
(1996) 04 P&H CK 0095

In the Punjab And Haryana At Chandigarh

Case No : Regular First Appeal No. 1712 of 1978

Nirmal Singh (Deceased by LRs) and others

APPELLANT

Vs

Smt. Gejo and another

RESPONDENT

Date of Decision : 09-04-1996

Acts Referred:

Specific Relief Act, 1963 — Section 16(1), 20, 27
Transfer of Property Act, 1882 — Section 41

Citation : AIR 1997 P&H 260 : (1997) 3 CivCC 111 : (1996) 2 CivCC 434 :
(1997) 115 PLR 301 : (1996) 3 RCR(Civil) 744

Hon'ble Judges : H.S. Brar, J

Bench : Single Bench

Advocate : Satya Prakash Jain, for the Appellant; M.L. Sarin and Hemant Sarin,
for the Respondent

Judgement

1. Briefly stated the facts are that land measuring 13 Kanals 19 Marias, 1/3rd share of 41 Kanals 17 Marlas, situated in the area of village Mirpur Mari as described fully in the head-note of the plaint was owned and possessed by defendant No. 1 Gejo who entered into an agreement to sell the same to Bakhshi Ram Plaintiff-respondent vide, agreement dated 1-11-1974 at the rate of Rs.12,000/- per killa. The sale-deed, according to the agreement, had to be executed on or before 15 Har, 2032 corresponding to 28-6-1975 A. D. A sum of Rs. 4,000/- was paid in cash to Gejo as earnest money and the balance was to be paid at the time of registration of the sale deed. Stamp and registration expenses were to be borne out by the plaintiff Bakshi Ram. It was then agreed that if the plaintiff committed the breach of the contract then the earnest money was to be forfeited and if the breach of agreement was committed by Gejo defendant No. 1 then she would have to pay back the earnest money, along with ascertained damages named in the deed of agreement. Both the parties were for specific performance if either of the party was given the right to move the Civil Court at fault in fulfilling the terms of the agreement. All the terms were incorporated in the terms of agreement duly signed and thumb-marked by the

parties.

2. It is averred in the plaint that defendant No. 1 Gejo played into the hands of defendants Nos. 2, 3 and 4 and out of greed, she sold the land under agreement to them vide sale deed dated 6-1-1975. The subsequent vendees, according to the plaintiff, were not bona fide purchasers for value without notice. The vendees were quite aware of the agreement in favour of the plaintiff and they were definitely told by the plaintiff and the others and the witnesses of the deed of agreement not to buy the litigation as the very land was to be purchased by the plaintiff vide agreement dated 1-11-1974 as stated above and the defendant No. 1 could not validly make a sale of this very land in their favour. Defendants Nos. 2 to 4 are real brothers. The news of this agreement in favour of the plaintiff had spread like a wild fire in the small village and the defendants and other male and female members came to know of the same.

3. It is then averred in the plaint that the plaintiff was and would always be ready and willing to perform his part of the contract and it was the defendant No. 1 who had committed breach of the contract by selling this very land in favour of defendants Nos. 2 to 4 on 6-1-1975, before the date fixed in the agreement. The land was under mortgage and mortgage money was kept in trust to be paid later to the mortgagees, Defendant No. 1 has resiled from the agreement and committed breach of the contract. As such, the plaintiff has been compelled to file this suit for specific performance.

4. It was the averred in the plaint that if the plaintiff is not granted a decree for specific performance of the contract of sale then he be granted a decree for the recovery of Rs. 20,025/- on account of recovery of earnest money, ascertained amount of damages and compensation. In spite of repeated requests, the defendants had not admitted the claim of the plaintiff. Therefore, this suit has been filed by Bakshi Rani plaintiff against Gejo etc. defendants for specific performance of contract of sale dated 1-11-1974 or in the alternative, suit for the recovery of Rs. 20,025/- the details of which have been mentioned in the head notes A and B of the plaint.

5. Defendant No. 1 was proceeded ex parte. However, the written-statement was filed by defendants Nos. 2 to 4. Preliminary objections have been raised by the contesting defendants that Balwant Singh defendant No. 3 is a minor. He has been wrongly impleaded as a major. His guardian has not been appointed. The plaint requires amendment. An objection was taken that the value of the suit for the purposes of court-fee and jurisdiction is incorrect, and the plaintiff is not coming with clean hands. It was averred in the written statement that defendants Nos. 2 to 4 are bona fide purchasers for value in good faith and without notice of the alleged agreement, so they are protected u/s 41 of the Transfer of Property Act.

6. On merit, it was pleaded in the written statement that the land in suit was mortgaged with possession with Gujar Singh, father of defendants No. 2 to 4 and

defendants No. 2 to 4 purchased the land in dispute after being fully satisfied after due enquiry about the title of defendant No. 1 from the revenue record. The terms and conditions of agreement are not admitted. It is then stated in the written statement that the contesting defendants had no knowledge of the alleged agreement in favour of the plaintiff. They are bona fide purchasers for value and in good faith without notice of the agreement in question. As such, according to them, they are protected u/s 41 of the Transfer of Property Act. They satisfied themselves about the title of defendant No. 1 regarding the land in suit and after making due enquiry from the revenue record they purchased the same. It was denied that defendant No. 1 was playing in the hands of the contesting defendants. Gejo sold the land in suit in favour of the defendants vide registered sale-deed for Rs. 8000/- each and the defendants Nos. 2 to 4 are the bona fide purchasers as contemplated u/s 41 of the Transfer of Property Act. Other allegations made in the plaint have been denied.

7. Replication was filed by the plaintiff, in which, the stand taken up by the defendants was not admitted.

8. The trial Court framed the following issues :--

1. Whether defendant No. 1 Gejo entered into an agreement dated 1-11-1974 to sell the land in dispute as alleged ? OPP

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

3. Whether defendant No. 1 committed the breach of the terms of the agreement ? OPP

4. Whether defendants Nos. 2 to 4 are bona fide purchasers for consideration without notice? OPD

5. Whether the plaint requires amendment as Balwant Singh is minor, as alleged ? OPD

6. Whether the plaintiff is estopped to file this suit by act and conduct ? OPD

7. Whether the suit is properly valued for the purposes of court-fee and jurisdiction? OPP

8. Whether the plaintiff is entitled to the decree for specific performance ? OPP

9. If issue No. 8 is not proved, whether the plaintiff is entitled to the recovery of Rupees 20025/- as alleged in the head note "B" of the plaint ? OPP

10. Relief.

9. After hearing the learned counsel for the parties, and going through the evidence on record, the learned trial Court decided issues Nos. 1,2,3 and 4 in favour of the plaintiff and against the defendants. Issues Nos. 5 and 6 were also decided against the defendants as they had not led any evidence to

discharge the onus of proving the same. On issue No. 7, it was held by the trial Court that the suit is properly valued for the purpose of court-fee and jurisdiction. Under issues Nos. 8 and 9 the trial Court held that the plaintiff was entitled to a decree for specific performance as Gejo committed the breach of contract and before the actual date fixed in the agreement she executed a sale deed in undue haste in favour of defendants Nos. 2 to 5. Resultantly, the suit of the plaintiff was decreed with costs for specific performance of the agreement of sale dated 1-11-1974. Defendant No. 1 was directed to execute the sale deed on 22-11-1978. Defendants Nos. 2 to 4 were directed to co-operate in executing the sale-deed. The plaintiff was ordered to give Rs. 16925/- at the time of registration of sale deed to the vendor Gejo before the Sub Registrar, Nakodaron 22-10-1978. If the defendant did not execute the sale-deed on the said date the trial Court directed that the plaintiff can get it executed through Court and in that event the plaintiff was directed to deposit the money in Court within one month from that date. The expenses of the sale deed were ordered to be borne out by the plaintiff.

10. Against this judgment and decree of the trial Court, defendants-vendees filed an appeal -which has come up for hearing before me for final decision.

11. The learned counsel for both the Parties have been heard and the evidence and the documents on the file have been perused with their help.

12. The trial Court under issues Nos. 1, 2 and 3 has held that Gejo defendant No. 1 entered into an agreement dated 1-11-1974 with Bakhshi Ram plaintiff to sell the land in dispute. Under issues Nos. 2 and 3 it was held by the trial Court that the plaintiff was always ready and willing to perform his part of the contract but it was defendant No. 1 who committed the breach of the terms of the agreement. I do not find any infirmity with this finding of the trial Court.

13. It is amply proved on the record that Gejo defendant No. 1 entered into an agreement to sell the disputed land with Bakhshi Ram plaintiff vide an agreement deed dated 1-11-1974. To prove the same, the plaintiff has produced the scribe and the attesting witness of the agreement.

14. PW-1 Kishan Kumar deposed at the trial that agreement deed dated 1-11-1974 Ex. P-1 was scribed by him at the instance of Gejo i.e. defendant No. 1 in favour of Bakhshi Ram plaintiff. According to this witness the agreement was read over to the Parties who thumb marked and signed the same after admitting its contents to be correct in his presence. At the same time, according to this witness, a sum of Rs. 4,000/- was paid to Gejo. According to Hari Ram, PW-2 who is a marginal witness of the agreement Ex. P-1 the agreement was executed at the instance of Gejo and Bakhshi Ram in his presence and at that time a sum of Rs. 4,000/- was paid by the plaintiff to Smt. Gejo. This document, according to him, was read over to the parties and the Parties attested the same after admitting its contents to be correct. He further stated at the trial that the second marginal witness was Swarna Sarpanch. It has come in evidence that Swarna

Sarpanch could not be produced as he had left the village and was not traceable. Again Bakshi Ram PW-3 has testified at the trial that the agreement Ex. P-1 was scribed at the instance of Gejo. The scribe, according to him, was Kishan Chand Deed-Writer and the document was read over to the parties and he along with Gejo attested it by signing and thumbmarking the same. Bakhshi Ram plaintiff PW-4 testified his statement made in the plaint and corroborated the statements made by the Scribe as well as the attesting witness at the trial so far as the execution of the agreement Ex. P-1 is concerned.

15. Thus, I endorse the judgment of the trial Court on this issue and hold that a valid agreement to sell between the plaintiff Bakhshi Ram and Gejo defendant No. 1 was executed on 1-11-1974.

16. Pronouncing upon issues No. 2 and 3 the trial Court has rightly held that plaintiff Bakhshi Ram was always ready and is still ready and willing to perform his part of the contract and it was defendant No. 1 Gejo who committed the breach of the terms of the agreement Ex. P-1.

17. Bakhshi Ram plaintiff, PW-3 has stated on solemn affirmation at the trial that he was ready previously and would also be ready in future to perform his part of agreement. There is no evidence on behalf of the defendant No. 1 Gejo that she was ready and willing to perform her part of the contract as she was proceeded ex parte and she did not choose to contest the suit and to lead any evidence whatsoever. The statement of the plaintiff rather goes unchallenged as the right person i.e. Smt. Gejo who could challenge the assertions made by the plaintiff so far as his readiness and willingness to perform his part of agreement are concerned did not choose to join the proceedings at all.

18. As per the agreement Ex. P-1, the sale deed was to be executed by Gejo defendant No. 1 on or before 28-6-1975 but she did not wait for that date. She sold the land in dispute to defendants No. 2 to 4 vide sale deed dated 6-1-1975 i.e. before 28-6-1975 and immediately after two months of the entering into an agreement with the plaintiff. Gejo vendor did not choose even to issue any notice to the plaintiff to show her willingness and readiness to perform her part of the contract and expressing her desire to sell the land to someone else, she could not wait up to 28-6-1975 i.e. the agreed date to sell the land mentioned in the agreement Ex. P-1 but in unusual haste sold the land to defendants Nos. 2, 3 and 4. It is thus, crystal clear that defendant No. 1 was not ready and willing to perform her part of the contract and on the other hand, there is plausible evidence on the record to show that the plaintiff was always willing and ready and is still ready to perform his part of the contract.

19. It has come in the evidence of DW-6 Gian Singh that Gejo and Darshan Singh her husband came to him and asked him and Chanan Singh to accompany them to Bakshi Ram so that he may get the sale deed of the land executed from them. He along with them went to Bakhshi plaintiff but Bakhshi told them that he had no ready money with him and he does not want to purchase the land,

though Gejo was ready and willing to execute the sale deed in favour of Bakhshi. Bakhshi, according to him, committed the breach of agreement and not Gejo. To the same effect is the statement of DW-7 Chanan Singh. DW-10 Darshan Singh, who is the husband of Gejo, has also stated in the same terms but Gejo did not choose herself to come in the witness box and throw any light on the matter. The statements of these witnesses indicate that they have tried to cook-up this story and it was certainly an after thought, but still whatever they have deposed at the trial does not dislodge the evidence produced by the plaintiff which goes to show that the plaintiff was always ready and willing and is still willing to perform his part of the contract but not the defendant Gejo. DW-7 Chanan Singh though at the trial had stated that he had accompanied DW-6 Gian Singh, DW-10 Darshan Singh and Gejo to Bakhshi Ram plaintiff for getting the sale- deed executed on the basis of the agreement to sell Ex. P 1 but in the same breath in the cross-examination he states that he did not know about the agreement which was executed between the parties. DW-10 Darshan Singh even has got the audacity to say that though he, his wife Gejo, Gian Singh and Chanan Singh DWs went to Bakhshi plaintiff two days before the time fixed for execution of the sale deed yet they have denied that he and Gejo did not tell Pargan Singh and Balwant Singh vendees about the previous agreement with Bakhshi. It has been stated by Darshan Singh DW-10 at the trial which is reproduced as under :--

"I and Gejo did not tell Pargan Singh and Balwant Singh about the previous agreement with Bakhshi. Nor they had any knowledge of the agreement in question."

20. Thus, this type of evidence seems to be only an afterthought and concoction and cannot be taken into consideration at all for deciding issues Nos. 2 and 3 and particularly, so when Gejo DW-1 neither chose to produce herself at the trial nor produce any evidence showing her eagerness to perform her part of the agreement and the non-performance of the agreement by the plaintiff. Even otherwise, as has been recently ruled by the Supreme Court in *Union of India (UOI) and Others Vs. G. Vasudevan Pillay and Others*, the plea that the plaintiff was not ready and willing to perform his part of the contract, cannot be raised by the subsequent purchasers from the vendor although they are necessary parties to the suit. It was only the vendor-defendant Gejo who could raise that plea and who as has been stated above has chosen not to take up this plea and to lead evidence to that effect. Thus, the findings of the trial Court on issues Nos. 2 and 3 also stand affirmed.

21. Let us now come to issue No. 4 in order to find out as to whether defendants Nos. 2, 3 and 4 are bona fide purchasers for consideration without notice. The onus to prove this issue, of course, was on the vendee-defendants Nos. 2, 3 and 4. Further there is no doubt that the sale deeds Exs. D-1 and D-4 of the land in dispute executed in favour of the vendees by Gejo and proved on the file, but they have to prove by cogent evidence that they are bona fide purchasers for consideration without notice. DW-2 Kewal Singh who is the marginal witness of

sale deeds Exs. D-1 and D-4 executed by Gejo defendant No.1 infavour of the vendees has deposed at the trial that no talk took place at the time of execution of these sale deeds about the alleged agreement entered into by Gejo in favour of anybody nor Gejo told him about any such previous agreement. The vendees, according to this witness, didnotknowof any such agreement entered into by Gejo in favour of anybody. He then stated that the vendees were bona fide purchasers for value without notice and in good faith. Gurdial Singh DW-3 who is the marginal witness of sale deed Ex. D-1 executed by Gejo in favour of Pargan Singh defendant, deposed at the trial that he and Pargan Singh did not know about the alleged agreement of sale in favour of Bakshi Ram.

22. DW-4 Gurdial Singh son of Kishan Singh, who is the marginal witness of sale-deed Ex. D-4 executed by Gejo in favour of Nirmal Singh and Balwant Singh vendees, has deposed at the trial that he, Nirmal Singh and Balwant Singh did not know about any alleged agreement entered into by Gejo in favour of Bakshi Ram plaintiff. Pargan Singh vendee-defendant entered into the witness-box and stated at the trial that he did not know about any agreement of sale entered into by Gejo in favour of Bakshi Ram plaintiff. He further stated that. Gejo did not tell him about the agreement to sell in favour of Bakshi Ram plaintiff, he further stated at the trial that he was a bonafide purchaser without notice for value, Nirmal Singh DW-9 vendee-defendant also entered into the witness-box and deposed before the trial Court that he had no knowledge of any alleged agreement of sale of disputed land in favour of Bakshi Ram and that he was bona fide purchaser for value without notice. This is the whole evidence which is oral in nature to prove that the vendee-defendants were bona fide purchasers for consideration without notice.

23. DW-2 Kewal Singh, DW-3 Gurdial Singh son of Phuman Singh and DW-4 Gurdial Singh son of Kishan Singh who are the marginal witnesses of the sale-deeds of the land in dispute sold by Gejo in favour of the vendees-defendants, have simply stated at the trial that neither they knew nor the vendee-defendants Pargan Singh, Nirmal and Balwant Singh knew about the alleged agreement to sell in favour of Bakshi Ram plaintiff nor respondent executed by Gejo defendant. DW-2 has further stated that no talk took place at the time of execution of the sale deeds about the previous agreement by Gejo in favour of any body and that the vendees were bona fide purchasers for value without notice and in good faith. Their bald statements that the vendees were bona fide purchasers for value without notice and in good faith do not prove that the vendees were not aware of the agreement to sell Ex. P-1 executed by Gejo defendant No. 1 in favour of Bakshi Ram plaintiff-respondent. They have not disclosed any special knowledge or source as to from where they came to know of the fact that the vendees had no knowledge of the agreement to sell entered into between the defendant Gejo and plaintiff-respondent Bakshi Ram. They have not even stated that they came to know about this fact from the vendees themselves. They did not disclose of any other source to substantiate their knowledge that the vendees did not know about the aforesaid agreement to sell. In any case, the mere

assertions of these DWs at the trial that the vendees were not in the knowledge of the agreement to sell Ex. P-I entered into between defendant Gejo and plaintiff-respondent Bakshi Ram and that the vendees were the bona fide purchasers for consideration without notice, do not inspire confidence and their testimony to that effect, thus, cannot be relied upon.

24. Pargan Singh vendee appeared as DW-8 before the trial Court, he simply stated that he did not know of any agreement by Gejo in favour of Bakshi Ram. Gejo, according to him, did not tell him about the alleged agreement in favour of Bakshi Ram. He stated at the trial that he was the bona fide purchaser without notice for value. Nirmal Singh vendee when appearing as DW-9 at the trial stated that he had no knowledge of any alleged agreement to sell of the disputed land in favour of Bakshi Ram. According to him, he was bona fide purchaser for value without notice, neither the vendees have alleged nor it is borne out from the record about any effort made by them to enquire about the existence of any agreement between defendant Gejo and the plaintiff-respondent Bakshi Ram. They did not even enquire from Gejo defendant No. 1 about the agreement of sale between her and Bakshi Ram plaintiff, particularly so when the disputed land was already mortgaged with their father Gujjar Singh and when it has come in the evidence of DW-9 Nirmal Singh vendee himself that he had strained relations with his father Gujjar Singh. It has come in the evidence of D.W. 9 Nirmal Singh that he lived with his uncle and not with his father Gujjar Singh and even Balwant Singh vendee Nirmal Singh's brother also resided with him instead of living with his father Gujjar Singh. It has been admitted by DW-9 Nirmal Singh himself in cross-examination at the trial that he did not have good relations with his father. Even otherwise, it has neither been asserted by the vendees nor has it been shown from any other evidence on the file that the vendees had made reasonable enquiry as to whether the disputed land which they were going to purchase was free from any encumbrance and particularly so when the strained relationship of Nirmal Singh vendee with his father is established.

25. On the other hand, there is evidence on the record suggestive of the fact the vendees had the knowledge of the agreement to sell Ex. P-1 entered into by Gejo defendant in favour of Bakshi Ram plaintiff-respondent. It has come out from the evidence on the file that Mirpur Mari has been described by some witnesses as one village and by the others as two different villages Mirpur and Mari. Document Writer of the sale-deed Ex. D-1 which is in favour of the vendees has stated at the trial that Smt. Gejo belongs to village Mirpur Mari. Gian Singh DW-6 at the time of his statement at the trial gave his address as cultivator of village Mirpur Mari. Same is the case with DW-7 Chanan Singh. Even the vendees Pargan Singh and Nirmal Singh DWs 8 and 9, have described themselves as residents of village Mirpur Mari at the time of their statements at the trial, it has come in the evidence of DWs 2 to DW-5 produced by the vendees that Mirpur and Mari have a common Panchayat and one Chowkidar and the land revenue is also collected by one person. It has come in the evidence of Gurdial Singh DW-4 that there are about 35 families residing in village Mirpur and 10/12 families residing in village

Mari and there is a difference of 5/6 killas between Mirpur and Mari. DW-5 Puran Singh has also stated at the trial that there are about 5-6 or 10 families in Mari and about 20-25 families in village Mirpur.

26. DW-6 Gian Singh has also stated at the trial that there are 30/35 houses of Jats in Mirpur and village Mari consists of only 10 or 12 houses. DW-7 Chanan Singh has also stated at the trial that there are about 40 houses in village Mirpur and 10/12 houses in village Mari. It has come in evidence of the defendants witnesses that there are about 35/40 houses of Jats in Mirpur and 10-12 houses of the other community i.e. Bairagi in village Mari.

27. It is, thus, amply clear from the record that Mirpur mari is a compact place consisting of only about 50-52 houses, 40 belonging to Jats and 12 belonging to Bairagis.

28. It is discernible from the record that atleast two witnesses DW-6 Gian Singh and DW-7 Chanan Singh produced by the vendees-defendants themselves, knew about the agreement to sell executed by Gejo defendant No. 1 in favour of plaintiff-respondent Bakshi Ram.

29. DW-6 Gian Singh has stated in his examination-in-chief at the trial which is reproduced as under :--

"I know the parties i.e. Gejo and Bakshi. Gejo and Darshan her husband came to us about 31/2 years ago, and asked me and Chanan Singh to accompany them to Bakshi so that he may get the sale deed of the land executed from them and we went with them to Bakshi plaintiff. Bakshi told them that he had no ready money with him and that he does not want to purchase the land. Gejo was ready and willing to execute the sale deed in favour of Bakshi and Bakshi committed the breach of agreement to sell."

30. He has further stated in his cross-examination which is reproduced as under :--

"Everybody in the village came to know of the fact that the plaintiff Bakshi Ram had resiled from agreement and was not ready to purchase this land."

31. Chanan Singh afore said who was produced by the vendees-defendants as DW-7 has stated in his examination-in-chief as under :--

"I know the parties i.e. Gejo and Bakshi, Gejo had entered into an agreement to sell her land in favour of Bakshi."

32. In the cross-examination, he has denied about his knowledge of the agreement between Gejo and Bakshi. However, when his statement is read as a whole his knowledge about the agreement entered into between Bakshi and Gejo is clearly established.

33. This evidence which was brought on the record by the vendee-defendants themselves goes a long way to prove that they were aware of the execution of

the agreement Ex. P1 by Gejo in favour of Bakshi Ram plaintiff-respondent and it has come out in the statement of DW-6 and DW-7 they along with Gejo and her husband had gone to Bakshi Ram plaintiff-respondent in order to get the sale-deed executed on the basis of the agreement entered into by Gejo in favour of Bakshi Ram.

34. It is unnatural to accept that the story given by DW-6 and DW-7 of having gone to Bakshi Ram plaintiff in the company of Gejo and her husband escaped notice of the vendees.

35. It has then come in the evidence of Bir Singh PW-5 and Harbans Lal PW-6 at the trial that Gujjar Singh and his sons i.e. vendees had the knowledge of the agreement to sell executed by Gejo defendant in favour of Bakshi Ram plaintiff. According to them Bakshi Ram, Girdhari and Banta went to the vendees to enquire as to how much mortgage money was to be paid to Gujjar Singh as the land in dispute was under mortgage with Gujjar Singh father of the defendants-vendees. The defendants, according to these witnesses, had told them that the exact amount to be paid was Rs. 8,000/-. Bir Singh PW-5 has stated at the trial that he knew Gujjar Singh and his sons and that Gujjar Singh and his sons had the knowledge of the agreement Ex.P-1 executed by Gejo defendant in favour of Bakshi Ram plaintiff-respondent. They further stated that the vendees were told by them about the existence of agreement P-1 entered, into by Gejo defendant with Bakshi Ram plaintiff.

36. Taking from another angle, though some witnesses have described Mirpur Mari as one village and the others as two villages contiguous to each other but the fact remains that it is a compact place consisting of about 50/52 houses out of which 40 belong to the Jats and the rest to Bairagi. It is natural and probable that in such a small place the defendants must have come to know of the prior agreement to sell of the disputed land between Bakshi Ram plaintiff-respondent and Gejo defendant. Another factor which is noticeable and goes to show the knowledge of the vendees-defendants about the aforesaid agreement is that the whole transaction of sale took place within a day or two and the vendees did not enter into any prior agreement before the sale with Gejo and all the parties are residents of a very small revenue estate which admittedly has got a common Panchayat, a common Chowkidar and the revenue is also collected by one person. It cannot be believed that in such circumstances the vendees-defendants did not have the knowledge of prior agreement to sell entered into between Gejo defendant No. 1 and Bakshi Ram plaintiff-respondent. At the cost of repetition the usual haste with which the sale-deed was executed and registered and the other circumstances stated above, point out towards only one conclusion that the vendees had the notice of the previous agreement to sell Ex.P-1, If any authority nearer to the facts of this case is required it is the judgment of the Hon'ble Supreme Court in Dr. Govinddas and Another Vs. Shrimati Shantibai and Others, the relevant portion of which is reproduced as under :--

"The learned counsel for the appellants contended that the onus of proof was

very light on the appellants and they had discharged it by entering the witness box and stating that they had no knowledge. We are unable to agree with him that in the circumstances of this case the onus was light on the appellants. The circumstances that tell heavily against the version of the appellants are these. First, all the parties are residents or have shops in the same vicinity and in places like this it is not probable that the appellants would not come to know of the execution of the agreement (Souda Chitthi) of the plaintiff. Secondly, the haste with which the sale deed in favour of the appellants was executed was unusual. It is more usual for an agreement to be executed in such cases rather than arrive at an oral agreement on one day and have the sale deed executed the next day and registered the following day. For some reason the appellants were in a hurry to get the deed registered. What was the reason? In view of all the circumstances we are inclined to accept the evidence of Hem Raj Chouhan, and corroborated by Hayat, that Govardhandas knew of the execution of the agreement with the plaintiff on March 1, 1960."

37. In view of my discussion above, I affirm the finding of the trial court on Issue No. 4 and hold that defendants 2 to 4 are not the bona fide purchasers for consideration and without notice.

38. Issues Nos. 5 and 6 were rightly decided by the trial Court against the defendants as the onus to prove these issues was on them and they did not lead any evidence to prove the same.

39. The Finding on Issue No. 7 decided by the trial Court is also affirmed. The value of the suit for the purposes of court-fee and jurisdiction for relief "A" and "B" comes to Rs. 20,925/-. Court-fee from Rs. 20,000/- to Rs. 21,000/- comes to Rs. 1905/- and the same has been paid.

40. I affirm the finding of the trial Court on Issues Nos. 8 and 9 also. The plaintiff is entitled to a decree for specific performance as Gejo committed the breach of contract and before the actual date fixed in the agreement, she executed sale deed in an undue haste in favour of defendants 2 to 4.

41. The trial Court has rightly not exercised its discretion in passing a decree for an alternate relief "B" as mentioned in the Head-Note of the plaint.

42. In view of my above findings, this appeal stands dismissed with costs throughout and the judgment and decree dated 18-9-1978 of the learned Sub-Judge 1st Class, Nakodar is affirmed.

43. Appeal dismissed.