Before S. S. NIJJAR, J.

GURMAIL SINGH AND ANOTHER,—*Defendants/Appellants*

versus

RAJINDER SINGH,—*Plaintiff/Respondents*

R.S.A. No. 2084 OF 2000

17th May, 2003

Specific Relief Act, 1963—Agreement to sell—Trial Court decreeing the suit after appreciating the entire evidence—1st Appellate Court affirming the findings of trial Court—No misreading of evidence by the Courts below to such an extent as to give rise to a substantial question of law—No perversity in the findings of fact recorded by Courts below—Relief of specific performance is equitable and discretionary in nature—Not permissible for High Court to interfere in the exercise of such a discretion exercised by the Courts below—Appeal liable to be dismissed.

Held, that it is not permissible for the High Court to reverse the judgment of the learned Lower Appellate Court without formulating a substantial question of law. Secondly, it is not permissible for the High Court to interfere with the concurrent findings of fact recorded by the learned Courts below except in two situations. The first is that when material or relevant evidence is not considered which if considered would have led to an opposite conclusion. The second situation is where a finding has been arrived at by the learned Lower Appellate Court by placing reliance on inadmissible evidence which if it was omitted, would have led to the opposite conclusion. Non-consideration of the two documents by the learned lower Appellate Court has not caused any prejudice to the case of the appellant. Even if, the documents had been considered it would not necessarily have led to a conclusion opposite to the one arrived at by the learned Lower Appellant Court.

(Para 14)

Further held, that there is no perversities in the findings of fact recorded by the learned Courts below. Both the learned Courts below have reached conclusion which are possible conclusions. Merely because this Court reach a different conclusion, would not give rise to a substantial question of law.

(Para 16)

Further held, that the relief of specific performance is equitable and discretionary in nature. It would be wholly inappropriate for this Court to interfere in the exercise of such a discretion exercised by the learned Courts below in a regular second appeal. Such an exercise of discretion can only be interfered with if the same is proved to be wholly perverse or having been exercised for extraneous considerations. In both these cases exercise of jurisdiction would be set aside on the ground that it is arbitrary exercise of judicial discretion.

(Para 24)

Arun Nehra, Advocate, *for the appellants.*

M.J.S. Sethi, Senior Advocate with G. M. Umair, Advocate, *for the respondent.*

JUDGMENT

S. S. NIJJAR, J.

(1) This Regular Second Appeal has been filed by the L. Rs. of Kishan Singh (hereinafter referred to as "the deceased") against the judgment and decree passed by Shri Joga Singh, Additional Senior Sub-Judge, Ropar in Civil Suit No. RT-376, 8th May, 1991, decided on 23rd December, 1993 and the judgment and decree passed by Shri Mohinder Pal, Additional District Judge, Ropar, in Civil Appeal No. RT-74, 21st February, 1994/1st July, 1997, decided on 13th December, 1999.

(2) The respondent had filed the aforesaid civil suit seeking a decree of specific performance of the agreement to sell dated 12th may, 1985 regarding sale of plot No. 659 measuring 150 square yards situated in Giani Zail Singh Nagar, Ropar. The deceased had executed an agreement for sale of the aforesaid plot in favour of the respondent dated 12th May, 1985 for a total consideration of Rs. 12,000. On the date of the execution of the agreement for sale, the deceased had received a sum of Rs. 5,000 as earnest money. The agreement was thumb, marked by the deceased and attested by two attesting witnesses i.e. Mahender Singh, Panch of village Majri Jatta, Ropar (PW-3) and Hardial Singh, Lumberdar of village Sangatpur. The agreement has been scribed by Mehar Singh Bala (PW-2). The sale deed was agreed to be executed on or before 6th May, 1988.

The balance consideration of Rs. 7,000 was to be paid before the Sub-Registrar at the time of the execution of the sale deed. All the expenses of the sale deed were to be borne by the respondent. He requested the deceased many times to execute the sale deed. It was also pleaded that the respondent was always ready and willing to perform his part of contract. On 6th May, 1988, he went to the office of the Sub-Registrar with balance sale consideration of Rs. 7,000 and other expenses for performing his part of the contract, but the deceased did not turn up to execute the sale deed. He remained there up to 4.55 p.m. and then moved an application alongwith affidavit for execution of the sale deed. The Sub-Registrar, Ropar, called the deceased, but nobody appeared on his behalf to execute the sale deed. The deceased did not execute the sale deed on the ground that a civil suit regarding the plot in dispute was pending in the Civil Court. He had stated that the sale deed will be executed after the decision of the civil suit. But he did not execute, the sale deed as the market price in Giani Zail Singh Nagar, Ropar had increased many times.

(3) The deceased filed the written statement. He took a preliminary objection that the suit has been got filed by Amar Singh, son of Jaswant Singh of village Bheora, Tehsil and District, Ropar (hereinafter referred to as "Bheora"). It was also pleaded that the agreement for sale has been executed in league with the respondent and it had been manufactured by Bheora and the respondent. The agreement is bogus, illegal and void for the following reasons :—

(i) That stamp of the agreement in question is alleged to have been purchased on 9th May, 1983. The stamp paper does not mention the name of the stamp vendor or by whom it was purchased.

(ii) The limitation for the use of the stamp paper had already expired on the date of the execution of the agreement.

(iii) On the first page of the agreement, there are clear signs of forgery as there are three smudged thumb-impressions marked A, B and D. This shows that the thumb impressions were obtained earlier and thereafter the agreement in question was manufactured.

(iv) The respondent and the attesting witnesses are not known to the deceased. At that time he was aged about 90 years.

(v) The thumb-impressions over the agreement in question have been obtained by fraudulent means. Therefore, the agreement is not enforceable in law.

(4) On merits, it has been stated that no agreement was executed by the appellants in favour of the respondent as alleged. The agreement in question is a result of fraud and undue influence and is a patent forgery. The thumb-impressions of the defendants or some imposter might have been imposed when he was bodily lifted near a canal of Ropar when he had gone to answer the call of nature. Bheora had also forged an agreement for sale dated 12th July, 1985. This agreement was challenged by the deceased in the Court of learned Senior Sub-Judge, Ropar. The suit filed by the deceased was decreed on 11th January, 1988. The appeal filed against the aforesaid judgment and decree was dismissed by the first Appellate Court on 23rd October, 1990 Regular Second Appeal No. 365 of 1991 against the judgments and decree of the learned Courts below was also dismissed on 25th July, 1991. This agreement had been executed for a total consideration of Rs. 15,000.

(5) In the written statement, the respondent had denied any knowledge about the agreement dated 12th July, 1985. In any event, it is stated that the agreement in favour of the respondent being earlier in time having been executed on 12th May, 1985 would prevail over the subsequent agreement dated 12th July, 1986. It was also stated that, in fact, the appellant had handed over the original receipt No. 280 dated 27th August, 1981 by which the appellant had deposited a sum of Rs. 500 with the Improvement Trust, Ropar for the purchase of a plot.

(6) On the pleadings of the parties, the following issues were framed by the learned trial Court :—

1. Whether defendant agreed to sell plot in dispute in favour of the plaintiff,—*vide* agreement dated 12th May, 1985 and received Rs. 5,000 as earnest money ? OPP

2. Whether agreement is the result of fraud, forgery and undue influence ? OPD

3. Whether plaintiff always remained ready and willing to perform his part of the contract ? OPP

4. Whether suit has been got filed by Amar Singh as alleged in preliminary objection No. 1 of Written Statement, if so, to what effect ? OPD

5. Whether plaintiff is entitled to specific performance of agreement ? OPP

6. If issue No. 1 is not proved, whether in the alternative, plaintiff is entitled to recover Rs. 10,000 from the defendant ? OPD

7. Relief.

(7) I have heard the learned counsel for the parties at length and perused the record of the case.

(8) A perusal of the admission order of this appeal shows that the admitting Bench did not frame any substantial question of law. In order to get over the aforesaid difficulty, Mr. Nehra has framed certain propositions of law which are as follows :—

1. Whether the judgment and decree passed by the Lower Appellant Court without considering the additional evidence is legally sustainable ?

2. Whether the Courts below acted perversely in passing a decree for specific performance of alleged agreement to sell :—

   (a) When the suit for specific performance of alleged agreement to sell dated 12th May, 1985 was filed almost after six years on 8th May, 1991.

   (b) The alleged agreement to sell dated 12th May, 1985 is written on a stamp paper dated 9th May, 1983.

   (c) The stamp papers on which the so called agreement to sell was written, were purchased on 9th May, 1983, whereas the plot in question was allotted to Sansar Singh on 1st May, 1985.

(d) The Stamp papers on which the agreement to sell is written: (a) does not bear the name of the stamp vendor (b) does not bear the name of the person who purchased the stamp paper (c) does not bear the signatures/thumb impression of the purchaser.

(e) The thumb impression of the vendor (Kishan Singh) are not in normal (horizontal manner) but are in abnormal (vertical manner). Further there are number of thumb impressions on the first page of the alleged agreement to sell which shows that they were obtained forcibly.

(f) Alleged agreement to sell is not witnessed by any respectable of the village.

(g) The alleged agreement to sell was scribed by Mehar Singh Bala who was not a regular scribe and was retired prematurely from service.

(h) The scribe Mehar Singh Bala is a friend of Shri Amar Singh Bheora against whom Kishan Singh had filed the earlier suit pleading therein that the said Amar Singh Bheora had fraudulently got the agreement to sell, power of attorney and WILL signed from him and the same be declared null and void and the said suit was decreed.

(i) The plaintiff Rajinder Singh who has propounded the agreement to sell is man of doubtful integrity and is involved in a criminal case for forging a WILL and in which he had identified a wrong person.

3. Whether the conduct of the plaintiff in not getting himself impleaded as a defendant in the earlier suit filed by Kishan Singh against Amar Singh Bheora shows that he had waived and abandoned his right to file the present suit.

(9) Mr. Sethi, learned Senior counsel appearing for the respondent has argued that none of the questions of law framed even at this stage, are substantial questions of law. However, I have heard the learned counsel for the parties at length even on merits to satisfy the conscious of this Court as to whether a substantial question of law arises.

(10) Mr. Nehra has submitted that an application was moved in the learned Lower Appellate Court under Order 41 Rule 27 of the Code of Civil Procedure, for leading additional evidence. On a statement made by the learned counsel for the respondent, the application was allowed on 17th September, 1999. The learned Lower Court had passed the following order on the aforesaid date which is as follows :—

> "This order will dispose of application Under Order 41 Rule 27 to allow the application for additional evidence. During the course of arguments, learned counsel for the respondent Shri P. S. Jagga, has suffered a statement according to which he has no objection in case this application is allowed subject to the condition that arguments in the main appeal are heard on the next date.
>
> In view of Statement of learned counsel for respondents, this application is allowed. Documents in question be placed on record and are exhibited as Ex. PX and Ex. PY."
>
> Now to come up on 4th October, 1999 for arguments. However, it is made clear that on the said date arguments are not heard, arguments will be heard on the next working date. The date has been given as per convenience of both the counsel".

(11) In pursuance of the aforesaid order, the appellant had placed on the record Ex. PY First Information Report No. 110 dated 30th August, 1988, under Sections 419, 420, 463, 467, 471 and 120-B of the Indian Penal Code, registered at Police Station, Kharar, against the respondent. Ex. PX is an order passed by the learned Additional District Judge, Ropar, dated 26th July, 1999 declining the application for bail filed by the respondent in the aforesaid case. Having taken these documents on record, the learned Lower Appellate

Court has failed to consider the impact thereof on the case put forward by the respondent. According to the learned counsel, these two documents, if they had been considered, would have shown that the respondent is a man of doubtful integrity. Therefore, the findings recorded by the learned Lower Appellate Court are perverse and this would give rise to a substantial question of law.

(12) There is no dispute with the proposition of law advanced by the learned counsel for the appellant, but the same is not applicable to the facts and circumstances of the present case. Having examined the two documents in Court, I am of the considered opinion that they had absolutely no relevance to the merits of the controversy which was pending before the learned Courts below. Therefore, it is not possible to hold that any substantial question of law arises on account of misreading of evidence by the learned Lower Appellate Court. In support of this submission, learned counsel for the appellant has relied on **Charan Singh** *versus* **Jagtar Singh,** ***(1).*** This judgment is of no relevance as it dealt with a situation where no order has been passed on the application for additional evidence. As noticed earlier, in the present case, the application for additional evidence was allowed and the documents were duly taken on the record. Mr. Nehra, learned counsel for the appellant had also relied on a judgment in the case of **Tehal Singh** *versus* **Harnam Singh (2).** This again was a case where the learned Lower Appellate Court had not passed any order on the application for additional evidence under Order 41 Rule 27 of the Code of Civil Procedure. Mr. Nehra has also placed reliance on a judgment in the case of **Jagir Kaur and another** *versus* **Nirmal Singh and another** ***(3).*** This case again relates to the non disposal of the application filed under Order 41 Rule 27 of the Code of Civil Procedure by the learned Lower Appellate Court.

(13) Mr Nehra then relied on the judgment of the Supreme Court in the case of **Ishwar Dass Jain (Dead) through learned representatives** *versus* **Sohan Lal (Dead) by legal representatives (4),** The law laid down. In the aforesaid judgment is as follows :-

> "10. Now under Section 100 CPC, after the 1976 Amendment, it is essential for the High Court to formulate a substantial question of law and it is not

(1) 1999 (2) R.C.R. 315
(2) 1999 (4) R.C.R. 611
(3) 1993 (2) P.L.R. 374
(4) (2000) 1 S.C.C. 434

permissible to reverse the judgment of the first appellate court without doing so".

(11) There are two situations in which interference with findings of fact is permissible. The first one is when material or relevant evidence is not considered which, if considered would have led to an opposite conclusion. This principle has been laid down in a series of judgments of this Court in relation to Section 100 CPC after the 1976 Amendment. In *Dilbagrai Punjabi versus Sharad Chandra* while dealing with a second appeal of 1978 decided by the Madhya Pradesh High Court on 20th August, 1981, L. M. Sarma, J. (as he then was) observed that : (SCC pp. 712-13, para-5).

"The court (the first appellate court) is under a duty to examine the entire relevant evidence on record and if it refuses to consider important evidence having direct bearing on the disputed issue and the error which arises is of a magnitude that it gives birth to a substantial question of law, the High Court is fully authorised to set aside the finding. This is the situation in the present case."

In that case, an admission by the defendant tenant in the reply notice in regard to the plaintiff's title and the description of the plaintiff as "owner" of the property signed by the defendant were not considered by the first appellate court while holding that the plaintiff had not proved his title. The High Court interfered with the finding on the ground of non-consideration of vital evidence and this Court affirmed the said decision. That was upheld. In *Jagdish Singh* versus *Nathu Singh* with reference to a second appeal of 1978 disposed of on 5th April, 1991, Venkatachaliah, J. (as he then was) held : (SCC p. 652, para 10)—

".....where the findings by the court of facts is vitiated by non-consideration of relevant evidence or by an essentially erroneous approach to the matter, the High Court is not precluded from recording proper findings."

Again in *Sundera Naicka Vadiyar versus Ramaswami Ayyar* it was held that where certain vital documents for deciding the question of possession were ignored—such as a compromise, an order of the Revenue Court—reliance on oral evidence was unjustified. In yet another case in *Mehrunnisa versus Visham Kumari* arising out of second appeal of 1988 decided on 15th January, 1996, it was held by Venkataswami, J. that a finding arrived at by ignoring the second notice issued by the landlady and without noticing that the suit was not based on earlier notices, was vitiated and the High Court could interfere with such a finding. This was in second appeal of 1988 decided on 15th January, 1996.

12. The second situation in which interference with findings of fact is permissible is where a finding has been arrived at by the appellate court by placing reliance on inadmissible evidence which if it was omitted, an opposite conclusion was possible. In *Sri Chand Gupta versus Gulzar Singh* it was held that the High Court was right in interfering in second appeal where the lower appellate court relied upon an admission of a third party treating it as binding on the defendant. The admission was inadmissible as against the defendant. This was also a second appeal of 1981 disposed of on 24th September, 1985.

13. In either of the above situations, a substantial question of law can arise. The substantial question of law that arises for consideration in this appeal is :—

"Whether the courts below had failed to consider vital pieces of evidence and whether the courts relied upon inadmissible evidence while arriving at the conclusion that the mortgage was sham and that there was no relationship between the plaintiff and the defendant as mortgagor and mortgagee but the real relationship was as landlord and tenant ?"

Point 1 is decided accordingly.

(14) A perusal of the aforesaid observations clearly shows that it is not permissible for the High Court to reverse the judgment of the learned Lower Appellate Court without formulating a substantial question of law. Secondly, it is not permissible for the High Court to interfere with the concurrent findings of fact recorded by the learned Courts below except in two situations. The first is that when material or relevant evidence is not considered which if considered would have led to an opposite conclusion. The second situation is where a finding has been arrived at by the learned Lower Appellate Court by placing reliance on inadmissible evidence which if it was omitted, would have led to the opposite conclusion. As noticed earlier, the learned Lower Appellate Court has not committed any error by not adverting to the two documents Ex. PX and PY placed on the record. On examination of the two documents, it transpires that the same has no relevance to the case of the appellant. At best, the two documents could prove that a criminal case was registered against the respondent. The allegations made in the first Information Report were yet to be approved and, therefore, no reliance could have been placed on the same. Similarly, the observations made by the learned Additional Sessions Judge, Rupnagar, on 26th July, 1999, are merely tentative and *prima facie*. These comments have only been made while disposing of a bail application filed by the respondent. The conduct of the respondent in the aforesaid case would have nothing to do with the present proceedings. I am of the considered opinion that non-consideration of the aforesaid documents has not caused any prejudice to the case of the appellant. Even if, the documents had been considered it would not necessarily have led to a conclusion opposite to the one arrived at by the learned Lower Appellate Court.

(15) Mr. Nehra had, thereafter, argued that the respondent was hand in glove with "Bheora" against whom the appellant had filed the earlier suit. The present suit would not have been filed if the earlier litigation had gone in favour of Bheora. The suit is stated to be filed at the instance of Bheora. A perusal of the judgment of the learned Courts below shows that specific findings of fact have been recorded on each of the issues that were framed. The learned trial Court in his judgment had adverted to the oral as well as documentary evidence led by the parties. Issue Nos. 1, 2, 5 and 6 were discussed together to avoid repetition of the discussion of evidence. The plaintiff appeared as PW-1 and supported the case in its entirety. Very lengthy cross-examination was conducted but his evidence was not shaken. PW-2, the scribe, has specifically denied that he was ever suspended even for a single day during the period of 22 years service as a District

Clerk and Accountant. He also denied that he was compulsorily retired from service. He sought voluntary retirement in 1980. He has also given an explanation with regard to the Smudge Marks on the first page of the agreement Ex. P-1. The learned tiral Court has appreciated the entire evidence and came to the conclusion that the sale agreement Ex. P-1 has been voluntarily executed. The suit was decreed with a direction to execute the sale deed. The learned Lower Appellate Court again meticulously examined the entire evidence and came to the same conclusion as the trial Court. I am of the considered opinion that there is no misreading of the evidence to such an extent as to give rise to a substantial question of law.

(16) The questions framed by Mr. Nehra referred to above, are all questions of fact and they all have been determined by the learned Courts below on the basis of appreciation of evidence. What constitute a question of law, was recently considered by the Supreme Court in the case of **Kulwant Kaur** *versus* **Gurdial Singh Mann (dead) by learned representatives and others, (5).** In the aforesaid judgment, it has been held that a perverse finding of fact would constitute a substantial question of law. In the present case there is no perversity in the findings of fact recorded by the learned Courts below. Both the learned Courts below have reached conclusion which are possible conclusions. Merely because this Court could reach a different conclusion, would not give rise to a substantial question of law.

(17) In the case of **Major Singh** *versus* **State of Punjab and others, (6)**, it has also been held that this Court could only interfere in concurrent findings of fact recorded by the learned Courts below after framing a substantial question of law. In the aforesaid case, in paragraph 6, it has been held as under :—

> "6. .....Even apart from that in Second Appeal in the light of concurrent findings of fact reached by the trial Court and the First Appellate Court on the nature of the impugned order passed against the appellant, without framing any substantial question of law, the learned Single Judge could not have exercised jurisdiction under Section 100 Code of Civil Procedure".

(5) AIR 2001 S.C. 1273
(6) JT 2000 (9) S.C. 571

(18) In fact, the High Court while adjudicating the matter in a regular second appeal has a very limited jurisdiction to reappraise the evidence and record findings of fact which are contrary to the concurrent findings of fact given by the learned Courts below. The aforesaid proposition of law has been laid down by the Supreme Court in the case of **Dilbagrai Punjabi** *versus* **Sharad Chandra, (7).** In this case, it has been observed as follows :—

> ".....It is true that the High Court while hearing the appeal under Section 100 of the Code of Civil Procedure has no jurisdiction to re-appraise the evidence and reverse the conclusion reached by the first appellate court, but at the same time its power to interfere with the finding cannot be denied if when the lower appellate Court decides an issue of fact a substantial question of law arises....."

(19) In the case of **Kondiba Dagadu Kadam** *versus* **Savitribai Sopan Gujar and others (8),** the Supreme Court has defined what would constitute a substantial question of law. In paragraph 4 of the judgment, it has been held as follows :—

> "4. It has been noticed time and again that without insisting for the statement of such substantial question of law in the memorandum of appeal and formulating the same at the time of admission, the High Courts have been issuing notices and generally deciding the second appeals without adhering to the procedure prescribed under section 100, Code of Civil Procedure. It has further been found in a number of cases that no efforts are made to distinguish between a question of law and a substantial question of law. In exercise of the powers under this Section the findings of fact of the 1st appellate Court are found to have been disturbed. It has to be kept in mind that the right of appeal is neither a natural nor an inherent right attached to the litigation. Being a substantive statutory right, it has to be regulated in accordance with law in force at the relevant time. The conditions mentioned in the Section must be strictly fulfilled before a second appeal can be maintained and no court has the power to add to or enlarge those grounds. The second appeal cannot be decided on merely

(7) J.T. 1988 (3) S.C. 308
(8) AIR 1999 S.C. 2213

equitable grounds. The concurrent findings of facts howsoever erroneous cannot be disturbed by the High Court in exercise of the powers under this Section. The substantial question of law has to be distinguished from a substantial question of fact. This Court in **Sir Chunilal versus. Mehta and Sons Limited versus Century Spinning and Manufacturing Company Limited** AIR 1962 SC 1314 held that :—

"The proper test for determining whether a question of law raised in the case is substantial would, in our opinion, be whether it is of general public importance or whether it directly and substantially affects the rights of the parties and if so whether it is either an open question in the sense that it is not finally settled by this Court or by the Privy Council or by the Federal Court or is not free from difficulty or calls for discussion of alternative views. If the question is settled by the highest Court or the general principles to be applied in determining the question are well settled and there is a mere question of applying those principles or that the plea raised is palpably absurd the question would not be a substantial question of law".

(20) The aforesaid ratio of law would show that no substantial question of law arises in the present regular second appeal.

(21) Again in the case of **Veerayee Ammal versus Seeni Ammal, (9),** the Supreme Court was dealing with a situation where concurrent findings of fact were set aside by the High Court. This was also a case which related to the relief of specific performance. The Supreme Court noticed that the earlier judgment in the case of **Paras Nath Thakur versus Smt. Mohani Dasi (deceased) (10),** wherein it had been held as follows :—

"It is well settled by a long series of decisions of the Judicial Committee of the Privy Council and of this court that a High Court, on second appeal, cannot go into questions of fact, however, erroneous the findings of fact recorded by the Courts of fact may be. It is not necessary to cite those decisions. Indeed, the learned counsel for the plaintiff-respondents did not and could not contend

(9) AIR 2001 S.C. 2920
(10) AIR 1959 S.C. 1204

that the High Court was competent to go behind the findings of fact concurrently recorded by the two courts of fact".

(22) After considering the law with regard to the meaning of a substantial question of law, the Supreme Court has observed in paragraph 10 of the judgment as follows :—

"10. The question of law formulated as substantial question of law in the instant case cannot, in any way, be termed to be a question of law. The question formulated in fact is a question of fact. Merely because of appreciation of evidence another view is also possible would not clothe the High Court to assume the jurisdiction by terming the question as substantial question of law. In this case, issue No. 1, as framed by the trial Court, was, admittedly, an issue of fact which was concurrently held in favour of the appellant-plaintiff and did not justify the High Court to disturb the same by substituting its own finding for the findings of the Courts below, arrived at on appreciation of evidence".

In that case, issue No. 1 was as follows :—

"Whether the plaintiff was always ready and willing to perform his part of contract ?"

(23) In the present case also, all the issues are pure questions of fact. Therefore, I am of the considered opinion that no question of law much less any substantial question of law arises in this regular second appeal.

(24) It is also to be noticed that the relief of specific performance is equitable and discretionary in nature. It would be wholly inappropriate for this Court to interfere in the exercise of such a discretion exercised by the learned Courts below in a regular second appeal. Such an exercise of discretion can only be interfered with if the same is proved to be wholly perverse or having been exercised for extraneous considerations. In both these cases exercise of jurisdiction would be set aside on the ground that it is arbitrary exercise of judicial discretion. This view of mine finds support from a judgment of the Supreme Court in the case of **A. C. Arulappan** *versus* **Smt. Ahalya Naik, (11).** In paragraph 15 of this judgment, it has been held as follows :—

"15. Granting of specific performance is an equitable relief, though the same is now governed by the statutory

(11) AIR 2001 S.C. 2783

provisions of the Specific Relief Act, 1963. These equitable principles are nicely incorporated in Section 20 of the Act. While granting a decree for specific performance, these salutary guide-lines shall be in the forefront of the mind of the Court. The trial Court, which had the added advantage of recording the evidence and seeing the demeanour of the witnesses considered the relevant facts and reached a conclusion. The appellate Court should not have reversed that decision disregarding these facts and, in our view, the appellate Court seriously flawed in its decision. Therefore, we hold that the respondent is not entitled to a decree of specific performance of the contract".

(25) In the present case, both the learned Courts below after appreciating evidence have given concurrent findings of fact to the effect that the agreement to sell was voluntary. It has also been held that the respondent was always ready and willing to execute the sale deed. The appellant had failed to execute the sale deed on the ground that a civil suit was pending with regard to the disputed plot. He failed to execute the sale deed even after the suit was decreed. There is no evidence on the record to show that the respondent had any connection with Bheora. The appellant had taken the plea that he had been kept in illegal confinement for eight days. Surprisingly, he did not make any complaint to the police. No Habeas Corpus petition was ever filed seeking his release from illegal detention. The trial Court also notices that the appellant had taken up the plea for the first time that he had gone to answer the call of nature and he was bodily lifted. This fact had not been mentioned in the earlier litigation. In fact, the story put forward in the present proceedings was never eluded to in the earlier proceedings.

(26) Much was sought to be argued by Mr. Nehra on the basis of stamp paper on which the agreement for sake has been scribed. These submissions were also considered in detail by the learned trial Court as also by the learned Lower Appellate Courts. The findings given by the learned Courts below cannot be said to be based on no evidence or perverse.

(27) In view of the above, I find no merit in the present regular second appeal. Dismissed. No costs.

R.N.R.