Before Rajive Bhalla, J.

RAVINDER KUMAR AND OTHERS,—*Defendant/Appellants*

versus

HARCHARAN SINGH,—*Plaintiff/Respondent*

R.S.A.. No. 260 of 1995

2nd July, 2008

Code of Civil Procedure, 1908—Urban Land (Ceiling and Regulation) Act, 1976—Agreement to sell—Permission to execute sale deed declined by Authorities under 1976 Act—Allegations of conspiracy, connivance, collusion and mala fide on part of appellants with officials of department—Absence of pleadings or evidence establishing existence of a conspiracy or of connivance—No fault found with appellants in refusing to execute sale deed—Discretion exercised by first appellate Court in decreeing suit arbitrary and unjust—Appeal allowed, judgment and decree passed by 1st Appellate Court set aside.

Held, that an allegation of a finding of conspiracy, connivance, collusion or *mala fide* etc. must be founded upon specific, cogent, credible and reliable pleadings supported by unimpeachable evidence. Mere conjectures, surmises or an inference drawn from insufficient pleadings and or evidence would not suffice. It is true that evidence of conspiracy and connivance is rarely direct and is more often than not a matter of inference. However, this does not absolve a person levelling such allegations of his primary obligation to plead and establish the ingredients of connivance and the existence of a conspiracy. Findings of conspiracy and connivance being serious, may in a given circumstance entail penal consequences and must, therefore, be based upon specific pleadings supported by cogent evidence and if not so based may be held to be illegal, perverse and void.

(Para 34)

Further held, that the discretion exercised by the first appellate Court in decreeing the suit was arbitrary and unjust. As the parties

genuinely believeed that the Urban Land Ceiling Act was applicable, no fault could be found with the appellants in refusing to execute the sale deed, after their application was rejected, whether the Act was applicable or not is secondary. Errors of law or of fact on the part of both parties cannot punish one of them. Consequently. it is held that the first appellate Court was not justified in allowing the appeal and reversing the judgment of the trial Court and decreeing the suit for specific performance.

(Para 58)

M. S. Khaira, Advocate with Ms. Anjali Kukkar, Advocate *for the appellants.*

Ashok Aggarwal, Sr. Advocate with Alok Jain, Advocate *for the respondents.*

RAJIVE BHALLA, J

(1) By way of this Regular Second Appeal, the appellants impugn the judgment and decree, dated 8th Novebmer, 1994, passed by the Additional District Judge, Ludhiana, decreeing the suit, filed by the respondent, and setting aside the judgment and decree, dated 21st January, 1991, passed by the Sub-Judge Ist Class, Ludhiana, whereby the suit was dismissed.

(2) The plaintiff-respondent filed a suit seeking possession of the property in dispute by way of specific performance of an agreement to sell, dated 12th December, 1980. In the alternative, he prayed for the grant of a decree for recovery of Rs. 80,000, Rs. 40,000 being the earnest money and Rs. 40,000 as damages. The defendants/appellants entered into an agreement to sell, dated 12th December, 1980 with the respondent/plaintiff, agreeing to sell land measuring 26 kanals 10 marlas, situated in Ludhiana @ Rs. 18 per square yard. The total sale consideration was fixed at Rs. 2,88,540. A sum of Rs. 40,000 was received by the appellants as earnest money. As per clause II of the agreement, the appellants were required to execute the sale deed, within a period of 15 days from the date of receipt of permission to sell land from the competent authority under the Urban Land (Ceiling and

Regulation) Act, 1976 (for short herein after referred to as "the Urban Land Ceiling Act"). It is averred in the plaint that as the appellants delayed the execution of the sale deed, a registered notice, dated 25th February, 1981 was served upon the appellants to complete necessary formalities under the Urban Land Ceiling Act and to intimate the date and time as well as the place for execution of the sale deed. It is also averred that the appellants, instead of replying to the aforementioned notice, sent a notice, dated 4th June, 1981 informing the respondent that permission to sell the aforementioned property had been declined by the Urban Land Ceiling Officer, Ludhiana,—*vide* his letter No. 1352, dated 27th May, 1981 and as they could not execute the sale deed, the appellants,—*vide* letter, dated 31st October, 1981, returned the earnest money of Rs. 40,000 by way of demand draft No. 41/10851, dated 29th October, 1981.

(3) In response to the averments in the plaint, the appellants/ defendants filed their written statement pleading that both parties had specifically agreed that the sale deed would be executed within 15 days from the receipt of permission, under the Urban Land Ceiling Act. As permission to execute the sale deed was declined,—*vide* letter, dated 27th May, 1981, the appellants were not in a position to execute the sale deed and, therefore, within their rights in refusing to execute the sale deed. It was further asserted that as the appellants were not at fault, the suit be dismissed, as the sale deed had been rendered inexecutable.

(4) The respondent/plaintiff filed a replication to the written statement, whereafter the trial Court framed the following issues :—

"(1) Whether the plaintiff has been ready and willing to perform his part of the contract ? OPP

(2) Whether the plaintiff is estopped by his act and conduct from filing the present suit ? OPP

(3) Whether the plaintiff is entitled to the specific performance of the agreement, dated 12th December, 1980 ? OPP

(4) Whether the suit for specific performance is not maintainable as alleged in the preliminary objection No. 1 ? OPP

(4A) Whether the plaintiff is entitled to the recovery of Rs. 80,000 as an alternative remedy ? OPP

(5) After the parties led their evidence, the trial Court,—vide judgment and decree, dated 21st January, 1991, declined the prayer for specific performance but accepted the prayer with respect to damages and decreed the suit for recovery of a sum of Rs. 48,800 in favour of the respondent. The trial Court held that parties to the suit were bound by clause II of the agreement which required the defendants/appellants to obtain permission under the Urban Land Ceiling Act, before executing the sale deed. It was also held that the disputed land was covered by the provisions of the Urban Land Ceiling Act, and as permission for sale of the land in dispute was declined, the agreement to sell had become a nullity and could, threfore, not be enforced. As regards, the plaintiff's contention that the land in dispute did not fall within the definition of urban land, as it was being used for agricultural purposes, the trial Court rejected this contention.

(6) Aggrieved by the aforementioned judgment and decree, the respondent/plaintiff filed an appeal. The Additional District Judge, Ludhaina,—vide judgment and decree, dated 8th November, 1994, accepted the appeal, reversed the judgment and decree, passed by the trial Court, and decreed the suit for specific performance.

(7) The first appellate Court held that as the Urban Land Ceiling Act was not applicable, clause II of the agreement, requiring the appellants to obtain permission, under the Urban Land Ceiling Act was a nullity and did not bind the parties. It was also held that the appellants connived and conspired with the officers of the Urban Land Ceiling Department to procure an order, rejecting permission to sell land, as the application was filed, without associating the respondent. A finding was also returned that the order of rejection was obtained with the mala fide intention of evading execution of the sale deed by any means. The first appellate Court also held that as the agreement stood proved, there

was no reason to accept the appellants' assertion that the discretionary relief of specific performance be declined on account of sharp increase in prices after the execution of the agreement to sell.

(8) Counsel for the appellants vehemently asserts that the findings, recorded by the first appellate Court, are factually incorrect and legally perverse. The first appellate court has ignored the pleadings, material evidence and its findings are based upon non-existent pleadings and evidence. *Vide* notice, dated 25th February, 1981 (Ex.P3), the respondent had called upon the appellants to obtain permission under the Urban Land Ceiling Act forthwith and inform him of its outcome. In compliance with the aforementioned demand, the appellants applied for permission to the Urban Land Ceiling Department. The Department rejected the application, which fact was, admittedly, communicated to the respondent. The appellants thereafter refunded the amount of earnest money and were, therefore, justified in taking a stand that they were not obliged to execute the sale deed and the suit for specific performance should therefore have not been decreed.

(9) It is further submitted that the plaint is devoid of any averments of conspiracy or connivance on the part of the appellants with officials of the department to procure and order of rejection. The respondents have not adduced any evidence to establish the ingredients of a conspiracy, connivance or collusion. The learned first appellate Court ignored the absence of pleadings and evidence while returning a finding that the appellants conspired and connived with the officials of the department in procuring an order of rejection. It is further argued that during cross-examination of the witnesses, who appeared on behalf of the department, no question was asked as to the conspiracy or connivance with the appellants. The first appellate Court also ignored the legal notice and despite the absence of any pleadings or evidence, proceeded to hold that the appellants conspired and connived with the department to procure an order of rejection.

(10) It is further argued that the true question that required adjudication was not the legality of clause II of the agreement or the applicability of the Urban Land Ceiling Act but whether the appellants, in view of the facts and circumstances of the present case, were justified

in believing that they were statutorily barred from executing the sale deed and were, therefore, justified in communicating their refusal to do so and returning the earnest money. It is further contended that the appellants obeyed their contractual obligations, complied with the demand, raised in the notice, Ex.P3, directing the appellants to obtain permission and, therefore, as permission was declined, it is entirely irrelevant whether clause II of the agreement is void or voidable, and/ or an error of law or of fact. From the facts of the present controversy, it is apparent that at best both parties committed an error as regards the applicability of the Urban Land Ceiling Act. The learned first appellate Court therefore, committed a fundamental error of jurisdiction in holding that the appellants connived and conspired with the authorities of the Urban Land Ceiling Department to evade the execution of the sale deed.

(11) It is further submitted that the Specific Relief Act incorporates an equitable discretionary relief, adjudication whereof is governed by the provisions of the Specific Relief Act. The facts of the instant case required the appellate Court to adjudge and balance equities between the parties, but the appellate Court disregarded the principles of the aforementioned statute and proceeded to mechanically set aside the judgment, passed by the trial Court and decree the suit for specific performance.

(12) The appellate Court assumed the jurisdiction of an appellate authority under the Urban Land Ceiling Act and proceeded to hold that the order rejecting the appellants' prayer for permission to sell the property was illegal and void. The order, if illegal, could only be challenged before the authorities under the Urban Land Ceiling Act and even otherwise as no challenge was laid to the legality of the order, the first appellate Court had no jurisdiction to hold that the order was illegal.

(13) Another argument, pressed into service, by counsel for the appellants, is that the first appellate Court, while examining the provisions of the Urban Land Ceiling Act, and holding that the Urban Land Ceiling Act was inapplicable on account of absence of a master plan, failed to consider that the absence of a 'master plan' is not a *sine-qua-non*

for the applicability or not of the Urban Land Ceiling Act. Even if it is accepted that there was no 'master plan' the applicability of the Urban Land Ceiling Act would not be ousted. It is contended that the Urban Land Ceiling Act applies to an 'urban agglomeration' and as held by the Hon'ble Supreme Court in **Union of India** *versus* **Valluri Basavaiah Chouwdhary and others, (1)** the absence of a 'master plan' would not render the Urban Land Ceiling Act inapplicable.

(14) It is also argued that as permission to sell was declined under the Urban Land Ceiling Act, the appellants were bound by the order, passed by the authorities and, therefore, could not execute the sale deed for fear of inviting prosecution, under Section 38 of the Urban Land Ceiling Act. The appellants were bound to obey the order, passed by the authorities and till such time the order remained inforce, the appellants were barred by law from executing the sale deed. The first appellate Court, on the other hand, committed serious errors, by proceeding to examine the merits of the order, passed by the authorities, under the Urban Land Ceiling Act, and assuming the jurisdiction of an appellate authority, under the Urban Land Ceiling Act.

(15) It is further argued that the appellants have filed an application for leading additional evidence, in the shape of a certified copy of the 'master plan'. The appellants pray that the application be allowed and the 'master plan' be taken on record. It is further submitted that the 'master plan' discloses that as the land in dispute is situated within the 'urban agglomeration' of Ludhiana it is, amenable to the jurisdiction of the authorities under the Urban Land Ceiling Act. The first appellate Court, thus, erred, while holding that the Urban Land Ceiling Act is not applicable. It is also contended that once parties have admitted that the land is situated within the municipal area of Ludhiana, the existence or otherwise of the master plan is irrelevant.

(16) The last argument, addressed by counsel for the appellants, is that the agreement to sell was executed in the year 1980. Prices of land have multiplied manifold and the value of the land in dispute has increased to crores of rupees. Decreeing the suit for specific performance, for a paltry sum of Rs. 2,88,540, would be highly inequitable and

(1) AIR 1979 S.C. 1415

contrary to the principles that govern the provisions of the Specific Relief Act. It is prayed that the appeal be accepted, the judgment and decree, passed by the first appellate Court be set aside and that of the trial Court be restored.

(17) Counsel for the respondent, on the other hand, contends that the first appellate Court's judgment, does not call for interference. No question of law, much less a substantial question of law, arises for consideration. It is submitted that the Urban Land Ceiling Act is not applicable, as no master plan exists or is proved on record. Consequently, clause II of the agreement is void and, therefore, not enforceable in law. It is further submitted that refusal to grant permission to sell, being without jurisdiction, the first appellate Court rightly decreed the suit for specific performance. Moreover, as the Urban Land Ceiling Act was repealed in the year 1999, of the 'master plan'. The appellants pray that the application be allowed and the 'master plan' be taken on record. It is further submitted that the 'master plan' discloses that as the land in dispute is situated within the 'urban agglomeration' of Ludhiana it is, amenable to the jurisdiction of the authorities under the Urban Land Ceiling Act. The first appellate Court, thus, erred, while holding that the Urban Land Ceiling Act is not applicable. It is also contended that once parties have admitted that the land is situated within the municipal area of Ludhiana, the existence or otherwise of the master plan is irrelevant.

(18) The last argument, addressed by counsel for the appellants, is that the agreement to sell was executed in the year 1980. Prices of land have multiplied manifold and the value of the land in dispute has increased to crores of rupees. Decreeing the suit for specific performance, for a paltry sum of Rs. 2,88,540 would be highly inequitable and contrary to the principles that govern the provisions of the Specific Relief Act. It is prayed that the appeal be accepted, the judgment and decree, passed by the first appellate Court be set aside and that of the trial Court be restored.

(19) Counsel for the respondent, on the other hand, contends that the first appellate Court's judgment, does not call for interference. No question of law, much less a substantial question of law, arises for

consideration. It is submitted that the Urban Land Ceiling Act is not applicable, as no master plan exists or is proved on record. Consequently, clause II of the agreement is void and, therefore, not enforceable in law. It is further submitted that refusal to grant permission to sell, being without jurisdiction, the first appellate Court rightly decreed the suit for specific performance.Moreover, as the Urban Land Ceiling Act was repealed in the year 1999, clause II of the agreement has lost its relevance. It is also asserted that as the land being agricultural, is excluded from the purview of the Urban Land Ceiling Act, and as parties suffered from a mistake of law, the first appellate Court rightly held that clause II of the agreement was inapplicable and the permission declined by the authorities made no difference to the rights of the respondent to be granted the relief of specific performance of the agreement to sell.

(20) It is further contended that the first appellate Court rightly held that by not associating the respondent with the application, for permission to sell the land in dispute, the appellants procured the order of rejection by conspiring and conniving with the officials of the Urban Land Ceiling Department with a *mala fide* intent to thwart the execution of the sale deed, as otherwise the application was not maintainable.

(21) As regards the demand raised in the notice, Ex.P3, calling upon the appellants to obtain permission from the authorities under the Urban Land Ceiling Act, it is submitted that the notice specifically states that the above Act is no longer applicable and that permission should be obtained, if necessary. Therefore, the arguments addressed by counsel for the appellants that the appellants were justified in refusing to execute the sale deed on account of rejection of the permission to sell, were rightly repelled by the first appellate Court. It is further submitted that the plaint contains averments that the appellants, conspired and connived with the officials of the Department to procure an order of rejection and it is specifically averred that the Urban Land Ceiling Act is not applicable. The arguments, addressed by the counsel for the appellants that the Learned First Appellate Court ignored the absence of pleadings and evidence is factually incorrect.

(22) It is further argued that as the Urban Land Ceiling Act is not applicable, clause II of the agreement is, therefore, void. The first appellate Court therefore rightly held that rejection of the permission to sell is irrelevant and would not entitle the appellants to pray that specific performance of the contract be denied. The discretion, exercised by the appellate Court, in decreeing the suit for specific performance is neither illegal nor arbitrary and, therefore, does not call for interference. As the respondent has established the appellants' *mala fides,* in refusing to execute the sale deed, the present appeal be dismissed and the judgment and decree, passed by the first appellate Court, be upheld.

(23) I have heard learned counsel for the parties and perused the paper book.

(24) During arguments, counsel for the appellants has framed the following questions of law :—

(1) Whether in the absence of any pleadings and evidence on record, the first appellate Court could have returned a finding that the appellants connived and conspired with the authorities, under Urban Land Ceiling Act, to obtain the order, declining permission to execute the sale deed ?

(2) Whether the impugned judgment and decree, is illegal and perverse, as the first appellate Court ignored material evidence, including the notice, dated 25th February, 1981 (Ex.P3), issued at the behest of the respondent, calling upon the appellants to obtain permission under the Urban Land Ceiling Act ?

(3) Whether, in view of the facts and circumstances of the present case, the discretion, exercised by the first appellate Court, in accepting the appeal, reversing the judgment and decree, passed by the trial Court, and decreeing the suit for specific performance, is illegal and arbitrary ?

(4) Whether the Urban Land Ceiling Act is applicable to the land in dispute, on the date of execution of the agreement ?

(5) Whether clause II of the agreement is an error of fact or of law, and if so, its effects ?

(25) Before proceeding to adjudicate the questions of law, as framed by counsel for the appellants, it would be necessary to briefly recapitulate admitted facts.

(26) An agreement to sell dated 12th December, 1980, was executed, inter parties, whereby the appellant agreed to sell land, measuring 26 kanals 10 marlas for a consideration of Rs. 2,88,540. The appellants received Rs. 40,000 as earnest money. Clause II of the agreement required the appellants to obtain permission under the Urban Land Ceiling Act to execute a sale deed. Both parties appended their signatures to the agreement to sell, accepting the correctness of the recitals therein, including the recitals in clause II. Clause II of the agreement binds the appellants to obtain permission from authorities, under the Urban Land Ceiling Act, prior to the execution of the sale deed, which would then be executed within 15 days of receipt of such permission.

(27) The respondent, admittedly, served a legal notice, dated 25th February, 1981, Ex.P3, calling upon the appellants to complete necessary formalities under the Urban Land Ceiling Act and thereafter inform the respondent of the date, the time as well as the place for execution of the sale deed. It would be necessary to mention that in the notice, Ex.P3, the respondent also stated that permission may not be necessary, as the Urban Land Ceiling Act is not applicable, but at the same time called upon the appellants to proceed to complete the formalities. The appellants thereafter applied to the authorities concerned, for grant of permission to sell the property in dispute. The authorities,—*vide* letter, dated 27th May, 1981, declined permission to execute a sale deed. Intimation of their refusal was sent by the appellants to the respondent,—*vide* notice, dated 4th June, 1981. A sum of Rs. 40,000, received by the appellants, as earnest money, was returned to the

respondent, by way of a demand draft. The bank draft was admittedly received by the respondent but it appears that it was not encashed, as the respondent claims to have returned it to the appellants' property dealer. Another fact that has not been denied is that the land in dispute falls within the urban area of the then Municipal Committee, now Municipal Corporation, Ludhiana.

(28) From the aforementioned facts, it is apparent that parties had agreed, of their own free will, to execute the sale deed within 15 days, from receipt of permission to execute the sale deed to be granted by the Authorities under the Urban Land Ceiling Act. As referred to herein above, the permission was declined.

(29) The trial Court dismissed the suit for specific performance by holding that the Urban Land Ceiling Act was applicable to the land in suit and as parties had agreed that the appellants would obtain permission to sell under the said Act and as authorities under the Urban Land Ceiling Act had declined permission to execute the sale deed, the appellants were justified in refusing to execute the sale deed.

(30) The first appellate Court, however, set aside the judgment and decree, passed by the trial Court, and decreed the suit for specific performance primarily on the basis of a finding that the appellants connived and conspired with the officers of the Urban Land Ceiling Department to procure an order, rejecting permission to execute the sale deed so as to evade the execution of the sale deed. In order to place the conclusion, recorded by the first appellate Court, in its correct perspective, it would be necessary to reproduce an extract from its judgment as under :—

> "xx xx xx The defendants did not associate the plaintiff while moving the application for permission to sell the suit land. The defendants were required to take the permission to sell the suit land in accordance with the provisions of Urban Land (Ceiling and Regulation) Act but no such procedure has been followed by the defendants. The very moving of the application by the defendants without taking the plaintiff into confidence and thereafter obtained an order of refusal

clearly establishes that there was conspiracy and connivance with the concerned officers as otherwise, the application for permission could not be entertained under the Act. This shows the *mala fide* intention of the defendants to back out from the agreement by hook or by crook."

(31) On the basis of the above findings, the first appellate Court concluded that the appellants had refused to execute the sale deed, with *mala fide* intent. It was also held as the Urban Land Ceiling Act was not applicable clause II of the agreement to sell was an error of law and therefore redundant. The appeal was accepted, the judgment passed by the trial court reversed, and the suit for specific performance decreed.

(32) The first and the second substantial questions of law, relate to the legality of the findings, returned by the first appellate Court, that the appellants conspired and connived with the officials of the Urban Land Ceiling Department to procure an order of rejection so as to evade the execution of the sale deed.

(33) It is a settled proposition of law that where pleadings or mateial evidence are deficient and the findings returned disclose a failure to refer to relevant pleadings or evidence, such findings would necessarily be illegal and perverse and would, give rise to a substantial question of law enabling a Court, to exercise its jurisdiction, in second appeal.

(34) An allegation or a finding of conspiracy, connivance, collusion or *mala fide* etc. must be founded upon specific, cogent, credible and reliable pleadings supported by unimpeachable evidence. Mere conjectures, surmises or an inference drawn from insufficeint pleadings and or evidence would not suffice. It is true that evidence of conspiracy and connivance is rarely direct and is more often than not a matter of inference. However, this does not absolve a person levelling such allegations of his primary obligation to plead and establish the ingredients of connivance and the existence of a conspiracy. Findings of conspiracy and connivance being serious, may in a given circumstance entail penal consequences and must, therefore, be based upon specific

pleadings, supported by cogent evidence and if not so based may be held to be illegal, perverse and void.

(35) A perusal of the pleadings and the evidence on record, discloses the absence of any pleadings or evidence alleging or establishing the existence of a conspiracy or of connivance on the part of the appellants with the officials of the Urban Land Ceiling Department, to obtain an order rejecting the appellants application for permission to sell the suit land. Except for a bald averment in the plaint that the defendants/appellants got the letter of rejection issued with *mala fide* intent, in collusion with the employees of the Urban Land Ceiling Department, as the price of the land had gone up considerably, no other facts or particulars of the nature of the conspiracy, collusion or *mala fides* are forth coming. The averments, in the plaint are vague and deficient in material particulars and therefore, would not suffice to form the basis for a finding of conspiracy or collusion. Further-more, in paras 2 and 6 of the plaint, the plaintiff-respondent specifically averred that he approached the defendants/appellants several times to get permission to sell under the Urban Land Ceiling Act but the defendants/appellants did not oblige. Apart from the absence of material particulars, as to the nature of the conspiracy and collusion, the averments in the plaint are inherently contradictory.

(36) The findings of conspiracy and connivance returned by the first appellate Court disclose an abject failure on the part of the first appellate Court to consider and/or make a reference to the pleadings or evidence, led by the respondent. In addition the First Appellate Court ignored a significant body of evidence that has a material bearing on the outcome of the present case. Its conclusions are primarily based upon an inference drawn from the appellants' failure to associate the respondent with the application, filed before the authorities, under the Urban Land Ceiling Act, and a faulty procedure, adopted by the authorities.

(37) A due consideration of the pleadings, more particularly the averments in the plaint, discloses the absence of any pleadings specific or inferential alleging that as the appellants did not associate the respondent with the proceeding before the Department they conspired or connived with the officers of the department to procure an order

rejecting the application for grant of permission to sell. Similarly, the evidence adduced by the respondent does not contain any material direct or inferential, as would lead to such an inference. Counsel for the respondent was unable to refer to any pleading setting out allegations or any material evidence establishing the existence of a conspiracy or of connivance on the part of the appellants or the officers of the Dpeartment. He, however, asserted that pleadings in moffusil courts should not be construed strictly and therefore a degree of indulgence has to be shown, where pleadings are deficient. Such an argument is not available as pleadings on all other matters are specific and cogent. To draw an inference of a conspiracy, collusion, connivance, or of *mala fide* etc., from the appellants' alleged failure to associate the respondent with the filing of the application before the authorities, under the Urban Land Ceiling Act, in my considered opinion, in the absence of any material pleadings or evidence is a travesty of justice and an error of jurisdiction as would render the impugned finding perverse and illegal.

(38) In addition, the first appellate Court, ignored that the respondent specifically called upon the appellants to obtain permission, as reiterated by the respondent in paragraphs 2 and 6 of the plaint. The appellants accordingly applied for grant of permission to sell. As to how the filing of an application without associating the respondent establishes conspiracy, connivance or collusion on the part of the appellants and the officers of the department has not been spelt out and is even otherwise beyond comprehension. The finding that procedure was not followed by the department is devoid of reference as to the procedure which was not followed. It would necessarily have to be mentioned that the first appellate Court failed to consider that during cross-examination, no questions were directed, against the departmental witnesses that they conspired and connived with the appellants to enable them to obtain an order of rejection.

(39) Another significant error committed by the First Appellate Court is that while holding that the appellants conspired and connived to procure an order of rejection, the first appellate Court ignored the legal notice, dated 25th February, 1981, Ex.P3, issued at the behest of the respondent, calling upon the appellants to obtain permission from

the authorities, under the Urban Land Ceiling Act, and inform him of the date and time for execution of the sale deed. The first appellate Court also ignored that the application for grant of permission was filed before the authorities under the Urban Land Ceiling Act, in compliance with the demand raised in the legal notice calling upon the appellants to obey their contractual obligation, under clause II of the agreement to sell. The first appellate Court also ingnored the appellants' notice, informing the respondent of the rejection of the application for permission to execute the sale deed. There significant facts were necessarily to be considered before returning any finding as to the conduct of the appellants. Failure, on the part of the First Appellate Court to consider these significant facts, in my consider opinion, render the findings that the appellants conspired and connived with the officers of the Urban Land Ceiling Department with the avowed object of evading the execution of the sale deed, perverse, illegal and void and, therefore, liable to be reversed.

(40) It would also be necessary to notice here that the agreement to sell was executed on 12th December, 1980. The legal notice, requiring the appellants to obtain permission from the authorities, under the Urban Land Ceiling Act, is dated 25th Feburary, 1981. The appellants informed the respondent about the refusal of permission of 4th June, 1981. The suit was, however, filed on 10th March, 1983, after the appellants refunded the earnest money, though the respondent claims that he did not encash the bank draft and returned it to the appellants through their property dealer.

(41) Any consideration of the above and the preceding facts is singularly absent from the judgment of the first appellate Court. It is, thus, apparent that the findings, returned by the first appellate Court, regarding a conspiracy and connivance to procure the order of rejection, to evade the execution of the sale deed by any means are illegal and perverse, as they are not based upon any cogent pleadings or material evidence, and are based upon mere conjectures and surmises. Failure to consider, refer to and opine with respect to the pleadings and material evidence, as detailed in the preceding paragraphs, renders the judgment, under appeal, illegal and perverse.

(42) The matter can be examined from another angle also. Clause II of the agreement required the appellants to obtain permission of Urban Land Ceiling Department. The appellants, as is apparent from the facts narrated in the preceding paragraphs, were called upon, by the respondent, to obtain permission of the authorities, under the Urban Land Ceiling Act, pursuant to the legal notice, Ex.P3. The appellants applied for grant of permission, which was rejected. The respondent asserted before the first appellate Court that Clause II of the agreement was redundant as the Urban Land Ceiling Act did not apply to the suit land and therefore the appellants applied for grant of permission with *mala fide* intent to procure an order of rejection. The appellate Court held that clause II of the agreement to sell was redundant. The Urban Land Ceiling Act did not apply to the suit land, as no master plan had been notified and as the suit land was agricultural in nature. It was also held that both parties suffered from an error of law as to the applicability of the Urban Land Ceiling Act. It belies comprehension as to how, from the aforementioned facts, the order of rejection could be said to have been obtained by conspiring or conniving with the authorities of department concerned. The situation would have been different if the respondent had not served a legal notice, calling upon the appellants to obtain permission under the Urban Land Ceiling Act. The mere fact that the notice also states that such a permission may not be necessary, in my considered opinion, would not make any difference to the conclusions, drawn herein above. The first appellate Court, disregarded material evidence, ignored the absence of pleadings or evidence and, therefore, committed an error of jurisdiction in holding that the appellants conspired, connived or colluded with the officers of the Urban Land Ceiling Department to procure an order of rejection.

(43) The first two questions of law are, thus, answered in favour of the appellants, by holding that the finding, returned by the first appellate Court that the appellants conspired, connived and colluded with the authorities, under the Urban Land Ceiling Act to procure an order of rejection to evade the execution of the sale deed, is illegal and perverse, for failure to take into consideration the absence of material pleadings and evidence, as referred to herein above.

(44) The next question of law, as framed by counsel for the appellants, is whether the first appellate Court erred in holding that the Urban Land Ceiling Act is not applicable to the land in dispute. The first appellate Court, while dealing with the aforementioned controversy, and after a detailed examination of the evidence on record, arrived at a conclusion that the appellants had failed to prove the existence of a master plan for the 'urban agglomeration' of Ludhiana, as witnesses produced in support thereof, namely, DW2-Mukhtiar Singh and DW6-Miss P. Ahluwalia failed to produce the original master plan. It was also held that the certified copy produced is a proposed master plan against which objections were invited. It was, thus, held that the authorities, under the Urban Land Ceiling Act, had no jurisdiction to entertain the application for permission and to address a letter, dated 27th May, 1981, Ex.DW6/6, declining permission to sell the suit land. The first appellate Court also held that as the land in dispute is agricultural land, it is not covered by the definition of 'urban and vacant land', as contained in Section 2 of the Urban Land Ceiling Act.

(45) After recording the aforementioned findings, the first appellate Court proceeded to examine the merits of the letter, dated 27th May, 1981, Ex. DW6/6, declining permission to execute the sale deed. The first appellate Court proceeded to hold that as the Urban Land Ceiling Act was inapplicable, clause II of the agreement was redundant and as the appellants had connived with the authorities under the Urban Land Ceiling Act to procure an order or rejection, they were reqired to execute the sale deed.

(46) As regards the applicability of the Urban Land Ceiling Act and the validity of clause II of the agreement, as also the fact that the Urban Land Ceiling Act stands repealed, suffice it to say and as held by the Hon'ble Supreme Court of India in **Union of India etc** *versus* **Valluri Basavaiah Chouwdhary and others' case** *(supra),* the absence of a master plan would not exclude land from the operation of the Urban Land Ceiling Act. Admittedly, the land, in dispute, is situated within the urban area of Ludhiana town but as per the revenue record, was used for agricultural purposes. However, as the first appellate Court has held that the land in dispute is agricultural land, which is specifically excluded from the operation of the Urban Land Ceiling Act, the existence

or otherwise of a master plan is irrelevant. Consequently, the first appellate Court rightly held that the Urban Land Ceiling Act was inapplicable and clause II of the agreement was a mistake of law; committed by both parties, which did not render the agreement null and void. The findings, returned by the first appellate Court, in that respect, are upheld.

(47) As regards the application for additonal evidence, the same cannot be considered at this belated stage. Even otherwise, the copy of the alleged master plan, placed on record, does not inspire confidence. It would also be necessary to mention here that the Urban Land Ceiling Act was repealed in 1999. Consequently, the application is dismissed.

(48) The next question of law that merits adjudication is whether, in the peculiar facts and circumstances of the present case, the first appellate Court was justified in the exercise of its discretion in decreeing the suit for specific performance or if put differently whether in view of clause II of the agreement, the legal notice calling upon the appellants to obtain permission, if necessary and the rejection of the application for permission, the first appellate Court was justified in the exercise of its discretion in decreeing the suit for specific performance.

(49) A prayer for grant of specific performance of a contract is an equitable relief though statutorily incorporated in the provision of the Specific Relief Act, 1963, (for short herein after referred to as "the Act"). Though equity follows law and not *vice versa,* principles of equity are inherent in the discretionary nature of the relief statutorily enacted under the Act. Chapter II of the Act, namely, Sections 9 to 25, titled as "Specific performance of contracts," enumerates the cases in which specific performance of a contract is or is not to be enforced. It also sets out that the jurisdiction to decree a suit for specific performance is discretionary i.e. a Court is not bound to grant the relief of specific performance merely becuase it is lawful to do so. The Act prescribes circumstances, though not exhaustive, where a Court may properly exercise discretion not to grant specific performance etc. However, this discretion is neither arbitrary nor unbridled and is governed by the well entrenched principles of law that govern the

exercise of judicial discretion, namely, that exercise of such a discretion must not be arbitrary, perverse or in any manner illegal, unjust or unfair. Section 20 of the Specific Relief Act reads as follows :—

> **"20. Discretion as to decreeing specific performance.**—(1) The jurisdiction to decree specific performance is discretionary, and the court is not bound to grant such relief merely because it is lawful to do so; but the discretion of the court is not arbitrary but sound and reasonable, guided by judicial principles and capable of correction by a court of appeal.
>
> (2) The following are cases in which the court may properly exercise discretion not to decree specific performance—
>
> (a) where the terms of the contract or the conduct of the parties at the time of entering into the contract or the other circumstances under which the contract was entered into are such that the contract, though not voidable, gives the plaintiff an unfair advantage over the defendant ; or
>
> (b) where the performance of the contract would involve some hardship on the defendant which he did not foresee, whereas its non-performance would involve no such hardship on the plaintiff ; or
>
> (c) where the defendant entered into the contract under circumstances which though not rendering the contract voidable, makes it inequitable to enforce specific performance.
>
> *Explanation 1.*—Mere inadequacy of consideration, or the mere fact that the contract is onerous to the defendant or improvident in its nature, shall not be deemded to constitute an unfair advantage within the meaning of clause (a) or hardship within the meaning of clause (b).

Explanation 2.—The question whether the performance of a contract would involve hardship on the defendant within the meaning of clause (b) shall, except in cases where the hardship has resulted from any act of the plaintiff subsequent to the contract, be determined with reference to the circumstances existing at the time of the contract.

(3) The Court may properly exercise discretion to decree specific performance in any case where the plaintiff has done substantial acts or suffered losses in consequence of a contract capable of specific performance.

(4) The Court shall not refuse to any party specific performance of a contract merely on the ground that the contract is not enforceable at the instance of the other party."

(50) Section 20 of the Act, which in essence, governs the exercise of jurisdiction, more particularly the exercise of discretion, though not exhaustive of the circumstances, in which specific performance may be declined, is illustrative of the circumstances where specific performance may be declined. the facts that may be pleaded against a prayer for specific performance would vary from case to case and cannot be placed within the confines of any straight jacket formula. Each case would, therefore, be decided on its own peculiar facts and in accordance with the provisions of the Act.

(51) The appellant's contention that they refused to execute the sale deed, as the authorities, under the Urban Land Ceiling Act, refused to grant permission for execution of the sale deed, has not been denied by the respondent. They have merely doubted the legality of the order and the motives of the appellants. Clause II of the agreement to sell bound the appellants to obtain permission under the Urban Land Ceiling Act. Whether the said clause is legal or valid, inapplicable or not, and the said Act relevant or not, in my considered opinion, would not determine the outcome of the instant appeal. The true question that required adjudication by the first appellate Court was whether in the

peculiar facts and circumstances of the present case, the discretionary relief of specific performance could be granted in favour of the respondent.

(52) A perusal of the impugned judgment reveals that after holding that clause II of the agreement to sell was redundant, as the Urban Land Ceiling Act was not applicable, and the order, rejecting permission to execute the sale deed, was illegal, the first appellate Court, without taking into consideration admitted facts, that have been narrated herein before, proceeded to mechanically decree the suit and reverse the judgment and decree, passed by the trial Court. The first appellate Court was required to consider the nature of the agreement, the contents of the legal notice, Ex.P3, issued at the behest of the respondent, directing the appellants to obtain permission to execute the sale deed, the order declining permission to execute the sale deed, the communication of this order by the appellants to respondent etc. and most significant of all that both parties committed an error in understanding the provisions of the Urban Land Ceiling Act and, thereafter consider, whether in these circumstances the relief of specific performance or the alternative relief of damages be granted. However, while considering whether to grant or decline the prayer for specific performance, these facts were neither considered nor adverted to and the suit for specific performance was decreed without any reference to this significant body of evidence. The first appellate Court did not address itself to these facts and merely proceeded to hold that as the Urban Land Ceiling Act was not applicable, clause II of the agreement was redundant and as the rejection of permission was illegal or not necessary, having been obtained by a conspiracy or by connivance, the suit for specific performance had to be decreed.

(53) The manner in which the first appellate Court proceeded to exercise its discretion to decree the suit, in my considered opinion, discloses an arbitrary exercise of jurisdiction/discretion in disregard to the principles contained in Chapter II of the Act, more particularly that discretion must be exercised fairly and justly, after taking into consideration all relevant facts. Jurisdiction more particularly discretion

to decree a suit for specific performance, under the Specific Relief Act is an equitable jurisdiction and a Court, while exercising discretion, would be called upon to balance equities and not merely proceed to decree or dismiss suits mechanically, for as postulated by Setion 20 of the Act, a Court is not bound to grant the relief of specific performance merely because it is lawful to do so.

(54) The appellants, as also the respondent proceeded on an assumption that the Urban Land Ceiling Act applicable to the land in dispute and, therefore, incorporated clause II in the agreement to sell, which required the appellants to obtain the permission of the authorities under the Urban Land Ceiling Act. The appellants, at the asking of the respondent, applied for permission to sell the property in dispute. The authorities declined permission. The appellants communicated this decision to the respondent, and returned the earnest money on 4th June, 1981. The suit was eventually filed in the year 1983. From the above facts, it could not have been held that the appellants evaded execution of the sale deed and procured an order of rejction or that they did not want to execute the sale deed with *mala fide* intent but the appellants and the respondent proceeded on an assumption that clause II of the agreement was valid and that the Urban Land Ceiling Act was applicable. The appellants, therefore, proceeded to discharge these obligations under the Urban Land Ceiling Act, in accordance with clause II of the agreement, and in obedience to the legal notice, Ex.P3.

(55) The first appellate Court committed another error, as the applicability of the Urban Land Ceiling Act and the validity of clause II of the agreement had to be examined in relation to the reasons, put-forth for refusal by the appellants to execute the sale deed. Merely because it was later discovered that the Urban Ceiling Act was inapplicable or that clause II of the agreement was redundant or that the order, passed by the authorities, under the Urban Land Ceiling Act, was without jurisdiction, would not automatically lead to the passing of decree. The first appellate Court was required, after examining the applicability of the Urban Land Ceiling Act and clause II of the agreement, to reutrn a finding that despite the above facts, the situation demanded that the suit be decreed.

(56) Parties agreed to a certain course of conduct and thereafter proceeded, in accordance therewith leading to the rejection of the permission to sell. It was held by the first appellate Court that the said course of conduct was based upon an erroneous assumption as to the law by both parties. In such a situation, to punish one party or the other, more particularly in a suit for specific performance involving immovable property, would be unjust and inequitable. The dilemma that stares a Court, in such a situation,is should a suit for specific performance, be decreed or should a Court consider the conduct of the parties, the mistake committed by them, and then proceed to decide the matter or merely decree such a suit by holding that the bar contained in another law is not applicable. In my considered opinion, resort to the latter course, in view of the peculiar facts and circumstances of the present case, would be inconsistent with the principles of equity and good conscience. A Court would be required to weigh the circumstances, the conduct of the parties, balance the equities and then proceed to decide whether to decree or dismiss the suit.

(57) In view of the findings already returned, as both parties proceeded on an assumption that the Urban Land Ceiling Act was applicable and the respondent issued a notice, calling upon the appellants to obtain permission, under the aforementioned enactment it would have to be held that both parties were in error as to the applicability of the Urban Land Ceiling Act. As a natural corollary, the question, namely, whether clause II of the agreement to sell is legal, valid or void, inapplicable and not binding upon the parties and the attending consequences thereof would have to be answered by holding that whether the aforementioned clause is legal or not, binds the parties or not, is secondary. The primary question, that required adjudication, was whether the appellants were justified in refusing to execute the sale deed, and whether in the exercise of discretion, the suit for specific performance should be decreed.

(58) In view of what has been discussed herein above, I have no hesitation in holding that the discretion, exercised by the first appellate Court, in decreeing the suit, was arbitrary and unjust. As the

parties genuinely believed that the Urban Land Ceiling Act was applicable, no fault could be found with the appellants in refusing to execute the sale deed, after their application was rejected. Whether the Act was applicable or not in my considered opinion is secondary. Errors of law or of fact on the part of both parties cannot punish one of them. Consequently, it is held that the first appellate Court was not justified in allowing the appeal and reversing the judgment of the trial Court and decreeing the suit for specific performance.

(59) It would also be necessary to mention here that though the mere pendency of a lis for a large number of years, may not be entirely relevant but a Court cannot ignore the monumental rise in prices of real estate that have occured during the preceding decades. The land in dispute was agreed to be sold for a sum of Rs. 2,88,540 in 1980. The price of land, as admitted by both parties, is no longer in lacs but is in crores. Decreeing the suit in favour of the respondent would perpetuate injustice to the appellants. However, at the same time, it cannot be ignored that the respondent, who was successful before the first appellate Court, would be deprived of a valuable right. Thus, in order to balance equities in the present case, the damages, as assessed by the trial Court, would have to be substantially enhanced. The trial Court awarded damages @ Rs. 48,800. I am of the considered opinion that interest of justice would be met, by accepting the prayer for damages, as raised before the trial Court, and assessing the aforementioned amount at Rs. 20 lacs along with interest @6% per annum from the date of filing of the suit up to its recovery.

(60) In view of what has been noticed herein above, the appeal is allowed, the judgment and decree, passed by the first appellate Court, is set aside, the suit, filed by the respondent, is dismissed, and the judgment and decree, passed by the trial Court, is modified to the extent that the appellants would be required to pay damages to the extent of Rs. 20 lacs with interest @6% per annum to the respondent from the date of filing of the suit up to its recovery.

(61) There shall, however, be no order as to costs.

R.N.R.