Before Rajbir Sehrawat, J.

MOHAN SINGH THROUGH LRS—*Appellant(s)*

versus

GURDEEP SINGH THROUGH LRS & OTHERS—*Respondents*

RSA No.7 of 2016

January 14, 2020

Agreement to sell/execution of agreement to sell—Specific performance of the agreement to sell—though the attestation by the notary public may not be a legal requirement for the validity of agreement to sell, however if the attestation shows the endorsement of the notary, duly proved as an exhibit, the same may be taken into consideration—mere inadequacy of the consideration is also no ground to disbelieve an agreement and to make it unexecutable—further, notification issued by the state in regard to acquisition would not stand in the way of enforcing an agreement as acquisition of property is a sovereign function of the State. Appeal allowed.

Held, Although, the attestation by a Notary Public may not be any legal requirement for the validity of the agreement to sell, however, the attestation shows that the endorsement of the Notary is of the same date, as is the date of the execution of the agreement itself. The register of the Notary Public, which has been duly proved on record as Exhibit P-4/A, bears the signatures of both the defendants. Hence, the presence of both the defendants and their signatures on the documents having been put on that date, have been duly established on the record.

(Para 11)

Held, that Although, the learned counsel for the defendants have raised the arguments that the agreement was suspicious because of the consideration for the property, as shown in the agreement, being e extremely under-valued, however, this court does not find any substance in this argument of learned counsel for the defendants. Firstly, even as per the law, mere inadequacy of the consideration is no ground to disbelieve an agreement or to make the agreement un-executable. However, the fact is that; in the present case the plaintiff has led in evidence other sale deeds pertaining to land in the same area and executed at about the same time, which shows the value of the agricultural land at about the same rates, as are mentioned in the present agreement.

(Para 14)

Held, that since the suit was instituted long ago, therefore, the preliminary notification issued by the State now, would not even stand in the way of the course of law in enforcing the agreement as such; and in issuing a direction to transfer the title by the defendant in favour of the plaintiff. However, it is needless to say that since the acquisition of the property is a sovereign function of the State, therefore, in that situation the plaintiff would step into the shoes of the defendants and would he acquire rights not more than the rights of the defendants, so far as the process of acquisition is concerned.

(Para 17)

Arun Jain, Senior Advocate and
Chetan Mittal, Senior Advocate with
Amit Jain, Advocate and
Kunal Mulwani, Advocate
for the appellants.

I. S. Saggu, Advocate
for respondents No.1 to 5.

M. S. Sachdev, Advocate
for respondent No.6.

RAJBIR SEHRAWAT, J. oral

(1) This is the regular second appeal filed by the plaintiff in the original suit, against the judgment and decree passed by the lower appellate court; vide which while partly reversing the findings recorded by the trial court in the suit for specific performance of the agreement to sell, the decree passed by the trial court was modified; and the suit of the appellant was partly decreed only qua recovery of the earnest money.

(2) For the convenience and continuity, the parties are being referred to herein as the plaintiff and the defendant, as they were described in the original suit. One more thing which deserves to be noted is that during the pendency of the appeal before the lower appellate court, the defendant No.1 in the suit had expired and his legal representatives were brought on record. Subsequently, even the plaintiff also expired and now the appeal is being prosecuted by the legal representatives of the original plaintiff in the suit.

(3) Briefly stated, the facts involved in this case are that the suit for specific performance was filed by the plaintiff on 11.04.2005 asserting therein that defendant No.1-Gurdeep Singh had entered into

an agreement to sell dated 10.11.2004. Vide this agreement, the agricultural land measuring 40 kanal 6 marla, situated in Village Sio, was agreed to be sold for a consideration of Rs.33,60,000/- (Rupees thirty three lacs sixty thousand only). An amount of Rs.10,00,000/- (Rupees ten lacs only) was received by the vendor as earnest money. The land was owned by defendants No.1 and 2. Accordingly, both the defendants had signed the agreement, as well as, the receipt, as token of having obtained the earnest money. The target date for execution of the sale deed was fixed to be on or before 31.03.2005. On 30.03.2005 the plaintiff requested the defendants to execute the sale deed in his favour after receiving the balance sale consideration as per the terms of the agreement. However, the defendants put false excuse and showed no interest in executing the sale deed in favour of the plaintiff. Accordingly, on 31.03.2005, the plaintiff got prepared two drafts in favour of the defendants for the balance sale consideration and remained present in the office of the Sub-Registrar from 9.00am to 4.00pm. When the defendants did not come present during the whole day, the plaintiff got his presence marked in the office of the Sub-Registrar; as a mark of his readiness and willingness to get the sale deed executed. However, since the sale deed could not be got executed as per the agreement to sell, therefore, the suit for the specific performance was instituted by the plaintiff. This also deserves to be mentioned that, in the first instance, only the defendant No.1 was arrayed as defendant in the suit. However, subsequently defendant No.2, who is the son-in-law of defendant No.1, was also arrayed as defendant by amendment of the plaint. During the pendency of the suit, the sons and wife of the defendant No.1 had also obtained a collusive decree dated 30.05.2009 from the defendant No.1. Accordingly, the suit was again amended by the plaintiff to challenge the said collusive decree. Subsequently, even the mutation based upon that decree came to the knowledge of the plaintiff, and therefore, again by amending the suit, the mutation was also challenged in the suit.

(4) The defendants No.1 and 2 filed separate written statements in which the agreement was denied. However, the essence of the assertions of the defendants was that defendant No.1-Gurdeep Singh intended to get his son settled abroad and for that purpose; he needed money. He had raised this money from the plaintiff as a loan; and at that time of getting the said loan, the plaintiff had got signatures of the defendant No.1 on some blank papers. Hence, the agreement in question has been fabricated by the plaintiff on those papers. It was further averred that the price of the land in the area, at the relevant time,

was not less than Rs.30,00,000/- per Acre. Hence, there could not have been any reason for the defendant to agree to sell the land only for total of Rs.33,60,000/-; at a throw away prices. The signatures of the defendant No.1 were obtained when he was under influence of the liquor. Attesting witnesses to the agreement are the persons of the plaintiff himself. The residential house of the family of the defendants is also situated in the said land. Hence, if the said land is sold, then the family would suffer a great hardship. It was further pleaded that plaintiff made defendant No.2 to sign certain papers, by stating to obtain his witness to the transaction of borrowing money by the defendant No.1. It is also pleaded that the agricultural land in question was coparcenary property, therefore, defendant No.1 had no right to sell the said property.

(5) After considering the pleadings of the parties, issues were framed by the trial court, including the issue qua the existence and validity of the agreement to sell in question. The parties led their respective evidence in the case. The plaintiff himself appeared as PW-3. Besides himself, he examined attesting witnesses of the agreement Surjit Singh as PW-1 and Partap Singh, Clerk, working in the Cooperative Bank, as PW-2; to prove the factum of preparation of the drafts of the balance sale consideration. Hukam Singh, Notary Public; was examined as PW-4 to prove the attestation of the agreement to sell, as well as; the signatures of the defendants in the register of the Notary Public; as a mark of their presence before him at the time of attestation of the agreement to sell. On the other hand, defendant No.1 appeared as DW-1. Defendant No.2 appeared as DW-2 and Amrit Pal Singh, son of the defendant No.1 appeared as DW-3. Besides this, one Pankaj Jiswal was examined as DW-4 to show the valuation of the property. Two other witnesses were also examined by the defendants.

(6) After considering the respective evidence led by the parties, the trial court held the agreement to have been duly executed. The defendants were held bound to the terms of the agreement. Accordingly, the suit filed by the plaintiff was decreed in toto and the defendants were directed to execute the sale deed after obtaining the balance sale consideration.

(7) Feeling aggrieved against the said judgment and decree, the defendants preferred appeal before the lower appellate court. However, the lower appellate court vide its judgment and decree dated 28.09.2015 partly modified the decree by holding the plaintiff entitled to only the return of the earnest money. The direction to execute the sale deed in

favour of the plaintiff was set aside by the lower appellate court. The modification of the decree by the lower appellate court was based upon the assessment of the lower appellate court that the circumstances surrounding the agreement to sell were such, which show that the alleged agreement was not intended to be enforced. The agreement could have been a security agreement for repayment of the loan, which was pleaded by the defendants. For arriving at this conclusion, the lower appellate court had relied, basically, upon the fact that the opening paragraph of the agreement mentioned the name of only defendant No.1 as the seller and defendant No.2 is not mentioned. Further, there are inconsistencies in the testimony of the witnesses of the plaintiff qua the time of the execution of receipt of payment. Although the agreement to sell in question was typed on stamp papers, however, certain columns in the same were left blank and have been filled up with pen later on. The parentage of the attesting witness has not been mentioned. Although, the description of the land was mentioned in the agreement, however, the year of the Jamabandi, on the basis of which title was claimed by the defendant, was not mentioned in the agreement. Although, defendant No.2 was also the co-owner of 17 kanal 16 marla of the land out of the land sold through the agreement to sell, however, the shares in the total consideration were not separately specified for both the sellers. There is a house existing on the land, however, the agreement did not mention the existence of house. The sale consideration mentioned in the agreement did not match the prevailing prices in the area. Still further, the lower appellate court held that in case the defendants are directed to execute the sale deed, they will have to undergo extreme hardship, whereas, on the other hand, the plaintiff would be unduly enriched on account of this transaction, and it would give unfair advantage to the plaintiff. Hence, the plaintiff was denied the right to get the sale deed executed, by granting him only relief of returning of his earnest money. Aggrieved against that judgment and decree of the lower appellate court, the present appeal has been filed by the plaintiff.

(8) While arguing the case, the learned counsel for the appellant/plaintiff has submitted that the agreement in question has been duly proved on record. The plaintiff has duly proved that he was present in the office of the sub-Registrar on the specified date for execution of the sale deed; along with the drafts Exhibits P-5 and P-6 qua the balance sale consideration. Still further, it is submitted by the counsel for the appellant/plaintiff that right from day one, the agreement Exhibit P-1 was intended to be an agreement to sell. The

receipt of earnest money is not even denied by the defendants. It has come on record that after receipt of the money from the plaintiff, the defendant had deposited the said money in his bank account. Still further, knowing fully well that the defendant had executed an agreement to sell, meant to be executed, the family members of the defendants made repeated attempts to frustrate the suit of the plaintiff. In that attempt, the suits were filed by the sons and wife of the defendant No.1, as well as, by sons of the defendant No.2. The plaintiff moved application for becoming party in those suites filed by sons of defendant No.2, however, the same was declined by the trial court. But on becoming aware that the plaintiff had become aware of the suits filed by the sons of defendant No.2, the said suits were withdrawn on 01.06.2006 and 15.09.2007 without seeking any permission from court. When the suits were withdrawn by the sons of defendant No.2, the present suit filed by the plaintiff was already pending before the trial court. Thereafter, the third suit was filed by sons of Gurdeep Singh defendant No.1 on 04.09.2008. In that suit, again the plaintiff was not made a party. Accordingly, a collusive decree was passed in the said suit between the defendant No.1 and his sons. However, when the plaintiff became aware of that decree, he challenged that decree as well, by amending the present suit. Hence, it is submitted that the very fact that the defendants and their families have been making frantic attempts to frustrate the suit filed by the plaintiff, shows that they were aware about the existence of the agreement as well as the validity of the agreement. Hence, the lower appellate court has gone wrong in law, in diluting the validity of the agreement by observing that it was not intended to be enforced. It is further submitted by the counsel for the appellant that the entire story, of making attempt to deny the signatures on the agreement and the receipt; or the claim that the signatures were obtained on blank papers, stand belied by the testimony of the defendants themselves. The son of the defendant No.1, while appearing as DW-1 has admitted that the signatures of both the defendants on the agreement Exhibit P-1 and the receipt Exhibit P-2, by saying that he recognizes the signatures of both. He has further stated that the defendant No.1 and his son-in-law defendant No.2, both were residing together. Not only this, he has admitted the signatures of both the defendants on Exhibit P-4/A, which is an endorsement in the register of the Notary Public. Therefore, it is established that no signatures were obtained on blank papers, rather; the agreement was duly signed by both the defendants and they were even present before the Notary Public, when the agreement was got attested from him. This witness has

further admitted that defendants have also sold other lands in the same village in the similar manner, and they have sold land in the other village as well, at about the same time. Hence, it is submitted by counsel for the appellant that the agreement to sell was intended to be an agreement to sell only and it was meant to be enforced. To buttress his claim further, the counsel for the appellant has referred to the testimony of DW-2; wherein he also admitted his signatures on Exhibit P-1, P-2, as well as, on Exhibit P-4/A; although he tried to explain that the signatures were put by him on the asking of defendant No.1-Gurdeep Singh. Not only this, even the defendant No.1-Gurdeep Singh admitted his signatures on agreement Exhibit P-1, receipt Exhibit P-2 and the endorsement Exhibit P-4/A. He has also admitted that even the defendant No.2 had put his signatures on the said document, although this witness tried to explain that defendant No.2 had signed only as a guarantor for the loan availed by defendant No.1. However, there is a specific admission in the testimony of DW-1 Gurdeep Singh, wherein he states that he had no hardship of any kind at the relevant time. In the end, the counsel for the appellant has submitted that Notary Public has also been produced by the plaintiff who has deposed that he had attested the said document and that all the parties to the deed were present at the time of attestation. So far as the minor defects in the language of the agreement to sell, are concerned, it is submitted by the counsel for the appellant that since the sale deed was prepared and typed by a person who was not a regular scribe, therefore, such defects were only the typographical mistakes. However, since both the executants of the agreement have not even denied their signatures on the agreement and the receipt of the money, therefore, it is sufficient to show that the agreement in question was duly executed in favour of the plaintiff. While citing the judgment of this court rendered in ***Brahm Dutt versus Sarabjit Singh***[1], the counsel for the appellant has submitted that no evidence has been led by the defendants to substantiate their claim qua the agreement being a security agreement for repayment of the loan. There is nothing, even on record, to show that the defendants ever repaid the money as a loan or any interest thereon. Hence, this contention of the defendants that agreement could be a security agreement, cannot be accepted. Still further, relying upon the judgment of this court rendered in ***Jaswinder Singh versus Nirmal Kaur***[2], it is contended by the counsel for the appellant that once the signatures on

[1] 2017(4) Law Herald, 3376
[2] 2018(2) RCR (Civil), 903

the agreement were admitted by the defendants, it was for them to lead the necessary evidence to prove the fraud in the case. It is further submitted that once the agreement is proved, as having been executed, thereafter the defendants are not entitled to raise the question of suspicious circumstance as a ground to question the validity of the agreement. In the present case, no evidence has been led by the defendants to prove the factum of any fraud. Hence, any argument qua the circumstances attending to the agreement in question, is an argument in futility. Accordingly, it is submitted that the appeal filed by the plaintiff be allowed and the judgment and decree passed by the court below be modified; to grant a decree in favour of the plaintiff for execution of the sale deed pursuant to the agreement in question.

(9) Replying to the arguments, learned counsel for the defendants No.1 and 2 has repeated the reasoning given by the lower appellate court and has submitted that the agreement Exhibit P-1, while describing the parties, mentioned the name of only defendant No.1 as the seller. The defendant No.2 is not even mentioned as a seller, despite the fact that half of the land agreed to be sold belongs to the defendant No.2. Still further, it is submitted that the date of execution, as well as, the names of witnesses and the parties to the agreement, have been written in hand, whereas the entire other agreement is typed. Therefore, this would show that at the time of typing of the agreement even the plaintiff was not sure as to when the agreement in question would be signed by the parties and as to who would be the witnesses. It is also submitted by the counsel that the consideration allegedly agreed and the earnest money paid, as mentioned in the agreement, has not been apportioned to the defendants/vendors in proportion to their shares in the recitals of the agreement. Hence, it is submitted that the assertion of the defendants that the signatures were obtained on a representation to them that it was a loan transaction, gains strength. Still further, it is submitted by the counsel for the defendants that the deed in question has not been scribed by a regular deed writer. The witnesses to the agreement are the friends of the plaintiff, therefore, their testimony cannot be relied upon. The attestation by the Notary Public would not confer any sanctity on the document, because the law does not require the agreement to be attested by any Notary Public. Still further, it is submitted by the counsel that the document itself become suspicious because even the big house, which is existing in the land, has not been mentioned in the agreement to sell. The value of the house alone has been evaluated by the competent valuer to be at Rs.57,00,000/- (Rupees

fifty seven lac only), however, despite that the sale consideration mentioned the total amount of Rs.33,60,000/- only.

(10) The defendant/respondent No.6 has got impleded himself as party during the pendency of the present appeal before this court on the ground that during the pendency of this appeal the land has been purchased by them from the defendants. Although the counsel representing defendant No.6 has repeated the arguments addressed by counsel for the other defendants, but, he has conceded that strictly speaking, he may not be in a position to argue anything beyond the arguments raised by the counsel for the defendants. However, he has also submitted that the plaintiff himself has placed on record a subsequent development, i.e., the fact that the State of Punjab has issued a preliminary notification for acquisition of the property in question. Since the property has gone in the process of acquisition, therefore, the decree for execution of the sale deed could not be passed by the court. Hence, it is submitted that the agreement stands frustrated. Therefore, the agreement itself having been rendered unexecutable, the present appeal be dismissed. It is further submitted by the counsel for the defendant No.6 that since the process of acquisition has started before the execution of the sale deed, therefore, the plaintiff has got no right in the property. Mere agreement does not tantamount to transfer of title in favour of the vendee. Hence, the plaintiff has got no right, title or interest in the suit property, which otherwise also has become subject matter of the acquisition proceedings. The counsel has relied upon the two judgments of the Kerela High court rendered in the cases of ***R. Chandramohan Naur*** versus ***Joseph Raju***[3] and ***Kumaran*** versus ***Kumaran***[4]. To the same effect, the counsel has also relied upon the judgment of the Supreme Court rendered in ***Satyabrata Ghose*** versus ***Mungneeram Bangur and Comp & anr.***[5]**.**

(11) Having heard the learned counsel for the parties and having perused the record, this court finds substance in the argument of the learned counsel for the appellant(s)/plaintiff. As is clear from the facts, the agreement in question has been duly proved before the trial court. The attesting witnesses have been examined. Not only this, even the Notary Public has been produced by the plaintiff who has produced his register, showing that the defendants were present at the time of the

[3] 2015(3) KHC 11
[4] 2011(1) KLT 252
[5] 1954 AIR (SC) 44

execution of the agreement in question. As a mark of their presence at the relevant time they had signed the endorsement in the register of the Notary Public. Although, the attestation by a Notary Public may not be any legal requirement for the validity of the agreement to sell, however, the attestation shows that the endorsement of the Notary is of the same date, as is the date of the execution of the agreement itself. The register of the Notary Public, which has been duly proved on record as Exhibit P-4/A, bears the signatures of both the defendants. Hence, the presence of both the defendants and their signatures on the documents having been put on that date, have been duly established on the record. Even the defendants in their testimony have admitted the signatures of both the defendants on the agreement to sell Exhibit P-1, receipt of payment of earnest money Exhibit P-2, as well as, on the register of the Notary Public Exhibit P-4/A. The same have also been recognized by the DW-3, who is son of the defendant No.1. The said signatures are not even being denied by the defendants, while appearing as DW-2 and DW-3. Although the defendant No.2 has claimed that he signed at the instance of the defendant No.1-Gurdeep Singh, however, he has admitted his signatures on the Exhibit P-1; the agreement to sell, the receipt Exhibit P-2 and also in the register of the Notary Public. Although, in the first instance, the defendant No.1 had tried to deny the execution of the sale deed by asserting that signatures were obtained from him on blank papers, however, while appearing as DW-3, the defendant No.3 has recognized his signatures on the agreement, as well as, on the receipt Exhibit P-2. The signatures of both the defendants on the receipt Exhibit P-2 make out a clear-cut case in favour of the plaintiff. This is so because the signatures, which the defendants have admitted on the receipt Exhibit P-2, are the signatures which are partly on the paper on which the receipt is typed and thereafter, transverse over the revenue stamp, which has been affixed upon the receipt. Therefore, the claim of the defendants that the signatures were obtained on the blank papers or for the purpose of loan, totally stands demolished.

(12) Although, the learned counsel for the defendants have pointed out that while describing the selling parties in the agreement to sell, the name of the defendant No.2 is not mentioned as the seller, however, on this point also this court finds substance in the argument of the learned counsel for the appellant(s) that it was a typographical error which had crept in because the said agreement was not scribed by a regular deed writer. The name of the defendant No.1 only is mentioned as the seller, but it is mentioned twice. Therefore, it is definitely a case of typographical error, wherein while describing the seller No.2, instead

of defendant No.2, the name of defendant No.1 again has been written. Otherwise, there would not have been any reason for mentioning the name of defendant No.1 twice as seller; at the same place and in continuity. However, whatever be the significance of this defect, that stands cured by the fact that at the end of the agreement, the sellers are described as such and both the defendants have put their signatures as sellers. Same is the case with other recital in the sale deed as well. The fact that the consideration amount has not been apportioned between both the sellers separately in the recital of the agreement, seems to have arisen from the fact that both the sellers are the father-in-law and the son-in-law, and has also been shown on record to be residing jointly at the same place. Hence, certain aspects in the agreement have been described giving reference of the defendant No.1 only. However, at all the relevant places, including all the pages of the agreement, as well as the receipt, the signatures of the defendant No.2 are very much there, along with signatures of defendant No.1. Therefore, if at all there was any slight defect in draftsmanship, the same is rendered insignificant because of the ratification coming from the signatures of the defendant No.2 at all the relevant places.

(13) Although, learned counsel for the defendants have also submitted that the agreement was in typed form but the date and the names of the parties were written with pen in handwriting, however, this argument is also not legally sustainable. There is no strict requirement as to whether all parts of the agreement have to be in typed form or in handwriting form or in combination thereof. In the present case, the fact remains; that all the terms of the agreement are duly typed. Thereafter the signatures have duly been put by both the parties to the agreement, as well as, by the attesting witnesses. Hence the integrity of the agreement stood completed.

(14) Although, the learned counsel for the defendants have raised the arguments that the agreement was suspicious because of the consideration for the property, as shown in the agreement, being extremely under-valued, however, this court does not find any substance in this argument of learned counsel for the defendants. Firstly, even as per the law, mere inadequacy of the consideration is no ground to disbelieve an agreement or to make the agreement un-executable. However, the fact is that; in the present case the plaintiff has led in evidence other sale deeds pertaining to land in the same area and executed at about the same time, which shows the value of the agricultural land at about the same rates, as are mentioned in the present

agreement. Particular reference has been made by the counsel for the plaintiff to Exhibits P-21 and P-22; which are the sale deed executed on 28.04.2005 and 11.03.2005 respectively, in which the value of the land is shown to be approximately the same as is mentioned in the present agreement. Not only this, in agreement Exhibit P-21 son of the defendant No.1-Gurdeep Singh, namely, Amritpal Singh DW-2, is one of the attesting witness. Therefore, it does not lie in the mouth of the defendants to allege that the value of the land at the relevant time was much more than the value mentioned in the agreement to sell. Although, the counsel for the defendants have submitted that there exists a house on the land in question and the house alone is valued by the valuer worth Rs.57,00,000/-. However, this argument is also totally irrelevant. Firstly, the alleged valuation report is after more than five years of the alleged agreement to sell. Still further, the defendants have not been able to place on record any revenue record to show that there exists a house on the suit land, which is undisputedly an agricultural land. Not only this, even the suits filed by sons of the defendants, while describing the suit property, did not mention that any house existed on the suit property. Therefore, it is clear that there was no house at the relevant time and it might be constructed later on or there does not exist any house on the suit property even now. In any case, as held above, the inadequacy of the consideration, by any means, is no ground not to enforce the agreement as such.

(15) The counsel for the defendants have also argued that the learned lower appellate court has rightly held that the execution of the sale deed in favour of the plaintiff, would cause extreme hardship to the defendants. However, the defendant No.1, while appearing as a witness before the court has himself deposed that there was no hardship to him. Still further, it has come in evidence that after taking the earnest money, the defendants had put the said amount in the Bank Account. Therefore, it is clear that the defendant No.1 was not under any pressing necessity or any personal hardship at the time of execution of the alleged agreement to sell. Not only this, it has also come on record that the defendants were selling land, repeatedly, at the relevant time. In the said process they had sold the land in this village, as well as, in the other village. Hence, there is no ground for presuming any hardship to the defendants; in the case of execution of the sale deed pursuant to the agreement to sell.

(16) Although, at the starting point the pleadings of the defendants had been that, that the money was taken from the plaintiff as

loan, however, the defendants have not led any evidence by examining any person, who might be present at the time of the execution of the alleged agreement and at the time of taking money from the plaintiff, to prove that it was a loan transaction. On the other hand, the witness signing the receipt of money, has proved the document to be an agreement to sell. Although, the defendants tried to deny the document by alleging that the signatures were obtained by the plaintiff on blank papers, however, even the testimony of the witness of the defendants do not support this argument. Feeling cornered, the counsel for the defendants even tried to deny the existence of the signatures on the documents itself, however, if that was so, it was incumbent upon the defendants to prove this fact, at least by examining some handwriting expert by comparing the signatures. But nothing of that sort has happened. Not only this, a bare eye perusal of the signatures of the defendants on their powers of attorney filed before the trial court, on the face of it, match with their signatures on the agreement and the receipt claimed by plaintiff. Hence, this argument cannot be treated more than the last but failed attempt by the defendants to wriggle out of their liabilities.

(17) Although, the counsel for the newly added defendant No.6 has submitted that since the process of acquisition of the suit land has been initiated, therefore, the agreement stand frustrated, however, this court does not find any substance in this argument of the counsel for the defendant No.6. The judgments cited by the counsel for the defendant No.6 are totally irrelevant for the purpose of the argument, as well as these are totally distinguishable with reference to the facts of the present case. It is a matter of fact in the present case; that the trial court had already passed the decree for execution of the sale deed in favour of the plaintiff. At that time there was no notification for acquisition of the land in question. There was no notification of acquisition even during the pendency of the appeal before the lower appellate court. Even before the High Court, the appeal has been pending since long, however, the notification has come only in October, 2019. Even this notification is only a preliminary notification, guarantying no acquisition as the ultimate produce of this process. Although the preliminary notification has been issued by the State, however, the State may or may not acquire this property. At this stage, even the title of the owner existing in the record has not been disturbed by the said notification. The said notification has only given certain powers to the State authorities to enter into the properties for the purpose of survey etc. However, the title shall still remain with the owner. The plaintiff is

claiming only that title. Whatever be the result of the proceedings of the notification, the plaintiff would step into the shoes of the defendants. Therefore, the issuances of the preliminary notification of acquisition, per se, cannot be taken as a fact frustrating the agreement to sell. As such, the agreement can still be enforced, which shall be subjected to the process of acquisition of land, if any. Since the suit was instituted long ago, therefore, the preliminary notification issued by the State now, would not even stand in the way of the course of law in enforcing the agreement as such; and in issuing a direction to transfer the title by the defendant in favour of the plaintiff. However, it is needless to say that since the acquisition of the property is a sovereign function of the State, therefore, in that situation the plaintiff would step into the shoes of the defendants and would he acquire rights not more than the rights of the defendants, so far as the process of acquisition is concerned.

(18) In view of the above, this court finds that the lower appellate court has wrongly reversed the findings recorded by the trial court on the issues mentioned in the judgment of the lower appellate court. Accordingly, those findings of lower appellate court are set aside. The judgment and decree passed by the trial court are upheld and restored.

(19) The appeal is allowed accordingly; with costs.

Payel Mehta