

further trouble. We pointedly asked Mr. Awasthy that if the first notice served by the Income-tax Officer on the assessee, which was based on estimate basis, were held to be legally valid even then the argument advanced by him would be tenable or not. The learned counsel did not give a direct reply to this question. This implies that if the first notice is valid, it is not open to the Revenue to complain that the assessee has not paid proper advance tax only on the ground that the assessment for the year relating to the notice on estimate basis itself has been modified in the same year. We are accordingly of the view that the notice, dated 30th June, 1967 issued by the Income-tax Officer to the assessee was valid and in accordance with law. There was no legal basis for the Income-tax Officer to amend this notice and since the assessee had complied with this notice, no new notice could have been sent to him.

(10) An Income-tax Officer has to justify his every action on the clear language of the statute. Sub-section (3) of section 210 of the Act does not in terms entitle an Income-tax Officer to amend the notice for advance payment of tax on the ground that the income for the year on the basis of which advance tax is being claimed has been regularly assessed. The law allows amendment of the notice if the income for any subsequent year has been subjected to a regular assessment.

(11) For reasons aforementioned, we answer the first question in the affirmative, i.e. in favour of the assessee and against the Revenue. In view of our answer to the first question, the second question is also answered in the affirmative. The reference is accordingly disposed of with no order as to costs.

*Bhopinder Singh Dhillon, J.*—I agree.

*H. S. B.*

*Before J. V. Gupta, J.*

SATISH BAHADUR,—Petitioner.

*versus*

HANS RAJ and others,—Respondents.

*Civil Revision No. 309 of 1980.*

August 27, 1980.

*Specific Relief Act (XLVII of 1963)—Section 41(h)—Agreement to sell duly executed by the parties—Vendee filing a suit for permanent injunction restraining the vendor from selling property to others—Such suit filed before the last date of execution of sale-deed*

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*fixed in the agreement—Such date subsequently expiring—Remedy by way of suit for specific performance thereafter available to the vendee—Suit for permanent injunction—Whether becomes infructuous.*

*Held*, that a reading of section 41 (h) of the Specific Relief Act, 1963 would show that if an equally efficacious relief can be obtained by any other mode then a suit for permanent injunction will not lie. What is to be seen is whether the suit for permanent injunction can continue when the relief for specific performance of the contract under the agreement, on the basis of which the suit for permanent injunction had been filed, has become available to the vendee as an injunction cannot be granted when an equally efficacious relief is otherwise available. It cannot be disputed that the subsequent events after the institution of the suit can always be taken into consideration while deciding the matter in controversy. In this view of the matter when the remedy by way of specific performance becomes available to a party no suit for permanent injunction would lie and as such the suit should be dismissed as having become infructuous. (Paras 3, 4 and 5).

*Petition Under Section 115 C.P.C. for revision of the Order of Shri G. S. Dhaliwal, Sub-Judge Fazilka, dated 1st December, 1979, dismissing the application with no order as to costs, filed by the applicant/defendant on 27th January, 1979.*

*Claim :—Suit for permanent injunction to the effect that the Defendant No. 1, who is owner of Land measuring 12 Kanals-2 Marlas comprised in Rect. No. 60 Killa Nos. 3/2 (6—12) 2 (3—10), 8 (1—11), 12/2 (0—9), Khewat No. 352, 617 Khatauni No. 460, 891,—vide Jamabandi 1973-74 situated in the area of village Jandwala Mira Sangla Tehsil Fazilka, be restrained from selling, mortgaging, leasing, exchanging, gifting or transferring the land in dispute to respondents Nos. 2 and 3 or any other person except the plaintiff because the defendant No. 1 had entered into an agreement to sell the land in dispute with the plaintiff,—vide agreement dated 15th April, 1976 and the date of Registration i.e. 13th January, 1979 has not come so far. On the basis of agreement to sell, Jamabandi for the year 1973-74 and on the basis of oral and documentary evidence of all types.*

*S. C. Khungar, Advocate, for the Petitioner.*

*Nemo,—for the respondent.*

JUDGMENT

*G. V. Gupta, J.*

(1) This revision petition has been filed against the order of the trial Court, dated 1st December, 1979, whereby the application for dismissing the suit for permanent injunction as having become infructuous, was declined.

(2) Hans Raj and others, plaintiff-respondents filed a suit for permanent injunction to the effect that defendant No. 1 Satish Bahadur, who is the owner of suit land, be restrained from selling, mortgaging, leasing, exchanging, gifting or transferring the same to Des Raj and Romesh Kumar defendants or any other person except the plaintiff because the defendant Satish Bahadur had entered into an agreement to sell the land in dispute to the plaintiffs,—*vide* agreement, dated 15th April, 1978 which was required to be registered by 13th January, 1979.

(3) The present suit was filed on 13th October, 1978. During the pendency of the suit, *ad interim* order of injunction was also passed against the defendants. It was on 27th January, 1979, the defendant-petitioners moved an application under section 151 of the Code of Civil Procedure, in which it was stated that the present suit for permanent injunction which was filed on the basis of agreement, dated 15th April, 1978 for which execution of the sale-deed, was to be effected by 13th January, 1979, has now become infructuous in view of the provisions of Section 41(h) of the Specific Relief Act, as an injunction cannot be granted where equally efficacious relief can certainly be obtained by any other mode. It was further stated that if the plaintiffs want to get the relief under the said agreement, they should file a suit for specific performance of the contract. Consequently, it was prayed that the present suit for permanent injunction be dismissed as having become infructuous. This was contested on behalf of the plaintiffs and the trial Court after hearing the learned counsel for the parties, came to the conclusion that the plaintiffs cannot be compelled to file a suit for specific performance of the contract before the expiry of three years period which will expire on 12th January, 1982. According to the trial Court, the suit can become infructuous after that date but till then the suit for permanent injunction could not be dismissed as having become infructuous. Feeling aggrieved against this order, the defendant Satish Bahadur has filed this petition in this Court.

(4) The learned counsel for the petitioner contended that in view of the provisions of section 41(h) of the Specific Relief Act, the present suit for permanent injunction restraining the defendant-petitioner to alienate the suit property has become infructuous after 13th January, 1979, when the plaintiffs have become entitled

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to file a suit for specific performance of the contract. Section 41 (h) reads as under:—

“When equally efficacious relief can certainly be obtained by any other usual mode of proceeding except in case of breach of trust”.

In support of this contention, he has relied upon *M/s. Jawahar Theatres Private Ltd., v. Smt. Kasturi Bai and another* (1) *Pasupuleti Venkateswarlu v. The Motor and General Traders* (2) and *Sardari Mal v. Hirde Nath and others* (3).

(5) After hearing the learned counsel for the petitioner, I find force in his submissions. It has been wrongly held by the trial Court that since the plaintiff has got three years period from 13th January, 1979, to file a suit for specific performance of the contract, and, therefore, the present suit for permanent injunction cannot be dismissed as having become infructuous. The whole approach seems to be wrong and illegal. In the present case, what is to be seen is whether the suit for permanent injunction can continue when the relief for specific performance of the contract under the agreement, on the basis of which the present suit for permanent injunction has been filed, has become available to the plaintiffs. Admittedly, after 13th January, 1979, the plaintiffs are entitled to claim the relief for specific performance of the contract. Since the plaintiffs are entitled to another equally efficacious relief, the present suit for permanent injunction cannot proceed, because an injunction cannot be granted when equally efficacious relief can certainly be obtained by any other usual mode of proceedings. In the present suit the Court is not concerned with the limitation of three years for filing the suit for specific performance of the contract. The sole question to be decided is whether the present suit for permanent injunction can continue when a equally efficacious relief has become available to the plaintiffs during the pendency of the suit. It cannot be disputed that the subsequent events after the institution of the suit can always be taken into consideration while deciding the matter in controversy. Reference in this respect can be made to *Pasupuleti Venkateswarlu's case*

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(1) A.I.R. 1961 M.P. 102.

(2) A.I.R. 1975 S.C. 1409.

(3) A.I.R. 1925 Lahore 459.

(supra). In this view of the matter, the order of the trial Court is illegal and liable to be set aside in this revision petition.

(6) For the reasons recorded above, this revision petition succeeds and the impugned order is set aside. It is further directed that the plaintiffs may be given an option to amend the plaint if they are so advised, failing which the present suit for permanent injunction will stand dismissed as having become infructuous. Since there is no representation on behalf of the respondents, the parties will bear their own costs.

*H. S. B.*

*Before D. S. Tewatia, J.*

DIDAR SINGH (DR.) and others,—*Petitioners.*

*versus*

STATE OF PUNJAB,—*Respondent.*

*Criminal Misc. No. 741-M of 1978*

August 29, 1980.

*Indian Penal Code (XLV of 1860)—Section 193—Code of Criminal Procedure (I of 1974)—Section 161—Statement of witness recorded in court on oath at variance with the statement made to police officer under section 161—Witness denying making of the statement before the police officer—Such witness—Whether can be said to have committed perjury—Statement of a witness recorded in vernacular and in English—Vernacular version at variance with the statement previously recorded by the Court in another case—English version not so discrepant—Such witness—Whether guilty of an offence under section 193.*

*Held*, that the statements recorded by an Investigating Officer under section 161 of the Code of Criminal Procedure 1973 are generally not signed by a witness. Witnesses whose statements in the very proceedings in which the statements under section 161 of the Code of Criminal Procedure had been earlier recorded by the Investigating Officer in the event of running counter to their statements under section 161 of the Code of Criminal Procedure are confronted with such statements. That is done only to make the witness aware of the presence of such a statement having been made by the witness. The witness may admit to have made such statement or may