

(18) So far as the payment of interest is concerned, learned Courts below have rightly come to the conclusion that as respondent-defendant-nawab Nftkhar Ali Khan was an agriculturist, hence as per Section 30 of the Punjab Relief of Indebtedness Act, 1934, appellant-plaintiff was not entitled to recover more than twice the sum advanced. Hence, appellant-plaintiff could not recover more than Rs. 60,000 and as he already received Rs. 500, suit was rightly decreed for a sum of Rs. 59,500.

(19) Hence, both the aforementioned substantial questions of law are decided in favour of respondent-defendant and against the appellant-plaintiff.

(20) As a consequence to my above discussion, I am of the view that there is no merit in the present appeal and hence, the same is, hereby dismissed with cost.

M. JAIN

Before Jitender Chauhan, J.

JASWANT SINGH L.R. OF SMT. HARJIT KAUR,—Appellant

versus

BACHNA AND OTHER,—Respondents

R.S.A. No. 3074 of 1985

31st May, 2011

Constitution of India, 1950—Art. 227—Code of Civil Procedure 1908—2(2), 96 & 151—Specific Relief Act—Plaintiff/appellant entered into agreement with defendant/respondent—Land already mortgaged, with plaintiff—In pursuance of General Power of Attorney, defendant/respondent land sold—Trial Court held that defendant is a bonafide purchaser for consideration without notice—First Appellate Court dismissed appeal—Appeal dismissed.

Held, that Sale deed was a registered document and duly executed. First Appellate Court has no *suo motu* power to declare the sale invalid vendee held to be a *bonafide* purchaser for valuable consideration, without

knowledge of any earlier alleged agreement. Sale deed held to be legal and valid. Appeal dismissed.

(Para 28)

Des Raj Mahajan and Viney Mahajan, Advocates for *L.R. of Harjit Kaur-appellant*.

Kamal Goyal, Advocate for the respondent No. 3-*Karnail Kaur*.

None for respondent Nos 1 and 2.

JITENDRA CHAUHAN, J.

(1) This judgment will dispose of RSA No. 3074 of 1985 filed by Harjit Kaur, plaintiff-appellant and RSA No. 2336 of 1985 filed by Smt. Karnail Kaur, defendant/respondent No. 3 as both of them have arisen out of a common judgment and decree of both the courts below. However, the facts are being taken from RSA No. 3074 of 1985.

(2) The following chart would facilitate in understanding the facts of the case :—

27-10-1980	Bachna, defendant No. 1 mortgaged the property in favour of Harjit Kaur, plaintiff-appellant.
1-12-1980	Stamp-paper for execution of agreement, Ex. P1, was allegedly purchased from Rajinder Pal, Stamp-Vendor, Ludhiana.
30-12-1980	Agreement of sell allegedly executed by Bachna, defendant No. 1, scribed by Pawan Kumar, Deed-Writer, Ludhiana in favour of plaintiff.
26-2-1981	Bachna executed an agreement to sell with one Hardayal Singh.
13-3-1981	Bachna executed a general power of attorney, Ex. D3, in favour of his daughter-in-law Smt. Ranjeet Kaur, defendant No. 2.
25-3-1981	Defendant No. 2 executed a sale-deed, Ex. D1, in favour of Smt. Karnail Kaur, defendant No. 3 as general attorney holder of Bachna, defendant No. 1.

8-4-1983 Special power of attorney, Ex. D2, executed by Karnail Kaur, defendant No. 3, in favour of her husband Major Singh for pursuing the litigation.

(3) As is clear from the above-facts, the case of the plaintiff is that she entered into agreement to sell, Ex. P1, with Bachna, defendant No. 1 for the purchase of land 1B-9B-15-B, pukhta, situated in the revenue estate of Village Raqba, Tehsil Jagaron, District Ludhiana, for a total consideration of Rs. 27,000. A sum of Rs. 6,000 was received by Bachna, defendant No. 1, as earnest money. It is alleged that the land in dispute was already mortgaged with the plaintiff for a sum of Rs. 16,000,—*vide* registered mortgage-deed dated 27th October, 1980. The sale-deed in pursuance of agreement to sell, Ex. P1, was to be executed on or before 30th July, 1981. It is alleged that Smt. Ranjeet Kaur, defendant No. 2, in pursuance of General Power of Attorney, Ex. D3, sold the land to one Karnail Kaur, defendant No. 3,—*vide* sale-deed dated 25th March, 1981. Hence the plaintiff filed the suit for specific performance on 11th June, 1981.

(4) Bachna, defendant No. 1, appeared and admitted the claim of the plaintiff by filing written-statement in Court. On 22nd October, 1981, on the same day of filing the written statement, he made the following statement in Court :—

“State that the suit of the plaintiff is correct and I am bound by the agreement of sell,—*vide* which I had agreed to sell the land to Harjit Kaur. I am prepared to get the sale-deed registered (Main Registry Karaan Lai Tiyaar Haan). I have no objection to the suit of the plaintiff being decreed. I have not sold any land to Karnail Kaur, defendant No. 3. I never appointed Ranjit Kaur as my attorney. Therefore, the sale-deed in favour of Karnail Kaur, defendant is bogus and faked.”

(5) Smt. Ranjit Kaur, defendant No. 2, general power of attorney holder of defendant No. 1, filed written statement admitting the fact of mortgage, but pleaded that agreement to sell, Ex. P1, is fake. It is alleged that defendant No. 1, legally appointed defendant No. 2,—*vide* general power of attorney dated 13th March, 1981, Ex. D3, and in pursuance of this attorney, she has executed a sale-deed in pursuant to agreement dated 26th February, 1981 executed by Bachna, defendant No. 1 in favour of one Hardyal Singh.

(6) Smt. Karnail Kaur, defendant No. 3, subsequent purchaser,— *vide* sale-deed, Ex. D1, contested the suit, denied the knowledge of prior agreement dated 30th December, 1980, which was alleged by her to be fake and forged, the factum of mortgage was admitted. It was alleged that she was competent to sell the land. It was pleaded that an agreement to sell dated 26th February, 1981 was executed by defendant No. 1 in favour of Hardayal Singh, father-in-law of Karnail Kaur, defendant No. 3. It was pleaded that defendant No. 3 is a *bona fide* purchaser without knowledge of the prior agreement.

(7) From the pleading of the parties, the following issues were framed :—

- (1) Whether defendant No. 1 entered into an agreement dated 30th December, 1980 with the plaintiff ? OPP
- (2) If issue No. 1 is proved, whether the plaintiff was and is ready to perform her part of the contract ? OPP
- (3) Whether the plaintiff is entitled to recover Rs. 6320 as damage as alleged ? OPP
- (4) Whether the defendant No. 3 is a bona fide purchaser for consideration without notice as alleged ? If so its effect ? OPD.
- (5) Relief.

(8) The learned trial Court decided issue Nos. 1 and 2, against the plaintiff holding that sale-agreement dated 30th December, 1980 was not in existence on 25th March, 1981. The learned trial Court decided issue No. 3 in favour of the plaintiff holding that the plaintiff was entitled to get Rs. 6320 as damages from defendant No. 1 in view of his admission in Court. Accordingly, the learned trial Court granted a decree of Rs. 6320 in favour of plaintiff and against defendant No. 1. While deciding issue No. 4, the learned trial Court held that defendant No. 3 was a *bona fide* purchaser for consideration without notice of the earlier alleged agreement to sell, Ex. P1. So the relief for specific performance of the agreement was declined.

(9) Against the above judgment and decree passed against defendant No. 1, Bachna, defendant No. 1, did not come in appeal. However, Smt. Harjit Kaur, plaintiff, preferred an appeal before the first appellate court. The learned first appellate court,—vide judgment and decree dated 13th June, 1985 dismissed the appeal of Harjit Kaur affirming the findings of the learned trial Court on issue no. 1, 2 and 3. The learned first appellate court reversed the finding of the learned trial Court on issues No. 4 holding that the sale-deed, Ex. P1, was not a valid transaction.

(10) Harjit Kaur, plaintiff, again came in this RSA No. 3074 of 1985 before this Court, which was admitted on 10th January, 1986.

(11) Karnail Kaur, defendant No. 3, subsequent purchaser, filed RSA No. 2336 of 1985 challenging the findings of first appellate court on issue No. 4, which was admitted on 14th August, 1985.

(12) Both the RSA Nos. 3074 of 1985 and 2336 of 1985 are being heard and disposed of by this single judgment.

(13) Mr. D.R. Mahajan, learned counsel for the appellant-Harjit Kaur, has submitted that agreement to sell, Exhibit P1, is duly proved from the admission of defendant No. 1, Bachana. He cites AIR 1960 SC 100 and submits that admission of the parties is the best evidence and the fact admitted need not be proved. The learned counsel further submitted that in fact the lower appellate court committed error of fact in observing that the property in question is situated in Jagaron. He submits that the land in question in fact is situated in Village Raqba and not in Jagaron. The court further submitted that the observation of the learned Lower Appellate Court that the parties also belong to Jagaron is also incorrect, whereas both the parties hail from Village Raqba, where the property is situated. The counsel also submits that if agreement to sell, Ex. P1, was executed at Ludhiana, there is nothing wrong in it as Village Raqba falls within the revenue District of Ludhiana.

(14) It has also been submitted that the observation of the learned trial Court that agreement to sell, Ex. P1 is ante dated, fake and forged, is wrong. Learned counsel further submits that agreement to sell, Ex.P1 is duly proved by Pawan Kumar, PW1 (Scribe), Harjit Kaur, plaintiff (PW2), Joginder Singh, Marginal witness (PW3), Gurdish Singh, PW4 and

Balwinder Singh, attesting witness (PW5). The learned counsel has submitted that findings of the both the courts below on issue Nos. 1 and 2 are erroneous and against the record.

(15) On the other hand, Mr. Kamal Goyal, learned counsel for appellant Karnail Kaur, defendant No. 3, the subsequent purchaser, submits that the findings of the learned first appellate court on issue no. 4 are wrong and perverse. The learned first appellate court has failed to observe that if the subsequent sale-deed, Ex. D1, is held to be in valid, then its effect will be that the property will revert back to defendant No. 1, Bachna, who did not file any appeal either before the first appellate court or before this Court. The learned counsel further submits that no substantial question of law arises for determination by this Court.

(16) It has further been argued that the learned First Appellate Court has made out a case on issue No. 4 beyond the pleadings of the parties. There was no issue on this point as to whether there was no necessary to sell the land by Ranjit Kaur being attorney of Bachna when the parties were not at issue, and had not led evidence on this point, the findings on this point cannot be arrived at by the court of first appeal.

(17) It is relevant to mention here that Smt. Harjit Kaur plaintiff died on 4th February, 2008, Smt. Ranjit Kaur died on 13th May, 2003, and Shri Bachna expired on 14th October, 1985, during the pendency of these regular second appeals and their respective legal representatives have been brought on record of the appeals.

(18) I have heard the learned counsel for the parties and perused the record with their able assistance.

(19) The substantial question of law arises in this appeal is “whether the findings of the 1st Appellate Court in its judgment dated 13th June, 1985 on issue no. 4 are perverse and based on no evidence ?”

(20) In *Gobind Ram versus Gian Chand—AIR 2000, Supreme Court 3106*, it held that “It is the settled position of law that grant of a decree for specific performance of contract is not automatic and is one of discretion of the court and the court lost to consider whether it will be fair, just and equitable court is guided by principle of justice, equity and good

conscious. The Court should meticulously consider all facts and circumstances of the case and motive behind the litigation should also be considered.”

(21) Shri Des Raj Mahajan, Advocate, counsel for the appellant, Harjit Kaur has raised preliminary objection regarding the maintainability of Regular Second appeal No. 2336 of 1985 filed by the vendee, Smt. Karnail Kaur. He submits that Karnail Kaur has no right to file regular second appeal against the findings on issue no. 4 as there is no decree against her passed by the 1st appellate Court. The learned counsel cites section 96 of the Code of Civil Procedure which is as under :

“**96. Appeal from original decree.**—(1) Save where otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie from every decree passed by any Court exercising original jurisdiction to the Court authorized to hear appeals from the decisions of such Court.

- (2) An appeal may lie from an original decree passed *ex parte*.
- (3) No appeal shall lie, passed by the court with the consent of parties.
- (4) No appeal shall lie, except on a question of law, from a decree in any suit of the nature cognizable by Courts of Small Causes, when the amount or value of the subject-matter of the original suit does not exceed ten thousand rupees.”

(22) The word “decree” is defined in section 2(2) of the Code, which is reproduced as under :

“Decree means the formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. It shall be deemed to include the rejection of a plaint and the determination of any question within section 144, but shall not include-(a) any adjudication from which an appeal lies as an appeal from an order, or (b) any order of dismissal for default.”

(23) He cites Mukhtiar Singh *versus* Nishan Singh—2006(3) Punjab Law Reporter 788=2006(4) RCR (Civil) 133.

(24) It is relevant to mention here that the vendee, Smt. Karnail Kaur preferred regular second appeal No. 2336 of 1985 on 15th July, 1985 which was admitted on 14th August, 1985, whereas Harjit Kaur plaintiff filed regular second appeal No. 3074 of 1984, on 30th October, 1985, which was admitted on 10th January, 1986. This Court is of the opinion that for the sake of arguments, even if it assumed that no appeal shall lie on behalf of the vendee, Karnail Kaur, against observations with regard to issue No. 4, in that eventuality, Regular Second Appeal No. 2336 of 1985, could be treated as cross-objections filed in Regular second appeal No. 3075 of 1985. The rules, procedure and legislative enactments are meant to dispense justice and not to dispense with justice. No person can be left remediless in a court of law. If a person is prejudicially or adversely affected by a judgment or a decree having no right of appeal, he is to be heard in cross objections along with the main appeal. Even otherwise under Article 227 of the Constitution of India and under section 151 of the Code of Civil Procedure this Court has inherent power to interfere to do complete justice. So, the preliminary objection raised by Shri Mahajan is not tenable.

(25) The arguments of the Shri D.R. Mahajan, Advocate, counsel for Harjit Kaur, plaintiff-appellant, that property in dispute is situated in village Raqba which is suburb of Ludhiana, so the agreement Ex. P.1, was got scribed from a deed writer at Ludhiana. It has been brought to the notice of this Court that village Raqba falls within the revenue tehsil Jagraon and not of Ludhiana. So, one of the suspicious circumstance in execution of agreement Ex. P.1, stands proved. The learned counsel made much stress on the admission of defendant No. 1, Bachna, regarding admission of execution of agreement Ex. P.1, which is without force as admission of Bachna is not binding on the vendee, Karnail Kaur, defendant No. 3. The learned counsel for the appellant submits that if the agreement to sell Ex. P.1, as observed by the learned 1st appellate Court was found to be ante dated, the learned lower Appellate Court could not have upheld the decree for the recovery of Rs. 6320 passed by the learned trial court in favour of Harjit Kaur plaintiff and against defendant No. 1, Bachna. This argument

is repelled on the ground that this money decree was passed on the admission of defendant No. 1, Bachna, regarding receipt of the amount and not by believing agreement Ex.P.1. There are many other circumstances, as discussed by the courts below, to hold that the agreement Ex. P.1 is fake and forged and it never existed, when the sale deed Ex.D.1 was executed and registered.

(26) So far as concurrent findings of facts on issues No. 1 and 2 are concerned, both the courts below have decided these issues against the plaintiff. The learned trial court held that sale agreement dated 30th December, 1980, Ex.P.1, was not in existence on 25th March, 1981 when the sale deed, Ex.D.1, was executed in favour of defendant No.3, Karnail Kaur, in pursuance of agreement dated 26th February, 1981, executed by defendant no. 1, Bachna, in favour of Hardial Singh, father in law of Karnail Kaur defendant No. 3. The 1st appellate Court affirmed the findings on issues No. 1 and 2. The agreement dated 30th December, 1980 is found to be forged by both the courts below on various grounds, which appear to be well reasoned, correct and based on convincing evidence. The learned trial court decided issue No. 3 in favour of the plaintiff and against defendant No. 1, Bachna, merely on his admission that he received a sum of Rs. 6320. These observations have also been affirmed by the 1st appellant Court.

(27) This Court has gone through the entire evidence on record. The concurrent findings of facts on issues No. 1, 2 and 3 are affirmed by this court in regular second appeal No. 3074 of 1985, which is liable to be dismissed. No substantial question of law arises for determination of this court in Regular second appeal No. 3074 of 1985.

(28) Smt. Karnail Kaur, defendant No. 3, has been held to be *bona fide* purchaser for valuable consideration without notice under issue No. 3. But the 1st Appellate Court reversed the findings under this issue holding that the sale deed Ex.D.1 is not valid. The findings on issue No. 4 of the 1st Appellate Court are perverse, erroneous and wrong as the learned 1st Appellate Court travelled beyond the pleadings of the parties holding that “there was no necessity to sell the land by Ranjit Kaur being attorney of Bachna.” The learned 1st Appellante Court further held that

“Ranjit Kaur was not having any necessity to sell land for the management of the land, so the sale made by Ranjit Kaur are not having to be correct and they are liable to be set aside.” It has been further held by the 1st appellate Court that “In this case it appears to me that when Bachna came under the influence of Ranjit Kaur, she got the power of attorney written and got executed a fictitious sale deed, and when Bachna went away from Ranjit Kaur and came into the hands of the plaintiff, they got an agreement to sell Ex. P.1, written ante dated from Bachna. So both the parties wanted to grab the property of Bachna and actually no power of attorney, no sale deed or agreement to sell was written.”

(29) This Court has gone through the written statement dated 22nd October, 1981, filed by Defendant No. 1, Bachna. He has not taken any such plea in his written statement. On the same day he appeared in court, made the statement on oath in court, wherein no such stand was taken by him. He simply stated that he did not sell any land to Karnail Kaur defendant no. 3, nor appointed Ranjit Kaur as his attorney; and therefore the sale deed in favour of defendant, Karnail Kaur, is bogus and fake. The 1st appellate Court is making out a new case for defendant no. 1. Further a bare perusal of grounds of appeal filed before the 1st Appellate Court would show that there was no ground regarding power of attorney, having not been executed by defendant no. 1, in favour of defendant No. 2, nor that the sale was made without there being any legal necessity. The Hon'ble Supreme Court in *Bachhaj Nahar v. Nilima Mandal and another*—Judgments Today 2008 (13) SC 255 has held that “a Court cannot make out a case not pleaded. The Court should confine its decision to the question raised in pleadings. Nor can it grant a relief which is not claimed and which does not flow from the facts and the cause of action alleged in the plaint.”

(30) The power of attorney Ex. D3 is a registered document duly proved on record, so the presumption of due execution is attached to a registered document unless and until rebutted by cogent evidence. DW5, Ranjit Kaur, produced the original power of attorney in court on the day of her deposition and proved the photostat copy thereof as Ex.D.3. A stranger has no right to challenge a sale deed executed by the vendor in favour of the vendee. Both the courts below have concurrently held that

agreement dated 30th December, 1980 is ante dated, forged and fabricated. After filing written statement and making statement on 22nd October, 1981, Bachna defendant no. 1 did not come into the witness box. This fact is fatal. It is settled law that admission made by one defendant are not binding on the other defendant(s). DW2, Major Singh, special attorney of Karnail Kaur, defendant No. 3, supported the case of defendant No. 3. PW4, Gurdeep Singh, son of the plaintiff in his cross examination had admitted that he did not give any notice to defendant No. 2, Ranjit Kaur, not to sell the suit land to defendant No. 3 nor he issued any notice to Karnail Kaur, not to purchase the suit land from defendant No. 2. No public notice was brought on record to inform the General Public about the agreement Ex.P.1. Apparently, he did not do so, because there was no such agreement, i.e., Ex.P.1 in existence at that time. It is interesting to note here that when the plaintiff herself appeared in the witness box she stated that the suit was not filed by her and in fact it was filed by Bachna. This shows the connivance of the plaintiff and defendant No. 1, as defendant No. 1 wanted to undo the act of executing the sale deed by his General Power of Attorney holder in favour of the vendee. He find a short method by executing an ante dated agreement Ex. P.1, in favour of the plaintiff and got the suit filed on the basis of the same. Later on, he filed written statement in favour of the plaintiff, admitting the execution of the agreement and made statement in court supporting the claim of the plaintiff. The agreement to sale does not confer any right or title in the property.

(31) Now this court is coming to the validity of the sale deed Ex.D.1. This sale deed in favour of Karnail Kaur was attested by marginal witness DW.1 Meetpal Singh, Advocate, and he had also proved that this sale, was executed by Ranjit Kaur in favour of Karnail Kaur and an amount of Rs. 4000 was paid by Major Singh, husband of defendant No.3, the vendee, to Ranjit Kaur, defendant No.2, before the Sub Registrar, who registered the same. DW4, Hardev Singh is the scribe of the sale deed and he also stated that the sale deed was read over and explained to Ranjit Kaur, General Power Attorney holder of Bachna and she signed the same admitting its contents to be true and correct. The scribe made entry in his deed writer register and the deed was attested by DW2 Major Singh, DW1

Meetpal Singh, Advocate, and DW3 Pritam Singh. DW 3 Pritam Singh, who is a marginal witness also corroborated the statement of other marginal witness and that of Major Singh. DW5 Smt. Ranjit Kaur, defendant No. 2, fully supported the case of the vendee. There is nothing in their cross examination to challenge their veracity or to impeach the character. From the finding of the learned 1st Appellate Court regarding the undue influence of Ranjit Kaur, over defendant No. 1, Bachna, and secondly of there being no legal necessity, does not affect the rights of Karnail Kaur, defendant no. 3, as sale deed was a registered document, which was duly executed and, therefore, Karnail Kaur, defendant no. 3, cannot be attributed prior knowledge of non existence agreement. Defendant No. 1, Bachna, never challenged the aforesaid sale deed Ex.D.1, executed by his attorney Smt. Ranjit Kaur. No grievance was ever made by her with regard to the non receipt of the consideration. He did not cancel the power of attorney executed by him in favour of his daughter in law Ranjit Kaur. The learned 1st appellate Court *suo moto* has no power to declare the sale invalid in any manner. The said sale deed does not suffer from any infirmity. It is held that Karnail Kaur defendant No. 3—the vendee is *bona fide* purchaser for valuable consideration, without knowledge of any earlier alleged agreement. So the sale deed Ex.D.1 is legal and valid. The findings of the 1st Appellate Court on issue No. 4 are erroneous, beyond pleadings and perverse and are, hereby, set aside.

(32) No other point or substantial question of law has been argued.

(33) Resultantly, regular second appeal No. 2336 of 1985 is allowed; findings of the 1st Appellate Court on issue No. 4 recorded in its judgment dated 13th June, 1985 are reversed and 1st Civil Appeal No. 539/197/205 of 1983, filed by Harjit Kaur, the plaintiff is dismissed in toto.

(34) Regular second appeal No. 3074 of 1985 is dismissed.

Both the parties are left to bear their own costs.

M. JAIN