



REPORTABLE

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NO. 6782 OF 2013

MAHARAJ SINGH & ORS.

...APPELLANTS

VERSUS

**KARAN SINGH (DEAD)
THR. LRS. & ORS.**

...RESPONDENTS

J U D G M E N T

ABHAY S. OKA, J.

1. This appeal is at the instance of the original third, second, and fourth defendants. The first and second respondents are the original plaintiffs. The third respondent is the mother of the deceased original first defendant. For convenience, we are referring to the parties according to their status in the suit.

FACTUAL ASPECT

2. Reference to a few factual aspects will be necessary. The first defendant executed a registered agreement for sale dated 7th December 1981 by which he agreed to sell his Bhumidhari land measuring 2.90 acres of Khasra no. 48 (for short, 'the suit property') at village-Jauniwala, Tehsil-Kashipur, District-Nainital in favour of the plaintiffs for the consideration of Rs.

20,300/-. There was a recital in the registered agreement dated 7th December 1981 (for short, 'the suit agreement') that the first defendant had received a sum of Rs. 7,000/- as advance and the balance consideration was payable at the time of execution of the sale deed. The first defendant agreed to execute the sale deed within three years from the date of the suit agreement. According to the plaintiffs' case, requests were made orally and by sending notices to the first defendant to execute the sale deed. It is pleaded in the plaint that the first defendant refused to accept notices.

3. On 6th September 1983, the first defendant sold 1.60 acres out of the suit property to the second and third defendants by a registered sale deed. By another sale deed dated 12th December 1983, the first defendant sold the remaining part of the suit property to the second to fourth defendants. We must note that the suit was filed on 17th December 1983, and the averments regarding the subsequent alienations were incorporated by the amendment made to the plaint in terms of the order dated 28th July 1984. The case made out in the plaint is that the subsequent sale deeds are collusive. The prayer in the suit was for specific performance of the suit agreement with a direction to the defendants to hand over possession of the suit property to the plaintiffs and to execute a sale deed in respect of the suit property in their favour.

4. The defendants, including the legal representative (Smt. Bhagwati Devi) of the original first defendant, filed separate

written statements. In the written statement filed by the legal representative of the first defendant, it was contended that the suit agreement was fictitious. In the written statement filed by the second and third defendants, it was pleaded that the suit agreement is a forged document which was never to be acted upon. It is pointed out that the first plaintiff - Karan Singh, and the first defendant were relatives. The plaintiffs never paid any money to the first defendant.

5. The first plaintiff was examined as a witness. The second plaintiff, Murari Singh, did not support the first plaintiff. He deposed in favour of the defendants. He stated on oath that the suit agreement was made only to ensure that the first defendant did not alienate the suit land. He stated that the first defendant was his relative. He stated that the first plaintiff was related to him and was a well-known person. The first plaintiff's name was included as the purchaser in the suit agreement to deter the first defendant. He stated that he and the first plaintiff never demanded execution of the sale deed from the first defendant. The second plaintiff proceeded to state that he had not filed the suit, and the signature shown to him on the vakalatnama was of someone else. Subsequently, the second plaintiff filed an affidavit stating that the first defendant had several bad habits and, therefore, there was an apprehension that he would sell the suit property.

FINDINGS OF THE COURTS

6. The Trial Court held that the execution of the suit agreement was proved. Relying upon Section 92 of the Indian

Evidence Act, 1872 (for short, 'the Evidence Act'), the learned Trial Judge held that evidence contrary to the contents of the suit agreement could not be adduced and was not admissible in evidence. The learned Trial Judge held that in view of the provisions of the Uttar Pradesh Civil Laws (Reforms and Amendment) Act, 1976, which came into force on 31st December 1976, an agreement for sale was compulsorily registrable in the State at the relevant time. Therefore, the learned Trial Judge held that in view of the explanation to Section 3 of the Transfer of Property Act, 1882 (for short, 'the TP Act'), the second to fourth defendants shall be deemed to have a notice of the execution of the suit agreement. The learned Judge held that it was a duty of the second to fourth defendants to take a search in the office of the Sub-Registrar to ascertain whether there was any prior transfer. Therefore, the learned Trial judge held that the second to fourth defendants could not be held to be *bona fide* purchasers for value received. The finding on the issue of readiness and willingness was also recorded in favour of the plaintiffs. Therefore, the Trial Court passed a decree for the specific performance, directing all the defendants to execute the sale deed and deliver possession of the suit property to the plaintiffs. In an appeal preferred by the second to fourth defendants, the Additional District Judge, Nainital, confirmed all the findings of the Trial Court. The Additional District Judge dismissed the appeal. A second appeal was preferred by the second to fourth respondents. The second appeal has been dismissed by the impugned judgment.

ORDERS OF THIS COURT

7. On 26th October 2010, this Court issued notice. The order of this Court reads thus:

“Mr. K.B. Sinha, senior advocate appearing for the petitioners submits that after coming into force of the Uttaranchal (The Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950) (Adaptation and Modification Order, 2001) (Amendment) Act, 2003, the sale of the suit land in terms of the decrees of the Court would be violative of the provisions of the Act because the plaintiff is not an agriculturist.

Issue notice.

In the meanwhile, there shall be stay of operation of the impugned decree.”

On 12th August 2013, leave was granted. This Court granted a stay to the operation of the impugned decrees on 26th October 2010.

SUBMISSIONS

8. The learned senior counsel appearing for the second to fourth defendants submitted that the three Courts refused to consider the submission that the suit agreement was sham and bogus. By pointing out Sections 91 and 92 of the Evidence Act, he urged that the provisions did not prevent the defendants from leading evidence to show that the suit agreement was bogus or sham. He relied on the Privy Council's decision in the

case of ***Tyagaraja Mudaliyar and Anr. v. Vedathanni***¹. He submitted that Sections 91 and 92 of the Evidence Act do not exclude evidence on the question of whether the parties had agreed to contract on the terms set forth in the document. He also relied upon a decision of this Court in the case of ***Krishnabai Bhritar Ganpatrao Deshmukh v. Appasaheb Tuljaramarao Nimbalkar & Ors.***². He submitted that it was brought on record in the depositions of the second plaintiff who was the uncle of the first defendant, and Bhagwati Devi, the mother of the first defendant, that the first defendant had many vices. Bhagwati Devi was apprehensive that the first defendant would sell the property to fund his bad lifestyle. The second plaintiff, Murari Singh, was her brother; therefore, she approached Murari Singh to prevent the first defendant from selling the suit property. The second plaintiff, Murari Singh, brought his friend, the first plaintiff. Thereafter, the suit agreement was executed to deter the first defendant from selling the property. He submitted the specific contention that the suit agreement was a sham document which was not to be acted upon has been brushed aside by the three Courts.

9. He submitted that the first plaintiff filed the suit within a few days after the first defendant executed a sale deed on 12th December 1983 in favour of the second to fourth defendants. The learned senior counsel further submitted that the second to fourth defendants are *bona-fide* purchasers as the suit

¹ ILR (1936) 59 Mad 446 : 1935 SCC OnLine PC 68

² (1979) 4 SCC 60

agreement is sham and bogus. He submitted that the defence that the plaintiffs were not ready and willing to perform their part of the suit agreement is also available to the defendants claiming to be subsequent purchasers through the vendor. The learned senior counsel relied upon a decision of this Court in the case of **B. Vijaya Bharathi v. P. Savitri & Ors.**³, and submitted that the plaintiffs are disentitled to relief of specific performance as they have not prayed in the plaint for setting aside or cancelling the subsequent sale deeds. Learned senior counsel also relied upon Section 154-B of the Uttaranchal (The Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950) (Adaption and Modification order, 2001) (Amendment) Ordinance, 2003 (for short, ‘the Zamindari Abolition Act’). He submitted that as the 1st plaintiff is not an agriculturist within the meaning of Section 3(a) thereof, in view of Section 154-B, a sale deed cannot be executed in terms of the suit agreement. He also pointed out that the legal representatives of the first respondent (first Plaintiff) have not chosen to contest the appeal despite service of notice. Therefore, they are not interested in contesting the appeal.

QUESTIONS FOR CONSIDERATION

10. After having considered the submissions of the learned counsel appearing for the appellants, we find that the following questions arise:

- a)** Can the contention that the suit agreement was sham and bogus and not intended to be acted upon be allowed

³ (2018) 11 SCC 761

to be raised notwithstanding Sections 91 and 92 of the Evidence Act?

- b)** Was the suit agreement sham and bogus and not intended to be acted upon?
- c)** Were the second to fourth defendants *bona fide* purchasers for value without notice of the suit agreement?
- d)** Whether, in view of the decision of this Court in the case of ***B. Vijaya Bharathi***³, the plaintiffs are not entitled to a decree of specific performance in the absence of any prayer for cancellation of the two subsequent sale deeds?
- e)** Do the provisions of the Zamindari Abolition Act create a bar on the execution of the sale deed in terms of the suit agreement?
- f)** Whether the plaintiffs are entitled to a decree of specific performance?

FIRST TWO QUESTIONS – (a) AND (b)

11. Now, we come to the first two questions. Right from the decision of the Privy Council in the case of ***Tyagaraja Mudaliyar***¹ the law is well settled. Section 91 of the Evidence Act excludes oral evidence of the terms of the written document by requiring those terms to be proved by the document itself. Section 92 excludes oral evidence for contradicting, varying, adding to or subtracting to such terms. These two sections do not prevent parties from adducing evidence on the issue of

whether the parties to the documents had agreed to contract on the terms set forth in the document.

12. Coming to the facts of the case, firstly, we must refer to the pleadings of the legal representative of the first defendant. In paragraph 11 of her written statement, she raised the following contention:

“.....

11. That the real facts are that plaintiff Murari Singh is the brother of answering respondent and Karan Singh is his friend. So, under fear and making the pressure on Preetam Singh, a fictitious agreement was prepared by plaintiff Murari Singh without any consideration in order to deter late Preetam Singh, so that the should not sale the land. Neither this agreement was acted upon nor was disclosed any time. The said amount for consideration, written in the agreement, is shown at very low price from the market price.

.....”

Thus, the legal representative of the first defendant did not plead that the first defendant was addicted to several vices and that to prevent him from selling the suit property for supporting his bad lifestyle, the suit agreement was executed. It is merely stated that the second plaintiff prepared a fictitious agreement without any consideration to deter the first defendant from selling the land. It is not pleaded that as the first plaintiff was an influential person, he was brought into the picture to deter

the first defendant. The second and third defendants filed a written statement. The contention raised by them in the written statement is entirely different. In paragraph 12 of the written statement, they pleaded thus:

“.....

12. That the alleged agreement to sale dated 17.12.1981 is a forged document and was never acted upon. The plaintiff no. 1 and Sh. Pritam Singh are relative to each other. The plaintiffs are the resident of some other districts. They never paid any money. They got prepared a forged documents colluding with some persons of their party. The agreement to sale is illegal and the plaintiffs are not entitled of any relief on the basis of this forged document.

.....”

The legal representative of the first defendant did not dispute that the first defendant signed the agreement. However, the other defendants raised a contention that the suit agreement was a forged document. The second to fourth defendants did not plead anything about the object of getting the agreement for sale executed from the first defendant. The case that the first defendant was addicted to vices and that with a view to deter him from selling the suit property, the agreement for sale was executed, was pleaded for the first time by the mother of the first defendant in her evidence. Even the allegation that the first plaintiff was joined as a purchaser to put pressure on the deceased - the first defendant was made by her for the first time

in her evidence. Thus, the contention that the deceased-first defendant was addicted to vices was never raised in the written statements and the same has come by way of an afterthought in the evidence of the mother of the first defendant. Moreover, the stand of the second to fourth defendants in their written statement is that the suit agreement was forged and was prepared by the plaintiffs and some persons of their party. Therefore, in the facts of the case, it is very difficult to accept the contention that the suit agreement was got executed from the first defendant with the object to deter him from selling the suit property to meet the demands of his bad lifestyle. Hence, the suit agreement cannot be held as bogus or sham.

ON QUESTION – (c)

13. The three Courts concurrently found that under the Uttar Pradesh Civil Laws (Reforms and Amendment) Act 1976, clause (v) of Section 17(2) of the Registration Act 1908 was amended, which made an agreement for the sale of an immovable property, a compulsorily registerable document in the State. On this aspect, no arguments have been canvassed by the appellants. Therefore, in view of explanation 1 to Section 3 of the TP Act, the second to fourth defendants shall be deemed to have knowledge of the suit agreement, which was duly registered. It cannot be said that the second to fourth defendants had no knowledge of the suit agreement in view of the constructive notice. It is not their case that they took a search in the office of the Sub-Registrar before getting the sale deeds in their favour. Hence, it cannot be said that they paid

money in good faith to the first Defendant. Therefore, the second to fourth defendants can never be held to be *bona-fide* purchasers who have paid consideration in good faith without the notice of the suit agreement.

ON QUESTION (d)

14. Now, we deal with another argument that the plaintiffs ought to have prayed in the suit to cancel the subsequent sale deeds executed by the first defendant. On this aspect, the law has been laid down by a Bench of three Hon'ble Judges of this Court in the case of ***Lala Durga Prasad & Ors. v. Lala Deep Chand & Ors.***⁴. Paragraphs 40 to 42 of the said decision read thus:

“40. First, we reach the position that the title to the property has validly passed from the vendor and resides in the subsequent transferee. The sale to him is not void but only voidable at the option of the earlier “contractor”. As the title no longer rests in the vendor it would be illogical from a conveyancing point of view to compel him to convey to the plaintiff unless steps are taken to re-vest the title in him either by cancellation of the subsequent sale or by reconveyance from the subsequent purchaser to him. We do not know of any case in which a reconveyance to the vendor was ordered but Sulaiman, C.J. adopted the other course in *Kali Charan Singh v. Janak Deo Singh* [*Kali Charan Singh v. Janak Deo Singh*, AIR 1932 All 694 : 1932 SCC OnLine All 154] . He directed cancellation of the subsequent sale

⁴ (1953) 2 SCC 509

and conveyance to the plaintiff by the vendor in accordance with the contract of sale of which the plaintiff sought specific performance. But though this sounds logical the objection to it is that it might bring in its train complications between the vendor and the subsequent purchaser. There may be covenants in the deed between them which it would be inequitable to disturb by cancellation of their deed. Accordingly, we do not think that is a desirable solution.

41. We are not enamoured of the next alternative either, namely, conveyance by the subsequent purchaser alone to the plaintiff. It is true that would have the effect of vesting the title to the property in the plaintiff but it might be inequitable to compel the subsequent transferee to enter into terms and covenants in the vendor's agreement with the plaintiff to which he would never have agreed had he been a free agent; and if the original contract is varied by altering or omitting such terms the court will be remaking the contract, a thing it has no power to do; and in any case it will no longer be specifically enforcing the original contract but another and different one.

42. In our opinion, the proper form of decree is to direct specific performance of the contract between the vendor and the plaintiff and direct the subsequent transferee to join in the conveyance so as to pass on the title which resides in him to the plaintiff. He does not join in any special covenants made between the plaintiff and his vendor; all he does is to pass on his title

to the plaintiff. This was the course followed by the Calcutta High Court in *Kafiladdin v. Samiraddin* [*Kafiladdin v. Samiraddin*, AIR 1931 Cal 67 : 1930 SCC OnLine Cal 46] and appears to be the English practice. See *Fry on Specific Performance*, 6th Edn., p.90, Para207;also *Potter v. Sanders* [*Potter v. Sanders*, (1846) 6 Hare 1 : 67 ER 1057] . We direct accordingly.”

(emphasis added)

15. Reliance is placed by the appellants on the decision of this Court in the case of ***B. Vijaya Bharathi***³. In paragraph 17 of the said decision, this Court held thus:

“17. It must also be noted that though aware of two conveyances of the same property, the plaintiff did not ask for their cancellation. This again, would stand in the way of a decree of specific performance for unless the sale made by Defendant 1 to Defendant 2, and thereafter by Defendant 2 to Defendant 3 are set aside, no decree for specific performance could possibly follow. While Mr Rao may be right in stating that mere delay without more would not disentitle his client to the relief of specific performance, for the reasons stated above, we find that this is not such a case. The High Court was clearly right in finding that the bar of Section 16(c) was squarely attracted on the facts of the present case, and that therefore, the fact that Defendants 2 and 3 may not be bona fide purchasers would not

come in the way of stating that such suit must be dismissed at the threshold because of lack of readiness and willingness, which is a basic condition for the grant of specific performance.”

(emphasis added)

A bench of two Hon'ble Judges has rendered this decision. Unfortunately, the attention of the Bench was not invited to binding precedent in the form of a decision of a larger bench in the case of *Lala Durga Prasad & Ors.*⁴ Hence, the decision in the case of *B. Vijaya Bharathi*³ is not a binding precedent. Therefore, there was no requirement to make a prayer in the plaint for cancellation or setting aside the subsequent sale deeds.

16. Clause (a) to (c) of Section 19 of the Specific Relief Act read thus:

“19. Relief against parties and persons claiming under them by subsequent title.—

Except as otherwise provided by this Chapter, **specific performance of a contract may be enforced against—**

(a) either party thereto;

(b) any other person claiming under him by a title arising subsequently to the contract, except a transferee for value who has paid his money in good faith and without notice of the original contract;

(c) any person claiming under a title which, though prior to the contract and known to

the plaintiff, might have been displaced by the defendant;

(d).....

(e).....”

(emphasis added)

In view of clause (b) of Section 19, the defendants who are claiming under the sale deeds executed after the execution of the suit agreement can be subjected to a decree of specific performance as the suit agreement can be enforced specifically against such defendants unless they are *bona-fide* purchasers without the notice of the original contract. When, in a given case, the defendants, who are subsequent purchasers, fail to prove that they entered into the sale deed in good faith and without notice of the suit agreement, in view of Section 19(b), a decree for specific performance can be passed against such defendants. Therefore, in such a case where Section 19(b) is applicable, under the decree of specific performance, the subsequent purchasers can be directed to execute the sale deed along with the original vendor. There is no necessity to pray for the cancellation of the subsequent sale deeds.

ON QUESTION – (e)

17. We have perused Section 154-B of the Zamindari Abolition Act. Sub-section (1) prohibits the sale or transfer of agricultural lands to a person who is not an agriculturalist. Clause (h) of sub-section (2) of Section 154-B permits the sale of agricultural land to a non-agriculturalist with the permission of the State Government for the purposes specified in clause (i)

to (v) of clause (h). What is prohibited is the sale of agricultural land to a non-agriculturalist. In view of Section 54 of the TP Act, an agreement for sale does not transfer the property subject matter of the agreement to the purchaser. It does not create any interest in the property subject matter of the agreement. Therefore, the embargo created by sub-section (1) of Section 154-B will apply only to the execution of the sale deed and not to the execution of the agreement for sale.

18. Now the question is whether the vendor and the persons claiming through him can be directed to apply for permission in accordance with clause (h) of sub-section (2) of Section 154-B to sell and whether a decree for execution of the sale deed can be made contingent upon the grant of permission to sell. The law on this aspect is no longer *res integra*. In the case of ***Rojasara Ramjibhai Dahyabhai v. Jani Narottamdas Lallubhai and another***⁵, in paragraphs 12 to 14, this Court held thus:

“12. Although Rana Mohabat Singh having failed to fulfil the terms of his contract with the appellant and execute a sale deed in his favour might have rendered the contract between them incapable of performance, but with the extinction of the title of Rana Mohabat Singh and the conferral of the rights of an occupant on the appellant, the property became transferable subject, of course, to the express covenant on the part of the appellant to do all things necessary to give effect to the agreement. Here, the suit banakhat (Ex. 25) embodies an express covenant to that effect.

⁵ (1986) 3 SCC 300

There is always in such contracts an implied covenant on the part of the vendor to do all things necessary to give effect to the agreement, including the obtaining of the permission for the transfer of the property. The principles on which a term of this nature may be implied in contracts are well-settled. It is enough to refer to Halsbury's Laws of England, Vol. 8, 3rd Edn., p. 121 where the principles are summarised as follows:

“In construing a contract, a term or condition not expressly stated may, under certain circumstances be implied by the court, if it is clear from the nature of the transaction or from something actually found in the document that the contracting parties must have intended such a term or condition to be a part of the agreement between them. Such an implication must in all cases be founded on the presumed intention of the parties and upon reason, and will only be made when it is necessary in order to give the transaction that efficacy that both parties must have intended it to have, and to prevent such a failure of consideration as could not have been within the contemplation of the parties.”

Chitty on Contracts Vol. 1, 23rd Edn., paras 694-95 points out that a term would be implied if it is necessary in the business sense, to give efficacy to the contract.

13. In this context, reference may be made to the decision of the Privy Council in *Motilal v. Nanhelal* [AIR 1930 PC 287 : (1930) 57 IA 333] . There, the facts were these. In that case, the plaintiff Mst Jankibai entered into an agreement to purchase from Rajbahadur Seth Jiwandas of Jabalpur four annas proprietary share of Mauja Raisalpur

together with the sir and khudkast lands appurtenant thereto, with cultivating rights in the sir lands. The property was subject to the provisions of the Central Provinces Tenancy Act, 1920. She filed a suit for specific performance of the said contract. The Privy Council held that the contract was for a transfer of the sir lands without reservation of the right of occupancy, and that the sanction of the Revenue Officer to the transfer was necessary under Section 50(1) of the Act, which was in these terms:

“50. (1) If a proprietor desires to transfer the proprietary rights in any portion of his sir land without reservation of the right of occupancy specified in Section 49, he may apply to a revenue-officer and, if such revenue-officer is satisfied that the transferor is not wholly or mainly an agriculturist, or that the property is self-acquired or has been acquired within the twenty years last preceding, he shall sanction the transfer.”

14. It was contended before the Privy Council that a decree for specific performance of the agreement of sale could not be made, because such performance would necessitate an application by or on behalf of the vendor to the Revenue Officer for sanction to transfer the cultivating rights in the sir land, and that the court had no jurisdiction to require the vendor to make such an application. In repelling the contention, the Privy Council observed that in view of their construction of the agreement, namely, that the vendor agreed to transfer the cultivating rights in the sir land:

“There was, in Their Lordships' opinion, an implied covenant on the part of the vendor to do all things necessary to effect such

transfer, which would include an application to the Revenue Officer to sanction the transfer.”

It was further observed that it was not necessary for their Lordships to decide whether in that case the application for sanction to transfer must succeed, but that it was material to mention that no facts were brought to their Lordships' notice which would go to show that there was any reason why such sanction should not be granted. **After making the said observations, the Privy Council held that in those circumstances the court had jurisdiction to enforce the contract under the Specific Relief Act, 1877 and Order 21, Rule 35 of the Code of Civil Procedure, 1908 by a decree ordering the vendor to apply for sanction and to execute a conveyance on receipt of such sanction. The decision of the Privy Council in Motilal v. Nanhelal [AIR 1930 PC 287 : (1930) 57 IA 333] therefore is an authority for the proposition that if the vendor agrees to sell the property which can be transferred only with the sanction of some government authority, the court has jurisdiction to order the vendor to apply to the authority within a specified period, and if the sanction is forthcoming to convey to the purchaser within a certain time. See also Chandnee Widya Vati Madden v. C.L. Katial [AIR 1964 SC 978 : (1964) 2 SCR 495] and R.C. Chandiook v. Chuni Lal Sabharwal [(1970) 3 SCC 140 : AIR 1971 SC 1238 : (1971) 2 SCR 573] where this Court following the Privy Council decision in Motilal v. Nanhelal case [AIR 1930 PC 287 : (1930) 57 IA 333] reiterated the same principle.”**

(emphasis added)

Hence, a decree enjoining the defendants to obtain permission to sell the suit property can be passed as it is their implied obligation to do so. A decree for the specific performance can be passed contingent upon the grant of the permission.

ON QUESTION – (f)

19. Now, the question is whether the plaintiffs were entitled to a decree for specific performance. In his deposition, the first plaintiff has proved the service of notice of demand to the first defendant. The suit is filed within limitation, and the defendants did not raise a plea of delay and laches. There are concurrent findings of the three Courts on the issue of the readiness and willingness shown by the first plaintiff. There is no reason to disturb the said findings. Now, the question is, what is the effect of the failure of the second plaintiff to support the first plaintiff and his conduct of supporting the defendants? In the facts of the case, the answer lies in the submissions made by the second to fourth defendants before the High Court. In paragraph 9 of the judgment, the High Court has recorded the following submissions made by the counsel for the second to fourth defendants:

“9. The learned senior counsel for the appellants submitted that the plaintiff no.2 Murari Singh did not file the suit nor had signed the vakalatnama and that the said plaintiff had admitted this fact in his deposition, consequently, the suit was not maintainable. **It was further submitted that the percentage of share between the**

plaintiffs were not defined in the agreement to sell and, consequently, under Section 45 of the Transfer of Property Act, the plaintiffs would be deemed to have equal shares, namely, 50 percent. The learned senior counsel for the appellants contended that since Murari Singh did not institute the suit, the decree for specific performance for the whole land, which was undivided could not have been decreed by the trial court and, consequently, to that extent, the decree passed by the trial court was erroneous.”
(emphasis added)

20. In our view, as the second plaintiff was not interested in getting the specific performance, the decree ought to have been restricted to the undivided one-half share in the suit property in favour of only the first plaintiff.

21. Accordingly, we partly allow the appeal by passing the following order:

(a) We modify the impugned decree by directing the legal representative of the first defendant and second to fourth defendants to execute a sale deed in favour of the first plaintiff (Karan Singh) only to the extent of one half undivided share in the suit property;

(b) The defendants shall join the first plaintiff in applying to the State Government/Competent Authority for the grant of permission under clause (h) of sub-section (2) of Section 154-B of the Zamindari Abolition Act to sell the

one half-undivided share in the suit land to the first plaintiff within two months from today. It shall be the obligation of the defendants to apply for the permission and to do all such things which are necessary to get the permission;

(c) If the defendants or any of them do not sign and file the application with relevant documents within the period mentioned above of two months, the executing Court shall appoint a Court Commissioner to sign and file the application on their behalf and to do all such things which are necessary to get the permission;

(d) If the application for grant of permission is rejected, it will be open to the first plaintiff to challenge the order of rejection in accordance with law. If the application for grant of permission is finally rejected, there shall be a decree for refund of the sum of Rs. 7,000/- against the legal representative of the first defendant together with interest thereon at the rate of 8 per cent per annum from the date of filing of the suit till the realisation. However, her liability shall be restricted to the extent of the estate of the first defendant inherited by her;

(e) If the State Government grants permission, the sale deed shall be executed in terms of clause (a) by all the defendants within three months from the date of grant of the permission;

- (f) The suit stands dismissed as far as the second plaintiff is concerned;
- (g) The impugned decree stands modified accordingly;
- (h) Even if a sale deed is executed in favour of the first plaintiff in respect of the one-half undivided share in the suit property, he will not be entitled to seek possession in the execution of this decree as he will be at liberty to file a suit for general partition;
- (i) Accordingly, the appeal is partly allowed with no orders as to cost.

.....J.
(Abhay S. Oka)

.....J.
(Sanjay Karol)

**New Delhi;
July 09, 2024.**