

**Sukhdev Singh Vs. Baxis Singh and anr.**

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**Court :** Rajasthan

**Decided On :** Jan-24-2006

**Reported in :** RLW2006(2)Raj1036

**Judge :** Satya Prakash Pathak, J.

**Acts :** [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 145; Code of Civil Procedure (CPC) - Sections 96 - Order 1 Rule 10 - Order 6 Rule 2; Indian Registration Act - Sections 17 and 49; Indian Registration Act, 1871; Indian Registration Act, 1877 - Sections 32; [Notaries Act, 1952](#); Punjab Land Revenue Act - Sections 31; Rajasthan Stamp Law (Adaptation) Act, 1952 - Sections 35; Rajasthan Stamp Law (Adaptation)(Amendment) Act, 1989; Rajasthan Tenancy Act, 1995 - Sections 53, 88 and 183; Registration Act, 1866; [Registration Act, 1908](#) - Sections 49; Registration and other related laws (Amendment) Act, 2001; Representation of the People Act; Specific Relief Act, 1877 - Sections 16; Specific Relief Rules - Order 8 Rules 3 and 5; Stamps Act - Sections 47A; Transfer of Property

**Appeal No. :** S.B. Civil First Appeal No. 296 of 2003

**Appellant :** Sukhdev Singh

**Respondent :** Baxis Singh and anr.

**Advocate for Def. :** S.L. Jain, Adv.

**Advocate for Pet/Ap. :** N.S. Acharya, Adv.

## **Judgement :**

### **Satya Prakash Pathak, J.**

1. The first appeal under Section 96 CPC has been filed against the judgment and decree dated 27.8.2003 passed by learned Addl. District Judge No. 1, Hanumangarh, in Civil Suit No. 114/2002 (22/1999) (47/1998)-Baxis Singh v. Mst. Gurdev Kaur and Anr. whereby the suit against defendant No. 1 was decreed with cost and it was ordered that the Defendant No. 1 shall get the sale-deed in respect of the disputed land written and executed at the expenses of the plaintiff and shall get it registered before the competent officer within a period of two months from the date of the order. It was further ordered that on Defendant No. 1's failing to do so within the specified period the plaintiff shall have the right to get the sale-deed written and executed and getting it registered in his favour through the Court.

2. The facts of the case inter alia stated in the suit filed by Plaintiff-Respondent No. 1 Baxis Singh in the year 1998 against Mst. Gurdev Kaur for specific performance of the agreement dated 27.5.1996 in respect of various lands, the details of which find mention in Para No. 2 of the plaint, are to the effect that defendant in whose name the agricultural lands in various kilas of Chak 17 LLW, Tehsil Hanumangarh are entered in the revenue records, is an old aged lady suffering from ailment and is unable to lookafter the same so she has executed a General Power of Attorney in favour of her nephew Baggasingh s/o Chandsingh to do all such acts on her behalf in respect of transfer, mortgage, giving it on contract etc. which was attested and verified in the office of Sub Registrar, Ganganagar on 30.4.1993. It is further stated in the plaint that the defendant was in need of money, so she through her Power of Attorney Bagga Singh agreed to sell the aforesaid lands which was 24 Bighas and 13 Biswas @ Rs. 16,400 per bigha to the plaintiff, the possession of which alongwith canal water turn was already with the plaintiff, for a total sum of Rs. 4,02,000 and she received Rs. 60,000/- on 30.12.1993 and Rs. 2,90,000 on 5.2.1994 and the balance amount of Rs. 52,000/- has been paid to the defendant on the date of execution of the agreement for sale and there remains nothing due in respect of the agricultural lands. The deed written and attested by the Notary Public was handed over to the plaintiff. It is further stated

that the plaintiff is an agriculturist, who is in possession of the land continuously and the Girdawari Nahari (Sudhakar) is in his name and he is making payment of it. The condition of the agreement says that on the defendant denying to get the registry done, the purchaser shall have the right to get the registry done through Court for which the defendant will be responsible for the expenses. It is also stated in the plaint that since then the plaintiff is in possession of land as Khatedar agriculturist and making payment of Lagan, Rakam and Abyana etc. to the Govt. after the purchase of the land and has developed the land by spending the money. It is further stated that he was always having money for the registry and was ready and willing to perform his part of contract but the defendant was not taking steps for getting registry done as per agreement for the reason that there has been escalation in the value of the land and further that as she has received the entire amount of the disputed land she was not interested in getting registry done on false pretexts despite asking time and again. Finally, when she was asked to get the registry done on 12.6.1998 at Jodkiya, she clearly refused to the request of the plaintiff as she was inclined to dispose of the land to some other person. It is claimed, as the defendant was not desirous to fulfill her part of contract, the plaintiff was entitled to obtain a decree for specific performance of the contract. In the alternate it was prayed that if for any reason a decree for specific performance of the agreement is not granted, a decree for the double of the amount paid by plaintiff be passed.

3. Sukhdev Singh, the present appellant herein, filed an application before the learned Trial Court on 8.1.1999 for impleading him as party respondent in the suit inter-alia stating that the land in question is his Khatedari land as Late Shri Buta Singh, owner of the land made a register Will on 15.1.1979 in his favour and others and mutation thereof was attested in his name on 4.5.1979. It was also stated that the The land in question was attached in the proceedings under Section 145 Cr.P.C. and in the final order passed holding Mst. Gurdev Kaur in possession of the land. For getting the land back, he filed a suit under Section 183 of the Rajas than Tenancy Act on 28.10.1995 before the Revenue Court [SDO (Revenue), Hanumangarh], which was decided in his favour on 11.3.1997 and in execution thereof physical possession of the land was handed over to him by the Tehsildar on 25.4.1997. It was further stated that against that judgment and

decree dated 11.3.1997 plaintiff filed an appeal before the Revenue Appellate Authority, which was rejected on 3.11.1998. It was also stated that the plaintiff on the basis of a forged agreement has filed the suit in collusion with defendant and concealed the material facts. It was prayed that for just and proper decision of the suit the applicant be made a party in the suit.

4. Plaintiff Baxis Singh emphatically denied the contents of the application moved for impleading defendant No. 1 party in the suit. It was further stated that the land stands in the Khatedari of Mst. Gurdev Kaur w/o Buta Singh Jat Sikh and she is tenant thereof. It was further stated that when the agreement was executed in favour of the plaintiff, then also the land stood entered in the Khatedari of Mst. Gurdev Kaur. It was stated that neither Sukhdev Singh had any right or interest in the land nor there existed any Will in his favour because Sukhdev Singh himself gave statement before the Court of learned ADJ, Hanumangarh Junction to the effect that no such Will was executed by Buta Singh in his favour. It was also stated that in respect of the mutation entered in the name of defendant No. 2, a revision petition is already pending before the Revenue Board and stay order is continuing. The applicant, who has no concern with the disputed land, is a stranger to the suit, therefore, his application for impleading him as party may be dismissed.

5. The learned Trial Court vide order dated 22.7.1999 accepted the application filed by Sukhdev Singh and ordered for impleading him as Defendant No. 2. Thereafter, Defendant No. 2 on 18.8.1999 filed written statement inter alia denying the averments made in the plaint and stated that the disputed land is not the Khatedari land of Defendant No. 1 but in fact it is in the Khatedari of Defendant No. 2 and despite that the plaintiff knowing it fully well in conspiracy with Defendant No. 1 executed an illegal agreement through some General Power of Attorney and purposely not filed the Jamabandi of the disputed land. It was further stated that when Defendant No. 1 was not having any Khatedari rights in the disputed land then there was no authority vested neither in defendant No. 1 nor the Power of Attorney holder to deal with in respect of the aforesaid land. It was further stated that the Defendant No. 1 had no right to sell out the disputed land which is in the Khatedari of Defendant No. 2 and so far as the agreement in

question dated 27.5.1996 is concerned, the same has been prepared in connivance with the said power of attorney as the agreement of the same date which was produced before the Revenue Appellate Court, Hanumangarh in the pending appeal is totally different. It was further stated that when the plaintiff is not in possession of the land in dispute, there is no question of improving the land and incurring expenditure on it. Further, it was stated that neither the so-called sale-deed is genuine nor the defendant has any right to get registry done in the name of plaintiff and further plaintiff is not entitled to get a decree for specific performance of contract on the basis of agreement in respect of Defendant No. 2's Khatedari land. In additional submissions, Defendant No. 2 stated that the disputed agriculture land, which is of his Khatedari land was mutated in his favour on 4.5.1979 in pursuance to the registered Will dated 15.1.1979 executed by late Buta Singh s/o Kapoor Singh. It was further stated that in due course of time proceedings under Section 145 Cr.P.C. in relation to the land in question took place and in those proceedings possession was ordered in favour of Defendant No. 1 under Section 183 of the Rajasthan Tenancy Act before the Sub Divisional Officer, Hanumangarh on 28.10.1995 which was registered as Revenue Suit No. 214/95 and same was decided in favour of Defendant No. 2 on 11.3.1997 and in execution proceedings the physical possession of the disputed land was received by him on 25.4.1997. The appeal filed against said judgment and decree dated 11.3.1997 by the plaintiff before the Revenue Appellate Authority was dismissed on 3.11.1998. It was further stated that the plaintiff unsuccessfully challenged the Will executed in favour of Defendant No. 2 by way of filing suits before the Revenue and Civil Courts. It was stated that Defendant No. 1 is neither having any interest in the disputed land nor she is its Khatedar but after the mutation recorded in his favour on the basis of the Will she in connivance with the Revenue authorities, she being the widow of late Buta Singh, got the Mutation No. 148 and 17.3.1994 entered in her name which was cancelled before the District Collector, Hanumangarh in Appeal No. 51/94 and the mutation attested in her favour was cancelled. It was stated further that the suit was filed by the plaintiff after filing of the appeal before the Revenue Appellate Authority against the judgment and decree awarded in favour of Defendant No. 2 declaring him as Khatedar and ordering possession to be handed over withholding the fact that Defendant No. 2

was having Khatedari in the land and Jamabandi of land in question was purposely not filed but a copy of Mutation No. 148 was filed, which had already been cancelled. The plaintiff has not bona fide filed the suit therefore is not entitled to get equitable relief from the Court. The conspiracy is evident from the two agreements dated 27.5.1996 being different; one filed before the Revenue Appellate Authority, Hanumangarh and the other filed with the plaint before the Court. It was also stated that the plaintiff any how is desirous to obtain a decree for specific performance of the contract on the basis of forged agreement. It was prayed that the suit be dismissed with costs.

6. On the basis of pleadings of parties, the learned Trial Court framed issues to the effect:

i) Whether the land mentioned in Para No. 1 of the plaint was of Defendant No. 1's Khatedari and possession, and was agreed to be sold through General Power of Attorney holder (on 30.4.1993 the General Power of Attorney registered) @ 16,400/- per bigha for a total sum of Rs. 4,02,000. A sum of Rs. 60,000 was received on 30.12.1993 and Rs. 2,90,000 on 5.2.1994 towards it and after receiving balance amount of Rs. 52,000 agreement was reduced in writing and possession of the land was handed over to the plaintiff?

ii) Whether the plaintiff was always ready and willing to get the registry done of the disputed land and is still ready but the Defendant No. 1 kept on making excuses and finally on 12.6.1998 clearly refused?

iii) Whether the plaintiff as per the conditions of the agreement is entitled to specific performance of this agreement?

iv) Whether the disputed land is the agricultural Khatedari land of Defendant No. 2, which was entered in his Khatedari on 4.5.1979 on the basis of Will dated 15.1.1979 executed by Buta Singh?

v) Whether in respect of this land litigation took place between Defendant No. 1 and Defendant No. 2 under Section 145 Cr.P.C. and Section 183 of the Tenancy Act and the same were decided in favour of Defendant No. 2?

vi) Whether the present suit has been filed by the plaintiff in connivance and conspiracy with defendant No. 1 and is liable to be dismissed?

vii) Relief?

7. Plaintiff in oral evidence got recorded the statements of PW.1 Jagdish Rai Gupta, PW.2 Jasjeet Singh, PW.3 Aadram and himself as PW.4. In defence, Defendant No. 2 Sukhdev Singh himself appeared before the Court as DW1 and producing DW2 Randheer Singh got his statement recorded. Both the parties in support of their pleas also tendered some documents in evidence.

8. It has been contended by the learned Counsel for the appellant that the agreement to sale is not adequately stamped and registered one, therefore, it was not admissible in evidence. It has further been contended that the Trial Court has decreed the suit on the basis of Ex. 1, the agreement dated 27.5.1996, which is said to be executed by the Power of Attorney holder of defendant Smt. Gurdev Kaur, which is a false and fabricated document as the defendant-respondent Smt. Gurdev Kaur was not the Khatedar tenant of the land in question. Gurdev Kaur not being Khatedar tenant, neither she herself nor her Power of Attorney holder was having any authority under law to dispose of the land, which was in the tenancy of appellant-defendant No. 2. The learned Counsel submitted further that it is an admitted position on record that in the present matter pertaining to the disputed agricultural land regarding which litigation took place under Section 145 of the Cr.P.C. and in those proceedings the possession was found of Smt. Gurdev Kaur and when a suit for possession under Section 183 was filed by the defendant-appellant before the revenue Court, the same was decreed in favour of the appellant and the judgment and decree awarded in that suit is still not disturbed and is in favour of the appellant, therefore, the Trial Court was not justified in decreeing the suit for specific performance of the land which was not the Khatedari land of the defendant Smt. Gurdev Kaur. The learned Counsel submits that the Trial Court has seriously erred while appreciating the evidence led by the parties and deciding the issues. According to the learned Counsel, a fake agreement to sale was prepared in relation to the disputed land by the plaintiff in connivance with Defendant No. 1 as plaintiff and defendant both knew it well that Defendant

No. 1 was having no Khatedari rights in the land. It has been submitted that the land in question is of the appellant as on account of a registered Will the land in question came in possession of the appellant by virtue of Will dated 15.1.1979 and the land in dispute was entered in the Khatedari of defendant No. 2 on the basis of the Will. The learned Counsel submits that if the Will was in favour of defendant No. 2 then there was no reason why on the basis of a forged document, said to be the agreement to sale, the suit was not liable to be decreed. In the last, learned Counsel submitted that it was the appellant who subsequently came to know about the collusive suit filed by Baxis Singh on the basis of alleged agreement to sale, then he moved an application before the learned Trial Court to implead him as a party and the Trial Court impleaded him party in the suit and he has been able to prove through various documents brought on record that the land in question came in his possession on account of a Will executed by Buta Singh, who was the owner of the land in question, and in that Will of the year 1979 some bighas of land were also given to Defendant No. 1 Smt. Gurdev Kaur. The learned Counsel submits that though the copy of the Will has not been produced but since reference has been made of the Will in various documents and judgments delivered by various courts, therefore, in the absence of Will to allow a decree of specific performance cannot be said to be legal, just and proper. In support of his submissions, the learned Counsel has placed reliance on Harish Singh and Ors. v. Lalu Ram RLR 1997 (1) 31, Khuraj and Anr. v. Moti Lal and Ors. 1998 DNJ Raj. 168, Jamna Bai v. Tulsi Ram, 1996 DNJ Raj. 717, Kamla Shankar v. Rattan Lal and Ors. 1998 RRD 21, Nihal Singh v. Singh Ram and Ors. 1989 (1) RLR 384, Claude Pinto v. M.V. Shankar Bhat and Anr. 1996 (2) Civil Court Cases 609 (Kar.), Sitaram Tukaram Dangaval and Ors. v. Sumantilal Chindulal Burad and Anr. 1997 (1) Civil Court Cases 689 (Bom.), Lourdu Mari David and Ors. v. Louis Chinnaya Arogiaswamy 1996 DNJ (SC) 348, Kallathil Sreedharan and Anr. v. Komath Pandiyala Prasanna and Anr. 1996 DNJ (SC) 452 and Ganesh Shet v. Dr. C.S.G.K. Shetty and Ors. 1998 (2) Civil Court Cases 711 (SC).

9. On the other hand, the learned Counsel has submitted that the land in question being in the Khatedari of defendant Gurdev Kaur and her Power of Attorney holder, who was her nephew and was having a registered General Power of Attorney of 1993 in his favour, received the consideration in relation to land in

dispute, mention of which has been made in Para 2 of the plaint, on different dates and finally on 27.5.1996 when balance amount was paid, the deed was executed, therefore, the plaintiff respondent has the right to get the decree of specific performance in his favour of the agreement to sale executed in the present matter i.e., Ex.1. Learned Counsel submitted further that since after receiving the entire consideration for the disputed land when Defendant No. 1 Gurdev Kaur or her Power of Attorney did not take any steps for getting the registry of the land in favour of the plaintiff-respondent then the suit was filed. The Trial Court, on the basis of the pleadings of the parties, framed issues and found that Sukhdev Singh appellant had not right whatsoever in the disputed land and therefore, decreed the suit for specific performance of the contract for the reason that plaintiff respondent was always ready and willing to perform his part of the contract and Smt. Gurdev Kaur when failed to perform her part of contract after receiving the entire consideration, the suit was liable to be decreed. Learned Counsel submits that the Trial Court has recorded its finding on issues after elaborate discussion. It has been submitted further that the case of the appellant is mainly based on Will as would appear from the written statement filed by the appellant who was subsequently made Defendant No. 2 in the suit on the basis of the Will. Neither the registered Will nor a copy thereof has been placed on record, therefore, the Trial Court was justified in drawing adverse inference for not producing the will against Sukhdev, the appellant and the plaintiff's suit has been rightly decreed which requires no interference by this Court. It has been submitted that it is not necessary that the agreement to sale should always be a registered document. It is submitted that this document tendered in evidence requires to be examined under the provisions of Registration Act particularly in the circumstances that it was admitted in evidence without there being any objection to it. The learned Counsel submits that on the basis of Ex. 1 the suit has been decreed and the appeal filed, therefore, deserves to be dismissed. In support of his submissions, learned Counsel has placed reliance on following decisions:

- 1) RLR 1984 511-Gulam Mohammed and Anr. v. Mst. Mariyam and Anr.
- 2) : AIR1985 Cal200 -Himjit Construction v. Tarun Sarkar

- 3) RLR 1982 pg. 1021-Girdhar Singh and Ors. v. Anand Singh and Ors.
- 4) : AIR1990 Ori129 -Chandra Sekhar Das and Anr. v. Girdidhari Sahu and Ors.
- 5) : [1968]3SCR111 -Mrs. Om Prabha Jain v. Abnash Chand and Anr.
- 6) RLW 1974 Raj. 296-Durgadan v. Devidan
- 7) RLR 2000 (2) 193-Harjeet v. Megha and Ors.
- 8) RLW 2002 (2) 802-Narayan v. Madan
- 9) WLC 1997 (UC) 377-Smt. Pushpa Kanwar and Anr. v. Suraj Prasad Gupta
- 10) : [1962]2SCR333 -Javer Chand v. Pukhraj Surana
- 11) : AIR 1994 SC1653 -Jattu Ram v. Hakam Singh and Ors.

10. Before proceeding further in the case, I deem it proper to discuss the authorities cited by learned Counsel for the appellant first.

RLR 1997 (1) 31 Harish Singh and Ors. v. Lalu Ram (supra)-In this case, this Court considered various provisions of the Stamps Act and also the [Notaries Act, 1952](#), and taking into consideration the rules relating to deed writers, found that the notaries, Advocates and deed writer had not performed their duties in preparing the agreement Ex. 1 in accordance with law, therefore, in the facts and circumstances when it was found that proper registers were not placed and the documents entered in the register were not serially entered and the numbers etc. required to be given on Ex. 1 were not given, it gave a room for suspicion and as such the document was not considered to be a genuine document.

1998 DNJ Raj. 168 Khuraj and Anr. v. Moti Lal and Ors. (supra)-This was a case in which this Court while interpreting the language of the document observed that the language of the document showed it a document purported to be an agreement to sale therefore it was liable to be marked as an exhibit at the time of recording of evidence but at the same time merely accepting a document does not dispense with its proof and the defendant can raise objection to it at any

subsequent stage.

1996 DNJ Raj. 717 Jamna Bai v. Tulsi Ram (supra)-In this case, this Court considered the admissibility of a document in a suit for temporary injunction. The Trial Court had allowed the defendant to prove the document for collateral purposes whereas this Court held that the document was not admissible in evidence even for collateral purposes, as the same was not adequately stamped.

1998 RRD 21 Kamla Shankar v. Rattan Lal and Ors. (supra)-The Board of Revenue while considering the provisions of Tenancy Act particularly Sections 53 and 88, in the circumstances held that when the Trial Court refused to allow the document to be tendered in evidence for the reason that it was an unregistered and unstamped family settlement in evidence and a revision petition filed was dismissed holding that the Trial Court had rightly rejected the request of the plaintiff to take this document in evidence as the document was a family settlement and it creates rights in immovable property, then under Section 17 of the Indian Registration Act and in view of the law laid down in Kale's case, the Trial Court committed no illegality in rejecting the prayer to take the document in evidence.

1989 (1) RLR 384 Nihal Singh v. Singh Ram and Ors. (supra)-This Court held that an unstamped and unregistered document required under law to be stamped and registered cannot be admitted in evidence even for collateral purposes.

Claude Pinto v. M.V. Shankar Bhat and Anr. 1996 (2) Civil Court Cases 609 (Karnataka)(supra)-The Karnataka High Court finding the plaintiff not approached with clean hands held him not entitled to the equitable relief of specific performance.

Sitaram Tukaram Dangaval and Ors. v. Sumantilal Chindulal Burad and Anr. 1997 (1) Civil Court Cases 689 (Bom.)(supra)-That was a case in which the Bombay Court found the property already under attachment in an earlier suit filed by plaintiff and the plaintiff filed another suit suppressing the fact of attachment. In the facts and circumstances, the Court held that specific performance cannot be granted during the pendency of attachment.

Lourdu Mari David and Ors. v. Louis Chinnaya Arogiaswamy 1996 DNJ (SC) 348 (supra)-The Hon'ble Apex Court observed that party seeking relief must come with clean hands and as the plaintiff came with incorrect and false facts and the respondent No. 3, who had no knowledge of the plaintiff's agreement in question, the Court refused to exercise discretion on legal principles and held that the respondent No. 3 bonafide purchaser for value without notice.

Kallathil Sreedharan and Anr. v. Komath Pandyala Prasanna and Anr. 1996 DNJ (SC) 452 (supra)-In this matter of specific performance of contract, the Hon'ble Apex Court on the facts that the theater in question was held by minor and his mother and therefore, sale thereof to the extent of minor's share was prohibited and in those circumstances observed that decree for specific performance cannot be granted and held the plaintiff entitled to the claim of alternative relief of refund of payment asked for in the plaint which allowed by the High Court.

Ganesh Shet v. Dr. C.S.G.K. Shetty and Ors. 1998 (2) Civil Court Cases 711 (SC) (supra)-was the case in which variance was between the contract pleaded and contract proved and the Hon'ble Supreme Court held that relief on the basis of contract proved but not pleaded cannot be permitted as that would amount to giving effect to a contract which was not the agreement between the parties according to plaintiff. It was also held that other relief sought must also be consistent with the pleading and proof.

11. Now, the authorities cited on behalf of respondent.

1984 RLR 511 (Gulam Mohammed and Anr. v. Mst. Mariyam and Anr.)(supra)-In this case, in relation to appreciation of evidence of a witness, it has been observed that when a witness is examined in the Court and he is not cross-examined in relation to the document, which was executed in his presence, then it must be presumed that the document was executed. It has further been observed in relation to Section 16(c) of the Specific Relief Act read with Order 8 Rules 3 and 5 of the CPC that if a party has made a specific statement of the effect that it was ready and willing to perform its part of the contract and this statement is not controverted then it should be presumed as if it has been admitted.

: AIR1985 Cal200 (Himjit Construction v. Tarun Sarkar)(supra)-The Calcutta High Court in this case observed that when a document in possession of party is not produced then an adverse inference can be drawn against non-production of the document.

1982 RLR 1021 (Girdhar Singh and Ors. v. Anand Singh and Ors.)(supra)-It has been observed by this Court that evidence brought on record, which is not based on pleadings, is not required to be taken into consideration.

: AIR1990 Ori129 (Chandra Sekhar Das and Anr. v. Girdidhari Sahu and Ors.)(supra)-The Orissa High Court considering the provisions of Order 6 Rule 2 CPC observed that if a plea regarding sale for lack of permission from Govt. was not taken then subsequently this aspect was not required to be considered by the Court.

: [1968]3SCR111 (Mrs. Om Prabha Jain v. Abnash Chand and Anr.)(supra)-Hon'ble Apex Court while considering various provisions of the Representation of the People Act in relation to the pleadings of the parties, observed that ordinary rule of law is that evidence is to be given only on a plea properly raised and not in contradiction of the plea and when pleas so made contradicted to each other then it was not required to be looked into.

RLW 1974 Raj. 296 (Durgadan v. Devidan)(supra)-In this case, this Court while considering the provisions of Section 54 of the Transfer of Property Act, in relation to a document, held that the document of sale on the basis of language, which was not registered as such did not amount to sale but only a contract for sale, therefore, plaintiff was not entitled to bring the suit for specific performance.

RLR 2000 (2) 193 (Harjeet v. Megha and Ors.)(supra)-In this case, this Court while considering the provisions of Indian Registration Act and the provisions of Transfer of Property Act, in circumstances that there existed an agreement to sale for agricultural land alongwith possession and complete payment of sale consideration, held the document admissible in evidence.

RLW 2002 (2) 802 (Narayan v. Madan)(supra)-In this case, the Court observed that it is true that it is the sale-deed registered and the Act which confers the right or title on the purchaser but the agreement to sale does give a right to the purchaser to compel the respondent for specific performance of the contract/agreement through the court, if the agreement to sale mentions the fact of handing over the possession, the admissibility of agreement is to be seen at the time of leading evidence but in case the agreement is unregistered, the so called purchaser party to the agreement can use the same for collateral purposes to show the nature of possession or other like questions; even the purchaser can compel the respondent by taking appropriate steps for registration of the agreement as well.

WLC 1997 (UC) 377 (Smt. Pushpa Kanwar and Anr. v. Suraj Prasad Gupta)(supra)-In this case, the agreement to sale was not registered one and objection was taken that it was not admissible in evidence. The Court in the circumstances found the case governed by proviso to Section 49 of the Registration Act and held the document admissible in evidence.

: [1962]2SCR333 (Javer Chand v. Pukhraj Surana)(supra)-The Hon'ble Apex Court in the circumstances when unstamped documents hundies were marked exhibits, observed that when earlier no objection was raised to it then subsequently it was not liable to be reviewed or revised.

: AIR 1994 SC1653 (Jattu Ram v. Hakam Singh)(supra)-The Hon'ble Apex Court while interpreting the provisions of the Punjab Land Revenue Act particularly Section 31 in relation to record of rights, in peculiar facts and circumstances of the case observed that entries made by Patwari in official record are only for fiscal purposes. It was a matter in relation to exchange of land in which defect in title of the land received in exchange was revealed.

12. I have carefully gone through the principles laid down by the various High Courts and the Hon'ble Apex Court and keeping in mind the principles laid down, now I propose to examine the present matter. The Trial Court has decided Issue No. 1 and 2 in favour of the plaintiff respondent holding that on account of an agreement to sale Ex. 1 it has been sufficiently proved, the consideration was

received and the plaintiff was always ready and willing to perform his part of contract and as the Defendant No. 1 failed to perform her part of contract, as such Issue No. 1 and 2 were decided in favour of the plaintiff. It was held in relation to Issue No. 3 that the plaintiff was entitled for specific performance of the agreement through Court. Regarding Issue No. 4, it has been held that Defendant No. 2 has based his claim on the basis of a Will and the will has not been produced in evidence, therefore, it cannot be presumed that Defendant No. 2 was having any right in relation to the suit agricultural land particularly in the circumstances that still it is not known as to whether finally the litigation between the parties have been concluded. Issue No. 4, therefore, was decided against the defendant. In relation to Issue No. 5, it has been decided that in the proceedings, which took place under Section 145 Cr.P.C. the possession was found of Defendant No. 1 but as regards the suit under Section 183 of the Tenancy Act is concerned, in fact no specific finding has been recorded and issue No. 5 has been decided against defendant No. 2. Issue No. 6 was in relation to suit brought collusively. The finding has been recorded against the defendant and the suit has been decreed.

In the present matter, following points require consideration:

- i) Whether on the basis of Ex. 1, the agreement to sale/sale-deed, the suit was liable to be decreed as Ex. 1 is not adequately stamped and is also not a registered document as required under the Indian Registration Act and the Stamp Act was inadmissible in evidence?
- ii) Whether any tenancy right was available to Defendant No. 1 or to her Power of Attorney holder in relation to the agricultural land to dispose of the same by Ex.1 agreement to Sale?
- iii) Whether the alternative prayer regarding refund of consideration paid to the defendant is required to be allowed in view of doctrine of unjust enrichment?

Point No. 1 and 2

13. Since Point No. 1 and 2 are inter-related, as such same are being decided together.

14. It is not denied in the present case that Ex. 1, a document dated 27.5.1996, is stated to be an agreement to sale/sale-deed in relation to agricultural land. The Power of Attorney holder of Defendant No. 1 executed this document on her behalf. This document has been tendered in evidence marking it as Ex.1. It is also not in dispute that this document is not a registered document.

15. A careful reading of Ex. 1 leads to a conclusion that in relation to the agricultural suit land entire consideration of Rs. 4,02,000/- has been received from the plaintiff by the Power of Attorney holder of Defendant No. 1. This document is not adequately stamped. It is also not a registered document. This says that possession of the agricultural land was handed over to the plaintiff. Thus, it appears, this document makes a mention about complete sale of the agricultural land i.e., in all 24 bighas and 13 biswas. This land is said to be of late Shri Buta Singh, whose wife Defendant No. 1 in the present case Gurdev Kaur has disposed of this land through her Power of Attorney holder Bagga Singh.

16. To decide the controversy, it is necessary to reproduce relevant provisions of law. Section 17 of the Indian Registration Act is most relevant. The relevant portions whereof read as under:

17. Documents of which registration is compulsory.-(1) The following documents shall be registered, if the property to which they relate is situate in a district in which, and if they have been executed on or after the date on which, Act No. XVI of 1864 or the Indian Registration Act, 1866, or the Indian Registration Act, 1871 or the Indian Registration Act, 1877, or this Act came or comes into force, namely:

a) xxx xxx

b) xxx xxx

c) xxx xxx

d) xxx xxx

e) xxx xxx

Provided....

1A) The documents containing contracts to transfer for consideration, any immovable property for the purpose of Section 53A of the Transfer of Property Act, 1882 (4 of 1882) shall be registered if they have been executed on or after the commencement of the Registration and other related laws (Amendment) Act, 2001 and if such documents are not registered on or after such commencement, then, they shall have no effect for the purpose of the said Section 53A.

2) Nothing in Clauses (b) and (c) Sub-section (1) applies to

xxx xxx xxx

xxx xxx xxx

xxx xxx xxx

Explanation.-A document purporting or operating to effect a contract for the sale of immovable property shall not be deemed to require or ever to have required registration by reason only of the fact that such document contains a recital of the payment of any earnest money or of the whole or any part of the purchase money.

17. Similarly, Section 35 of Rajasthan Stamp Law (Adaptation) Act, 1952 reads as under:

35. Instruments not duly stamped inadmissible in evidence, etc.-No instrument chargeable with duty shall be admitted in evidence for any purpose by any person having by law or consent of parties authority to receive evidence, or shall be acted upon, registered or authenticated by any such person or by any public officer, unless such instrument is duly stamped.

Provided that-

a) any such instrument not being an instrument chargeable with a duty not exceeding ten naye paise only, or a bill of exchange or promissory note, shall, subject to all just exceptions, be admitted in evidence on payment of the duty with which the same is chargeable or, in the case of an instrument insufficiently stamped, of the amount required to make up such duty, together with a penalty of five rupees, or when ten times the amount of the proper duty or deficient portion

thereof exceeds five rupees, a sum of equal to ten times such duty or portion;

b) Where any person from whom a stamped receipt could have been demanded, has given an unstamped receipt and such receipt, if stamped, would be admissible in evidence against him, then such receipt shall be admitted in evidence against him on payment of a penalty of one rupee by the person tendering it;

c) Where a contract or agreement of any kind is effected by correspondence consisting of two or more letters and any one of the letters bears the proper stamps, the contract or agreement shall be deemed to be duly stamped;

d) Nothing herein contained shall prevent the admission of any instrument in evidence in any proceeding in a criminal Court, other than a proceeding under Chapter XII or Chapter XXXVI of the Code of Criminal Procedure, 1898 (5 of 1898);

e) Nothing herein contained shall prevent the admission of any instrument in any Court when such instrument has been executed by or on behalf of the Government or where it bears the certificate of the Collector as provided by Section 32 or any other provisions of this Act.

18. In order to consider the submissions of the rival parties, it would also be relevant to consider the concerned Section 49 of the [Registration Act, 1908](#). Section 49 of the Registration Act is reproduced hereinbelow:

49. Effect of non-registration of documents required to be registered.-No document required by Section 17 or by any provision of the Transfer of Property Act, 1882 (4 of 1882), to be registered shall-

(a) affect any immovable property comprised therein, or

(b) confer any power to adopt, or

(c) be received as evidence of any transaction affecting such property or conferring such power,

unless it has been registered: Provided that an unregistered document affecting immovable property and required by this Act or the Transfer of Property Act, 1882 (4 of 1882), to be registered may be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1877 (3 of 1877) or as evidence of any collateral transaction not required to be effected by registered instrument.

19. We then have the Rajasthan Stamp Law (Adaptation)(Amendment) Act, 1989 (Act No. 27 of 1989), which has amended Second Schedule to Rajasthan Act No. 7 of 1952. The amending provision reads as under:

3. Amendment of the Second Schedule, Rajasthan Act No. 7 of 1952.-At the end of the last entry 'Exemptions' in Article 23 of the Second Schedule appended to the Rajasthan Stamp Law, the following shall be added, namely:

Explanation.-For the purpose of this article, an agreement to sell an immovable property or an irrevocable power of attorney shall, in case of transfer of the possession of such property before, at the time or after the execution of such agreement or power of attorney, be deemed to be a conveyance and the stamp duty thereon shall be chargeable accordingly.

Provided that the provisions of Section 47-A shall be applicable mutates mutandis to such agreement or power of attorney as are applicable to a conveyance: Provided further that the stamp duty already paid on such agreement or power of attorney shall, at the time of the execution of conveyance in pursuance of such agreement or power of attorney subsequently, be adjusted towards the total amount of duty chargeable on the conveyance.

20. In view of above provisions, it appears, in the present case, Ex. 1 is a document, which ought to have been adequately stamped but it has not been stamped adequately and therefore, it creates no right whatsoever and further the document is not admissible in evidence.

21. In 1989(1) RLR 85 (Nihal Singh v. Singh Ram), this Court has observed as under:

The disputed document, paper No. 36C/2-3 is the photostat copy of the original entry contained in the Bahi Khata of Phoola Ram DW 3. According to it, defendants mortgaged their land with him for Rs. 10,000 for making payment to the plaintiff. Admittedly the original entry is neither stamped nor registered. It is not the case of the defendant non-petitioners that it is exempted from the payment of stamp duty or registration. It is not necessary to determine the exact nature of this document. Suffice it to say here that it does require some stamp duty. Section 35, Stamp Act provides that no instrument chargeable with duty shall be admissible in evidence for any purpose. It does not say that such a instrument can be admitted in evidence for a collateral purpose. The learned Counsel for the defendant non-petitioners has not been able to cite any ruling in support of his contention that a document chargeable with stamp duty and not stamped can be used for collateral purposes. The learned Trial Court has relied upon (2) AIR 1959 Madras 764. In AIR 1959 Madras part ends at page 560. The learned Trial Court has held that the portion of unstamped document requiring no stamp duty can be read in evidence and has relied upon (3) . It may be mentioned here that question regarding the admissibility of a document for want of registration was involved in it and it was held that unregistered document can be used for collateral purpose as provided under Section 49, Registration Act. The words 'for any purpose' appearing in Section 35 Stamp Act were construed by the Allahabad High Court in (4) Mst. Bibo v. Rai Sahib Gokaran AIR 1937 Allahabad 101, as undoubtedly implying for each and every purpose whatsoever without any exception and it matters little whether the purpose is the main purpose or a collateral one. It is thus clear that the learned Trial Court has acted illegally in the exercise of its jurisdiction in holding that no stamp duty is payable on the said entry of the Bahi of Phoola Ram DW 3, in allowing the defendant's application paper No. B-37, and admitting the Photostat copy paper No. 36C/2-3. If the order dated 28.8.1987 is not set aside, the plaintiff would suffer an irreparable injury.

22. In the case of Jamna Bai v. Tulsi Ram (supra), this Court has clearly held that the document, which was required to be registered under the provisions of the Registration Act, was not adequately stamped and registered, and therefore the document could not be received in evidence, as it was not admissible even for collateral purposes.

23. In AIR 1976 SC 803 (Kale and Ors. v. Dy. Director of Consolidation and Ors.), the Hon'ble Apex Court has held that even in the matters of family settlements where it is considered proper to reduce the settlement in writing then registration would be necessary.

24. In the present case, in view of the contents of Ex. 1 when it says that possession was handed over to the plaintiff then the document was required to be adequately stamped, which has not been done and the document is not a registered one, therefore, it is not admissible in evidence.

25. Now it is further to be seen that defendant No. 1 had tenancy right at the time of execution of Ex. 1. The case of the plaintiff is that he purchased the suit agricultural land from the General Power of Attorney Holder of Defendant No. 1 whereas the case of Defendant No. 2 is that the suit land had already been mutated in his favour of account of a Will executed in the year 1979. It is not denied that in the present case proceedings under Section 145 of the Cr.P.C. also took place and in those proceedings possession was considered to be of Defendant No. 1. Defendant No. 2, who is the appellant in this case, when came to know about the suit for specific performance, presented himself before the Trial Court and moved an application under Order 1 Rule 10 CPC and in the suit, which was filed in the year 1998, he was made defendant. It is correct that he claims the property on the basis of a Will and thereafter on the basis of entries made in the revenue record. It is further case of the defendant that since the proceedings under Section 145 of the Cr.P.C. did not determine the title or ownership in land, therefore, he filed a revenue suit under Sections 88 and 183 of the Tenancy Act. Ex. A/9 is the certified copy of the revenue suit filed on 28.10.1995 by Sukhdev Singh against Gurdev Kaur, who is defendant respondent No. 1 in the present case. The revenue suit was filed by Defendant No. 2, who is appellant just soon after when in the proceedings under Section 145 Cr.P.C. the possession of the disputed land was declared of defendant Mst. Gurdev Kaur. This suit was for possession and declaration of the Khatedari rights. The Revenue Court on 11.3.1997 passed the judgment and decree in this case in favour of appellant. The Revenue Court found as under:

i=koyh esa miyC/k nLrkostksa ds voyksdu ls ;g Li'V gks tkrk gSa fd cwVkflag }kjk oknh ds i{k esa 24&06 ch/kk Hkwfe dh fnukad 28-2-1978 dks djkbZ xbZ olh;r dks flfoy U;k;ky; }kjk lgh eku fy;k x;k gSaA izfroknh;k }kjk nk;j IHkh jktLo jsdk MZ esa oknh ds uke [kkrsnkjh Hkwfe ntZ g SA fookfnr vkjkth vkjkth ij /kkjk 145 lh-vkj-ih-lh- ds fu.kZ; ds vk/kkj ij gh izfrokfn;k dk dCtk gksuk ik;k tkrk g SA /kkjk 145 lh-vkj-ih-lh- esa fl QZ dCtk ds IEcU/k esa vkns'k fn;k tkrk g SA Title dk fu.kZ; flfoy U;k;ky; ;k jktLo U;k;ky; }kjk fd;k tkrk g SA oknh fjdkMs ZM [kkrsnkj dk'rdkj gSa vr% Title ds IEcU/k esa bl izdj.k esa dksbZ vkns'k nsus dh vko';drk ugha g SA izfrokfn;k fookfnr 24-06 ch?kk Hkwfe ij vukf/kd`r :l ls dkfct gksuk ik;k tkrk g SA

vr% ckn oknh fMdzh fd;k tkdj fookfnr vkjkth okds pd 17LLW ds i- 11@106@220 fd- u- 4&5&6&7&15 o ia- ua- 107@220 ds fd-ua- 1]2]7 rk- 14]17 rk-20]22 rk- 25]@ia- ua- 106@223 ds fd-u- 21@106] o i-ua- 105@123 fd-ua- 25@164 dqy 6147 gS Hkwfe ls izfrokfn;k dks csn[ky djus dk vkns'k fn;k tkrk g SA ipkZ fMdzh tkjh gksA

26. A perusal of the above judgment on the basis of which decree Ex. 10A was passed completely clinches the issue and makes a mention that the suit land by way of Will made by Buta Singh came in the ownership of defendant-appellant Sukhdev Singh. It is further important to refer here another document Ex. A/12, which is certified copy of an appeal filed before the learned Revenue Appellate Authority against the judgment and decree awarded on 11.3.1997 by Shri Baxis Singh, who is plaintiff-respondent in the present case. Thus, it can be gathered that the plaintiff of this case knew it very well that a suit for declaration of Khatedari rights was decreed in favour of Defendant No. 2 the appellant in this case. This appeal No. 13/1997 titled Baxis Singh v. Sukhdev Singh and Gurdev Kaur, was decided on 3.11.1998. A detailed judgment has been given in this case. The Court found:

mDr foospu ls Li'V gS fd fookfnr vkjkth vih- ds }kjk Jherh xqjnso dkSj ds eq[r;kjvke ls tfj;s bdjkjukek nkSjkus vihyk/khu okn dz; djus dk le>kSrK fd;k x;k g SA nkSjkus okn fookfnr vkjkth dks dz; djus IEcU/kh bdjkjukesha ls dksbZ oS| vf/kdkj vih- dks izklr ugha gks ldrs g SA vihyk/khu fu.kZ; dh fMdzh ls ,-vkbZ-vkj- 1992 mM+hk ist 47 ds vuqlkj vih- Hkh ck/; gks ldk gS vFkkZr vih- ds nkSjku okn fookfnr Hkwfe dz; djus dk bdjkjukek blfy, vihyk/khu okn esa fn;s x;s fu.kZ; o fMdzh ls vih- Hkh ck/;

jgsxkA vih- dks rFkkdfFkr bdjkjukeksa ls fookfnr vkjktH ds lUnHkZ esa dksbZ oS| vf/kdkj izklr ugha gksrs gSaA blfy, vih- dks ;g vihy Hkh izLrqr djus dk dksbZ oS| vf/kdkj izekf.kr ugha gksrk g SA tk-nh- dh /kkjk 96 ds vUrxZr vih- ds fo}ku vfHkHkkod }kjk m)r vkj-vkj-Mh- 1984 ist 45 o vkj-ch-ts- 1997 ist 446 mUgSa O;fFkr i{kdkj ekuus ds fy, izLrqr fd;s x;s gS] ijUrQ ;gka bl izdj.k esa vih- dh O;Fkk muds }kjk jsLiks- ua- 2 ds eq[;r;kjvke ls fookfnr vkjktH ds dz; djus ds fd;s x;s bdjkjukeksa ds vk/kkj ij g SA nkSjkus okn nksuksa bdjkjukeksa vih- ds gd esa fu'ikfnr fd;s x;s gSaA blfy, vih- vUrfjrh bl vihy/khu okn i= ds fu.kZ; ls ikcUn g SA okn i= ds fu.kZ; ls ikcUn g SA okn i= ds yEcuDky esa gq, lFkkukUrj.k ds vk/kkj ij r`rh; i{k vih- vihy/khu fu.kZ; o fMdzH dks pqukSrh ugha ns ldrkA vih- ,sls fu.kZ; o fMdzH ls ikcUn jgsxkA rFkkdfFkr bdjkjukeksa bl vk/kkj ij fof/keku; Hkh ugha dgs tk ldrsA okn yEcu ds nkSjku vUrfjrh vih- okn esa ikfjr fu.kZ; o fMdzH ls pkgs og ,di{kH; gks ;k jkthukeksa ij vk/kkfjr gks ls ck/; jgsxkA bl izdkj vih- ftu nLrkostkr ds vk/kkj ij vk;k gS mu nLrkostkr dks fof/keku; fdlh Hkh izdkj ls ughZ dgk tk ldrkA ,sls xSj dkuwuh nLrkostkr ds vk/kkj ij vih- dks 'Buyer be Aware' ds fl)kUr ds vuqlkj fookfnr vkjktH dks dz; djus ds bdjkjukeksa djus ls igys jktLr fjdk MZ dk fof/kor ijH{k.k djuk pkfg;s Fkk rFkk Jherh xqjnso dkSj dks bl vkjktH dks fodz; djus ds vf/kdkj gS Hkh ;k ugha] ds ckjs esa Hkh vPNh rjg ls tkap iM+rky djuk pkfg;s Fkh og vkjktH lu~ 1972 ls fdlh u fdlh izdkj ds fookn esa Qalh pyh vk jgh g SA ,slh fLFkfr es vih- us fookfnr vkjktH dks tku cw>dj ds dz; fd;k g SA blfy, vih- vo SZ| nLrkostkr ds vk/kkj ij ;g vihy izLrqr djus dk vf/kdkjh izekf.kr vkj-vkj-Mh- 1990 ist 689 ds vuqlkj ugha gksrs g SA vih- dks ;gka vkj-ch-vkj- 1959 lqizhe dks VZ ist 960 i- , -vkbZ-vkj 1960 jktLFkku ist 196 esa izfrokfnr fl)kUrksa ds vuqlkj ikfjr fd;k x;k g SA vihy/khu fMdzH o fu.kZ; iw.kZ :i ls oS| o fof/k lEer g SA bl fu.kZ; o fMdzH esa gLr{kSi djus dk dksbZ dkuwu lEer vk/kkj vih- iznf'kZr ugha dj ldk g SA ifj.kke Lo:i v/khuLFk U;k;ky;d dk fu.kZ; oS| Bgjkrs gq, vihykaV dh vihy fujLr dh tkrh g SA v/khuLFk U;k;ky; dh i=koyh ckn rdehy iqu Hksth tk;SA fu;ekuqlkj fMdzH ipkZ tkjh gksA

27. Thus, it appears that on the basis of these two documents, tendered in evidence before the Trial Court by Defendant No. 2 Sukhdev Singh, the plaintiff was well aware of the fact that the land in dispute infact came in possession of defendant No. 2. There is yet one more document available on record i.e., Ex. A/8. This is the record of right of Samvat Year 2057 to 2060 corresponding to the year 2000 to 2003. In this document description of the suit land is available, which is in

the name of appellant. On the basis of judgment and decree awarded by the revenue Court in favour of the appellant-defendant, possession was also given by the Tehsildar on 25.4.1997. The relevant document is Ex. A/11 in this regard. Defendant No. 2 Sukhdev singh has tendered the documents referred to hereinabove in evidence and in his statement he has proved these documents.

28. The contention of the learned Counsel for the respondent has been that since neither copy of the Will nor original Will has been produced in the Court, therefore, there is no case as far as Defendant No. 2-appellant is concerned. I do not find any merit in the contention of the learned Counsel. It is always required of plaintiff to provide his case. The case of plaintiff is that he purchased the agricultural land from defendant Gurdev Kaur, His further case is that he was put in possession also. His statement made in the plaint and recorded before the Court coupled with the documents referred to hereinabove would go to show that he was well aware of the proceedings, which took place in the revenue Court. He is also aware of the fact that defendant No. 2 was put in possession of the suit land long back in the year 1997. It is not in dispute that Smt. Gurdev Kaur has not challenged the findings recorded in revenue suit, which has been decreed in favour of defendant-appellant. Thus, as far as this suit is concerned, it has become final. The plaintiff-respondent filed the appeal against Ex. A/1 and that was dismissed in the year 1998. It is also pertinent to mention here that since from very beginning the plaintiff, was in the knowledge that the land in dispute infact on account of a Will came in possession with the appellant-defendant but all those facts were not narrated in the plaint.

29. In view of the above referred documents and in view of the fact that Ex. A/2 has not been challenged by Mst. Gurdev Kaur any further, therefore this judgment and decree awarded in the year 1997 declaring the tenancy rights in favour of appellant-Defendant No. 2 makes it clear that Gurdev Kaur, who was made defendant in the present suit for specific performance was well aware of the Will and her power of attorney holder, who is said to be her nephew, was also well aware of all litigation and when plaintiff had chosen to purchase the agricultural land then he cannot blame others. Ex. A/2, Ex. A/8 and Ex. A/11 are the documents, which speak about the tenancy rights available in favour of the

appellant. When a revenue suit regarding declaration of tenancy rights was filed against Gurdev Kaur, she did not contest and when the judgment was delivered, she did not challenge the same, then it can very well be concluded that in the light of various decisions, certified copies of which have been filed, it appears that Defendant No. 1 had no tenancy right at the time when Ex. A/1 the sale deed was executed. It shall also be relevant to refer here one more document Ex. A/18, which is a judgment delivered by learned Addl. Munsif Magistrate No. 2, Hanumangarh in a civil suit filed by Smt. Gurdev Kaur, defendant respondent and Gurdwara Namdhari Bheni Sahab and other persons including Sukhdev Singh, the present appellant for cancellation of Will. In this case 6 issues were framed. Issue No. 3 and 5 were relevant. Issue No. 3 was regarding limitation and Issue No. 5 was as to whether in view litigation pending in many courts whether the suit was liable to be stayed? It further appears that this suit was filed in the year 1993. The Court recorded its findings regarding Issue No. 3 that the suit was barred by limitation. The Court also recorded finding on Issue No. 5 that in view of litigation pending in other courts, the matter was required to be stayed. Nothing has been brought on record to show that this judgment-dated 3.6.1994 has been challenged any further or not. Be as it may, but this thing absolutely certain that respondent Gurdev Kaur was well aware of the fact that there was Will in favour of defendant-appellant, who filed the suit and the Will of 1979 was made by the husband of Defendant No. 1 in favour of appellant as well as defendant Gurdev Kaur, so in the above facts and circumstances it was necessary for her to have disclosed the facts in the written statement but it appears that Defendant No. 1 Smt. Gurdev Kaur has not even filed a written statement in this case.

30. In view of above discussion, the answer to point No. 1 and 2 is that document Ex. 1 is not admissible in evidence even for collateral purposes and further Mst. Gurdev Kaur had no tenancy right in the suit land as the land in dispute was in the tenancy of Defendant No. 2, the appellant. Consequently, the answer to point No. 2 is that plaintiff is not entitled to a decree for specific performance of contract and the appeal filed by the Defendant No. 2 is required to be accepted. However, the plaintiff-respondent, who has paid the consideration amount for the suit land to Defendant No. 1, is entitled to get refund of the amount with interest @ 6% per annum from the date of filing of the suit till realization and that answers the point

No. 3.

31. In the result, the appeal is accepted and the judgment and decree dated 27.8.2003 is set aside allowing the alternative prayer made by the plaintiff in the suit regarding refund of the payment made to Defendant No. 1. The defendant No. 1 shall refund the amount so received alongwith interest @6% per annum to Defendant No. 2 from the date of filing of the suit till payment. Decree be prepared accordingly.

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