HIGH COURT OF DELHI

Bench: Hon'ble Ms. Justice Neena Bansal Krishna
Date of Decision: 1st November, 2023

CS(OS) 436/2004 & IA No.1871/2021

CPT. RAJESH SETHI S.C.
S/o Col P.C. Sethi
R/o C-269, Defence Colony
New Delhi. ..... Plaintiff

Versus

1. **COL. P.C. SETHI**
S/o late Sh. Mool Chand Sethi R/o C-269, Defence Colony New Delhi.

2. **SH. RAVINDER NANGIA**
S/o Sh. S.G. Nangia R/o C-500, Defence Colony New Delhi.

3. **SH. RAMAN SETHI**
S/o Col P C. Sethi R/o C-269, Defence Colony New Delhi.

4. **Sh. RAVI SETHI**
110 Daly Road, Far Hills
New Jersey - 07931
USA. ..... Defendants

CS(OS) 759/2004 & IA No.1643/2021

Sh. RAVINDER NANGIA
S/o Shri S.G. Nangia
R/o C-500, Defence Colony,
New Delhi. ..... Plaintiff

versus

1. **Sh. PURAN CHAND SETHI**
S/o Late Shri Mool chand Sethi R/o C-269, Defence Colony,
NEW DELHI

2. **Sh. RAMAN SETHI**
S/o Col P C. Sethi
R/o C-269, Defence Colony
New Delhi. ..... Defendant

Legislation:

Section 16, 20, 21, 22, 23, 38, 41(h) of the Specific Relief Act, 1963
Section 44 of the Transfer of Property Act, 1882
Section 7(iv)(c) of the Court Fees Act, 1871
Section 8 of the Suit Valuation Act, 1877
Section 16 of the Indian Contract Act, 1872
Section 17(1) of the Registration Act, 1908
Section 2(9), 4(3) of the Benami Transactions (Prohibition) Act, 1988
Code of Civil Procedure, 1908

Subject: Determination of HUF property status and Karta's authority to sell - Evaluation of specific performance based on readiness and willingness - Examination of undue influence in agreement execution - Entitlement to refund and damages in a property agreement.

Headnotes:

HUF Property – Agreement to Sell by Karta – Suit property, acquired from compensation for ancestral property in Pakistan, held to be HUF property since 1947 – Karta (Defendant No.1) lacked authority to sell HUF property individually – Agreement to Sell void to the extent of shares of coparceners except Karta's share. [Para 68-99, 188]

Specific Performance – Readiness and Willingness – Plaintiff (Defendant No.2) failed to demonstrate readiness and willingness to perform part of the Agreement to Sell – Lacked continuous financial capacity – Suit for specific performance dismissed, but entitled to refund of advance payment with interest. [Para 150-189]

Undue Influence – Agreement to Sell – No undue influence by Plaintiff (Defendant No.2) on Karta (Defendant No.1) established – Agreement not void on grounds of undue influence. [Para 130-144]

Permanent Injunction – HUF Property Management – Karta (Defendant No.1) retains right to manage HUF property, including alienation rights – No permanent injunction granted against Karta for dealing with HUF property. [Para 188]

Refund and Damages – Agreement to Sell – Plaintiff (Defendant No.2) granted refund of advance amount with interest – Claim for damages unsubstantiated and dismissed. [Para 185-186, 189]

Referred Cases:

- Ladli Prashad Jaiswal v. The Karnal Distillery Co. Ltd., Karnal & Ors, AIR 1963 SC 1279
- Joseph Johan Peter Sandy vs Veronica Thomas Rajkumar & Anr, (2013) 3 SCC 801
- Raghunath Rai & Another vs. JageshwarPrashad Sharma, (1999) 50 DRJ 751
- Saradamani Kandappan v. S. Rajalakshmi, (2011) 12 SCC 18
- U.N. Krishnamurthy (Since Deceased) Thr. Lrs. Vs A.M. Krishnamurthy 2022 SCC OnLine SC 840

- Chand Rani v. Kamal Rani, (1993) 1 SCC 519
- Vimaleswar Nagappa Shetty Vs. Noor Ahamad Sharif, AIR 2011 SC 2057
- Syed Dastagir v. T.R. GopalakrishnaSetty, (1999) 6 SCC 337
- H.P. Pyarejan v. Dasappa (Dead) By L.Rs. & Ors., (2006) 2 SCC 496
- Motilal Jain v. Ramdasi Devi, (2000) 6 SCC 420
- N.P. Thirugnanam vs. Dr. R. Jagan Mohan Rao (1995) 5 SCC 115
- Kamal Kumar vs Premlata Joshi, 2019 SCC OnLine SC 12
- Bhavyanath vs. K.V. Balan (Dead) Through Legal Representatives (2020) 11 SCC 790
- Aniglase Yohannan vs. Ramlatha and Others (2005) 7 SCC 534
- Raja Rajeswara Dorai v. A.L.A.R.R.M. Arunachellan Chettiar, 1913 SCC OnLine Mad 276
- Brahm Dutt vs. Sarabjit Singh, 2017 SCC OnLine P&H 5489
- Afsar Shaikh & Anr v. Soleman Bibi & Ors, AIR 1976 SC 163
- K.S. Vidyanadam v. Vairavan, (1997) 3 SCC 1
- Madhukar Nivrutti Jagtap vs. Pramilabai Chandulal Parandekar 2019 SCC OnLine SC 1026

Representing Advocates:

Mr. Arjun Mukherjee, Advocate for the Plaintiff (Captain Rajesh Sethi).
Mr. Hrishikesh Baruah, Mr. Pranav Jain, Advocates for Defendant No.1 (Col. P.C. Sethi).
Mr. Ashish Mohan, Mr. Samarth Chaudhary, Ms. Gargi Sethee, Advocates for Defendant No.2 (Sh. Ravinder Nangia).
Mr. Arjun Dewan, Mr. Varisha B., Advocates for Defendants No.3 (Sh. Raman Sethi) and No.4 (Sh. Ravi Sethi).

****

J U D G M E N T

CS(OS) 436/2004:

1. The plaintiff Capt. Rajesh Sethi, has filed a suit for **Declaration** that the Agreement to Sell dated 14.01.2004 executed by his father, Col. P.C. Sethi, defendant No.1 in favour of Shri Ravinder Nangia, defendant No.2 is *void ab initio* & *non est*, a **Mandatory Injunction** to direct defendant No.1 to cancel the Agreement to Sell and also **Permanent Injunction** to restrain the defendants from creating third party interest on the suit property in furtherance of the Agreement to Sell.

CS(OS) 759/2004:

2. A civil suit is filed by **Sh. Ravinder Nangia** *(defendant no.2 in afore mentioned Civil Suit No* CS(OS) 436/2000 **)** seeking Specific Performance **of** Agreement **to Sell dated 14.01.2004** entered into by him with Col. P. C. Sethi, and in the alternative specific performance in respect of the share of

Col. P.C. Sethiub or a refund of Rs. 39,00,000/- & damages of Rs. 75,00,000/- along with interest @ 18% per annum.

3. **A**ll the parties are concordant that defendant No.1 Col. P. C. Sethi, who is the father of the plaintiff Capt. Rajesh Sethi, having lost all assets in Pakistan, had applied and obtained provisional allotment of a 325 sq. yards plot bearing No. C-269, Defence Colony, New Delhi (*hereinafter referred to as the* "suit property") vide a Perpetual Lease. The possession of the plot was handed over to defendant No.1 on 13.05.1954 and the construction was carried out by Kilokri Defence Service Co-operative House Building Society Ltd. in January, 1955.

4. He entered into an Agreement to Sell dated 14.01.2004 for the sale of the suit property for a total consideration of Rs.2,74,00,000 (Rupees two crores seventy four lakhs) against which Rs.26,00,000 was paid at the time of signing the Agreement to Sell and further payment of Rs.13,00,000 was made on 22.01.2004. However, the circumstances leading to the signing of the Agreement to Sell and the events thereafter have come under challenge by way of these two suits.

5. **The plaintiff in CS (OS) 436/2004, Captain Rajesh Sethi has claimed** that the suit property was purchased partly out of the money received towards claims in respect of ancestral properties left behind in Pakistan and partly from loans which were paid from the sale of ancestral jewellery. It is an HUF property that was managed by his father, defendant No.1 Col. P.C. Sethi and has all along been reflected as a joint family property in the Income Tax Returns filed by defendant No.1 in the capacity of Karta of Col. P.C. Sethi, HUF (hereinafter referred to as —*HUF*‖). 6. It is claimed that the Captain Rajesh Sethi as a coparcener of the HUF, has also contributed for the upkeep and maintenance of the property including having paid Conversion fee amounting to Rs.52,200/- vide cheque dated 03.08.1996 to get the property converted to freehold. It is further stated that defendant No.1 and his youngest son defendant No.3 Shri Raman Sethi resided in the suit property; however, after the marriage of defendant No. 3, he and his wife had an extremely acrimonial relationship with defendant No.1.

7. On 28.01.2004, Col. Ranjan Narang, a family friend enquired from the plaintiff about the sale of the HUF property. On further inquiry, he revealed to the Captain Rajesh Sethi that there was a talk in the locality regarding the sale of the HUF property by defendant No. 1. The plaintiff immediately questioned defendant No.1 who explained that he wanted to spend his last days in peace and had decided to sell the HUF property to end his daily

tension and fights. Plaintiff also got to know that defendant No.1 had already entered into an Agreement to Sell dated 14.01.2004 in favour of defendant No.2 in lieu of which Rs. 39,00,000 was received by him as advance.

8. The plaintiff was shown the Agreement to Sell from which he came to know that defendant No.1 had entered into the Agreement to Sell in his individual capacity even though the suit property belonged to the Col. PC Sethi (HUF). The defendant No.1 neither had the exclusive right to sell the suit property nor was the intended sale for the benefit of the coparceners. Though defendant No.1 assured that he would cancel the transaction and return the advance amount of Rs.39,00,000, he failed to act on his words. Thus, the plaintiff got in touch with defendant No. 2 to appraise him on the HUF status of the suit property which cannot be sold without the concurrence of its joint owners, but this meeting yielded no results.

9. The plaintiff bonafide and verily believed that defendant No.1 who was 82 years old, has been duped and unfair advantage had been taken of his old age. *Hence, the present suit has been filed for declaring Agreement to Sell dated 14.01.2004 as null and void and to cancel the said Agreement to Sell.*

10. **The defendant No.1 Col. P.C. Sethi in his Written Statement** admitted that he financed the purchase of the plot and the construction of the house partly from the money received from the claims in respect of ancestral properties left behind in Pakistan, sale of ancestral jewellery & wife‟s jewellery and from Provident Fund in order to pay off the loans taken from friends and family. The construction of the house got completed in December, 1955. In May, 1957 the defendant No.1 received second instalment of compensation in the sum of Rs.857/- in respect of his ancestral property left in Pakistan which was used to pay the ground rent, cost of plot and Development charges. In 1962, a sum of Rs.133.18 was received as arrears of payment towards the defendant No.1‟s claim for ancestral property left in Pakistan which was also adjusted towards payment of the suit property.

11. It is asserted that the suit property was not initially reflected as a joint family property in the Returns filed by defendant No.1 and the said property was declared as an HUF property only in 1970. During this period, defendant No. 1 was posted outside Delhi and the property was lying vacant. In order to augment the family resources, the suit property was intermittently rented out from time to time. Once he retired from his service on 1st January, 1973, defendant No. 1 permanently shifted to the Ground Floor of the suit property. Thereafter, in the year 1994, the plaintiff took pre-mature retirement and

shifted with his family to the suit property and thus, the entire house was occupied only by the family members.

12. Sometime around 1995, defendant No. 3 Shri Raman Sethi also shifted into the suit property after which defendant No.1‟s relationship with him and his family, became acrimonious. The situation worsened when defendant No. 3 moved to London on an assignment and left behind his wife and children in the suit property. Eventually, because of the daily fights, the atmosphere in the house became tense which was a common knowledge and well known to the neighbours, acquaintances and relatives.

13. Defendant No.1 through some friends, made acquaintance with one Gurcharan Singh Bawa who introduced him to Sandeep Jain, his property sub-broker. These two gentlemen introduced him to defendant No.2 Shri Ravinder Nangia and convinced defendant No.1 that he could resolve his problems and achieve peace of mind by selling the suit property to buy independent Units and retaining the balance amount for living a peaceful and a comfortable life. He was also assured by the two property brokers that they would find the best possible alternative properties in Defence Colony for him.

14. However, defendant No.1 expressed his inability to sell the suit property as it was the subject matter of an HUF. On the insistence of defendant No. 2, he showed the title documents along with the Income Tax Returns filed in respect of the suit property to him, on 11.01.2004. After going through the documents, Defendant No. 2 conveyed that there was no impediment to the sale of the property as neither any Returns had been filed nor any income had accrued on the suit property since 1994, for which reason the HUF had ceased to exist and expressed his willingness to buy. It is asserted that defendant No. 2 took advantage of the disturbed state of mind of the defendant No.1 and cunningly persuaded and pressurized him with exercise of dominance, to which he succumbed and entered into the Agreement to Sell 14.01.2004.

15. It is explained that on 14.01.2004 the defendant No.1 went to the house of defendant No.2 along with his nephew Major. J.M Sindhwani and signed the Agreement to Sell which was already prepared by defendant No.2 and received an advance money in the sum of Rs.26,00,000 (Rs.10,00,000 by cheque and Rs.16,00,000 by cash) in the presence of the two brokers.

16. It is further explained that when the plaintiff and defendant No. 4 Shri Ravi Sethi, his eldest son confronted him regarding his right to sell the HUF property, he approached defendant No.2 to cancel the transaction, but met with refusal. It is contended that defendant No.1 had truly believed the words

of defendant No. 2 Shri Ravinder Nangia that there was no impediment in selling the suit property in his individual capacity. It is also contended that defendant No. 1 did not enter into the Agreement to Sell to fulfil any legal or beneficial necessities of the estate of the HUF or to clear his own personal debts.

17. The defendant No.1 further claimed that the defendant No.2 Sh. Ravinder Nangia had assured him that the HUF ceased to exist as no Income Tax Returns were filed since 1994. No time was given to defendant No. 1 to even read the said Agreement to Sell and within minutes of his arrival, he was made to append his signatures thereon. The Agreement to Sell dated January, 2004 of which specific performance is being sought by defendant no.2 is void, non-est and is unenforceable by reason of undue influence exercised him by, inter-alia, the defendant No.2 to sign the said Agreement. 18. On enquiry in the locality, defendant No. 1 came to know that Shri Ravinder Nangia was part of a powerful consortium of property developers/brokers who controlled nearly 80% of all new developments of properties in the Defence Colony area and wielded considerable clout and influence. When the sons of defendant No. 1 contacted defendant No.2 for cancelling the Agreement, the plaintiff threatened them of dire consequences.

19. It is asserted that due to the continuous pleas of defendant No. 1, Defendant No.2 agreed to cancel the Agreement to Sell but demanded Rs. 1 crore over and above the amounts advanced, as the price for cancellation. Based on the tone and tenor of the language of defendant no.2, the influence held by him and his resistance to cancel the Agreement in an amicable manner, defendant No. 1 sent a letter dated 21.03.2004 terminating the Agreement to Sell and enclosing a copy of the Demand Drafts in the sum of Rs.26,00,000 (Amount received while signing the Agreement) calling upon defendant No.2 to collect the same along with a sum of Rs. 13,00,000 which was later received in cash at any time as per his convenience. It is lastly submitted that he had been made to sign the Agreement to Sell under undue influence and has already terminated/ cancelled before the institution of the present suit, the defendant no.2 is not entitled to a relief of specific performance and his Suit for Specific Performance is liable to be rejected with exemplary costs.

20. **The defendant No.2, Shri Ravinder Nangia,** the proposed buyer, in his **Written Statement** has claimed that he agreed to purchase the suit property and the deal was negotiated for a sum of Rs. 2,74,00,000/-(rupees two crores and seventy lakhs) on the assurance by defendant No.1 that he is

the lawful owner of the suit property as is also reflected in his individual name in the Lease Deed dated 30.05.1975 issued by L & DO. The property was later converted to freehold vide Conveyance Deed dated 19.02.1997 which also mentioned the individual name of Col. P.C. Sethi. In fact, alleged factum of the suit property being transferred to Col. P.C. Sethi (HUF) was never brought to the notice of the L & DO. It is claimed that no other person or persons had got any right, title, lien or interest of any nature in the suit property except Sh. P.C. Sethi and the same was not subject matter of any HUF and he was thus, entitled to sell the property in accordance with his wishes. The defendant No.2 denied that the suit property is an HUF property or that the defendant No.1 is not its absolute lawful owner. It is further asserted that defendant No.1 is in possession of entire suit property and according to the terms and conditions in the Agreement to Sell, the Sale Deed was to be executed within three and half months i.e. upto 30.04.2004.

21. It is further asserted that even though defendant No.2 was under no obligation to make any further payment before the execution of Sale Deed, a further payment of Rs.13,00,000 was made on 22.01.2004 on the request of defendant No. 1. The balance payment of Rs. 2,48,00,000 was agreed to be paid on or before 30.04.2004 upon the execution of a Sale Deed in favour of the plaintiff.

22. It is asserted that it was not disclosed prior to entering into the Agreement to Sell that the suit property was reflected as an HUF property in the Income Tax Returns. Irrespective, such filings were made only for the limited purpose of avoiding payment of Income Tax. Thus, the present suit has been filed malafidely by colluding with the plaintiff as an afterthought. Moreover, even if the suit property is presumed to be an HUF property, the present suit is not maintainable as a coparcener cannot maintain a suit against the Karta. Moreover, the Karta of an alleged HUF does not require the consent of the coparceners to sell the suit property. It is further asserted that even if it were to be presumed that the suit property belonged to the Col. P.C. Sethi (HUF), Col PC Sethi as the Karta of the said HUF is fully competent to sell the suit property. An alternative submission has also been made stating that the plaintiff is entitled to Specific Performance apropos the share of Col P.C. Sethi in the suit property if the court comes to the conclusion that Col P.C. Sethi is merely the co-owner of the said property and is not entitled to alienate the entire property.

23. It is claimed that due to sudden appreciation in the value of the properties in Delhi, similar properties as suit property saw an increase in value by Rs.75,00,000. Defendant No.1 started getting better offers and thus, turned greedy and dishonest. He wrote a letter dated 21.03.2004 cancelling the Agreement to Sell by stating that he does not intend to sell the suit property, in response to which Defendant No.2 sent a Legal Notice Dated 10.04.2004 requesting Col. P.C Sethi to perform his obligations under the Agreement to Sell dated 14.01.2004.

24. It is further submitted that the suit is liable to be dismissed for misjoinder of all the members of the alleged HUF and the under valuation of the relief at Rs. 39,00,000 (*part consideration amount paid to defendant no.1 by defendant no.1*)while a Declaration is being sought in respect of Agreement to Sell dated 14.01.2004 the value of which is Rs. 2,74,00,000/-.

25. Shri Ravinder Nangia, defendant No.2 filed ***CS.(OS) 759/2004 seeking Specific Performance of the Agreement to Sell dated 14.01.2004*** asserting that he had always been ready and willing to perform his obligations

under the Agreement to Sell. It is further claimed that Col. P.C. Sethi colluded with his sons in order to wriggle out of the obligations under the Agreement to Sell dated 14.01.2004, by alleging the suit property to be an HUF property, despite categorically agreeing in writing at the time of signing the Agreement to Sell that the suit property is not an HUF property. Such a false representation would in fact tantamount to cheating.

26. **The defendant No. 3 Sh. Raman Sethi, the youngest son of defendant No.1** has taken a similar defence as the plaintiff claiming that it is an HUF property and defendant No.1 was not competent to execute the Agreement to Sell in his individual capacity. However, the allegations regarding causing tension in the house, were denied and it was stated that defendant No. 1 was in an irritable state due to his age.

27. It is submitted that the Agreement to Sell required compulsory *registration under Section 17(1) of the Registration Act, 1908.* Because of the mischievous intentions of defendant No.2, he purposely avoided getting the documents registered. It is claimed the Agreement to Sell is, therefore, liable to be set aside.

28. **The defendant No.4 Shri Ravi Sethi** eldest son of defendant No.2 who is resident of USA, has taken the similar defence as defendant No.3.

29. The **plaintiff** in his respective **Replications** to the written statements of the four defendants has re-affirmed his assertions as contained in the plaint.

30. The **issues in CS(OS) 436/2004** were framed on 20.03.2006 as under:

—(i) Whether the suit is bad for mis-joinder of necessary parties? OPD-2

(ii) Whether the suit is not properly valued for purposes of Court Fee? OPD-2

(iii) Whether the plaintiff has no locus standi to file the Suit? OPD-2

(iv) Whether the suit property is a HUF property of the Plaintiff, Defendant No.1, Defendant No.3 and others? OPP

(v) Whether Defendant No.1 had the right to or was entitled to execute the Agreement to Sell dated 14.01.2004? OPP

(vi) Whether the Agreement to Sell dated 14.01.2004 was not for legal necessity or for the benefit of the estate of Col. P.C. Sethi (HUF) or for any antecedent debt? OPP

(vii) Whether the Agreement to Sell dated 14.01.2004 is non-est and void ab initio and of no consequence and effect for the reasons stated in the Plaint? OPP

(viii) Whether the Plaintiff is entitled to a decree of permanent injunction restraining the Defendant Nos. 1 and 2 either directly, and/or indirectly, from doing any act in furtherance of and/or under the Agreement to Sell dated 14th January, 2004? OP Parties

(ix) Whether the suit has been filed by the plaintiff in connivance with the defendant No.1 with malafide and as a matter of after though in order to wriggle out of the Agreement dated 14.01.2004 executed by the defendant No.1 in favour of the defendant No.2 in respect of the suit property? OPD2

(x) Whether the defendant No.1, prior to execution of Agreement to Sell dated 14.01.2004, ever disclosed to the defendant No.2 about the ownership of M/s P.C. Sethi HUF in respect of the suit property, if not its effect? OPD1

(xi) Relief.

31. The issues **in CS(OS) 759/2004** were framed on 20.03.2006 as under:

(i) Whether the defendant No.1 had executed the Agreement to Sell dated 14.01.2004 under undue influence as alleged in Preliminary Objection No.1 of his Written Statement? OPD 1.

(ii) Whether the defendant No.1, at any point of time, prior to execution of Agreement to Sell dated 14.01.2004, ever disclosed to the plaintiff that the suit property is owned by M/s P.C. Sethi (HUF), if no, its effect? OPD 1.

(iii) Whether the Agreement to Sell dated 14.01.2004 stood validly terminated by defendant No.1 for the reasons given in his letter dated 21.03.2004, if not, its effect? OPD 1.

(iv) Whether the suit property is owned by M/s P.C. Sethi (HUF) as alleged by the defendants in their Written Statement, if so, its effect? OPD.

(v) Whether the plaintiff was ready and willing to perform his part of contract? OPP

(vi) Whether the plea of ownership of M/s P.C. Sethi (HUF) in respect of the suit property has been set up by the defendants out of malafide and as a matter of afterthought in order to wriggle out of the agreement dated 14.01.2004? OPP.

(vii) Whether the defendant No.1 is the Karta of the HUF namely M/s P.C. Sethi (HUF), if yes, its effect? OPD 1

(viii) Whether the plaintiff is entitled to the relief of specific performance in respect of entire property? OPP

(ix) If issue No.8 is decided in negative, whether the plaintiff is entitled to the specific performance of the Agreement in respect of the share of the defendant No.1 in the suit property for the proportionate sale consideration? OPP

(x) If issue No.9 is decided in negative, whether the plaintiff is entitled to a decree for refund of Rs.39,00,000/- and also the recovery of the damages of Rs.75,00,000/- along with interest @ 18% p.a. from the date of Agreement till the date of payment? OPP.
(xi) Relief.

32. ***The two suits were consolidated for trial vide Order dated 13.12.2006.***

33. The plaintiff examined seven witnesses in support of his case.

34. ***PW1 Capt. Rajesh Sethi***, the plaintiff in his affidavit of evidence Ex.PW1/A reiterated his assertions as made in the plaint. The documents relied upon by him are Ex.PW1/1 to Ex.PW1/6.

35. ***PW2 Ms. Mala Chhabra*** from the office of L&DO, Nirman Bhawan, New Delhi brought the summoned record pertaining to L&DO which is Ex.PW2/1 to Ex.PW2/20.

36. ***PW3 Mr. Ajay Kumar*** *UDC* from the office of L&DO brought the free hold Conversion Challan dated 09.08.2016 which is Ex.PW3/1.

37. ***PW4 Mr. Milind Nandurikar, Sr. Branch Manager Standard Chartered Bank*** produced the record of account bearing No.52505008439 which was in the name of Mr. Rajesh Sethi and his wife Ms. Anjali Sethi.
He had written a letter dated 27.03.205 to M/s Armaan Tours & Travels Pvt. Ltd. which is Ex.PW4/1. He further deposed that the account has been closed on 29.04.2011 and is no longer in operation.

38. ***PW5 Mr. Uday Singh, Tax Assistant, Civil Centre*****,** New Delhi deposed that the summoned record pertaining to Income Tax was not available and the letter dated 17.03.2016 issued by the Income Tax Officer in this regard is Ex.PW5/1.

39. ***PW6 Shri TS Kakkar, Chartered Accountant*** who filed the Income Tax returns for the Col. PC Sethi (HUF) has tendered is evidence by way of affidavit Ex.PW6/1. The documents relied upon by him are Ex.PW6/2 to Ex.PW6/6.

40. ***PW7 Shri Brig Mohan Gulati***, s/o Late Shri C.L Gulati has tendered is evidence by way of affidavit Ex.PW7/A to prove the signatures on the valuation report Ex. PW3/1.

41. **D1W1 is *defendant No.1 Col. P.C. Sethi*** has tendered his evidence by way of affidavit Ex.D1W1/X.

42. ***D1W2 Major (Retd.) J.M. Sindhwani*** has deposed that defendant No.1 Col. P.C. Sethi is his maternal uncle and that after completing his services with Indian Army he came to reside at Faridabad. On 14.01.2014 on the request of defendant No.1, he along with his wife visited defendant No.1 in the suit premises and on his request he drove him to Panchsheel Club, where they met two persons who were introduced as Gurcharan Singh and Ravinder Nangia. They had brought some already typed documents Ex.P1/D2 which were handed over to his uncle who signed the documents without reading them and thereafter they left the Club.

43. ***D1W3 Shri Manoranjan Chopra*** has deposed that on the request of defendant No.1, he had conducted the survey to determine the market value of the properties of similar size as the suit property in Defence Colony area. He also asked him to find out about the real estate business of Mr. Ravinder Nangia. He informed defendant No.1 to obtain certified copies of 21 registered Sale Deeds of the properties in Defence Colony during the period 2010 to February, 2016. The average sale price of similarly located plots was approximately Rs.22.07 crores. He handed over the certified copies of the registered Sale Deeds to defendant No.1 which are exhibited as Ex.D1W1/L1 to Ex.D1-W1/L21. Furthermore, on the request of defendant No.1 he obtained certified copies of the documents pertaining to Maanick Enterprises Pvt. Ltd. and Swati Real Estate Pvt. Ltd. which are Ex.D1W1/H1 to Ex.D1-W1/H14.

44. ***Defendant No.3 Shri Raman Sethi in his testimony as DW3*** tendered his evidence by way of affidavit Ex.D3-W1/A.

45. ***Shri Ravinder Nangia has also deposed as PW1 being the plaintiff in CS (OS) 759 of 2004*** and has tendered is evidence by way of affidavit Ex.PW1/A.

46. The detailed testimony of the witnesses shall be considered subsequently.

47. **Captain Rajesh Sethi has submitted his written submissions in CS(OS) 436/2004. It has been has argued by his learned counsel** that the suit property was an HUF property purchased by defendant No.1 from the funds received in lieu of the ancestral property in Pakistan and the compensation amount. The defendant No.2 has wrongly contended that the

Conveyance Deed was in the individual name of defendant No.1 and thus, the suit property cannot belong to the HUF. Section 4(3) of the Benami Transactions (Prohibition) Act, 1988 as it previously stood and Section 2(9) of the Amended Benami Act makes an exception in respect of the properties that are purchased for HUF; the suit property belonged to HUF, even though it was registered in the individual name of Col. P. C. Sethi. For this reliance has been placed on *Anis Ur Rehman vs. Mohd. Tahir*, RFA NO.855 of 2018 decided on 21.01.2019 and *Paramjit Anand vs. Mohan Lal Anand*, 2018 (170) DRJ 670.

48. It is further argued that considering the HUF character of the suit property, Col. PC Sethi was not competent to enter into an Agreement to Sell in his individual capacity. Reliance has been placed on *Commissioner of Wealth Tax Kanpur & Ors. vs. Chander Sen & Ors.* (1986) 3 SCC 567, *Yudhishthir vs. Ashok Kumar* (1987) 1 SCC 204, *Sunny (Minor) and Anr. Vs. Raj Singh and Anr. 225* (2015) DLT 211 and *Surender Kumar vs. Dhani Ram & Ors.* 227 (2016) DLT 2017.

49. In the present case, the plaintiff was born in 1951, Ravi Sethi in 1947 and Raman Sethi in 1955 i.e. all were born before 1956. Before 1956, an HUF was automatically created if an immovable property was inherited from paternal ancestors for upto three generations. Since the suit property was purchased from the claims received for their ancestral property, the same constituted an HUF property.

50. The change came only with Hindu Succession Act, 1956 after which automatic creation of an HUF ceased as a legal concept. Notwithstanding the above, an HUF could come into existence even after 1956 by putting property in a common hotchpotch for which reference has been made to *Sunny (Minor) and Anr.* (supra) and *Surender Kumar* (supra). In the alternative, it is argued that even the subsequent acts of defendant No.1 of filing Income Tax Returns and execution of Lease Deeds clearly establish that the suit property was an HUF property. It is, therefore, submitted that the Agreement to Sell dated 14.01.2004 entered into between defendant No.1 and 2, is liable to be declared null and void.

51. **Learned counsel for defendant Nos. 3 & 4 Shri Raman Sethi & Ravi Sethi respectively have argued and also submitted the written submissions** stating that there is no dispute that after partition, Col. P.C. Sethi defendant No.1 came to India and submitted his claim for the properties that were left in Pakistan and he got the compensation which was utilized for the purchase of the suit property. Therefore, the property so purchased is ancestral property

as has been held in *Maya Ram and Others vs. Satnam Singh* AIR 1967 P&H 353 and *Neelam Kapoor vs. Bagh Chand* RFA Nos. 241/1999 & 242/1999 decided on 14.03.2011. It is argued that these facts are **also** corroborated from the testimony of Col. P.C. Sethi. It is further argued that the detailed evidence which has been led by the plaintiff, defendant No.1 and defendant No.3 clearly proves the HUF status of the suit property and defendant No.1 had no authority to enter into the Agreement to Sell. Defendant No.3 Shri Raman Sethi being a co-parcener had contributed for the upkeep of the suit property and the Agreement to Sell is liable to be declared as null and void.

52. **Raman Sethi has submitted in his written submissions in CS (OS) 436/2004** that the ancestral properties in Pakistan were in the name of grandfather Sh. Beli Ram Sethi who is the father of Col. P.C. Sethi. The same has been recorded in jamabandi, though has not been produced by the parties. The claim amount was used to purchase the suit property and thus, an HUF was automatically created. The submission of Captain Rajesh Sethi have further been reiterated.

53. **Shri Ravinder Nangia has submitted in his written submissions in CS(OS) 759/2004** that the defendants have failed to establish or even mention when the HUF was created. Reliance is placed on *Dayanand Rajan & Ors. vs Ram Lai Khattar*, AIR 2018 Delhi l04 to contend that it is a mandate under Order VI Rule 4 CPC to disclose the cause of action and in this case, the date of creation of the HUF. Though Col. P.C. Sethi claims in his cross examination that the HUF was created in 1947 when his first son was born, there is no document produced to this effect. In fact, none of documents relating to the suit property after 1947 record the HUF status of the suit property.

54. **Submissions heard from the Ld. Counsels for all the parties and the evidence and record perused.** .

In CS(OS) 436/2004:

Issue No.1: Whether the suit is bad for mis-joinder of necessary parties? OPD-2

55. A preliminary objection has been taken by defendant No.2 Ravinder Nagia that all the members of the alleged HUF of the Defendant No.1 Col. P.C. Sethi, who are necessary parties to the suit, have not been impleaded. Admittedly, defendant No.1 Col. P.C. Sethi had three sons i.e. the plaintiff Caption Rajesh Sethi, defendant No.3 Shri Raman Sethi and defendant No.4 Shri Ravi Sethi. Originally, when the suit for Declaration was filed by Captain

Rajesh Sethi, son of defendant No.1 Col. P.C. Sethi, his two brothers Shri Raman Sethi and Shri Ravi Sethi had not been impleaded as a party. Subsequebtly, Shri Raman Sethi was impleaded as defendant No. 3 vide order 09.08.2004, Shri Ravi Sethi was impleaded as defendant no. 4 vide Order dated 22.05.2006. Thus all the members of the HUF, who are necessary parties have been impleaded in the suit. **This issue is decided against Shri Ravinder Nangia.**

In CS(OS) 436/2004:

Issue No.2: Whether the suit is not properly valued for purposes of Court Fee? OPD-2.

56. Defendant No.2 had taken a preliminary objection in his Written Statement that the suit had been valued at Rs.39,00,000 i.e. the amount that was paid by defendant No.2 to defendant No.1 pursuant to an Agreement to Sell, when in fact the declaration is being sought in respect of Agreement to Sell dated 14.01.2004 the value of which is Rs.2,74,00,000. It is thus contended that the suit ought to have been valued at Rs.2,74,00,000 and thus, the suit has been undervalued.

57. The valuation of the suit has been provided in paragraph 20 of the Plaint as thus:

> *—20. For the purpose of **pecuniary jurisdiction and valuation the present Suit is valued at Rs 39,00,000/-** (being the monies paid/received under the Agreement to Sell dated 14th January, 2004) and advalorem Court Fee of Rs 40,00,00/- has been paid. **For the relief of Declaration the Suit is valued at Rs.200/-** and Court fee of Rs. 20/- has been affixed. For the **relief of Mandatory Injunction the Suit is valued at Rs. 200/-** and Court fee of Rs. 20/- has been affixed. For the relief of Permanent Injunction the Suit is valued at Rs. 260/- and Court fee of Rs. 26/- has been affixed.*॥

58. In the present case the plaintiff has sought for a Declaration that the Agreement to Sell dated 14.01.2004 is void ab initio and *non-est* and a Mandatory Injunction to direct the defendant No.1 to cancel the said Agreement. Though couched as a Mandatory Injunction, the plaintiff in effect, has sought cancellation of Agreement to Sell. According to Section 7(iv) (c) of the Court fees Act, 1871, suit where a decree for **Declaration and Consequential relief** is prayed, court fee is payable "*according to the amount at which the relief sought is valued in the plaint or memorandum of appeal".*

59. Section 8 of the Suit Valuation Act, 1877 provides that in any of the suits referred to in clause (iv) of Section 7 of the Court Fees Act, 1870, court fee is

payable ad valorem on the value determined for the purpose of the jurisdiction. It is apparent that the relief for declaring the Agreement to Sell as void and *non-est* has to be valued at the sale consideration agreed to in the Agreement i.e. Rs. 2,75,00,000 and not the sum of Rs. 39,00,000 which is an installment or part payment of the said consideration. Thus, the court fee payable must be determined on the valuation of Rs. 2,75,00,000. An *ad valorem* court fee of Rs. 40,500 has been paid as the plaintiff has valued the relief at Rs. 39,00,000, which is insufficient. Therefore, the plaintiff Captain Rajesh Sethi is liable to pay the deficient court on a valuation of Rs. 2,74,00,000.

This issue is decided accordingly.

In CS(OS) 436/2004:

Issue No.3: Whether the plaintiff has no locus standi to file the Suit?

OPD-2

Issue No. 8: Whether the Plaintiff is entitled to a decree of permanent injunction restraining the defendant Nos 1 and 2 either directly, and/or under the Agreement to Sell dated 14th January, 2004? OP

Parties

60. Defendant No.2, Shri Ravinder Nangia has challenged the locus standi of the plaintiff, who claims to be a coparcener of the Col. PC Sethi HUF, to file a suit against the Karta of the alleged HUF as a coparcener can never file a suit against their Karta.

61. In the present case, the plaintiff has sought a **Declaration that the Agreement to Sell dated 14.01.2004 is non-est** and an **Injunction for restraining the defendants from executing the said Agreement to Sell**. **Section 38 of the Specific Relief Act, 1963** *(hereinafter referred to as Act, 1963*) provides for the circumstances under which permanent injunction can be granted by a Civil Court. *Section 41(h)* of the said Act,1963 bars the grant of an injunction in cases where an *alternate efficacious remedy is available.*

62. In the case of *Sunil Kumar and Another v. Ram Parkash and Others*, (1988) 2 SCC 77 the Apex Court considered the similar facts wherein the Karta entered into an Agreement to Sell the coparcenery property to third party claiming it to be his individual property. The plaintiff claimed the suit property as ancestral property and they as coparceners of joint Hindu Mitakshara family having equal shares with their father in the suit property. It was held that —*…No doubt the law confers a right on the coparcener to challenge the alienation made by karta, but that right is not inclusive of the right to obstruct*

alienation. ***Nor the right to obstruct alienation could be considered as incidental to the right to challenge the alienation.*** *These are two distinct rights. One is the right to claim a share in the joint family estate free from unnecessary and unwanted encumbrance. The other is a right to interfere with the act of management of the joint family affairs. The coparcener cannot claim the latter right and indeed, he is not entitled for it.* ***Therefore, he cannot move the court to grant relief by injunction restraining the karta from alienating the coparcenary property****.*‖

63. It is thus, explained that a coparcener has no right to interfere in the management of the joint family affairs and seek injunction to restrain the Karta from alienating the property. If any such alienation is objectionable then, it may be challenged after the sale is completed on the ground that it was not undertaken for benefit of estate or for legal necessity. The other remedy with the coparcener, if he apprehends mismanagement of the HUF property, is to seek partition. However, no simpliciter preventive Injunction can be sought.

64. In *Sunil Kumar and Another (supra)* it was however clarified that "*that in case of waste or ouster an injunction may be granted against the Manager of the joint Hindu family at the instance of the coparcener. But nonetheless a blanket injunction restraining permanently from alienating the property of the joint Hindu family even in the case of legal necessity, cannot be granted*‖. The question whether the suit property is the self-acquired property of the father or it is the ancestral property has to be decided before granting any relief. The suit being one for permanent injunction, this question cannot be gone into and decided. Moreover, *the case of specific performance of agreement of sale had already been decreed by then.*

65. In the judgement of *Sri Narayan Bal and Others vs. Sridhar Sutar and Others*, 2 (1996) 8 SCC 54 it was observed by the Apex Court that though a coparcener has the right to claim his share in the HUF property, he cannot file a suit for injunction to restrain the Karta from alienating the property as the right to challenge accrues only after the alienation has been completed.

66. In the present case, the suit property, which is alleged to the subject matter of the Col. PC Sethi (HUF), has not been completely alienated by the Karta but only an Agreement to Sell dated 14.01.2004 Ex. P1/D2 has been executed by defendant no.1 claiming it to be his individual property. Thus, the plaintiff Captain Rajesh Sethi is seeking to avoid the Agreement to Sell on account of the suit property being an HUF property and the consequential relief of injunction to restrain the Col. PC Sethi from alienating the property. Since the relief claimed requires extensive to determine whether the property

indeed belongs to an HUF, the plaintiff Captain Rajesh Sethi has a locus to maintain the suit for Declaration and Mandatory Injunction which pertains to the cancellation of the Agreement to Sell in respect of the suit property.

67. However, the suit property being an HUF property, Captain Rajesh Sethi is not entitled to permanent injunction to restrain Col. P.C. Sethi from managing the Suit property, which includes the right of alienation.

These issues are decided accordingly.

In CS(OS) 436/2004:

Issue No. 4: Whether the suit property is a HUF property of the Plaintiff, Defendant No.1, Defendant No.3 and others? OPP

In CS(OS) 759/2004:

Issue No. 4: Whether the suit property is owned by M/s P.C Sethi (HUF) as alleged by the by the defendants in their written statement?

OPD

68. Admittedly, Col. P.C. Sethi had entered into an Agreement to Sell dated 14.01.2004 Ex. P1/D2 with Shri Ravinder Nangia. The said Agreement to Sell has been challenged by the Captain Rajesh Sethi on the ground that the suit property was an HUF property and Col. P.C. Sethi could not have agreed to sell the same by representing himself to be its absolute /individual owner.

69. In *Surender Kumar Khurana vs. Tilak Raj Khurana,* (2016) 155 DRJ 71 (DB) it was explained that it would not be enough to say in the plaint simply that a Joint Family or HUF existed. Detailed facts as required by Order VI Rule 4 of the CPC as to when and how the HUF properties had become so must be clearly and categorically averred. Such averments have to be made by factual reference qua each property claimed to be an HUF property as to how the same came to be an HUF property. In law, generally bringing in any and every property as HUF is incorrect as there is known tendency of litigants to include unnecessarily many properties claiming them to be an HUF.

70. To appreciate the contention of the plaintiff Capt. Rajesh Sethi, it would be relevant to briefly reiterate that a ***Joint Hindu Family*** consists of all persons lineally descended from a common ancestor, and includes their wives and unmarried daughters as explained in the *Commissioner of Income Tax vs Luxminarayan*, (1935) 59 Bom 618. Thus, under the traditional Hindu Law a daughter becomes the member of her husband‟s family upon marriage and she thus ceases be a member of her father‟s family.

71. In *Raghavachariar's*, Hindu law, 5TH Edition at p. 838, the concept

„*coparcenary'* was defined as under:

—Co-parcenary is a narrower over body than a joint family and consist of only those persons who have taken by birth and interest in the property of the holder for the time being and who can enforce a partition whenever they like. It commences with the common ancestor and includes the holder of joint property and only those males in his male line who are not removed from him by more than three degrees.‖

72. This aforesaid explanation provides the meaning of a "coparcener" under the customary Hindu law. Thus, a "Joint Hindu Family" consists of male members descended lineally from a common male ancestor and including their unmarried daughters, wives, mothers and widows. On the other hand, a coparcenary is a narrower body which is a subset within a Joint Hindu Family where an interest in the property is created by birth. Though a joint family status is a result of birth, the possession of joint property is only an appendage and not prerequisite for the constitution of such a family as held in *Haridas vs Devaki Bai*, 1926 SCC OnLine Bom 76. Thus, a

"coparcenary" is created only when there is joint or coparcenary property.

73. Before the enactment of Hindu Succession Act, 1956 the HUF in a joint family would automatically come into existence as soon as there was an acquisition of property by the joint Family. An HUF could also be created by putting the individual property in the HUF pool. The HUF once constituted, would continue even after the enactment of the Hindu Succession Act,1956 *(hereinafter referred to as HSA,1956*) if not dissolved.

Even after the enactment of HSA, 1956 the HUF already in existence would continue till dissolved expressly by partition.

74. Prior to the passing of the Hindu Succession Act, 1956 there was a presumption as to the existence of an HUF and its properties and as such the properties were inheritable upto three generations. In the pre 1956 era when the customary Hindu law was prevalent, the coparcenary with HUF properties which came into existence prior to passing of the Hindu Succession Act, 1956 continued so even after the passing of Hindu Succession Act, 1956. Thus, when a property is inherited by the members of an HUF even after 1956, it would be jointly held by their paternal successors up to three degrees. In such a case, the status of Joint Hindu Family/ HUF properties continues even after 1956 till it is dissolved by the parties or by virtue of law.

75. It is concomitant to examine the testimonies in light of the requisite procedure to create an HUF. **D1W1 Col. P.C. Sethi** in his affidavit of evidence Ex.D1W1/X has explained that he was the only son of his parents and belonged to Sethi Mohalla, Kot Jai Village, Tehsil Dera Ismail Khan, District

Dera Ismail Khan, North-West Frontier Province, India (now situated in Pakistan). His father had inherited two properties namely, *'Kutcha Pucca house inside Sethi Mohalla, Village Kot Jai constructed on an area ad-measuring 420 sq. Yards'* and *'One shop inside Kot Jai Bazar, consisting of one room'.* On completion of his education, he was commissioned as an Officer of the Indian Army on 15.10.1944. After being commissioned, he was posted in different areas as per the orders of the Competent Authority.

76. At the time of partition he was posted in School of Artillery, Coast Wing, Colaba, Bombay. As there was huge rioting and arsenal violence during this period, his mother Late Jeevani Devi and his wife Late Sarla Devi who were residing in their ancestral home at Kot Jai, Dera Insmail Khan at the time of partition, came to India with the assistance of Indian Army. After the partition and creation of independent India, he opted to join the Indian Army and thereafter, never visited his ancestral village at Kot Jai. 77. D1W1 **Col. P.C. Sethi** has further deposed in his affidavit that after moving to India during the partition, the suit property was purchased and constructed based on the claim amount received for their ancestral property in Pakistan and loans that were repaid through ancestral jewelry and wife‟s jewelry. **Hence, he held the suit property under his name in a fiduciary capacity as a Karta.**

78. He submitted his Claims Ex.P1 and P2 for the immovable property left by the family in Pakistan, before the Claims Officer who conducted an inquiry and verified the claims on 04.02.1952 vide Ex. P3; the certified copy of the letters by Under Secretary, Ministry of Home Affairs, Government of India are Ex.D1W1/A and D1W1/B. The Claim Officer, in Ex.D1W1/C, valued both the properties for a total of Rs.3800/- i.e. Rs.2,500/- for the house and Rs.1,300/- for the shop.

79. He filed an application with the Resettlement Commissioner, Ministry of Defence and suit property bearing No.C-269, Kilokari, New Delhi was allotted to him and his family initially on Perpetual Lease vide letter dated 07.11.1952. The Certificates of Eligibility dated 06.03.1953 and 11.05.1954 Ex.PW2/5 and Ex.PW2/19 were issued in his favour. He was handed over possession of the suit property vide Certificate of Possession dated 13.05.1954 Ex.PW2/17. The purchase of the plot and construction of residential house thereon was done partly from the money received from the Claims and partly from the sale of ancestral jewellery and sale of wife‟s jewellery to pay off the loans taken from his Provident Fund, friends and family.

80. The Perpetual Lease Deed Ex.PW2/2 was executed in his favour by President of India on 26.11.1955 for 99 years which was duly registered. He deposed that though the Perpetual Lease Deed was executed in his individual name, it was acquired and constructed from the ancestral funds and he held the property in a fiduciary capacity as the Karta of HUF.

81. *D1W1 Col. P.C. Sethi* has further explained that he was posted at various places, hence the suit property was given out on rent. He got posted in Delhi from March 1971 till 01.01.1973 and during this period he got the first floor of the suit property constructed in the year 1972. He along with his family, was residing on the ground floor of the suit property and they all had a common kitchen. After the construction of first floor, the same was rented out to different persons from time to time and the common kitchen of the family members continued till 1994.

82. He has further explained that because of accrual of rental income from the suit property, he was advised to register it as an HUF with the appropriate Income Tax Authority. At that time, his eldest son Ravi Sethi, defendant no.4 was in USA. He informed everyone that he was creating an HUF and wrote two letters viz. dated 29.12.1977 Ex.D1W1/E and another letter though not available with him, informing his son Ravi Sethi about it. 83. D1W1 Col. P.C. Sethi proved his Income Tax Returns and the

Assessment Challans on behalf of HUF, as Ex.D1W1/F1 to F10. The Assessment Returns for the year 1989-90 Ex.D1W1/F2 reflect that the only income in the HUF was the income from the suit property as it was the only asset of the HUF.

84. He has further deposed that his second son Captain Rajesh Sethi/plaintiff took a voluntary retirement from the Indian Navy in the year 1994 and he came to stay on the ground floor of the suit property initially and thereafter occupied the first floor. Since 1994 there was no further income from the HUF property and consequently, no Income Tax Returns in the name of HUF were filed thereafter.

85. D1W1 Col. P.C. Sethi has further explained that initially his youngest son Raman Sethi (defendant No.3) was working in various Companies outside Delhi. He relocated himself in Delhi in 1995 and started residing with them on the ground floor of the suit property. Because of shortage of space, second floor was constructed in the year 1996. By then, he also retired and had no further resources to undertake the construction of the second floor which was done jointly by his sons.

86. In the interim, a scheme was launched by Government of India for conversion of Lease hold property into Freehold property. His sons were also desirable of getting the property converted to freehold. Captain Rajesh Sethi, the plaintiff thus, undertook all the expenses and the challan for the payment of the conversion fee is Ex.PW3/1and the Conveyance Deed dated 19.02.1997 Exhibit PW-3/DX2 was thereafter executed.

87. **D1W1 Col.P.C.Sethi has deposed that the HUF was automatically created on the birth of his first son Shri Ravi Sethi who was born on 13.10.1947** and the HUF has not never been dissolved thereafter. It is admitted by D1W1 P.C.Sethi in his cross-examination that though this property was allotted at his individual name but it was in the capacity of being the Karta of HUF. He has further explained that though he had not used the expression of Karta of HUF in his claim made to Government of India, but according to the traditional Hindu Law, *the HUF was born on 13.10.1947*.

88. It is further explained by him that he did not have complete knowledge about the concept of HUF at that point of time. For some time they income was added to his personal income and at that stage, the rental income was not substantial and did not attract income tax. He had only subsequently registered the HUF with the Income Tax Authorities in or around 1970 when the suit property started fetching rent which was taxable.

89. It is further established that in none of the documents of claim or allotment, Col. PC Sethi had been reflected as Karta of the HUF and all the documents, namely, the Perpetual Lease Deed and Conveyance Deed were all executed in his individual name. Nevertheless, the existence of an HUF which is a creation of law, cannot be disputed in the light of overwhelming evidence on record which has proved that the claim amounts received in lieu of the properties left in Pakistan, were adjusted towards the purchase of the suit property.

90. **Similar is the testimony of the PW1 Captain Rajesh Sethi, plaintiff in his affidavit** in Ex.PW1/A that the suit property had been acquired from ancestral funds. He corroborated the testimony of his father that the conversion charges in the sum of Rs.52,200/- for the suit property, were paid by him vide cheque No.121922 dated 03.08.1996 drawn on ANZ Grindlays Bank, New Delhi, which had his signatures and is Ex.PW1/5. He also deposed that the suit property belongs to the Col. P.C. Sethi (HUF).

91. **D3W1 Shri Raman Sethi in Ex D3W1/A** has also deposed that Col. PC Sethi is not the sole owner of the suit property as it belongs to an HUF. It is stated that the certified copies of the Schedule of fixtures in the suit property in Ex.

D3W1/8 and the Valuation Report dated 19.07.1982 were procured from the MCD records through RTI, which record Col. PC Sethi as the Karta of the HUF.

92. The testimony of the PW1 Shri Rajesh Sethi, plaintiff as well as the testimony of the D1W1 Col. P.C.Sethi and D3W1 Shri Raman Sethi, which is fully corroborated by the documents as discussed above, proves that the family of Col. P.C. Sethi was residing in Village Kot Jai, District Dera Ismail Khan, North West Frontier Province, Pakistan which was part of undivided India and became part of Pakistan on partition. Thereafter, the family of Col. P.C.Sethi shifted from Pakistan to India and in lieu of the properties left behind in Pakistan they were given claim/compensation and the property in question was also allotted to them. A Lease Deed dated 26.11.1955 Ex PW2/2 and subsequently a Conveyance Deed dated
19.02.1997 Ex PW3/DX2 was registered in the name of Col PC Sethi.

93. This court in the case of *Neelam Kapoor vs. Bagh Chand* (supra) and *Maya Ram and others vs. Satnam Singh* (supra) held that the land allotted to a displaced person in India in lieu of the land left in Pakistan which was ancestral, will be deemed to be ancestral *qua* his sons.

94. It is hence, proved that the allotment of the suit property was in lieu of the ancestral properties left in Pakistan and was an HUF property.

95. The HUF was admittedly never dissolved and continued even after the enactment of the Hindu Succession Act,1956. This is countenanced by the fact that the suit property was registered with the Income Tax Authority in the year 1970 '*on account of rental income accruing from the suit property resulting in higher tax liabilities for him'.* The Income Tax Returns were filed by Col. P.C. Sethi in the capacity of Karta of the HUF; some of the Income Tax Challans for the Assessment years 1992-1993, 1993-1994 are Ex D1-W1/F7 and D1-W1/F10. The filling of these Returns have also been proved by **PW6 T.S. Kakkar** who was appointed as the Chartered Accountant for the HUF in the year 1975.

96. It is observed that registration with Income Tax Authority is only an incident of evidence to prove its existence and not the process of creation of HUF itself. As already discussed above, HUF came into existence way back in 1947. It is natural that HUF would be registered with Income Tax Authority only when it starts generated taxable income and every individual "*is entitled so to arrange his affairs as not to attract taxes imposed by the Crown so far as he can do so within the law, and that he may legitimately claim the advantage of any expressed term or of any emotions that he can find in his favour in taxing*

Acts. In so doing he neither comes under liability nor incurs blame" as held by Lord Sumner in *IRC vs Fisher's Executors*, 1926 AC 395. Similar view was taken by the Supreme Court in the case of *CIT vs A. Roman & Company*, AIR 1968 SC 49.

97. Moreover, after the registration of the HUF, Col. PC Sethi has entered into Lease Agreements dated 01.04.1991 and 16.11.1991 with M/s Ranbaxy Laboratories and Tube Investments of India Ltd in Ex P18 and Ex P20 respectively under the capacity of Karta of the Col. PC Sethi (HUF).

98. It is thus, established from the evidence of D1W1 Col. P.C.Sethi that the suit property belongs to Col. PC Sethi (HUF) of which he was the Karta. An HUF continues to exist until and unless it is dissolved by the Karta which may happen by way of a partition as observed in *Income Tax Officer, Calicut vs N.K. Sarada Thampatty (Smt)*, 1991 Supp (2) SCC 737. Admittedly, neither a partition has taken place nor has the HUF been dissolved.

99. Therefore, it is held that the Suit Property is the HUF property of M/s. P.C. Sethi (HUF).

Issues are answered accordingly.

In CS(OS) 759 / 2004

Issue No. 7: Whether the defendant no.1 is the Karta of the HUF namely M/s P.C. Sethi (HUF), if yes, its effect? OPD1

Issue No. 8: Whether the plaintiff is entitled to the relief of specific performance in respect of the entire property? OPP

100. In the light of the findings in the above mentioned issues that the suit property was an HUF property, Defendant no.1. **Col. P.C. Sethi being the eldest member of the Coparcenary, became its Karta.**

101. Having so held, the next aspect for consideration is what are the powers and obligations of the Karta towards the HUF. In a Hindu family, the Karta or manager occupies a unique position. The legal position of Karta or manager has been succinctly summarized in the *Mayne's* Hindu *Law (12th Ed. para 318) thus*:

> *—318.* ***Manager's Legal position****-"The position of a karta or manager is sui generis; the relation between him and the other members of the family is not that of principal and agent, or of partners. It is more like that of a trustee and cestui que trust. But the fiduciary relationship does not involve all the duties which are imposed upon trustees.*"

102. The managing member or Karta has not only the power to manage, but also power to alienate the joint family property which is circumscribed by three caveats, namely: *for family necessity, discharge of family obligations or for the benefit of the estate*. Such alienation would bind the interests of all the undivided members of the family whether they are adults or minors.

103. The oft quoted decision on this aspect wherein the position of the Karta is considered akin to that of a guardian of a minor, is that of the Privy Council in *Hanooman Parshad v. Mt. Babooee,* 1856 SCC OnLine PC. There it was observed at p. 423:

> "*The power of the manager for an infant heir to charge an estate not his own is, under the Hindu law, a limited and qualified power. It can only be exercised rightly in case of need, or for the benefit of the estate.*"

104. In the case of *Beereddy Dasaratharami Reddy v. V. Manjunath and Others*, Civil Appeal No. 7037/2021 decided on 13.12.2021, the Supreme Court has explained that the right of the Karta to execute the Agreement to Sell or Sale Deed of a Joint Hindu Family property for the fulfilling legal necessities such as payment of government revenues, maintenance of coparceners, conducting marriage and religious functions, payment of debts, acting for the benefit of the estate etc. is settled and is beyond cavil based on the several judgments of this Court.

105. As discussed above, the HUF property can be sold by the Karta only in three situations namely, (i) benefit of his estate; (ii) legal necessity; and (iii) indispensable religious obligations. In the present case, neither of the three grounds has been pleaded nor proved on behalf of the defendant No. 1/Col. P.C. Sethi. The entire suit property could not have been sold by Col. P.C. Sethi in an individual capacity**. Therefore, this court is of the view that Shri. Ravinder Nangia is not entitled to the relief of specific performance in respect of the entire suit property.**

The issues are accordingly decided.

In CS(OS) 436 / 2004

Issue No.5: Whether Defendant No. 1 had the right to or was entitled to execute the Agreement to Sell dated 14.01.2004? OPP

Issue no 6: Whether the Agreement to Sell dated 14.01.2004 was not for legal necessity or for the benefit of the estate of Col. P.C. Sethi (HUF) or for an antecendent debt? OPP

Issue No. 7: Whether the Agreement to Sell dated 14.01.2004 is nonest and void ab initio and of no consequence and effect for the reasons stated in the Plaint? OPP

In CS(OS) 759 / 2004

Issue No.9: If issue No. 8 is decided in negative, whether the plaintiff is entitled to the specific performance of the Agreement in respect of the share of the defendant No.1 in the suit property for proportionate sale consideration? OPP

106. Now the question before this Court for its consideration is whether Col. P.C. Sethi could have entered into the Agreement to Sell dated 14.01.2004 for the sale of the suit property in his individual capacity and not as the Karta of the Col. P.C. Sethi (HUF), as it was an HUF property. The attendant issue is not whether a Karta is entitled to alienate an HUF property without the consent of the coparceners but whether a Karta can alienate an HUF property as his individual property.

107. Though the powers of alienation held by a Karta is indubitable and the coparceners have no right to challenge such alienation until completely effectuated. As has been stated above, the onus of proving that the sale transaction was for the legal *necessity or for the benefit of the estate or pious duty,* rests on the purchaser of the property. The proposed purchaser Ravinder Nangia has neither alleged nor led any evidence to prove that Col. P.C. Sethi had undertaken the Sale transaction for any of these reasons. However, this discussion is more academic as Col. P.C. Sethi had represented the suit property to be his individual property in the Agreement to Sell. So be the case, there was no occasion for the defendant no.2 Ravinder Nangia to make such enquiry.

108. Given that Col. P.C. Sethi has signed the said Agreement in favour of Shri. Ravinder Nangia as the absolute owner of the suit property and there is no evidence whatsoever that it was undertaken for the reasons as permitted for alienation of HUF property by the Karta, the next question is whether Col. P.C. Sethi is bound by the Agreement to the extent of his undivided share in the suit property.

109. To determine whether the aforesaid, legal consequence of the Agreement to Sell ought to be considered. In *Raj Kumar Raghubanchmani*

Prasad vs Ambica Prasad Singh, AIR 1971 SC 776, it was observed *that in any event an alienation by the Manager of the joint Hindu family even without legal necessity is voidable and not void.*

110. **Thus, the Agreement to Sell in the present case by its very nature is not *void ab initio*.**

111. Further, the Madras High Court in *Vasanthlal and ors vs Ramu and ors*, MANU/TN/5425/2022 found that if a sale executed by a Karta is found to be voidable for not satisfying the essential condition of legal necessity, then alienating Karta would only be bound to the extent of their own undivided share.

112. The Apex Court in *Smt. Sarla Agarwal vs Sh. Ashwani Kumar Agarwal*, 2012 SCC OnLine Del 5408 has categorically held that a coparcener can sell his undivided share in the HUF property without seeking the consent of the coparceners. However, the intending purchaser does not acquire the title to a defined share without first seeking partition of the said property as the share of the purchaser also remain undefined as held in the case of *Sidheshwar Mukherjee vs Bhubeshwar Prasad Narain Singh*, AIR 1953 SC 487.

113. The aforesaid findings are in line with Section 44 of the Transfer of Property Act, 1882 which reads as under:

> *—**Transfer** by one co-owner.—Where one of two or more co-owners of immoveable property legally competent in that behalf transfers his share of such property or any interest therein, the transferee acquires as to such share or interest, and so far as is necessary to give effect to the transfer, the transferor's right to joint possession or other common or part enjoyment of the property, and to enforce a partition of the same, but subject to the conditions and liabilities affecting, at the date of the transfer, the share or interest so transferred.*
> *Where the transferee of a share of a dwelling-house belonging to an undivided family is not a member of the family, nothing in this section shall be deemed to entitle him to joint possession or other common or part enjoyment of the house.*‖

114. Section 44 of the Transfer of Property Act, 1882 also recognizes the right of the coparcener to sell the undivided share to the third party without the consent of other co-owners and the transferee acquires the rights and interest in the property which he can exercise by way of partition. To protect the members of a coparcenary from the intrusion or interference of a third party purchaser when a coparcener alienates his undivided share in a residential home, the transferee is not entitled to joint possession but would have to claim partition. Thus, the right of the coparcener to sell the undivided share is also acknowledged statutorily.

115. Although the power of disposition of joint family property has been conceded to the manager of joint Hindu family for the reasons aforesaid, the law raises no presumption as to the validity of his transactions. His acts could be questioned by the other members of the joint family to have the transaction declared void, if not justified. When an alienation is challenged as being unjustified or illegal it would be for the alienee to prove that he did all that was reasonable to satisfy himself there was *Legal necessity in fact or that he made proper and bonafide enquiry as to the existence of suchnecessity.* If the alienation is found to be unjustified, then it would be declared void. Such alienations would be void except to the extent of manager's share; the purchaser could get only the manager's share. ***[Mayne's Hindu Law 11th ed. para 396].***

116. This court thus, concludes that in such circumstances where the Karta alienates the HUF property outside the scope of legal necessity, such a sale cannot be held valid in respect of entire HUF property as he cannot transfer a share more than what he has as encapsulated in the Maxim *Nemo dat quod non habet*. **He shall, however, be bound to the extent of his undivided share in the HUF property.**

These issues are decided in favour of defendant no. 2 Ravinder Nangia.

In CS(OS) 436/2004:

Issue No. 10: Whether defendant No.1, prior to execution of Agreement to Sell dated 14.01.2004, ever disclosed to defendant No.2 about the ownership of M/s P.C. Sethi HUF in respect of the suit property, if not its effect? OPD1

In CS(OS) 759/2004:

Issue No. 2: Whether the defendant No. 1, at any point of time, prior to execution of Agreement to Sell dated 14.01.2004, ever disclosed to the plaintiff that the suit property is owned by M/s P.C. Sethi (HUF), if no, its effect? OPD1

117. Col. P.C. Sethi had taken a defence in his Written Statement as well as in his affidavit of evidence that at the time of negotiation for the deal with Ravinder Nangia for sale of the property, he had disclosed that it was HUF property and had shown him the Income Tax Return documents along with the Title documents of the Suit property. However, it is observed that in the normal scheme of things, any person entering into a sale transaction would seek the title documents to satisfy himself about the title before agreeing to purchase the property. No person seeks the Income Tax papers in an ordinary

course. The only documents which reflected the suit property as an HUF were the Income Tax Return documents. Therefore to fortify that he had disclosed before finalizing the deal that it was HUF property, Col. P.C. Sethi had falsely claimed that he had shown the Income Tax Return documents.

118. Another tell tale factor that no disclosure of the suit property being an HUF was made by Col. P.C. Sethi is evident from Clause 7 of the Agreement to Sell which reads as under:

*—7. That the First Party assures the Second Party that he is **the exclusive owner of the said property** and as such he is fully competent to sell the same to the Second Party and if anyone else claims rights, title and interest in the said property, as owner or otherwise, then the First Party shall be liable and responsible to make good the losses thus suffered by the Second Party.*‖

119. The above clause in the Agreement further reinforces the conclusion that Col. P.C. Sethi represented the suit property as his individual property.

120. A defence was taken by D1W1 Col. P.C. Sethi in his cross examination that he had not read the Agreement to Sell before signing it. His testimony reads as under:

—Q 132 I suggest to you that you read the agreement to sell dated 14.01.2004 prior to appending your signatures. What do you have to say?
*Ans. **I did not read the agreement before signing**. I **glanced through and the figure of Rs. 2.74 Crores had stayed in my mind**.*‖

121. Col. P.C. Sethi admittedly met Shri. Ravinder Nangia, defendant No.2 in Panchsheel Club where the Agreement to Sell was signed in the presence of Mr. Gurcharan Singh Bawa and Mr. Sandeep Jain. He has admitted that he did read the Agreement and also saw the sale consideration but did not read the Agreement carefully and it way taken away by Mr. Ravinder Nangia without providing a copy and even later he was not provided a copy and thus, was not aware about the inclusion of Clause 7 in the Agreement. It was further deposed that the Col. P.C. Sethi received a copy of the Agreement to Sell on 29.01.2004 and only on receiving the same, did he realise that he had signed the said Agreement in his individual capacity.

122. According to Col. P.C. Sethi on 28.01.2004 he informed his sons Captain Rajesh Sethi, Shri Raman Sethi and Shri Ravi Sethi about the Agreement to Sell. His sons reminded him that the suit property belonged to the HUF and that the deponent had no right to sell the same without their consent. His intention to enter into the Agreement to Sell was also questioned as the sale of suit property was not in the interest of all the members of HUF. On account of this confrontation, the defendant No.1 approached Shri Ravinder Nangia

on 29.01.2004 with a request to cancel the Agreement to Sell which he had been induced to enter into by being misled that there was no impediment to executing the Agreement to Sell in his individual capacity. D1W1 further deposed that he even offered to return the money paid by Shri Ravinder Nangia.

123. This explanation is again an attempt to wriggle out of the specific averment in the Agreement. It does not appeal to reason that when Col. P.C. Sethi read the Agreement, he only checked the consideration amount. In fact, this specific clause in the Agreement further reinforces the conclusion that Col. P.C. Sethi represented the suit property as his individual property and did not show his Income tax papers to Mr. Ravinder Nangia at the time of negotiations. This claim of property being HUF has been raised only subsequently.

124. Col. P.C. sethi has deposed that after a meeting in late February 2004, Shri Ravinder Nangia agreed to reverse the transaction, but did not complete the paper work for the same despite repeated requests. Shri Ravinder Nangia demanded a sum of Rs.1,00,00,000 over the above the amount already paid as an advance as a price for cancellation. On realizing that Shri. Ravinder Nangia would not reverse the transaction being a part of a powerful consortium of property developers/brokers, the deponent sent a Letter dated 21.03.2004, Ex. D1W1/G to rescind the Agreement. The relevant portions of the letter read as under:

> *—However, immediately thereafter I gave considerable thought to this rather rash decision on my part to sell the house. As you are aware I am at present 82 years of age, and at this advanced stage of my life do not want to face the prospect and the attendant difficulties of purchasing and shifting to a new accommodation (this property being my one and only residence), which is, as you are aware a very daunting task, more so at my advanced age. This decision was in fact conveyed to you on 29 Jan 2004 itself.*॥

125. The reason for rescinding from the Agreement is given in the Letter dated 21.03.2004 Ex.D1W1/G s that after giving considerable thought to his rather rash decision to sell the house at this advanced stage of his life, D1W1 realised that he did not want to face the prospect and the attendant difficulties of purchasing and shifting to new accommodation which is a daunting task. Since he did not hear anything further from Shri Ravinder Nangia, he had written this letter to convey his decision that he was not inclined to proceed with the Agreement to Sell dated 14.01.2004 and accordingly terminated/cancelled the same. All this leads to inevitable conclusion that though the suit property was HUF property to the knowledge of Col. P.C.

Sethi, but he always considered it as his individual property and thus, entered into the Agreement to Sell claiming it to be individual property.

126. If the reason for cancellation of deal was that the suit property was HUF, he would have mentioned this reason in his Notice dated 21.03.2004 Ex.D1W1/G for cancelling the deal. However, this reason was conspicuously missing and the only reason stated in the Notice was inconvenience of re-location in old age.

127. All these explanations are clearly an attempt to rescind the Agreement. It is held that Defendant no.1 Col. P.C. Sethi never disclosed at the time of entering into the Agreement that is was an HUF property.

The Issues are accordingly answered against Defendant no.1 Col. P.C. Sethi.

In CS(OS) 436/2004:

Issue No. 9*: Whether the Suit has been filed by the plaintiff in connivance with the defendant No.1 with malafide and as a matter of afterthought in order to regular(sic) out of the Agreement dated 14.01.2004 executed by defendant No.1 in favour of the defendant No.2 in respect of the suit property? OPD2* **In CS(OS) 759/2004:**

Issue No. 6: Whether the plea of ownership of M/s P.C. Sethi (HUF) in respect of the suit property has been set up by the defendants out of malafide and as a matter of afterthought in order to wriggle out of the agreement dated 14.01.2004? OPP.

128. A defence has been taken up by Shri Ravinder Nangia that Col. P.C. Sethi started claiming the property to be an HUF property only to wriggle out of the Agreement to Sell dated 14.01.2004 Ex.PW1/D which Col. P.C. Sethi had entered with him. This argument may have held some water if the HUF had been created after the Agreement to Sell was executed. Once the property has been proven to be an HUF property since 1947, Col. PC Sethi suffered from a legal disability in entering into the Agreement to Sell in 2004 treating it as an individual property.

129. Thus, the plea taken by Shri Ravinder Nangia that suit property was claimed to be an HUF property only to retract from the Agreement to Sell dated 14.01.2004, does not hold merit as the property was infact HUF since much prior to the date of execution of the Agreement to Sell. **This issue is decided in favour of Col. P.C. Sethi, defendant No.1.**

In CS(OS) 759/2004:

Issue No.1 : Whether defendant No. 1 had executed the Agreement to Sell dated 14.01.2004 under undue influence as alleged in preliminary objection No. 1 of his written statement? OPD1

130. The doctrine of „*undue influence'* under the common law was evolved by the Courts in England for granting protection against transactions procured by the exercise of insidious forms of influence spiritual and temporal. The doctrine applies to acts of bounty as well as to other transactions in which one party by exercising his position of dominance obtains an unfair advantage over another.

131. Section 16 of the Indian Contract Act, 1872 echoed the doctrine of „*undue influence'* as under:

"Section 16:
Undue influence-

(1) A contract is said to be induced by "undue influence" where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and uses that position to obtain an unfair advantage over the other.

(2) In particular and without prejudice to the generality of the foregoing principle, a person is deemed to be in a position to dominate the will of another--

(a) where he holds a real or apparent authority over the other, or where he stands in a fiduciary relation to the other; or
(b) where he makes a contract with a person whose mental capacity is temporarily or permanently affected by reason of age, illness, or mental or bodily distress.

(3) Where a person who is in a position to dominate the will of another, enters into a contract with him, and the transaction appears, on the face of it or on the evidence adduced, to be unconscionable, the burden of proving that such contract was not induced by undue influence shall lie upon the person in a position to dominate the will of the other.

Nothing in this sub-section shall affect the provisions of section 111 of the Indian Evidence Act, 1872 (1 of 1872).‖

132. **In *Ladli Prashad Jaiswal v. The Karnal Distillery Co. Ltd., Karnal* & Ors,** AIR 1963 SC 1279, the Apex Court explained that the first subsection of Section 16 of the lays down the principle in general terms. By *sub*-section ***(2) a presumption arises that a person shall be deemed to be in a position to dominate the will of another if the conditions set out therein are fulfilled. Sub-section (3) lays down the conditions for raising a rebuttable presumption that a transaction is procured by the exercise of undue influence. The reason for the rule in the third sub-section is***

that a person who has obtained an advantage over another by dominating his will may also remain in a position to suppress the requisite evidence in support of the plea of undue influence."The principles so stated herein were reiterated in ***Joseph Johan Peter Sandy vs Veronica Thomas Rajkumar & Anr***, (2013) 3 SCC 801.

133. The term "*undue influence*" and its applicability was succinctly explained by the Privy Council in ***Raghunath Prasad v. Sarju Prasad,*** AIR 1924 PC 60. It expounded three stages for consideration of a case of undue influence which reads as under:

> *—(i)The **first thing** to be considered is whether the plaintiff or the party seeking relief on the ground of undue influence has proved that **the relations between the parties** to each other are such **that the one naturally relied upon the other for advice** dominate the will of the other. Upto this point, 'influence' alone has been made out.*
>
> *(ii)Once that position is substantiated, **the second stage** is reached to ascertain whether the transaction has been induced **by undue influence. That is to say whether the other person was in a position to dominate the will of the first in giving it.***
>
> *(iii) **third stage** is of **the onus probandi**. If the transaction appears to be unconscionable, then the burden of proving that it was not induced by undue influence is to lie upon the person who was in a position to dominate the will of the other.*‖

134. It was further explained in *Raghunath Prasad* (supra) that the three stages must be followed chronologically. ***The first thing to be considered is the relation of the parties and whether they were such as to put one in a position to dominate the will of the other. The unconscionableness of the bargain would arise only after establishing the first two aspects.***

135. What may be termed as "***undue influence"*** was explained by Bombay High Court in the case of *Poosathurai vs Kannappa Chettiar*, (1920) 22 BOM LR 538. *It was observed that is a mistake to treat undue influence as having been established by a proof of the relations of the parties having been such that the one naturally relied upon the other for advice, and the other was in a position to, dominate the will of the first in giving it.* ***Up to that point "influence" alone has been made out****. Such influence may be used wisely, judiciously and helpfully. But, more than mere influence what must be proved further is whether such influence in the language of the law, was "undue."* ***It must be established that the person in a position of domination has used that position to obtain unfair advantage for himself, and so to cause injury to the person relying upon his authority or aid and making the bargain with the "influencer" itself gets rendered unconscionable. Then the person in a position to use his dominating power has the***

burden thrown upon him of establishing affirmatively that no domination was practised so as to bring about the transaction, but that the granter of the deed was scrupulously kept separately advised in the independence of a free agent.

136. These principles were reiterated **in the case of *Subhash Chandra Das Mushib v. Ganga Prasad Das Mushib & Ors.,*** AIR 1967 SC 878*;* ***Hardwar vs Smt Kulwanta*****,** 2013 SCC OnLine All 13579.

137. In ***Afsar Shaikh & Anr v. Soleman Bibi & Ors*****,** AIR 1976 SC 163 *undue influence* was explained to mean domination of a weak mind by strong mind to an extent which causes the behaviour of the weaker person to assume an unnatural character. **Undue influence is any influence brought to bear upon a person entering into an agreement or consenting to a disposal of property which in normal circumstances one would not have done or agreed to do**. The essence of "undue influence" is that a person is constrained to do against his will, but for the influence he would have refused to do it left to exercise his own judgment. It is an influence which acts to the injury of a person who is swayed by it and which compels that person to do something which he would not have done, if he had been a free person."

138. The testimony of the parties may now be considered to ascertain if the three elements of "*undue* influence" as explained in *Raghunath* (supra) namely – (1) a relationship where the party naturally relied on the advice of the other, (2) whether the person was in a position to dominate, (3) whether the transaction that took place on influence was unconscionable, are established and proved in order to avoid the transaction.

139. **Defendant No.1 Col. P. C. Sethi has deposed** in his affidavit Ex D1W1/X that when his youngest son Raman Sethi moved in the suit property in 1995, the family peace was shattered and the relations between Raman Sethi and other members of the family got exceedingly acrimonious and tense. The situation became worse in 2003 as Raman Sethi left for London on a Foreign assignment leaving his family behind. He stated that

Raman Sethi‟s wife refused to adjust with the other family members and every day was marked with fights and verbal abuse.

140. On account of the daily tension he became distraught and disturbed both mentally and emotionally and used every available opportunity to stay away from the house. His daily walking partner was one Gurcharan Singh Bawa resident of B-99, Defence Colony, who introduced him to Sandeep Jain resident of R-10, Green Park Extension. Gurcharan Bawa and Sandeep Jain together introduced D1W1 to Shri Ravinder Nangia. D1W1 testified that Shri

Ravinder Nangia pretended to be his well-wisher and assured him that he would resolve all his issues to his satisfaction and thereby won his goodwill. Shri Ravinder Nangia convinced the dependent to sell the suit property so that he could purchase independent units and live a peaceful and a comfortable life. Unaware that Shri Ravinder Nangia, Gurcharan Bawa and Sandeep Jain had colluded with each other, the dependent conveyed to them that he was not the exclusive owner of the suit property as it was an asset of Col. P.C. Sethi HUF. However, on the insistence of Shri Ravinder Nangia, D1W1 showed him the title documents along with Income Tax Returns on 11.01.2006 after which Shri. Ravinder Nangia informed the dependent that there was no impediment to the sale of suit property and that he was willing to purchase the same.

141. It is observed that the most telling evidence of influence on D1W1 by Shri Ravinder Nangia to sign the Agreement to Sell by taking advantage of his distraught state of mind is his testimony in his cross examination that "***I don't think anyone had put pressure on me. I had developed full faith in Nangia***‖. This clearly proves that Sh. Ravinder Nangia gained the trust and faith of Col. PC Sethi and his suggestion to sell the property by convincing him that the solution to get his mental peace from the pervasive animosity between the members of the Col. P.C. Sethi Family, was to sell the suit property itself which was the cause of his unhappiness. Due to his fragile state of mind Col. P.C. Sethi was gullible and accepted the suggestions of Shri Ravinder Nangia that he should sell the property and buy individual units from that money to escape from the daily chaos. Shri Ravinder Nangia even offered to buy the property himself. Thus, Col. P. C. Sethi developed trust and faith in Ravinder Nangia for advice, but that only puts Ravinder Nangia in a position of influence or dominance.

142. The mere reason that Shri Ravinder Nangia is in property business and agreed to purchase the suit property at the prevailing market rate is not enough to make a presumption of undue influence. For the influence to be *undue* in nature, the transaction must be unreasonable on the face of it. Clearly, there is no evidence that the sale consideration in the Agreement to Sell was not in consonance with the prevailing market rate and thus it cannot be termed as unconscionable.

143. Thus, even if it is held that Col. P.C. Sethi was influenced by Shri Ravinder Nangia to sell the suit property to him, but the influence cannot be termed as undue leading to an unconscionable Agreement to the detriment of Col. PC

Sethi. Therefore, it is held that no undue influence was exercised upon the defendant No.1 Col. P.C. Sethi giving him a right to rescind the Agreement.

144. The issue is answered against the plaintiff and Defendant No.1 Col. P.C. Sethi and in favour of Shri Ravinder Nangia.

In CS(OS) 759/2004:

Issue No.3: Whether the Agreement to Sell dated 14.01.2004 stood validly terminated by defendant No.1 for the reasons given in his letter dated 21.03.2004, if not, its effect? OPD1

145. The question which now needs deliberation is whether the Agreement to Sell dated 14.01.2004 Ex P-1/D-2 had been validly terminated by Col. P.C. Sethi *vide* his Letter dated 21.03.2004, before the expiry of the three month period for execution as provided in the said Agreement.

146. To evaluate the validity of a unilateral rescission of a contract it would be apposite to refer to the judgement of the Madras High Court in *Raja Rajeswara Dorai v. A.L.A.R.R.M. Arunachellan Chettiar*, 1913 SCC OnLine Mad 276 where it was observed that a unilateral expression of rescission of a contract by one of the parties to the contact cannot be held to relieve him from his obligation to have the contract rescinded by Court under the substantive law and within the time allowed by statutory law if he wants as a plaintiff the assistance of the Court in obtaining certain reliefs on the basis that the contract has ceased to exist. It was observed that repudiation of a contract by one party alone cannot get the party any relief except as consequent of getting a declaration and a rescission by the Court. Thus, a contract can be properly rescinded without the intervention of a Court only by the act of both parties or, if the original contract or Deed itself, by clauses of forfeiture or similar clauses, puts an end to the contract or transaction. However, even the latter case has to be determined by both the parties and only then the aid of the Court is not required. Therefore, even though a contract or transaction may be voidable at the instance of one party, its rescission is effectuated, not by the mere repudiation of one party, but by the decree of declaration of this Court.

147. It has been further explained by Punjab and Haryana High Court in the case of *Brahm Dutt vs. Sarabjit Singh,* 2017 SCC OnLine P&H 5489 that unilateral cancellation of Agreement to Sell by one party is not permissible in law except where the agreement is determinable in terms of Section 14 of this Specific Relief Act, 1963 and such cancellation cannot be raised as a defense in a suit for Specific Performance. If any such plea of cancellation/termination is raised

by the defendant, the Court can just ignore the same and the plaintiff is also not required to challenge such a cancellation or revocation. It was further observed that if such unilateral cancellation of non-determinable agreements is permitted as a defense, then virtually every suit for specific performance can be frustrated by the defendant. On the contrary, if the defendant so claimed that he had valid reasons to terminate the contract or rescind the contract then he ought to have sought a declaration from the competent Court, as required under Sections 27 and 31 of Specific Relief Act, 1963.

148. Thus, once a party claims the right of revocation or rescission of the Agreement, then such a party is required to seek a declaration from the Court regarding the validity of revocation or rescission, as the case may be.

149. In the present case, the Col. PC Sethi has given contrary reasons in his Letter of Revocation dated 21.03.2004 to those which have been stated in his Written Statement clearly reflecting that the reason for rescission on the ground that the property was an HUF was an after-thought. Be that as it may, the reason provided in the Letter of Rescission dated 21.03.2004 cannot by any means be construed as a valid one to unilaterally rescind the Agreement to Sell even before the tenure of executing the same had expired. Col. PC Sethi clearly had second-thoughts about the sale and wanted to wriggle out of this Agreement to Sell on one ground or the other. Such unilateral rescission is not permissible under law, especially when the Col. PC Sethi neither had any valid reason, nor filed any suit for seeking a declaration that the Agreement to Sell was void. Therefore, the plea that the Agreement to Sell dated 14.01.2004 was unilaterally rescinded by Col. PC Sethi as the suit property is an HUF asset is not sustainable in the present case.

150. Thus, the cancellation/termination of Agreement by Col. P.C. Sethi is not valid and the Agreement to Sell is held to be subsisting and executable to the extent of the share of Col. P.C. Sethi.

This issue is accordingly decided in favour of Sh. Ravinder Nangia/defendant no.2.

In CS (OS) 759/2004:

Issue No. 5*: Whether the plaintiff was ready and willing to perform his part of contract? OPP*

151. Having concluded that the Col. P.C. Sethi is bound by the Agreement to Sell to the extent of his undivided share, it further needs to be ascertained whether defendant No.2. Ravinder Nangia is entitled to the relief of Specific

Performance of the Agreement to Sell dated 14.01.2004 Ex. P1/D2 as has been sought by him in CS (OS) 759/2004.

152. Before evaluating the facts of the present, it would be appropriate to first examine the principles of seeking Specific Performance in terms of an Agreement to Sell. Section 16 of the Specific Relief Act, 1963 stipulates the circumstances when a relief for specific performance shall not be granted by a court. The relevant part of the provision of it reads as under:

*—**Section 16 Personal Bars to Relief –** Specific performance of a contract cannot be enforced in favour of a person–*

(a) .....

(b) .....

*(c) **[who fails to prove] that he has performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him, other than terms the performance of which has been prevented or waived by the defendant.***

Explanation – For the purpose of clause (c), –

(i) where a contract involves the payment of money, it is not essential for the plaintiff to actually tender to the defendant or to deposit in court any money except when so directed by the court;
(ii) the plaintiff [must prove] performance of, or readiness and willingness to perform, the contract according to its true construction.‖

153. The principles relating to specific performance as contained in Sections 16(c), 20, 21, 22 and 23 of the Specific Relief Act, 1963 read with Forms 47/48 of Appendix A to C of the Code of Civil Procedure, 1908 were succinctly summarized by the Supreme Court in *Kamal Kumar vs Premlata Joshi,* 2019 SCC OnLine SC 12 as under:

*—10. It is a settled principle of law that the grant of relief of specific performance is a discretionary and equitable relief. The material questions which are required to be gone into for grant of the relief of specific performance, are **First**, whether **there exists a valid and concluded contract** between the parties for sale/purchase of the suit property; **Second**, whether the **plaintiff has been ready and willing to perform his part** of contract and whether he is still ready and willing to perform his part as mentioned in the contract; **Third**, whether **the plaintiff has, in fact, performed his part of the contract** and, if so, how and to what extent and in what manner he has performed and whether such performance was in conformity with the terms of the contract; **Fourth**, whether **it will be***

equitable to grant the relief of specific performance to the plaintiff against the defendant *in relation to suit property or it will cause any kind of hardship to the defendant and, if so, how and in what manner and the extent if such relief is eventually granted to the plaintiff; and* ***lastly****, whether* ***the plaintiff is entitled for grant of any other alternative relief****, namely, refund of earnest money etc. and, if so, on what grounds.*

154. It was further observed by the Apex Court in *Kamal Kumar vs Premlata Joshi* (supra), that *these requirements have to be properly pleaded by the parties in their respective pleadings and proved with the aid of evidence in accordance with law. It is only then the Court is entitled to exercise its discretion and accordingly grant or refuse the relief of specific performance depending upon the case made out by the parties on facts.* 155. The ***first*** requirement remains satisfied as it has already been held that there *existed* a valid and concluded Contract between the Col. PC Sethi and the Shri. Ravinder Nangia in regard to the undivided share of Colonel P.C. Sethi in the suit property which is the HUF property.

156. The ***second*** aspect calls for discussion as to whether Shri Ravinder Nangia has been and is still ready and willing to perform his part of the Agreement to Sell dated 14.01.2004.

157. The Legislature has chosen to use two phrases, namely **"readiness"** and **"willingness"**. While the **"willingness"** indicates his state of mind which is determined through the conduct of the plaintiff, the "**readiness"** indicates the financial capacity of the plaintiff which is required to be proved through evidence that he had the financial capacity to perform the Agreement, as has been explained in the case of *K.V. Balan (Dead) Through Legal Representatives v. Bhavyanath* 2015 SCC OnLine Kel 298.

158. In *Syed Dastagir v. T.R. GopalakrishnaSetty,* (1999) 6 SCC 337, the Apex Court while construing the connotation of "**readiness**" and "**willingness**", observed that the compliance of "**Readiness and Willingness**" has to be in spirit and substance and not in letter and form. So, to insist for mechanical production of the exact words of a statute is to insist for the form rather than essence. Therefore, the absence of form cannot dissolve an essence if already pleaded. It was also observed that the plea of "**readiness and willingness**" is not an expression of art and science, but an expression through words to place fact and law of one‟s case for a relief. In order to gather true spirit behind a plea it should be read as a whole and to test whether the plaintiff has performed his obligations, one has to see the pith and substance of the plea. Unless statute —*specifically require a plea to*

be made in any particular form, it can be in any form. No specific phraseology or language is required to take such a plea.‖

159. Further, in *H.P. Pyarejan v. Dasappa (Dead) By L.Rs. & Ors*., (2006) 2 SCC 496, the Apex Court observed that the plaintiff is required to prove continuous readiness and willingness from the date of the contract to the time of the hearing, to perform the contract on his part. Failure to make good that averment brings with it and leads to the inevitable dismissal of the Suit. In *Motilal Jain v. Ramdasi Devi*, (2000) 6 SCC 420, the Apex Court had expounded the same principle that averments in the plaint must reflect the readiness and willingness on the part of the plaintiff.

160. The evidence required to be pleaded and proved by the plaintiff to establish his "**readiness**" in the context of Section 16 was explained in *Raghunath Rai & Another vs. JageshwarPrashad Sharma,* (1999) 50 DRJ 751. The intending purchaser need not produce the money or to vouch a concluded scheme for financing the transaction; it is sufficient for the purchaser to establish that he has the capacity to pay. The financial capacity has to be, however, proved strictly and self-serving statements cannot discharge the burden of proving existence of financial capacity as noted by this Court in the case of *Baldev. vs. Bhule*, (2012) 132 DRJ 247.

161. Further merely stating the *—readiness*‖ in the plaint itself is not sufficient to meet the rigors of Section 16 of the Specific Relief Act, 1963. It has to be continuous as explained by the Apex Court in the case of *N.P. Thirugnanam vs. Dr. R. Jagan Mohan Rao* (1995) 5 SCC 115, by stating that the continuous readiness and willingness on the part of the plaintiff is a condition precedent to grant the relief of specific performance. If the plaintiff fails to either aver or prove the same, he must fail. To adjudge whether the plaintiff is ready and willing to perform his part of the contract, the court must take into consideration the conduct of the plaintiff prior and subsequent to the filing of the suit along with other attending circumstances. The amount of consideration which he has to pay to the defendant must of necessity be proved to be available. Right from the date of the execution till date of the decree he must prove that he is ready and has always been willing to perform his part of the contract. As stated, the factum of his readiness and willingness to perform his part of the contract is to be adjudged with reference to the conduct of the party and the attending circumstances. The court may infer from the facts and circumstances whether the plaintiff was ready and willing to perform his part of the contract.

162. Thus, the continuous "**readiness**" of the plaintiff in a way signifies his conduct or "**willingness**" to perform the contract. Similar observations were made in the recent judgment of *U.N. Krishnamurthy (Since Deceased) vs. A.M. Krishnamurthy* 2022 SCC OnLine SC 840, the Apex Court has reiterated that in order to prove "readiness and willingness" to perform the obligation to pay money in terms of the contract, the plaintiff would have to not only make the requisite averments in the plaint but also adduce evidence to show the availability of funds to make payment in terms of the contract. The plaintiff would have to prove that he had sufficient funds or was in a position to raise funds in time to discharge his obligations under the contract. If he does not have sufficient funds with him to make the required payment of money, he would have to specifically show how the funds would be made available by him. Such readiness and willingness have to be proved all along till the decision of the Suit.

163. Further, conduct of a party seeking specific performance also needs to be established by way of proving the continuous financial capacity to fulfill the terms of the Agreement i.e. from the time the amount becomes due. Ad rem to this requirement, the Supreme Court in *Madhukar Nivrutti Jagtap vs. Pramilabai Chandulal Parandekar* 2019 SCC OnLine SC 1026 held that the requirement to prove readiness and willingness is not that the plaintiff should continuously approach the defendant with payment or make incessant requests for performance. The requirement of readiness and willingness of the plaintiff is not theoretical in nature but is essentially a question of fact which needs to be determined in reference to the pleadings and the evidence led by the parties.

164. Similar observations were made by the Apex Court in *Bhavyanath vs. K.V. Balan (Dead) Through Legal Representatives* (2020) 11 SCC 790 where the Apex Court, while considering the financial capacity to pay the consideration, explained that the law is not that the plaintiff must prove that he has cash in his hand from the date of Agreement till the relevant date. But what is important to be proved is that he had the capacity to allow the deal to go through. Therefore, if the plaintiff is able to prove his assets which can be converted into cash either by sale or by loan, it is sufficient to prove the financial capacity of the plaintiff. Even if the plaintiff is able to establish that the defendant has refused to execute the Sale Deed and thereby committed a breach, is not sufficient to entitle him for specific performance unless he is also able to prove his own readiness and willingness.

165. Next, the extent and the manner in which the Agreement has been performed and whether it was in conformity with the terms of contract needs to be further considered. The concept of "**Willingness**" has been examined by the Apex Court in the case of *Aniglase Yohannan vs. Ramlatha and Others* (2005) 7 SCC 534, where it was observed that the court has to grant relief on the basis of the conduct of the persons seeking relief. If the pleadings manifest that the conduct of the plaintiff entitles him to get the relief on perusal of the plaint, he should not be denied the relief. The averments in the plaint as a whole must clearly indicate the readiness and the willingness.

166. In the present case, Shri Ravinder Nangia, in his plaint and in his affidavit of evidence has claimed that he was always ready and willing to perform his part of the contract. PW1 Shri Ravinder Nangia has deposed in his affidavit of evidence Ex. PW1/A that he had paid Rs. 26,00,000/- on 14.01.2004. Thereafter, on the request of Col. P.C. Sethi, a sum of Rs. 13,00,000/- was paid on 22.01.2004. In terms of the Agreement to Sell, the payment of the entire balance amount of Rs. 2,35,00,000/-was to be made on 30.04.2004 on which date the Sale Deed was executed and registered and the vacant peaceful possession of the suit property was to be handed over to Ravinder Nangia. Aside from initial payment of Rs. 39,00,000/-, there has conspicuously neither been any mention of his assets and financial position in the plaint nor has he produced any document as a testament of his financial capacity. Apart from this lack of disclosure, not a single a single averment has been made by Shri Ravinder Nangia regarding his

"**readiness**" to perform the Agreement to Sell. He has miserably failed to plead and prove his financial capacity to complete the transaction either at the time of entering into the Agreement in the year 2004 and thereafter till date.

167. Shri Ravinder Nangia has placed reliance on the affidavit of evidence of D1W1 Col. PC Sethi to prove his financial capacity wherein it was claimed that Shri Ravinder Nangia and his family are in the business of real estate and development of the properties their *modus operandi* was to create an interest in the suit property by perpetrating fraud and abusing relationship of faith with him as a friend and well-wisher. He sought to purchase the suit property only for his business purpose and nothing else. Also, he and his family had closely held Companies, including M/s. Maanick Enterprises Pvt. Ltd. and M/s. Swati Real Estate Pvt. Ltd. by Shri. Ravinder Nangia and the documents pertaining to these Companies were Ex.D1W1/H1 to D1W1/H14.

168. Even if the testimony of Col. P.C. Sethi is accepted, mere existence of Companies and businesses by Shri Ravinder Nangia is not sufficient to prove that the money was available from his businesses or that he had the capacity to generate sufficient money from his Company and business for payment to P.C. Sethi consequent to the Agreement to Sell. It is observed that the onus to prove his financial capacity was on Ravinder Nangia but not an iota of evidence has been led by him to prove his readiness to execute this Agreement to Sell.

169. Ravinder Nangia did send a Legal Notice dated 10.04.2004 Ex. P3 but all he had claimed was that the Agreement to Sell was irrevocable and binding in terms of Clause 11 of the Agreement and that the Agreement had to be executed by 30.04.2004 and Col. P.C. Sethi cannot wriggle out of it. However, no subsequent action has been taken by Ravinder Nangia and there is nothing to show that he approached P.C. Sethi on or before or after 30.04.2004 to seek execution of the Sale Deed. Thus, mere empty words stated in the plaint or in affidavit of evidence would not tantamount to his willingness to perform the contract.

170. The ***third aspect*** for consideration is whether Shri Ravinder Nangia performed his part of the Agreement. Neither was there any overt act nor any implied conduct to show that he ever came forth to perform his part of the Agreement or tendered the money for execution of the Sale Deed. 171. The ***forth aspect is whether it is equitable*** in the given circumstances to grant the relief to Shri Ravinder Nangia.

172. Col. P.C. Sethi has asserted that the value of suit property has appreciated over the years and he has produced Sale Deeds of the neighbouring properties which are Ex D1-W1/L1 to Ex D1-W1/L21 to establish the same. The said Sale Deeds are of the period from 2013 to 2016 and their considerations range from 3 crores to 29 crores depending on the size of the property.

173. The testimony of Col. P.C. Sethi is corroborated by D1W3 Shri Manoranjan Chopra who has deposed that on the request of defendant No.1 Col. P.C. Sethi, he had conducted the survey to determine the market value of the properties of similar size as the suit property in Defence Colony area. He also asked him to find out about the real estate business of Mr. Ravinder Nangia. He informed defendant No.1 to obtain certified copies of 21 registered Sale Deeds of the properties in Defence Colony during the period 2010 to February, 2016. The average sale price of similarly located plots was approximately Rs.22 crores. He handed over the certified copies of the

registered Sale Deeds to defendant No.1 which are exhibited as Ex.D1W1/L1 to Ex.D1-W1/L21.

174. It is thus, submitted on behalf of Col. P.C. Sethi that a relief of specific performance in favour of Shri Ravinder Nangia of a property value of which has appreciated multifold, would be unjust to Col. PC Sethi and his sons.

175. In *K.S. Vidyanadam v. Vairavan,* (1997) 3 SCC 1 the Apex Court observed that the Court cannot be oblivious to the reality *as the reality is constant and continuous rise in the values of urban properties - fuelled by large scale migration of people from rural areas to urban centres and by inflation.*"

176. Having paid an insignificant amount the Plaintiff cannot be held entitled to discretionary equitable relief of Specific Performance, as observed by this Court in *Saradamani Kandappan v. S. Rajalakshmi, (2011) 12 SCC 18 17*:

> *—37. The reality arising from this economic change cannot continue to be ignored in deciding cases relating to specific performance. The steep increase in prices is a circumstance which makes it inequitable to grant the relief of specific performance where the purchaser does not take steps to complete the sale within the agreed period, and the vendor has not been responsible for any delay or non-performance.* ***A purchaser can no longer take shelter under the principle that time is not of essence in performance of contracts relating to immovable property, to cover his delays, laches, breaches and "non-readiness.*** *The precedents from an era, when high inflation was unknown, holding that time is not of the essence of the contract in regard to immovable properties, may no longer apply, not because the principle laid down therein is unsound or erroneous, but the circumstances that existed when the said principle was evolved, no longer exist.* ***In these days of galloping increases in prices of immovable properties, to hold that a vendor who took an earnest money of say about 10% of the sale price and agreed for three months or four months as the period for performance, did not intend that time should be the essence, will be a cruel joke on him, and will result in injustice.*** *Adding to the misery is the delay in disposal of cases relating to specific performance, as suits and appeals therefrom routinely take two to three decades to attain finality. As a result, an owner agreeing to sell a property for rupees one lakh and receiving rupees ten thousand as advance may be required to execute a sale deed a quarter century later by receiving the remaining rupees ninety thousand, when the property value has risen to a crore of rupees.*‖

177. In *Saradamani Kandappan* (supra) this Court reiterated that (i) while exercising discretion in suits for Specific Performance, the Courts should bear in mind that when the parties prescribed a time for taking certain steps or for completion of the transaction, that must have some significance and therefore time/period prescribed cannot be ignored; (ii) the Courts will apply greater scrutiny and strictness when considering whether purchaser was ready and willing to perform his part of the contract and (iii) every suit for Specific

Performance need not be decreed merely because it is filed within the period of limitation, by ignoring time limits stipulated in the agreement. The fact that limitation is three years does not mean that a purchaser can wait for one or two years to file a suit and obtain Specific Performance. The three year period is intended to assist the purchaser in special cases, as for example where the major part of the consideration has been paid to the vendor and possession has been delivered in part performance, where equity shifts in favour of the purchaser.

178. The Hon'ble Supreme Court once again reiterated this principle of equitable relief in *U.N. Krishnamurthy (Since Deceased) Thr. Lrs. vs A.M. Krishnamurthy*

179. The Constitution Bench of the Supreme Court in *Chand Rani v. Kamal Rani*, (1993) 1 SCC 519 observed that "… *it is clear that in the case of sale of immovable property there is no presumption as to time being the essence of the contract. Even if it is not of the essence of the contract, the Court may infer that it is to be performed in a reasonable time from the following conditions: (1) the express terms of the contract; (2) the nature of the property; and (3) the surrounding circumstances, for example, the object of making the contract.*‖ In other words, the court should look at all the relevant circumstances including the time-limit(s) specified in the Agreement and determine whether its discretion to grant specific performance should be exercised.

180. In another decision between *Vimaleswar Nagappa Shetty Vs. Noor Ahamad Sharif,* AIR 2011 SC 2057 it was held that, —*it is settled that sec.20 of the Act confers discretion powers. It is also well settled the value of the property escalates in urban areas very fast it would not be executable to grant specific performance after a lapse of long period of time.*

181. It is thus, settled law that for relief of specific performance, the Plaintiff has to prove that all along and till the final decision of the suit, he was ready and willing to perform his part of the contract. This crucial facet has to be determined by considering all circumstances including availability of funds and mere statement or averment in plaint of readiness and willingness, would not suffice.

182. Significantly, as per the deposition of D1W1 Col. P.C. Sethi there were several discussions between February and March, 2004, with Shri. Ravinder Nangia to reverse the transaction and in a meeting held in later half of February, 2004, he agreed to reverse the said transaction. However, he did not complete the paper work and thereafter demanded Rs.1,00,00,000/- over

and above the amount of advanced as the price for cancellation. He also informed that the suit property was now his property and he had enough power to defeat Col. P.C. Sethi. He made enquiries in the locality and came to know that Shri. Ravinder Nangia was the part of powerful consortium of property developers/brokers who had control nearly 80% of the newly developed properties in Defence Colony and wielded considerable clout and influence. Realising in the second week of March, 2004 that Ravindra Nangia would not reverse the transaction, the defendant No.1 sent a Letter dated 21.03.2004 Ex.D1W1/G for rescinding the Agreement before the expiry of the three-month time period provided under the said Agreement to make the complete payment. i.e., upto 14.04.2004. He also annexed the Draft of the amount received by cheque i.e. Rs. 26,00,000/- and the amount received in cash was offered to be returned immediately.

183. In these circumstances, the conduct of Sh. Ravinder Nangia becomes pertinent that he did not show his readiness and willingness to complete the transaction neither then nor ever after during the pendency of the suit. The value of property now has rocketed to more than 22 Crores while Sh. Ravinder Nangia had merely paid Rs.39,00,000/- way back in 2004. It would not be equitable to allow the Sale transaction of the property at the sale price of 2.75 crores as agreed way back in 2004, on the basis of meagre investment of Rs 39,00,000/-. The equity also does not favour Sh. Ravinder Nangia. In these circumstances, it has to be held that the conduct of Ravinder Nangia does not merit grant of discretionary relief in his favour. 184. Therefore, it is held that **Sh. Ravinder Nangia has not been able to prove his readiness and willingness to perform his part of the Agreement and the equity is also not in his favour because of his subsequent conduct.** He is thus, not entitled to seek relief for Specific Performance of the Agreement to Sell dated 14.01.2004.

The Issues are accordingly answered against Sh. Ravinder Nangia.

In CS (OS) 759/2004:

Issue No.10: If issue No. 9 is decided in negative, whether the plaintiff is entitled to a decree for refund of Rs. 39,00,000/- and also the recovery of the damages of Rs. 75,00,000/- along with interest at 18% p.a. from the date of agreement till the date of payment? OPP

185. In view of the findings, that Ravinder Nangia is not entitled to execution of the Agreement to Sell. It is held that he is entitled to refund of

Rs. 39,00,000/- along with interest @ 6% from the date of Agreement to Sell till the date of payment.

186. Shri. Ravinder Nangia has also claimed damages in the sum of Rs. 75,00,000/- along with interest @ 18% from the date of Agreement to Sell till the date of payment. However, he has not been able to justify his demand for damages, especially when he himself has not been able to demonstrate his readiness and willingness for execution of the Agreement to Sell. There being dereliction on the part of Shri. Ravinder Nangia himself, he cannot claim damages as asserted.

The issues are answered accordingly partly in favour of Sh. Ravinder Nangia.

Relief in Suit No. CS (OS) 436/2004:

187. In the light of the findings on the issues as discussed above, it is hereby held that the Agreement to Sell is void and *non-est* to the extent of the shares of the plaintiff and other coparceners/defendants except the share of Defendant No.1 Colonel P.C. Sethi.

188. Further, Captain Rajesh Sethi is not entitled to Permanent injunction for restraining Col. P.C. Sethi from dealing with the suit property which belongs to HUF. However, Defendant No.2 Shri. Ravinder Nangia being a prospective buyer of the undivided share of Col. P.C. Sethi and not of the entire property, he, his Legal representatives, assignees or agents are hereby permanently restrained from creating third party interest in the Suit property on the basis of Agreement to Sell dated 14.01.2004. The deficient court fees be paid. Parties to bear their own costs. Decree Sheet be prepared accordingly.

Relief in Suit No. CS (OS) 759/2004:

189. In the light of the findings on the issues as discussed above, the suit of the plaintiff Sh Ravinder Nangia for Specific Performance is hereby dismissed. However, he is held entitled to refund of Rs. 39,00,000/- along with interest @ 6% from the date of Letter terminating the Agreement to Sell i.e. 21.03.2004 till the date of payment. Parties to bear their own costs.

Decree Sheet be prepared accordingly.