

(2012) 02 DEL CK 0076

In the Delhi High Court

Case No : Regular First Appeal No. 377 of 2010

Sh. Mukhinder Singh (Deceased) Through L.Rs. and Others	APPELLANT
Vs	
Sh. Gurbux Singh and Others	RESPONDENT

Date of Decision : 02-02-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 10, 96
Evidence Act, 1872 — Section 115
Limitation Act, 1963 — Article 113, 27, 59, 65
Punjab High Court Rules and Orders — Rule 15
Transfer of Property Act, 1882 — Section 3, 53A, 54

Citation : (2012) 4 ILR Delhi 578

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Advocate : Rajive Sawhney, with Mr. Gourav Duggal and Mr. Vineet Jhanji, for the Appellant; Amit S. Chadha with Mr. Kunal Sinha, Advocate for respondent No.1, for the Respondent

Final Decision : Dismissed

Judgement

Valmiki J Mehta, J.—This Regular First Appeal (RFA), filed u/s 96 of Code of Civil Procedure, 1908 (CPC), impugns the judgment of the trial Court dated 14.1.2010 dismissing the suit of the plaintiffs (late plaintiff No.1-Shri Mukhinder Singh and others) who are legal heirs of late Sardar Sohan Singh. By the suit the plaintiffs claimed possession of the suit property being plot No. 8, Friends Colony, New Delhi measuring 4132 sq. yds. alongwith the building constructed thereon. Besides praying for the relief of possession, mesne profits were also claimed. The suit was filed against the defendant no.1/respondent no.1-Sh. Gurbux Singh who was a resident of the suit property and was claiming ownership rights therein. The defendant Nos.2 to 5 are the other legal heirs of late Sardar Sohan Singh. For the sake of convenience, reference in this judgment to the appellants would mean reference to the original plaintiffs. This I am stating because one of the plaintiffs i.e. plaintiff No. 1-Sh. Mukhinder Singh expired during the pendency of

the suit and whose legal heirs were consequently brought on record.

2. The case of the plaintiffs as set out in the plaint was that their predecessor-in-interest late Sardar Sohan Singh, the father of plaintiff Nos.1 and 2 as also the defendant Nos.2 to 5 (defendant No. 2 being one other son and defendant Nos.3 to 5 being the daughters, plaintiff Nos.3 and 4 are the sons of plaintiff No.1-Sh. Mukhinder Singh and plaintiff No.5 is the son of plaintiff No.2-Sh. Sukhinder Singh), was a member of a Cooperative Society known as Nathu Ram Friends Colony Co-operative House Building Society. Sardar Sohan Singh became a member of this Cooperative society on 16.1.1950. On 14.1.1952 Sardar Sohan Singh was allotted the suit plot admeasuring 4132 sq. yds and an agreement was entered into by Sardar Sohan Singh with the society. It was pleaded that the said Sardar Sohan Singh paid the entire consideration with respect to the plot being the amount of Rs. 11,824/-. Sardar Sohan Singh was stated to have friendly relations with Sir Sobha Singh, who was the father of defendant no.1/respondent no.1 and both of them were also partners in a partnership firm which was engaged in construction (the name of this firm has not come either in the pleadings or in the evidence of the parties). It was further pleaded that Sir Sobha Singh was entrusted by late Sardar Sohan Singh the task to correspond and deal with the society in all matters pertaining to the suit plot and the physical possession of the plot was also accordingly with Sir Sobha Singh. The plans for construction were got sanctioned from appropriate authorities on an application made on behalf of Sardar Sohan Singh and the task of constructing the building was entrusted by Sardar Sohan Singh to Sir Sobha Singh. It was further pleaded that the construction material from which the residential house on the suit plot was made was utilized out of the material of the partnership firm in which Sir Sobha Singh and Sardar Sohan Singh were partners alongwith one G.S. Banga. It was further averred that on the basis of the aforesaid understanding Sir Sobha Singh started construction of the house for and on behalf of Sardar Sohan Singh and after construction, the property was entrusted by Sardar Sohan Singh to Sir Sobha Singh for managing the property in the best interest of Sardar Sohan Singh. It is further pleaded that Sardar Sohan Singh continued to remain the owner of the plot in the records of the society. It is further pleaded in the plaint that the society wrongly transferred the suit plot by a sale deed dated 3.12.1960 in the name of defendant no.1/respondent no.1 on account of fraud and collusion and hence this action of the Society was not binding on Sardar Sohan Singh. It was also alleged that the execution of the sale deed in favour of defendant no.1/respondent no.1 was contrary to the rules and regulations of the cooperative society. It was then pleaded that on or about 14.5.1963 when Sardar Sohan Singh approached the society for executing the sale deed of the suit plot in his name, the society by its letter dated 23.5.1963 informed Sardar Sohan Singh that the sale deed with respect to the suit plot had already been executed in favour of defendant no.1/respondent no.1 on 3.12.1960, and that thus only on 23.5.1963/25.5.1963 the existence of the sale deed dated 3.12.1960 came to the knowledge of Sardar Sohan Singh and the plaintiffs. It was pleaded that

defendant No. 1/respondent No.1 after retiring from Indian Army in about 1964 came into the possession of the house constructed on the suit plot (the plot and the building hereinafter referred to together as the "suit property") and has been living there since then. There was further reference in the suit of certain litigation initiated by the society against the parties to the present suit, however, the same is not material for the disposal of the present appeal. Suffice to say that the said suit filed by the society has been dismissed in default and for non-prosecution. In the said suit, the society had however supported the present defendant No. 1/respondent No.1-Sh. Gurbux Singh. While referring to this suit filed by the society it will be necessary to mention that all the parties to the present suit were the defendants in the suit filed by the society and the exhibit marks of the documents and the depositions of the witnesses referred to in the present suit and in this appeal are those in the society's suit as the society's suit was consolidated with the subject suit and evidence was led in the suit which was filed by the society. The numbering of the exhibited documents which will be thus referred to would be a bit incongruous initially in view of the said position. On the basis of the aforesaid facts, claiming that the cause of action had arisen either in January, 1964 or on 25.5.1963, the subject suit for possession and mesne profits came to be filed.

3. The suit was contested by the defendant no.1/respondent No.1. There were various defences, however, the golden thread which runs through the defence on merits was that Sardar Sohan Singh after making initial payment of the cost of the plot, was not in a position to make construction on the plot, and which was a necessary requirement of the terms of the allotment that construction must be completed within a specified period of time, and on account of inability of Sardar Sohan Singh to complete the construction there was consequently a threat of cancellation of the allotment and forfeiture of the moneys paid. It was pleaded that on account of such threat of cancellation of the allotment and forfeiture of the amounts which were paid by Sardar Sohan Singh to the society, Sardar Sohan Singh agreed to mutation of the plot in the name of the defendant no.1/respondent no.1, the son of Sir Sobha Singh, a close friend of Sardar Sohan Singh. In furtherance of the intention/desire of Sardar Sohan Singh for mutation, he wrote his letter dated 4.10.1954 to the society to transfer the membership and the plot in the name of the defendant no.1/respondent no.1. The further case of defendant no.1/respondent no.1 in the written statement was that by a resolution number 3-C passed in the meeting held on 13.10.1954, the society agreed to transfer the suit plot in the name of defendant no.1/respondent no.1 pursuant to the letter dated 4.10.1954 written by Sardar Sohan Singh to the society. This letter dated 4.10.1954 stated that defendant no.1/respondent no.1/Gurbux Singh was the "nephew" of Sardar Sohan Singh and which relationship was stated inasmuch as, as per the then existing rules of the society (which were subsequently amended to include transfer to a non-blood relation) the plot allotted to a member could only be transferred to a close relation. The defendant no.1/respondent no.1 vide its letter dated 20.10.1954 sent the complete arrears

due to the society payable as on that date, being the amount of Rs. 1180/-, and requested the society to transfer the plot in his name. The society by its letter dated 22.11.1954 informed Sardar Sohan Singh about payment of dues by the defendant no.1/respondent no.1 and also of payment of the membership fee with the cost of the share. It was pleaded that by this letter dated 22.11.1954, Sardar Sohan Singh was informed by the society that defendant no.1/respondent no.1 was allotted the suit plot. It was thereafter pleaded in the written statement that Sir Sobha Singh never acted as an attorney or an agent of Sardar Sohan Singh and, the fact of the matter was that Sir Sobha Singh was acting only for and on behalf of his son, the defendant no.1/respondent no.1, with the society. The defendant no.1/respondent no.1 also denied that any funds were spent by Sardar Sohan Singh for construction, much less from the alleged partnership in which Sardar Sohan Singh and Sir Sobha Singh were the partners. It is further pleaded that the payments made by Sardar Sohan Singh totaling to Rs. 50,000/- towards his capital in the partnership firm was an issue of the partnership firm and the same had no co-relation with the ownership of the suit plot or the construction made thereon. It was further pleaded that the society by means of a proper resolution transferred the membership of the society to defendant no.1/respondent no.1, issued a membership certificate, and thereafter executed a sale deed dated 3.12.1960 in favour of defendant no.1/respondent no.1 which was duly registered with the concerned Sub-Registrar. The resolution of the General Body of the society confirming the transfer of the suit property to defendant No. 1/respondent No.1 was stated to be dated 13.12.1959. It was further pleaded that the entire construction was made between the years 1957 to 1959 by late Sir Sobha Singh out of his own funds, for and on behalf of his son-defendant no.1/respondent no.1/Sh. Gurbux Singh. The written statement also denied the alleged plea of fraud and collusion as alleged by the plaintiffs in the plaint. It was further pleaded that as the sale deed was executed in the year 1960, and that right from the year 1960 the plaintiffs were aware of the sale deed having been executed in the name of defendant no.1/respondent no.1 and also of the defendant no.1/respondent no.1 being the owner of the suit property, the suit filed in the year 1975 was hence time barred.

4. After completion of pleadings, the trial Court framed issues on 10.12.1976. Additional issues were framed on 20.9.1984. These issues read as under:-

1. Whether the court fee has been properly paid?
2. Whether the suit is not maintainable in the present form?
3. Whether this court has no jurisdiction to try the suit?
4. Whether the suit is bad for non-joinder or mis-joinder or multifariousness of parties, as alleged by the contesting defendant?
5. Whether the plaintiffs constitute a joint Hindu Family as alleged in the plaint?
6. Whether the suit is liable to be stayed u/s 10 of the C.P.C. as alleged by the

contesting defendant?

7. Whether the suit is within limitation?

8. Whether the plaintiffs are stopped from filing this suit on the grounds alleged by defendant no.1?

9. Whether late S. Sohan Singh was allotted plot no.8, Friends Colony, New Delhi by the Society and was given possession thereof, as alleged?

10. Was the plot in question transferred to defendant no.1 by the society, as alleged by the contesting defendant?

11. Whether the sale deed of the plot in dispute was fraudulently executed by the Society in favour of defendant no.1, as alleged in the plaint? If so, its effect.

12. Whether the plot in question was allotted to defendant no.1 on 22/11/1954 as alleged in para 25 of the written statement?

13. If the preceding issue is decided in the affirmative, whether defendant no.1 is in open possession of the same and had constructed the house thereon?

14. Whether the plaintiffs are entitled to claim mesne profits? If so, for which period and what amount?

15. Relief.

Additional issues framed on 20/09/84:-

1. Whether the house in question was constructed by S. Sobha Singh for and on behalf of S. Sohan Singh from the material left over available with the partnership firm and whether the plaintiff S. Sohan Singh also gave Rs. 30,000/- to S. Sobha Singh towards the construction of the super-structure, as alleged, thus becoming owner of the house?

2. If the plaintiffs are entitled to possession of the property in dispute, is defendant no.1 entitled to any compensation? If so, to what amount would the defendant be entitled?

3. Whether the plaintiff, S. Sohan Singh, paid full consideration for the plot no.8, Friends Colony, New Delhi as alleged in paragraph 3 of the plaint?

5. Before this Court, the arguments were addressed by learned Senior counsel for both the parties under the following basic heads:-

(i) Whether Sardar Sohan Singh had become the owner of the suit plot by virtue of Section 53A of Transfer of Property Act, 1882 as then applicable? This aspect would also cover various other related aspects with respect to actual physical possession or constructive possession or whether the possession of Sir Sobha Singh was as a trustee for and on behalf of Sardar Sohan Singh or for the defendant no.1/respondent no.1, also as to whether the membership of the society was validly transferred to the defendant no.1/respondent no.1 and

whether the society passed the necessary resolutions for transferring of membership of the society and the suit plot to defendant no.1/respondent no.1. Included in this head will be whether Sir Sobha Singh acted as an attorney for and on behalf of Sardar Sohan Singh or that he acted only for and on behalf of his son-defendant no.1/respondent no.1/Sh. Gurbux Singh.

(ii) Whether and if the sale deed dated 3.12.1960 was executed by the society in favour of defendant no.1/respondent no.1 on account of fraud and collusion, if so its effect?

(iii) Whether defendant no.1/respondent no.1 was the owner of the property by virtue of principle of estoppel and also by adverse possession.

(iv) Whether the suit of the plaintiffs was barred by time inasmuch as actual notice/knowledge or deemed notice/knowledge of the existence of the sale deed was there of the plaintiffs from 1960 and admittedly since 1963, and the suit which was filed for possession without seeking cancellation of the sale deed dated 3.12.1960 filed in the year 1975 was barred by Article 59 of the Limitation Act, 1963.

6. The first aspect is the aspect with respect to Section 53A of the Transfer of Property Act, 1882 and which section deals with the doctrine of part performance and the rights created thereby in an immovable property. Before proceeding I must state that there is no pleading or any issue framed in the suit on the aspect of Sardar Sohan Singh having rights u/s 53-A however the appellants/plaintiffs in the interest of justice have been allowed to argue on this basis. u/s 53A, once there is an agreement in writing signed by the parties containing the terms on which the immovable property has to be transferred, and pursuant to such agreement, the proposed seller receives consideration and transfers possession of the property to the proposed buyer, then notwithstanding that no sale deed has been executed and registered yet the seller of the suit property cannot claim any right, title or interest in such property as against the proposed buyer except the rights reserved under the agreement. In the present case, there is admittedly an agreement in writing, dated 14.1.1952 by which the plot was agreed to be transferred/sold to Sardar Sohan Singh and which contained the terms of the transfer. Possession of the plot under this agreement was given to Sardar Sohan Singh. Sardar Sohan Singh paid the consideration as was then payable under this agreement dated 14.1.1952.

The issue, however, is whether Sardar Sohan Singh had performed and was always ready and willing and continued to be ready and willing to perform all the terms of the contract as contained in the agreement dated 14.1.1952. To this, I must say that the answer has to be in negative. This I say so because the basic requirement of being ready and willing to perform his part of the contract by Sardar Sohan Singh was that he had to make construction on this plot allotted by the society within the specific period of time. The construction on the plot was made by Sir Sobha Singh. The issue as to whether this construction was made by

Sir Sobha Singh out of the funds of Sardar Sohan Singh and as a trustee of Sardar Sohan Singh is an aspect which will be discussed by me later, however, it is important to note that on account of his inability to make the constructions, Sardar Sohan Singh vide letter dated 4.10.1954 (Ex.P-28) wrote to the society that the plot and the membership on account of his aforesaid inability, be transferred to the defendant no.1/respondent no.1. This letter, Ex.P-28 specifically stated that Sardar Sohan Singh was not in a position to construct the house. Of course, this letter also stated that defendant no.1/respondent no.1 was the nephew of Sardar Sohan Singh and which is factually incorrect, however, the effect of this factually incorrect statement made by the Sardar Sohan Singh has no effect as will be dealt with by me hereafter. Therefore the requirement of Section 53-A of Transfer of Property Act, 1882 of readiness to perform his part of the contract was not complied with by Sardar Sohan Singh and therefore in my opinion no benefit can be derived by Sardar Sohan Singh or now his legal heirs being the appellants/plaintiffs with respect to the agreement dated 14.1.1952 by claiming that Sardar Sohan Singh had effective ownership rights in the suit plot by virtue of the agreement dated 14.1.1952. Sardar Sohan Singh admittedly did not make any construction on the suit property till 1957. Even after 1957 when construction started on the suit plot and which was completed till 1959 the same was made by Sir Sobha Singh. In fact, a particular amount of arrears was also not paid by Sardar Sohan Singh and which amount of Rs. 1180/- was paid by the defendant no.1/respondent no.1 and even to this extent there is a breach of non-performance by Sardar Sohan Singh of the terms of the agreement dated 14.1.1952.

7. There is, in my opinion, one other very important reason for holding that Sardar Sohan Singh cannot have the benefit of Section 53A of the Transfer of Property Act, 1882. This reason is that rights which are claimed by a proposed buyer u/s 53A; and I am assuming at this stage that all the requirement of Section 53A were complied with by Sardar Sohan Singh; are such rights which till the actual sale deed in terms of Section 54 of Transfer of Property Act, 1882, is executed, can surely be given up by the person in whose favour the agreement to sell which creates rights u/s 53A is entered into. In the present case, by virtue of letter, Ex.P-28 dated 4.10.1954 Sardar Sohan Singh voluntarily gave up his rights under the agreement dated 14.1.1952 with respect to suit property and unfortunately on which agreement a claim is now being made to have rights under the doctrine of part performance enshrined in Section 53A. Surely, a proposed buyer after complying with the requirement of Section 53A, and by which he could have rights in an immovable property, can voluntarily give up such rights. This legal position cannot be doubted. In the facts of the case, Sardar Sohan Singh in addition to the fact that he was not ready and willing to perform his part of contract (a necessary requirement of Section 53A) in fact voluntarily gave up his rights in the suit plot and the membership of the society inasmuch as he stated that he could not make the construction on the suit plot and therefore gave up his rights in favour of the defendant no.1/respondent no.1

vide letter dated 4.10.1954. I may also additionally and independently mention here that by the specific language of Section 53-A, rights which are reserved by the seller under the agreement are not given to the proposed buyer and the society, having reserved certain rights by requiring constructions to be completed by allottees in a specified time, was fully competent under such reserved right to transfer the plot to the defendant No.1/respondent No.1.

8. Now, on the aspect as to who incurred the construction cost for making the building on the suit plot between the years 1957 to 1959 i.e. whether the construction was made by Sir Sobha Singh for and on behalf of Sardar Sohan Singh or it was made by Sir Sobha Singh for and on behalf of his son- the defendant no.1/respondent no.1. Before proceeding further, I may at this stage itself mention that the undisputed position which has come on record is that actually no moneys were paid specifically with respect to construction of the building on the plot by Sardar Sohan Singh to Sir Sobha Singh. The case as put up on behalf of the plaintiffs/appellants was that construction was made on the suit plot by Sir Sobha Singh out of the funds of Sardar Sohan Singh lying to the latter's credit in the partnership firm. There is also a related aspect that the construction is stated to have been made out of the materials of the partnership firm. Let us examine these aspects.

9. In this case, when it is pleaded that Sardar Sohan Singh had moneys to his credit in a partnership firm having one other partner as Sir Sobha Singh and one Mr. G.S. Banga, the onus to so prove was on the plaintiffs who had to establish that: (i) there was in fact credit amount of Sardar Sohan Singh in the partnership firm, and (ii) such amounts were in fact spent and utilized for construction of the building on the suit plot. In this regard, there is absolutely no documentary evidence in the suit as to Sardar Sohan Singh having any credit/amounts lying in the partnership firm or that such credit/amounts were in fact used for construction on the building on the suit plot. On the contrary, when Sardar Sohan Singh wrote his letter dated 11.2.1960, Ex.D2W3/7, to Sh. G.S. Banga, the other partner in the partnership firm, Sardar Sohan Singh in this letter expressed his apology for making a statement that the construction material belonging to the firm or the funds of the firm were utilized for making construction of a building on the suit plot. This letter dated 11.2.1960, Ex.D2W3/7, was written by Sardar Sohan Singh in response to the letter dated 8.1.1960, Ex.D2W3/3, of Sh. G.S. Banga to Sardar Sohan Singh. These two letters are most crucial and therefore I am reproducing the entire contents of the two letters and which read as under:-

Ref. No._____

Date 8th January, 1960

My dear Sardar Sahib,

S.B. Sir Sobha Singh has shown me your letter of the 4th January, 1960, in which you have mentioned that the house in Friends' Colony on Mathura Road was built with the material and labour provided by the partnership business.

It gave me a rude shock to see these remarks. I have done work in your partnership for the past ten years or so. These remarks reflect on my honesty. I can assure you that not a single brick or a bag of cement or a pound of steel was used in building this house, from the partnership business. All the material used for the construction of the house was purchased and the scaffolding material was received from Sujan Singh Park. Supervision and other necessities were provided directly by Sardar Bahadur Sir Sobha Singh. The partnership accounts have nothing to do with the construction of the house. All the payments are made directly by Sardar Sahib and debited to Brigadier Gurbux Singh's account. Any service that I have done in checking up the measurements or rates from time to time that Sardar Sahib asked me, I have done that in my personal capacity as I have been doing in your case also. I hope you will kindly realize the difficult position that you have mentioned to me in your letter. I am sending a copy of this letter to S.B. Sir Sobha Singh also to clear my position.

With regard to the partnership account, I am sorry they were delayed as there were some disputes about the sales-tax as well as the final measurements of the work and I could not get payment also to know the actual position. The accounts are now ready and I will be sending to you a copy of the same within this week.

With best wishes and kind regards,

Yours sincerely,

(G.S. Banga)

Sardar Sohan Singh,

Rais-i-Azam of Rawalpindi,

C/o Sir Buta Singh,

Nowshera House,

Amritsar.

Ex.D-2 W3/7

Regd.A.D.

Dated: 11.2.1960

From: Sohan Singh

Dear Mr. Bagga,

Reference your letter of 8.1.60, I am sorry for the misunderstanding, I have never meant any reflection on you when I had written the letter regarding the building of the house in the Friends Colony. That was the impression given to me and besides my funds in this firm. I was naturally under the impression that the same was utilized for building on my plot. May I request you to please send me if possible a copy of the building account that you have sent to Brig Sardar Gurbux

Singh Ji.

Regarding the balance sheet of the firm, I am going through it, and will return the same after reconciling with my banking account. In this connection I will ask you to please send me a copy of the Income Tax returns submitted to the Income Tax Department as well as the balance sheets for the period that the firm has been in existence as I had not got those copies.

The balance sheet that you have sent now is upto 31.3.58 when there were incomplete works in hand which had to be completed, and were completed later on, the dissolution of the firm can only be completed after all the assets have been collected in hand and disposed and liabilities met.

You will therefore please send me a final account as it is almost a year after the closing.

Sorry for the delay in acknowledging your letter as I have been on the move.

Tries to hear in good time.

Yours sincerely,

Sd/- Sohan Singh.

Sh. G.S.Banga,

M.A., K-52, Jangpura,

New Delhi.

(underlining added)

The aforesaid letters, in my opinion, leave no manner of doubt that not a single rupee of Sardar Sohan Singh was spent towards the construction of the building on the plot. It is thus clear that the construction of the building on the plot was not made for and on behalf of Sardar Sohan Singh by Sir Sobha Singh by using/spending any alleged moneys of Sardar Sohan Singh. Obviously, this was an outright false stand of the plaintiffs and therefore it has been rightly disbelieved by the trial Court. At the cost of repetition I would seek to reiterate that the undisputed position which has come on record is that there has not been shown any actual transfer of funds by Sardar Sohan Singh either to Sir Sobha Singh or to anybody else for raising of construction on the suit plot. Further, if really the construction was made by Sir Sobha Singh for and on behalf of Sardar Sohan Singh on the suit plot, then, surely original documents with respect to construction would have been taken by Sardar Sohan Singh from Sir Sobha Singh, however, no original documents whatsoever of construction i.e. the purchase vouchers or bills or any such original documents were filed by the appellants/plaintiffs and therefore such documents would only have been in the power and possession of Sir Sobha Singh as he had spent his moneys for and on behalf of his son-defendant no.1/respondent no.1. A very important aspect which has to be noted is that Sardar Sohan Singh in his lifetime never filed any suit to

claim any right in the suit property whether by seeking cancellation of the sale deed dated 3.12.1960 or seeking possession of the building thereon. Sardar Sohan Singh also in his lifetime never revoked the letter dated 4.10.1954 seeking transfer of the membership and transfer of allotment of the suit plot to the defendant No.1. As already stated above, building was constructed during the years 1957 to 1959 and the sale deed was executed on 3.12.1960 whereas Sardar Sohan Singh expired much later in the year 1974. Thus, it is only the legal heirs of Sardar Sohan Singh who have suddenly woken up after his death hoping that by speculation in litigation they may be successful and be able to get some benefits. However, the trial Court has rightly on various counts, including the aspect which is being discussed, rejected the case of the appellants/plaintiffs and dismissed the suit.

10. The next related aspect in this regard is of certain letters which were written by Sir Sobha Singh to the society, by Sardar Sohan Singh to Sir Sobha Singh and by the society to Sardar Sohan Singh and on which correspondence lot of emphasis was laid by the counsel for the appellants/plaintiffs to contend that Sir Sobha Singh was acting only as an attorney or an agent of Sardar Sohan Singh i.e. he was acting only for and on behalf of Sardar Sohan Singh and not on behalf of Gurbux Singh/defendant No.1/son of Sir Sobha Singh.

11. Learned senior counsel for the appellants, in this regard, laid great stress and emphasis on the following letters:-

Ex.P-30 being a letter dated 16.10.1954 written by the society to Sardar Sohan Singh, Ex.P-34 letter dated 22.11.1954 from the society to Sardar Sohan Singh, Ex.P-43 letter dated 8.11.1956 from Sir Sobha Singh to the society, Ex.P-44 letter dated 10.11.1956 from the society to Sardar Sohan Singh, Ex.D-7 letter dated 13.10.1956 from Sardar Sohan Singh to the society, Ex.D2/12 by the society to Sardar Sohan Singh, Ex.D2W1/X4 letter dated 21.2.1957 from Sardar Sohan Singh to the society and so on.

There are some other letters also, however, in my opinion, the aforesaid letters are the letters which are really important. In fact, even out of the aforesaid letters the most important letters on which great stress was sought to be laid by the learned senior counsel for the appellants were Ex.D2W1/X4 (dated 21.2.1957), Ex.D-7(dated 13.10.1956), Ex.P-44 (dated 10.11.1956) and Ex.P-43(dated 8.11.1956). The reason why great stress has been laid on these letters is that in Ex.D2W1/X4 (dated 21.2.1957) being a letter by Sir Sobha Singh, he has described himself as an attorney for Sardar Sohan Singh, Ex.P-43 (dated 8.11.1956) contains a statement that Sir Sobha Singh mentions the house to be of Sardar Sohan Singh and in Ex.D-7 (dated 13.10.1956) Sardar Sohan Singh speaks of Sir Sobha Singh doing needful on behalf of Sardar Sohan Singh.

12. In my opinion, the entire chain of correspondence whether they be from the society to Sardar Sohan Singh, Sardar Sohan Singh to the society, Sardar Sohan

Singh to Sir Sobha Singh and Sir Sobha Singh to Sardar Sohan Singh or Sir Sobha Singh to the society and vice versa, has to be read in context that by an existing earlier letter dated 4.10.1954 of Sardar Sohan Singh to the Society, there was already a request made to transfer the membership and the plot to the defendant no.1/respondent no.1, and finality of which proceeding was seemingly in a partial limbo inasmuch as though there was a Resolution 3-C making reference of transfer of the membership and the plot to the defendant no.1/respondent no.1, however, it was necessary as per that resolution to be enquired and found out if the defendant no.1/respondent no.1 was the blood relation of Sardar Sohan Singh. Obviously, till there was an actual transfer of membership, and the consequent execution of the sale deed by the society in favour of the defendant no.1/respondent no.1, the letters which were to be written to the society either by Sir Sobha Singh or by Sardar Sohan Singh had to be worded which would in effect have two subject matters. One subject matter was that in the record, Sardar Sohan Singh continued to be the nominal owner, however, the second subject matter was that there was also an existential fact of the letter dated 4.10.1954 (and which admittedly was never revoked) under which the membership was to be transferred to the defendant no.1/respondent no.1 by Sardar Sohan Singh himself. It is therefore in this context that if either Sir Sobha Singh or the society or even Sardar Sohan Singh refers to the house to be of Sardar Sohan Singh or Sir Sobha Singh acting as the attorney, cannot really make too much difference because in reality there was an existing intent to transfer the plot and membership to the defendant no.1/respondent no.1, and which process had not achieved finality and was taking some time. It is in this interregnum period that this correspondence existed when there was no actual transfer of the suit plot to the defendant no.1/respondent no.1 by means of execution of the sale deed but a request was pending. Therefore, merely because in some of the aforesaid letters, Sir Sobha Singh has referred to himself as acting as an attorney for Sardar Sohan Singh (and which was bound to be till actual execution of the sale deed in favour of defendant no.1/respondent no.1), will not take the case of the appellants much further, keeping in view the contextual position between the period from 1954 till 3.12.1960 when ultimately the sale deed was executed. I am therefore of the opinion that the letters which have been relied upon on behalf of the appellants, cannot have the effect of reverting the position away from the letter dated 4.10.1954 inasmuch as there has never been written any specific letter by Sardar Sohan Singh to the society or to Sir Sobha Singh withdrawing the letter dated 4.10.1954. Also, during this relevant period it is only because of the partial limbo position as stated above prevailing that the sanctioning of the plans was done in the name of Sardar Sohan Singh, however, as already stated, that cannot in any manner mean that there was any revocation of the position prevailing as per the letter dated 4.10.1954 sent by Sardar Sohan Singh to the society for transfer of the membership and the allotment of the plot to defendant no.1/respondent no.1.

13. With respect to the issue that the society has wrongly and illegally

transferred the membership as also ownership of the plot to the defendant no.1/respondent no.1 under the sale deed dated 3.12.1960, I am of the opinion that a society is an entity which is governed by rules which are in the nature of contractual terms between its members, and even if there was violation of some contractual rules of the society (such rules not being statutory in character) unless and until the general body of the society specifically passed a resolution cancelling the sale deed dated 3.12.1960, it cannot be argued on behalf of the appellants that sale deed cannot confer the ownership rights on the defendant no.1/respondent no.1, and that the ownership rights continued to vest with Sardar Sohan Singh. While on this aspect, I must also state that prior to the execution of the sale deed dated 3.12.1960 in favour of the defendant no.1/respondent no.1 by the society, a resolution dated 28.11.1954 (which is attached to the letter Ex.P-38 dated 24.12.1954) exhibited as Ex.P-38A, was already passed by the society that transfer can take place not only to a close blood relation but also to a friend of the member of the society. The contents of the said resolution dated 28.11.1954 thus expanded the list of proposed transferees from the members to a non-blood relation. Therefore, the strict requirement of the transfer only to a blood relation having been done away by the society, surely, therefore the transfer of membership and execution of the sale deed by the society in favour of the defendant no.1/respondent no.1 cannot be said to be void and illegal as is being contended on behalf of the appellants inasmuch as the society would be alive to its resolution dated 28.11.1954 at the time of execution of the sale deed dated 3.12.1960.

14. A summary of the above stated position till now shows that the appellants cannot claim the benefit of Section 53A, there was an inchoate situation of a partial limbo from 1954 till 1960 resulting in the particular correspondence as also sanctioning of the plans in the name of Sardar Sohan Singh, and finally the fact that the society ultimately allowed transfer of membership not only to blood relations but also to friends and a sale deed dated 3.12.1960 was executed and registered in favour of the respondent No.1 which was never challenged by Sardar Sohan Singh in his lifetime. All the aforesaid aspects are to be read with the factum of continued validity and non-withdrawal of the letter dated 4.10.1954 by Sardar Sohan Singh, by writing any letter to the society stating that his letter dated 4.10.1954 stands revoked and that there should not be transfer of the membership and the allotment of the plot to the defendant no.1/respondent no.1.

15. The next main issue which was argued before this Court was with respect to whether the suit was barred by time. Related to this issue is the issue as to whether a suit for possession could be filed in the year 1975 without first seeking cancellation of the sale deed executed way back on 3.12.1960 by the society in favour of the defendant no.1/respondent no.1. This subject will also cover the issue of whether there is any fraud or collusion in getting the sale deed dated 3.12.1960 executed by the society in favour of defendant no.1/respondent no.1.

An ownership of a property is transferred by means of a registered sale deed as per Section 54 of the Transfer of Property Act, 1882. Every sale deed has an effect of divesting the transferor of the ownership of the property and the vesting of the ownership in the transferee. A sale deed by which the ownership rights in an immovable property are transferred can be ignored only under two circumstances. Firstly, if the sale deed is a nominal transaction or a paper transaction because the parties intended it to be so or secondly, if the document being the sale deed is void ab initio. It is in these two circumstances that it is not necessary to have the sale deed set aside inasmuch as the sale deed cannot have the effect of transferring ownership. However, in all other cases where it is pleaded that sale deed is a voidable document because it ought not to have been executed or there is a fraudulent transfer of title by means of the particular sale deed or for any reason which makes the transfer voidable (and not void), it is necessary that a suit has to be filed for cancellation of such a sale deed within a period of three years from the date a person comes to know of execution and existence of the sale deed which goes against the interest of such person. This is the mandate of Article 59 of the Limitation Act, 1963.

16. In the facts of the present case, in my opinion, the knowledge of the appellants/plaintiffs and their predecessor-in-interest, Sardar Sohan Singh of the existence of the sale deed dated 3.12.1960 is actually from 1960 itself. This knowledge of the appellants/plaintiffs and their predecessor-in-interest Sardar Sohan Singh is from the year 1960 itself is a knowledge which is both actual/factual knowledge as also deemed knowledge.

The knowledge is an actual knowledge inasmuch as in the cross examination of the late plaintiff no.1 conducted on 8.8.1990, the plaintiff No.1 specifically admitted that the appellants/plaintiffs and Sardar Sohan Singh came to know of the fraud in the year 1960 itself. In my opinion, this is a vital admission showing knowledge and existence of sale deed dated 3.12.1960 from the year 1960 itself. Besides this categorical admission, I would like to refer to Section 3 of the Transfer of Property Act, 1882 and which provides that when "a person is said to have notice". As per this definitional clause in Section 3 of the Transfer of Property Act, 1882, a person is said to have a notice of a fact when he actually knows that fact, or when, but for wilful abstention from an enquiry or search which he ought to have made, or gross negligence, he would have known it. Explanation 1 to this definitional clause provides that where there is a transaction related to immovable property by a registered instrument, then acquiring of interest in such property shall be known to the world at large by means of a deemed notice on the registration of such instrument before the sub-Registrar. In my opinion, if the appellants/plaintiffs have only conveniently contended that they came to know of the sale deed in the year 1963, because if knowledge of the sale deed of 1960 is only conveniently alleged of 1963 then, why not in 1964 or why not in 1965 or why not in 1966 and so on. Obviously, the date given of the year 1963 is a conjured date and was thus shown to be false by the admission made by Sh. Mukhinder Singh/plaintiff no.1 in his cross-examination

dated 8.8.1990. Also, on registration of the sale deed dated 3.12.1960, the appellants/plaintiffs and Sardar Sohan Singh in accordance with Section 3 of Transfer of Property Act, 1882 were deemed to have notice of the fact that the sale deed was actually executed. The plaintiffs or Sardar Sohan Singh but for wilful abstention of making an enquiry, they ought to have made, would have come to know of the execution of the sale deed within at best a few months or a year thereafter. I therefore hold that in fact, the suit of the appellants/plaintiffs, even if the present suit was one for cancellation of the sale deed dated 3.12.1960, would have become barred by 1963, or at best by 1965/1966 even if we take the knowledge from the year 1963 as pleaded by the appellants/plaintiffs. Once, there cannot be cancellation of the sale deed, the ownership of the defendant no.1/respondent no.1 becomes final and also the disentitlement of the appellants/plaintiff to the reliefs claimed in the suit of possession and mesne profits.

17. The Supreme Court in the judgment reported as Prem Singh and Others Vs. Birbal and Others, has held that Article 59 applies to voidable transactions and not void transactions. Therefore, the allegedly voidable sale deed dated 3.12.1960 (having been executed by the society, and not being challenged by the society) has the conclusive effect of transfer of title in favour of defendant No.1/respondent No.1 since the same was not challenged within a period of 3 years under Article 59. The effect therefore is of barring the plaintiffs from challenging the sale deed 3 years after the knowledge was derived by the appellants/plaintiffs of the sale deed. Though, the defendant no.1/respondent no.1 claims that the appellants came to know of the sale deed in the year 1960 itself, however, even if we take the knowledge of the appellants of the sale deed in the year 1963 as per the admitted case, the challenge to the sale deed for the same to be cancelled becomes barred by limitation at the end of the year 1965 or at best in the year 1966. The subject suit was filed in the year 1975 and even in the subject suit no relief was sought for cancellation of the sale deed dated 3.12.1960. If no challenge is laid, and no relief is claimed, surely, the Court cannot grant such relief which legally is barred, and once no such relief can be claimed or granted, and thus the sale deed dated 3.12.1960 stands, surely title/ownership of the suit property would be of the defendant no.1/respondent no.1. This is because it cannot be that a sale deed of a property can exist by which title is of the defendant no.1/respondent no.1 in law (and hence he is the owner), yet, someone else can claim an ownership and claim possession of the property. Since the appellants/plaintiffs were in fact well-aware that a challenge if laid by the subject suit to the sale deed then the same would be held to be barred under Article 59 of the Limitation Act, 1963, therefore they filed a simplicitor suit seeking only the reliefs of possession and mesne profits without asking for cancellation of the sale deed dated 3.12.1960 on the grounds/facts which were pleaded in the plaint itself. When we read the plaint, no manner of doubt is left that in fact, the sale deed is also being challenged as being fraud and collusive. Since no specific prayer seeking cancellation of the sale deed is

asked for, ownership will continue in law to be vested with the defendant no.1/respondent no.1, and if ownership continues to be vested with defendant no.1/respondent no.1, surely the right to possession fails. I therefore hold that the subject suit for possession was not maintainable because the right to seek cancellation of the sale deed had become barred by time at the maximum in around the year 1965/1966, and therefore, no relief can be granted in a suit filed in the year 1975 for cancellation of the sale deed. At the cost of repetition it is stated that if the sale deed stands, ownership of the defendant no.1/respondent no.1 stands, and if the ownership of the defendant no.1/respondent no.1 stands, appellants/plaintiffs are not entitled to the reliefs of possession and mesne profits as claimed with respect to the suit property.

18. In my opinion, the trial Court has also rightly decided issue no.8 by holding that the appellants/plaintiffs are estopped from filing the subject suit. Though, the Trial Court has not given a very detailed reasoning, in my opinion, really the reasoning of the Trial Court is based upon Section 115 of the Evidence Act, 1872. As per the provision of Section 115 of the Evidence Act, if a person has a belief that he is the owner of a plot, and such person thereafter builds on the plot having the impression that he is the owner of the plot, and the real owner stands by and allows him to construct on the plot, the real owner is then estopped in law from claiming any rights on the plot once the third person has made the construction on the plot. While giving these observations, I reiterate the finding that the defendant no.1/respondent no.1 and Sir Sobha Singh were entitled to have an impression that it was the defendant no.1/respondent no.1 who is the owner of the plot inasmuch as there was a letter dated 4.10.1954 by Sardar Sohan Singh to the society for transfer of the plot and membership and which letter was never revoked, taken with the fact that pursuant to such letter there was a resolution of the society 3-C (Ex.P8) by which there was a transfer, though conditional on defendant no.1/respondent no.1 being a blood relation and that in 1954 itself transfer was made permissible to a person who was not a close relation. Further, and as already discussed above, no amount whatsoever was paid by Sardar Sohan Singh to Sir Sobha Singh for construction on the plot. Also never any income tax returns were filed, which have been proved on record, to show that Sardar Sohan Singh during his lifetime ever claimed ownership of the suit plot.

I may note that there was an earlier round of litigation with respect to production of income tax records of the appellants/plaintiffs as also Sardar Sohan Singh, and a learned single Judge of this Court had rejected the prayer of the defendant no.1/respondent no.1 to summon the income tax records of the appellants/plaintiffs and Sardar Sohan Singh, however, the order of this Court was set aside by the Hon"ble Supreme Court and the defendant no.1/respondent no.1 was allowed to summon the income tax records of the appellants/plaintiffs and Sardar Sohan Singh. By that stage it was however too late, and the necessary records in the income tax department were no longer available, possibly having been weeded out. But, that cannot mean that the appellants/plaintiffs who are

bound to have possession of such records, ought not to have filed such records and therefore, I draw an adverse inference against the appellants/plaintiffs for concealing the income tax and wealth tax returns of the appellants/plaintiffs as also of late Sardar Sohan Singh. The defendant no. 1/respondent No.1 has on the contrary filed his tax returns showing that he had claimed ownership of the suit property and represented himself to be the owner of the suit property in the tax records. These income tax and wealth tax returns have been filed and exhibited before the Trial Court as Ex.PW4/1 to Ex.PW4/12.

19. Accordingly, I am of the opinion that the defendant no.1/respondent no.1 is also the owner of the suit property on the basis of the principle of estoppel enshrined in Section 115 of the Evidence Act, 1872 and I uphold the finding of the Trial Court on issue no.8 with respect to estoppel against the plaintiffs/appellants.

20. That finally leaves this Court for deciding the issue with regard to the claim of ownership of the suit property by the defendant no.1/respondent no.1 on the ground of adverse possession. Related to this aspect is also whether the suit of the appellants/plaintiffs is barred by time as per Article 65 of the Limitation Act, 1963.

I have already while discussing the issue of suit being barred by time for cancellation of sale deed by virtue of Article 59 held that Sardar Sohan Singh and the appellants/plaintiffs had both actual and deemed knowledge of execution of the sale deed dated 3.12.1960 in the year 1960 itself. There cannot be a more clear-cut proof of the claim of ownership of the property by the defendant no.1/respondent no.1 and the consequent challenge to the ownership rights of Sardar Sohan Singh than by a duly registered sale deed. Of course, calling the right claimed by the defendant no.1/respondent no.1 as one of adverse possession is a misnomer, inasmuch as what is really claimed is the ownership of the defendant no.1/respondent no.1 by virtue of law of prescription contained in Section 27 of the Limitation Act, 1963 as the suit for possession on the basis of the claim of ownership rights was not filed as per Article 65 within 12 years of the knowledge that defendant no.1/respondent no.1 is claiming the ownership rights. A heading of a claim is not material but it is the substance of the claim which has to be seen. As per Section 27 of the Limitation act, 1963, once the limitation for claiming a relief/right with respect to an immovable property expires, the right in the property itself is lost. This provision of Section 27 of the Limitation Act, 1963 is a departure from the normal law of limitation, and as per which normal law of limitation on expiry of limitation, right is not lost but only the entitlement to approach the Court is lost. Merely because the defendant no.1/respondent no.1 has ill advisedly claimed ownership of the property by adverse possession, cannot have the effect of extinguishing finality to the ownership of the defendant no.1/respondent no.1 by law of prescription contained in Section 27 of the Limitation Act, 1963 read with Article 65 of the Limitation Act, 1963. Once it was clear to the plaintiffs/appellants that from the year 1960 ownership in the suit

property was being claimed by the defendant no.1/respondent no.1(and surely, there cannot be a more blatant act of claiming ownership of a property than by a sale deed), the period of 12 years for the appellants/plaintiffs to have filed a suit for possession with respect to this property under Article 65 commenced in 1960 itself. Once the limitation commenced in the year 1960, by the year 1972, the right to approach the Court by means of a suit for possession governed by Article 65 of the Limitation Act, 1963 was lost. Once the right is lost in the year 1972, the subject suit having been filed in the year 1975, the ownership of the defendant no.1/respondent no.1 becomes absolute by virtue of law of prescription contained in Section 27 of the Limitation Act, 1963. I, in view of the aforesaid, also find no weight in the submission made on behalf of the appellants/plaintiffs that defendant no.1/respondent no.1 has to fail because the claim of title and adverse possession cannot be concurrently set up.

21. Learned senior counsel for the appellants/plaintiffs had also during the course of his arguments sought to lay great emphasis on certain contradictions between the pleadings of the defendant no.1/respondent no.1 and the evidence led by him and on his behalf on the aspect of claiming ownership by title from the year 1954 and also simultaneously by adverse possession from the year 1954 itself. Further contradictions were pleaded to exist on the basis of the sale deed of the year 1960 and in fact also claiming ownership by title from the year 1954 itself by virtue of the letter dated 4.10.1954. It was further argued that fraud should be held to be established on account of closeness of relations between Sir Nathu Ram, who was the Secretary of the society, with the family of the defendant no.1/respondent no.1 and Sir Sobha Singh.

In my opinion, even assuming that these contradictions exist, they cannot take away the finality to the factual position and the legal position which I have discussed in detail above that defendant no.1/respondent no.1 was the owner of the plot under the sale deed dated 3.12.1960 and the building was constructed by the moneys only of Sir Sobha Singh and not of Sardar Sohan Singh, besides the aspects of the suit being time-barred and not maintainable as framed. Also, in India the doctrine of *falsus in uno, falsus in omnibus* has no application, i.e. merely because a person is said to be lying or should not be believed on one point, does not mean that he should be necessarily treated for not being believed on all other aspects of his case. This doctrine is rightly not applied in India inasmuch as in every case, every person in his favour seeks to speak some untruths by manipulating facts and it is almost a non-existent case that each and every averment of fact; each and every issue; each and every legal argument and each and every document, is only and only in favour of one party and which party does not speak even a single lie or does not make a single false statement. Therefore, in my opinion, the so called contradictions cannot in any manner take the case of the appellants/plaintiffs forward for entitling them to the relief of possession and mesne profits in view of the other detailed findings and conclusions which have been arrived at as stated above.

22. Learned senior counsel for the appellants/plaintiffs firstly has relied upon judgments being a judgment of learned single Judge of this Court in the case of Harbans Kaur and Others Vs. Bhola Nath and Another, and the judgment of the Supreme Court in the case of D.N. Venkatarayappa and another Vs. State of Karnataka and others, in support of his arguments. The judgment in the case of Harbans Kaur (supra) is relied upon for the proposition that if a trespasser makes construction on somebody else's property, the trespasser will not become owner of the property. The judgment in the case of Harbans Kaur (supra) is also relied upon in support of the argument that mere payment of house tax will not make a person an owner. The judgment in the case of D. N. Venkatarayappa (supra) is relied upon in support of the proposition that the plea of adverse possession has to be very strictly proved.

In my opinion, both the judgments which the learned senior counsel for the appellants wanted to rely upon have no application to the facts of the present case. The judgment of Harbans Kaur (supra) does not apply inasmuch as I have already held above that the defendant no.1/respondent no.1 was under a bonafide belief that he is the owner of the plot and therefore raised construction under such bonafide belief entitling him the rights u/s 115 of the Evidence Act, 1872. The present case is not one where defendant no.1/respondent no.1 was a rank trespasser inasmuch as the letter dated 4.10.1954 clearly showed the intention of Sardar Sohan Singh to transfer the membership and the suit plot to the defendant no.1/respondent no.1 and the respondent no.1/defendant no.1 had also paid the arrears then due of Rs. 1180/-. Sir Sobha Singh and defendant no.1/respondent no.1, in the detailed facts of this case noted above, were rightly under the impression that defendant no.1/respondent no.1 would formally become the owner of the plot and were thus entitled to construct on the plot on the basis of their belief in their ownership rights in the plot. Similarly mere payment of property tax cannot by itself make a person an owner as held in the case of Harbans Kaur (supra), however, in the present case the claim of ownership is based in addition to payment of house tax, on the grounds of ownership of the plot under the sale deed dated 3.12.1960 and also of the ownership of the building by incurring the entire cost of construction thereof. Merely because in the house tax records the property may have been till about 1969 or so in the name of Sardar Sohan Singh, however, that aspect has to be considered alongwith the counter balance of not only the sale deed dated 3.12.1960 being in the name of defendant no.1/respondent no.1 (and which is in law final on the issue of ownership of the plot) but also that in the income tax and wealth tax records the suit property is shown to be of the ownership of the defendant no.1/respondent no.1. Also, it is settled law that mutation in the house tax records cannot make such person, in whose name mutation is there, an owner once a title document being a sale deed of the property is in the name of somebody else and who is also shown and declared as owner in the income tax and wealth tax records.

There is no dispute to the legal proposition laid down in the case of D. N.

Venkatarayappa and Anr. (supra) that adverse possession has to be very strictly proved, however in this case the strictness of onus is very much discharged because of the claim of ownership by a sale deed (read with the doctrine of prescription contained in Section 27 of the Limitation Act, 1963) and also of having filed tax returns, both with the income tax and the wealth tax authorities. For the sake of arguments, assuming a case of adverse possession had to be proved (issue is actually of suit for possession being time barred under Article 65), then surely a registered sale deed of the year 1960 taken with the income tax/wealth tax records are strict evidence required in law for proving adverse possession i.e. a possession claiming ownership which is open, hostile and continuous. However, I need not delve on this aspect further inasmuch as I have already held above that the issue is not of adverse possession but of the suit for possession having become time barred under Article 65 and of ownership vesting absolutely in defendant no.1/respondent no.1 by virtue of law of prescription contained in Section 27 of the Limitation Act, 1963.

The learned Senior counsel for the appellants secondly relied upon the judgment in the case of Balvant N. Viswamitra and Others Vs. Yadav Sadashiv Mule (dead) through Lrs. and Others, for the proposition that once the physical possession of the suit plot was given to Sardar Sohan Singh, then, the possession which was with Sir Sobha Singh could be only as a trustee and for and on behalf of Sardar Sohan Singh. It was also argued that once construction is made on a plot which was given in trust to Sir Sobha Singh by Sardar Sohan Singh, neither Sir Sobha Singh nor the defendant No.1/respondent No.1 can claim any right in the plot or the construction made thereon. To the legal proposition, there cannot be dispute, however, in my opinion, in the present case physical possession which was transferred by Sardar Sohan Singh to Sir Sobha Singh after the letter dated 4.10.1954 was written (and as per which the membership as also allotment of the plot had to be transferred to the defendant no.1/respondent no.1), the possession of Sir Sobha Singh cannot in any manner be said to be thereafter in trust for and on behalf of Sardar Sohan Singh but possession stood transferred to him for and on behalf of the defendant No.1/respondent No.1-his son. I need not repeat here the arguments which have already been dealt with by me above with respect to the contextual position existing from the year 1954 to 1960 when the sale deed was executed by the society in favour of defendant no.1/respondent no.1.

23. Finally suo moto, on the issue of equities in the case on the ground that Sardar Sohan Singh had paid a sum of Rs. 11,824/- for the plot and therefore it can be argued that it is unfair and inequitable for the defendant no.1/respondent no.1 to claim ownership of the plot. However, the defendant no.1/respondent no.1 in around the year 1960 itself when the sale deed was executed had sought to repay back this amount by crediting this amount in the bank account of Sardar Sohan Singh, however, it has come on record that this amount which was credited in the account of Sardar Sohan Singh was transferred back by Sardar Sohan Singh. Therefore, neither in law, nor in equity, the appellants/plaintiffs can

be said to have any claim with respect to the suit property.

24. A civil case is decided on balance of probabilities. The balance of probabilities in the present case shows that it is the defendant no.1/respondent no.1 who was the owner of the property. The defendant no.1/respondent no.1 and his father-Sir Sobha Singh have represented themselves to the world at large as the owners from the year 1960 and which aspect was never challenged by the appellants or their predecessor-in-interest within the period of limitation. Any alleged rights/ownership claims are thereby destroyed. Also even assuming there is a fraud which is played upon a person, even with respect to such fraud, the necessary action in law has to take place within three years under Article 113 of the Limitation Act, 1963 and if such an action is not taken, a person cannot interminably seek disentitlement to the ownership of another person on the ground of fraud, when there is a proper registered sale deed, which is in this case is of the year 1960 i.e. about 52 years back. Also as already observed above, this litigation has been initiated after the death of Sardar Sohan Singh, and who in his lifetime did not file a suit claiming rights in the suit property.

25. In view of the above, I do not find any merit in the appeal, which is accordingly dismissed. In my opinion, the appellants/plaintiffs are wholly ill-advised in trying to speculate in litigation for claiming rights in the suit property, since Sardar Sohan Singh himself never filed any suit during his lifetime to claim rights in the suit property. Supreme Court recently in the case of Rameshwari Devi and Others Vs. Nirmala Devi and Others, has held that it is high time that actual costs be imposed. The Supreme Court has also stated that unnecessary delays in litigation leads to huge costs upon the person who is ultimately successful, and unless actual costs are awarded dishonesty of unnecessary litigation will never come to an end. The Supreme Court has in an earlier Division Bench judgment of three Judges in the case of Salem Advocate Bar Association, Tamil Nadu Vs. Union of India (UOI), has also held (in para 37) that it is high time that actual costs be awarded. I am also empowered to impose actual costs by virtue of Volume V of the Punjab High Court Rules and Orders (as applicable to Delhi) Chapter VI Part I Rule 15.

Before commencement of arguments in the appeal I had made it known to both the parties that costs in this case will follow the final decision. I, therefore, while dismissing the appeal direct that the defendant no.1/respondent no.1 file in this Court an affidavit by way of the costs incurred by him for the lawyers' fees for defending this appeal. This affidavit of the costs incurred will be supported by the necessary certificates of the lawyers of having received the fees with respect to this appeal. This affidavit alongwith certificates of lawyers be filed within a period of four weeks from today. The costs as stated in such affidavits supported by the certificates of lawyers will be the costs in favour of the defendant no. 1/respondent no. 1 and against the appellants.

26. The appeal is dismissed with costs as stated above. Trial Court record be sent back.

C.M. No. 18265/2011

These cross-objections filed on behalf of defendant no.1/respondent no.1 will stand decided in terms of the aforesaid judgment.

Application stands disposed of accordingly.