into detailed Agreements to Sell whereunder substantial sale consideration was paid and against which physical possession of the property agreed to be sold was delivered, with the balance minuscule sale consideration being payable after the permissions required for execution of the Sale Deed had been obtained. It is the case of Poddar that qua the subject land also a detailed Agreement to Sell was to be executed immediately after 11th August, 1984 and which Sahni failed to do. Undoubtedly the document dated 11th August, 1984 does not provide so. However there is no explanation from Sahni as to why a different modus was agreed for the subject land. Both, Sahni and Poddar seem to have indulged in suppression of true sale consideration, with the detailed formal Agreement to Sell on the basis of which various permissions for sale were to be received not reflecting the entire agreed sale consideration, with the sale consideration so concealed exchanging hands prior to or at the time of execution of the detailed Agreements to Sell.

60. The learned Addl. District Judge is also correct in his finding of Sahni having utterly failed to prove being possessed of and willing to pay the balance sale consideration, even within the time agreed of six months. Though the sale consideration of Rs.4.70 lacs may today appear to be a pittance but we cannot lose sight of the fact of the same being required to be paid nearly 30 years back. Thus Sahni has to be held disentitled to the relief of specific performance on this count also. The Supreme Court in *J.P. Builders v. A. Ramadas Rao* (2011) 1 SCC 429 reiterated that the words "ready and willing" imply that the person

was prepared to carry out the terms of the contract and that the distinction between “readiness” and “willingness” is that the former refers to financial capacity and the latter to the conduct of the plaintiff wanting performance and that the plaintiff must allege and prove a continuous readiness and willingness to perform the contract on his part from the date of the agreement.

61. Irrespective of the aspect of limitation, there is also the aspect of delay and laches on the part of the plaintiff. Sahni as aforesaid, instituted the suit for specific performance of Agreement dated 11th August, 1984 on 19th April, 1988 inspite of the Agreement providing for the sale to be completed within six months therefrom and further inspite of Poddar, whether rightly or wrongly resiling from the Agreement in February, 1985. The Supreme Court in *K.S. Vidyanadam v. Vairavan* (1997) 3 SCC 1, reiterated in *Saradamani Kandappan supra*, has held that Courts will frown upon suits which are not filed immediately after breach/refusal and the fact that limitation is three years does not mean that a purchaser can wait for one or two years to file a suit and obtain specific performance. It was further held that three year period is provided to assist the purchaser in special cases, as where major part of the consideration has been paid and possession delivered in part performance. Applying the said principle also Sahni is not entitled to the relief of specific performance.

62. Once Sahni himself has been held to be not ready and willing to perform his part of the Agreement to Sell, the question of Sahni being still entitled to compensation / damages for breach of contract from Poddar does not arise and the learned Addl. District Judge though ordering so has not given any reasoning whatsoever except for also finding Poddar at fault. However the fault or the conduct of Poddar, howsoever heinous, can still not entitle Sahni to compensation once Sahni himself is found to be in breach of the Agreement. The finding to the said effect of the learned Single Judge is clearly erroneous and cannot be sustained. The Supreme Court in *Jagdish Singh v. Natthu Singh* (1992) 1 SCC 647 held that when the plaintiff by his option has made specific performance impossible, Section 21 of the Specific Relief Act does not entitle him to seek damages and enables award of compensation only in lieu and substitution of specific performance. The High Court of Madras recently in *Ganga Harinarayanan v. K. Pattammal* MANU/TN/0973/2011 held that once it is found that the plaintiff has not approached the Court with clean hands, the question of awarding compensation, by no stretch of imagination or even by phantasmagorical thoughts would arise.

63. I have wondered as to what locus Sahni has to plead that notwithstanding the registered Sale Deed of the land executed by Poddar in favour of Jajodia, Poddar continued to be the owner of the property or that transaction between Poddar and Jajodia is a sham and fictitious one. Sahni as aforesaid was merely an agreement purchaser. An Agreement to Sell does not convey any rights in the property and vests in the agreement purchaser only a right to claim specific performance against the seller. The statute i.e. the Specific Relief Act also vests in such a agreement purchaser a right, if the agreement seller after the date of the Agreement to Sell has conveyed title in the property in favour of another, to seek such right of specific performance against such transferee also. (See *Sunil Kapoor v. Himmat Singh* 167 (2010) DLT 806, SLP (Civil) No.6010/2010 whereagainst was dismissed

on 12th March, 2010). The right of Sahni as agreement purchaser thus was only to claim specific performance against Jajodia also to whom Poddar had conveyed title in the property and I am unable to fathom any law under which Sahni would have locus to challenge the said transaction between Poddar and Jajodia. I therefore do not deem it necessary to go into the said aspect on which the learned Addl. District Judge has spent considerable time.

64. Interestingly there was no claim also in the suit for voiding of the said deed from Poddar to Jajodia. The claim in this regard was to the effect that Sahni is not bound by the said Sale Deed and that Jajodia should also convey to Sahni whatever had been conveyed to her under the Sale Deed registered by Poddar in her favour. Not only so, the learned Addl. District Judge though holding Sahni to be not entitled to specific performance, nevertheless proceeded to cancel the Sale Deed executed by Poddar in favour of Jajodia. The decree to the said effect is clearly illegal and set aside.

65. The learned Additional District Judge has also held Jajodia to be not a bona fide purchaser from Poddar for value who had paid money in good faith and without notice of Agreement to Sell in favour of Sahni. Lengthy arguments were addressed by the counsels also on the said aspect. Though in the light of my finding hereinabove, of Sahni being not entitled to the relief of specific performance against Poddar, the need for considering whether Sahni would be entitled to the relief of specific performance against Jajodia does not arise but I may record that Sahni has not led any evidence whatsoever of knowledge of Jajodia of prior Agreement to Sell of Poddar in favour of Sahni. The only argument of the counsel for Sahni in this regard is of Jajodia having not stepped into the witness box to deny knowledge and Jajodia being presumed to have knowledge from the possession of Sahni of the land. In my opinion, in the facts and circumstances of the case, no such inference can be drawn from non-appearance of Jajodia in the witness box. I am unable to find any proposition of law that there is any such presumption of law on the part of the subsequent purchaser and which is required to be rebutted by stepping into the witness box. The Agreement to Sell in favour of Sahni is not registered, for it to be said that therefrom there was publication thereof. It is also not as if Jajodia otherwise appeared in the witness box but failed to depose on this aspect. The non-appearance in the witness box of Jajodia in the present case is akin to being ex-parte. It was thus for Sahni to lead evidence of such knowledge on the part of Jajodia and which he has failed to do. Jajodia could also have been presumed to have notice of the prior Agreement to Sell in favour of Sahni, if Sahni had got his possession as claimed by him recorded. Sahni did not do so. In the absence of any presumption, such knowledge or notice by Jajodia of the prior Agreement to Sell in favour of Sahni could have been proved only by positive evidence to the said effect and the onus whereof was on Sahni and which he has failed to discharge. The argument of such notice, from Sahni being in possession also loses steam since Sahni has failed to prove that he was so delivered possession in pursuance of Agreement to Sell or was in possession at the time of execution of Sale Deed by Poddar in favour of Jajodia. Else, Sahni has admitted in the plaint of the sale in favour of Jajodia being for consideration; the only argument is of insufficiency of consideration and which has been dealt hereinabove. I may also highlight that I have hereinabove also held that Sahni and Poddar were indulging in suppression of

sale consideration. The sale consideration paid by Sahni to Poddar under the four transactions out of five which fructified is not much higher than the sale consideration paid by Jajodia to Poddar. Thus, therefrom no presumption of knowledge/notice of prior Agreement to Sell in favour of Poddar can be drawn.

66. That leaves the relief given by the learned Addl. District Judge of delivery of possession of land from Sahni who is admittedly in possession thereof to Poddar. Poddar as aforesaid has already sold the land to Jajodia. Poddar had not even claimed the relief of recovery of possession. All that Poddar had stated in his written statement originally filed was that it was reserving the right to claim possession. I do not understand as to in exercise of what power the learned Addl. District Judge granted the relief of delivery of possession of the land by Sahni to Poddar. The only explanation can be that it was a condition to receipt of compensation by Sahni from Poddar. However Sahni has now been held to be not entitled to the said relief of compensation also. I also do not find the plea of Poddar of reserving the right to claim possession to be such as to affect the validity of the sale in favour of Jajodia. Poddar as seller remained bound to perfect the title of the property conveyed to Jajodia and it is well-nigh possible that Poddar was reserving the right in the said context.

67. The claim for recovery of possession against Sahni as aforesaid was of Jajodia. Sahni as aforesaid was merely an agreement purchaser and has failed in his claim for specific performance and has no right to retain possession. The only defence of Sahni to the said aspect is, of the jurisdiction of the Civil Court to entertain a claim for possession being barred.

68. I have perused the written statement filed by Sahni in the suit for possession filed by Jajodia and do not find any plea therein to the effect that the jurisdiction of the Civil Court is barred or to the effect that the land is governed by the Delhi Land Reforms Act, 1954. The counsel for Sahni also admitting the same, referred to the judgment supra to contend that it is a legal issue and can be urged. It is not the case that any issue was claimed on the said aspect or that any arguments on the said aspect were urged before the learned Addl. District Judge. In the absence of any plea and proof, it is not today possible for this Court to form an opinion whether the property, qua which the decree for possession was sought, on the date of institution of the suit or today is governed by the provisions of the Delhi Land Reforms Act, 1954. The said aspect is not such which can be said to be purely legal. I therefore do not find any merit in the said defence also to the claim for possession.

69. Resultantly, the judgment and decree impugned in these appeals is substituted by the following judgment and decree.

A. The suit of Sahni for specific performance is dismissed with costs throughout. Counsel's fee assessed at Rs.35,000/-.

B. The suit of Jajodia for possession is decreed, again with costs throughout. A decree for possession is passed in favour of Jajodia and against Sahni for recovery of possession of land situated in Khasra Nos.693 (4-6) and 694 (4-6) ad measuring 1.80 acres in village Kapashera as per the site plan Annexure-A to the plaint in the suit for possession filed by Jajodia. Counsel's fee assessed at Rs.35,000/-.

Decree sheet be drawn up.

RAJIV SAHAI ENDLAW, J.
JULY 18, 2014.