IN THE HIGH COURT OF MADHYA PRADESH AT INDORE

BEFORE

HON'BLE SHRI JUSTICE VINAY SARAF

FIRST APPEAL No. 513 of 2025

ATMARAM AND OTHERS

Versus

TRICON PROJECT INDIA LIMITED THROUGH AUTHORISED SIGNATORY RAHUL SHARMA AND OTHERS

Appearance:

Mr. R. B. Singh with Mr. K. K. Gupta - Advocates for appellants.

Mr. Yogesh Kumar Mittal - Advocate for respondent No. 1 / Caveator.

Mr. Manish Sankhla - Govt. Advocate for the respondent No. 2 / State.

Mr. Ashok Kumar Sethi - Senior Advocate with Mr. Aayush Gupta - Advocate for the respondents No. 3 and 4.

WITH

FIRST APPEAL No. 736 of 2025

SHREE SAI SAMARTH BUILDCON AND OTHERS

Versus

TRICON PROJECT INDIA LTD. THROUGH AUTHORISED SIGNATORY RAHUL AND OTHERS

Appearance:

Mr. Ashok Kumar Sethi - Senior Advocate with Mr. Aayush

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Gupta - Advocate for the appellants.

Mr. Yogesh Kumar Mittal - Advocate for respondent no. 1 / Caveator.

Mr. R. B. Singh with Mr. K. K. Gupta - Advocates for respondents No. 2 to 4.

Mr. Manish Sankhla - Govt. Advocate for the respondent No. 5 / State.

RESERVED ON : 12/08/2026

DELIVERED ON : 17/09/2026

JUDGMENT

This judgment will govern the disposal of First Appeal Nos. 513 of 2025 and 736 of 2025, as both the appeals are arising out of one and same judgment and decree delivered by IV District Judge, Dr. Ambedkar Nagar, District Indore (M.P.) in RCSA 66/2023 on 11/03/2025, by which the suit filed by respondent No. 1 Tricone Project India Limited has been decreed for specific performance of contract, perpetual injunction, possession and declaration of registered sale deed dated 12/04/2023 as *void* and ineffective, executed by original defendants No. 1 to 3 (Atmaram Patel, Radhabai and Nandkishore) in favour of defendants No. 4 and 5 (Shri Sai Samarth Buildcon). Challenging the judgment and decree these appeals have been filed by original defendants No. 1 to 3 (First Appeal No. 513/2025) and defendants No. 4

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and 5 (First Appeal No.736/2025).

SHORT FACTS OF THE CASE:

2) The facts of the case in narrow compass are that the respondent No. 1 / plaintiff (hereinafter for short referred to as, 'plaintiff') Tricone Project India Limited entered into an agreement on 17/02/2021 with appellants of First Appeal No. 513/2025 (hereinafter for short referred to as, 'sellers') to purchase the land bearing survey No. 361/4 admeasuring 1.04 acre (0.568 hectare), survey No. 361/2 admeasuring 1.04 acre (0.569 hectare), survey No. 361/1/2 admeasuring 0.024 acre (0.101 hectare), survey No. 361/3 admeasuring 1.89 acre (0.767 hectare) total admeasuring 4.95 acre (2.005 hectares) of Village Datoda, Tehsil Dr. Ambedkar Nagar, District Indore @ Rs. 75,00,000/- per acre for total sale consideration of Rs. 3,71,46,900/-, out of which Rs. 5,00,000/- were paid by the plaintiff to the seller No. 1 by cheque number 808110 dated 15/02/2021 drawn on IndusInd Bank and acknowledging the receipt of the advance amount, the agreement was executed by the sellers in favour of the plaintiff.

2.1) As per the terms of the agreement, it was agreed between the parties that within two months, part payment of Rs. 45,00,000/- will be made by the plaintiff to the sellers and after receipt of Rs. 50,00,000/-, the sellers will obtain the NOC from the Bank of India, Branch Datoda, with whom the subject lands were mortgaged. It was agreed that the sellers will take steps for deletion of the entry of mortgage from the

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revenue records i.e. *Khasra*. Thereafter, the sellers will obtain the diversion order of the lands. The balance sale consideration of Rs. 3,21,46,900/- will be payable in six equal quarterly installments to be started after 09 months of the date of execution of the agreement. The total 24 months period was fixed for payment of total sale consideration.

2.2) As per the plaintiff, the plaintiff paid total Rs. 1,58,11,469/- to the sellers till 16/09/2022, however, no intimation was given to the plaintiff by sellers that the lands have been released by the Bank of India and the Bank has issued NOC. No intimation of diversion of the lands was forwarded to the plaintiff.

2.3) As per the plaintiff, the measurement and demarcation was also not carried out, which was essential, because as per the terms of the agreement, if the land would found short at spot, the proportionate sale consideration was payable.

2.4) The plaintiff pleaded in the plaint that when the sellers failed to comply with the aforesaid terms, a notice was issued by the plaintiff through lawyer to the sellers on 13/12/2022 intimating them that the plaintiff is ready to pay the balance sale consideration and called upon the sellers to execute the sale deed in favour of the plaintiff, however, the sellers avoided to execute the sale deed and receive the balance sale consideration, therefore, the plaintiff filed the suit for specific performance of the contract, declaration, possession and perpetual

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injunction.

2.5) The defendants No. 1 to 3 / sellers filed their written statement and denied the plaint allegations in *toto*. They denied the execution of agreement in favour of the plaintiff and receipt of advance amount of Rs. 5,00,000/- through cheque. They further denied the receipt of Rs. 1,58,11,469/- under the agreement from the plaintiff and the responsibility of the sellers to obtain NOC from the Bank and diversion order from the competent authority and to get demarcation of the lands. The sellers denied the receipt of the notice and prayed for dismissal of the suit.

2.6) It is further pleaded by the sellers in their written statement that the plaintiff practiced fraud with them and obtained their signatures on the blank papers and later on prepared sale agreement, which was drafted without the knowledge and consent of the sellers and therefore, treated by them as cancelled. It is further pleaded that as alleged agreement is not registered, it cannot be accepted in evidence.

2.7) The suit was filed by the plaintiff on 16/03/2023, however, immediately thereafter, on 13/04/2023 the sellers executed the sale deed in favour of the appellants of First Appeal No. 736/2025 (hereinafter for short referred to as, 'subsequent purchaser') Shri Sai Samarth Buildcon and transferred the lands to them. Consequently, the plaintiff moved an application under Order I Rule 10 r/w Order VI Rule 17 and Section 151 of Code of Civil Procedure, 1908 (hereinafter for short referred to as,

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'CPC') for impleading the subsequent purchaser as party in the suit and bringing the subsequent purchaser on record and seeking decree of declaration in respect of sale deed executed by the sellers in favour of the subsequent purchaser to be ineffective, *null* and *void* and not binding on the plaintiff.

2.8) The Trial Court by order dated 26/07/2023 directed the parties to maintain status *quo* in respect of the suit lands. The subsequent purchaser remained *ex parte* after service of notice by substituted mode of service. After amendment in the plaint and impleading subsequent purchaser as party in the suit and decision upon the application filed by the plaintiff under Order I Rule 10 r/w Order VI Rule 17 and Section 151 of CPC, fresh notices for settlement of issues were served upon the subsequent purchaser by substituted mode of service of publication, however the subsequent purchaser continued to remained absent even after publication of notice in the daily news paper '*Agniban*', therefore, the Trial Court proceeded *ex parte* against the subsequent purchaser / defendants No. 5 and 6 by order dated 09/12/2024.

2.9) After settlement of issues, the Trial Court put the parties to trial. The plaintiff examined Rahul Sharma (PW-1) in support of its case and the sellers examined Nandkishore Patel (DW-1) in favour of their case. The Trial Court after hearing the final arguments of both the parties *vide* judgment and decree dated 11/03/2025 decreed the suit and passed the decree of specific performance of contract in favour of the

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plaintiff with a direction that the sellers / defendants No. 1 to 3 will execute the sale deed in favour of the plaintiff upon payment of balance sale consideration of Rs. 2,17,06,900/- and will handover the peaceful possession of the suit lands to the plaintiff and thereafter, will not interfere in the possession of the plaintiff themselves or through anyone else. The sale deed executed by the sellers / defendants No. 1 to 3 in favour of the subsequent purchaser i.e. defendants No. 5 and 6 has been declared *null* and *void* and ineffective to the rights of the plaintiff.

3) First Appeal No. 513/2025 has been preferred by the defendants No. 1 to 3 assailing the judgment and decree passed by the Trial Court and First Appeal No. 736/2025 is preferred by the defendants No. 5 and 6 impugning the same judgment and decree.

4) Heard Mr. Ashok Kumar Sethi, learned Senior Advocate with Mr. Aayush Gupta, Advocate on behalf of the appellants of First Appeal No. 736/2025, Mr. R. B. Singh, learned Advocate on behalf of the appellants of First Appeal No. 513/2025, Mr. Yogesh Kumar Mittal, Advocate for the respondent / plaintiff and Mr. Manish Sankhala, Govt. Advocate for the respondent / State for the purpose of final disposal of the appeals in compliance of the order passed by the Supreme Court in Special Leave to Appeal (C) No. 1785/2026, wherein by order dated 04/05/2026 the Supreme Court has directed this Court to decide the First Appeal as early as possible and disposed the same expeditiously.

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ARGUMENTS ON BEHALF OF THE SELLERS:

5) Mr. R. B. Singh, learned Advocate appearing on behalf of the defendants No. 1 to 3 submits that the Trial Court has erred in not considering that the suit was filed by an unauthorized person and no authorization letter was submitted by Mr. Rahul Sharma, who filed the suit on behalf of the plaintiff Company though he is not a Director or shareholder of the Company.

5.1) To buttress his arguments, Mr. Singh relied on the judgment delivered by the Bombay High Court in the matter of **Uttamram Vithaldas Vs. Thakur Das Parshottamdas** reported in **AIR 1922 Bombay 113 (1)**, wherein the Bombay High Court has held that if a plaint is not presented by duly authorized person, the suit is liable to be dismissed. Mr. Singh further submits that as Mr. Rahul Sharma was not authorized by the plaintiff Company, he had no authority to give statement on behalf of the plaintiff company and he could appear as witness only.

5.2) To bolster his arguments, he placed reliance on the judgment delivered by the Supreme Court in the case of **Janki Vashdeo Bhojwani and Another Vs. Indusind Bank Ltd. and Others** reported in **AIR 2005 SC 439**, wherein the Supreme Court has held as under:

> *"17. On the question of power of attorney, the High Courts have divergent views. In the case of Shambhu Dutt Shastri Vs. State of Rajasthan, 1986 (2) WLL 713 it was held that a general power of attorney holder can appear, plead and act on behalf of the party but he cannot become a witness on behalf of the party. He can only appear in his own capacity. No one can delegate the power to appear in*

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witness box on behalf of himself. To appear in a witness box is altogether a different act. A general power of attorney holder cannot be allowed to appear as a witness on behalf of the plaintiff in the capacity of the plaintiff."

5.3) Learned counsel further relied on the judgment of Gujrat High Court delivered in the matter of **Ajay Kiritakant Ghelani & Ors. Vs. Mathureshnagar Co-operative Housing Society Ltd. & Anr.** reported in **AIR 2008 Gujarat 44**, wherein the Gujarat High Court after relying on the judgment of the Supreme Court in **Janki Vashdeo Bhojwani (Supra)** has held as under:

"15. However, it is clarified that permitting the petitioners to place on record the Power-of-Attorney shall not be construed as permission to do all acts as stated in the said Power-of-Attorney. The clarification is necessitated in view of the fact that the document of Power-of-Attorney also empowers the petitioner No. 3 to depose on behalf of the petitioner Nos. 1 and 2, which is not permissible under law as held by the Supreme Court in the case of Janki Vashdeo Bhojwani (supra). Therefore, under the said Power-of-Attorney the petitioner No. 3 shall be entitled to appear, plead and act on behalf of the petitioner Nos. 1 and 2, but shall not appear as a witness on behalf of the petitioner Nos. 1 and 2."

5.4) With the aid of the aforesaid judgments delivered by the Bombay High Court, Supreme Court and Gujarat High Court Mr. Singh submits that firstly, Rahul Sharma was not authorized to institute the suit on behalf of the plaintiff Company, Secondly, he has not filed any Authority Letter or Board Resolution to prove his authorization and

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thirdly, he was not competent to depose on behalf of the plaintiff Company, thus, the plaintiff failed to prove its case as no one else was examined by the plaintiff in support of it's case.

5.5) He further submits that Rahul Sharma was not even authorized to serve any notice on behalf of the plaintiff Company and even no document has been filed in the case to demonstrate that he was in service of the plaintiff Company, even though the Trial Court passed the judgment in favour of the plaintiff Company, ignoring all the aforesaid legal grounds.

5.6) Mr. Singh submits that the Trial Court erred in not accepting the plea of the defendants No. 1 to 3 that no agreement was executed between the plaintiff and defendants No. 1 to 3 and the agreement produced by the plaintiff is a forged document. The suit filed on the basis of the said agreement could not have been decreed by the Trial Court. He further submits that as the suit has been filed on the basis of forged and fabricated agreement, it was not maintainable at all and the Trial Court erred in passing the decree in favour of the plaintiff. It is further submitted by the defendants No. 1 to 3 that even on the date of filing of the appeal i.e. 21/03/2025, they were cultivating the land and are still in the possession of the suit lands.

5.7) Mr. R. B. Singh, learned counsel prays for setting aside the judgment and decree passed by the Trial Court and for dismissal of the suit filed by the plaintiff.

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ARGUMENTS ON BEHALF OF THE *PENDENTE LITE* TRANSFEREE:

6) Mr. A. K. Sethi, learned Senior Counsel appearing on behalf of the defendants No. 5 and 6 raises the issue of service of notice upon defendants No. 5 and 6 in the original suit and submits that the complete and correct addresses of the defendants No. 5 and 6 were not mentioned by the plaintiff and there was no proper and valid service of summons upon the defendants No. 5 and 6 thus, they were wrongly proceeded *ex parte*. He submits that before allowing the service of notice through substituted mode, the Trial Court has not recorded its satisfaction that by ordinary mode of service, notices would not be served upon defendants No. 5 and 6.

6.1) Learned Senior Counsel further submits that the notice of the amendment application dated 07/11/2024 was never issued to the defendants No. 5 and 6 and no efforts had been made by the plaintiff to serve the defendants No. 5 and 6 through due process of service for application filed under Order VI Rule 17 of CPC on 07/11/2024, though the said application was not pressed by the plaintiff on 12/12/2024.

6.2) Mr. Sethi forcefully argued that the plaint has not been signed by any authorized signatory and even in support of the application filed under Order V Rule 20 of CPC, no affidavit of any authorized person of plaintiff was filed and as such the application could not have been allowed and the Trial Court illegally ordered to serve the notice through

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substituted mode of service upon the defendants No. 5 and 6 by paper publication and in the absence of effective service, the Trial Court could not have ordered to proceed against them *ex parte,* which is bad in law and consequently, the judgment and decree are liable to be set aside on this ground alone.

6.3) Mr. Sethi submits that an *ex parte* decree can be challenged in First Appeal apart from filing application under Order IX rule 13 of CPC and to support his contention, he relied on the judgment of Supreme Court in the matter of **Neerja Realtors Pvt. Ltd. (M/s.) Vs. Janglu (Dead) Thr. LR** reported in **2018 (1) RN 194**, wherein the Supreme Court after relying upon the judgment in the matter of **Bhanu Kumar Jain Vs. Archana Kumar and Another** reported in **(2005) 1 SCC 787** has held that an appeal against an *ex parte* decree in terms of Section 96(2) of CPC could be filed on the grounds that the materials brought on record in the *ex parte* proceedings in the suit by the plaintiff would not entail a decree in his favour, and the suit could not have been posted for *ex parte* hearing. He further relied on the judgment by the Supreme Court in the matter of **Bhanu Kumar Jain (Supra)** to support his contentions.

6.4) Learned Senior Advocate further submits that the Trial Court has wrongly exercised the discretion for granting a decree of specific performance without considering the fact that there are no pleading and proof with respect to readiness and willingness on the part of the

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plaintiff, which is required to be pleaded and proved as per Section 16(c) of Specific Relief Act, 1963 and Form No. 47 and 48 of Appendix 'A'. He pointed out from the pleadings of the plaint that in the plaint, it is nowhere stated that the plaintiff was ready and willing to perform his part of the contract and the plaintiff witness has also not stated anything in this respect in his statement. Thus, the Trial Court committed error in passing the decree of specific performance of contract in favour of the plaintiff. He submits that the suit itself was not maintainable in the absence of pleading of readiness and willingness.

6.5) To bolster his arguments, learned Senior Counsel relied upon the judgment delivered by the Supreme Court in the matter of **J. Samuel and Others Vs. Gattu Mahesh and Others** reported in **(2012) 2 SCC 300** and referred the following paragraphs:

> *"14. Before proceeding further, it is also useful to refer Section 16(c) of Specific Relief Act which reads as under:*
>
> *"16. **Personal bars to relief**.- Specific performance of a contract cannot be enforced in favour of a person-*
>
> *(a) - (b) xxx*
>
> *(c) who fails to aver and 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 purposes of clause (c),-*
>
> *(i) where a contract involves the payment of money, it is not essential for the plaintiff to actually*

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tender to the defendant or to deposit in Court any money except when so directed by the Court;

(ii) the plaintiff must aver performance of, or readiness and willingness to perform, the contract according to its true construction."

It is clear that in a suit for specific performance of a contract, unless there is a specific averment that he has performed or has always been ready and willing to perform the essential terms of the contract, the suit filed by him is liable to be dismissed. In other words, in the absence of the above said claim that he is always ready and willing to perform his part of the contract, the decree for specific performance cannot be granted by the Court.

15. *In this legal background, we have to once again recapitulate the factual details. In the case on hand, Suit O.S. No. 9 of 2004 after prolonged trial came to an end in September, 2010. The application for amendment under Order VI Rule 17 CPC was filed on 24.09.2010 that is after the arguments were concluded on 22.09.2010 and the matter was posted for judgment on 04.10.2010. We have already mentioned that Section 16(c) of the Specific Relief Act contemplates that specific averments have to be made in the plaint that he has performed and has always been willing to perform the essential terms of the Act which have to be performed by him. This is an essential ingredient of Section 16(c) and the form prescribes for the due performance. The proviso inserted in Rule 17 clearly states that no amendment shall be allowed after the trial has commenced except when the court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of the trial.*

16. *As stated earlier, in the present case, the amendment*

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application itself was filed only on 24.09.2010 after the arguments were completed and the matter was posted for judgment on 04.10.2010. On proper interpretation of proviso to Rule 17 of Order VI, the party has to satisfy the Court that he could not have discovered that ground which was pleaded by amendment, in spite of due diligence. No doubt, Rule 17 confers power on the court to amend the pleadings at any stage of the proceedings. However, proviso restricts that power once the trial has commenced. Unless the Court satisfies that there is a reasonable cause for allowing the amendment normally the court has to reject such request.

17. An argument was advanced that since in the legal notice sent before filing of the suit, there is reference to readiness and willingness and the plaintiff has also led in evidence, nothing precluded the court from entertaining the said application with which we are unable to accept in the light of Section 16(c) of the Specific Relief Act as well as proviso to Order VI Rule 17. The only reason stated so in the form of an affidavit is omission by "type mistake". Admittedly, it is not an omission to mention a word or an arithmetical number. The omission is with reference to specific plea which is mandated in terms of Section 16(c) of the Specific Relief Act."

6.6) Learned Senior Counsel further relied on the judgment of Supreme Court delivered in the matter of **Abdul Khader Rowther Vs. P. K. Sara Bai and Others** reported in **(1989) 4 SCC 313** and relied on the following paragraph:

*"12. In **Ouseph Varghese v. Joseph Aley and Ors. [(1969) 2 SCC 539, 543]**, this Court stated (SCC p. 543, para 9)-*

"This takes us to the decree passed by the High Court in

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respect of plaint item No. 1. This decree is purported to have been passed on the basis of the admission made by the defendant. It may be noted that the agreement pleaded by the defendant is wholly different from that pleaded by the plaintiff. They do not refer to the same transaction. The plaintiff did not at any stage accept the agreement pleaded by the defendant as true. The agreement pleaded by the the plaintiff is said to have been entered into at the time of the execution of Exh. P-1 whereas the agreement put forward by the defendant is one that is said to have been arrived at just before the filing of the suit. The two are totally different agreements. The plaintiff did not plead either in the plaint or at any subsequent stage that he was ready and willing to perform the agreement pleaded in the written statement of defendant. A suit for specific performance has to conform to the requirements prescribed in Forms 47 and 48 of the 1st Schedule in the Civil Procedure Code. In a suit for specific performance it is incumbent on the plaintiff not only to set out agreement on the basis of which he sues in all its details, he must go further and plead that he has applied to the defendant specifically to perform the agreement pleaded by him but the defendant has not done so. He must further plead that he has been and is still ready and willing to specifically perform his part of the agreement. Neither in the plaint nor at any subsequent stage of the suit the plaintiff has taken those pleas. As observed by this Court Pt. Prem Rai v. The D.L.F. Housing and Construction (Private) (Ltd.) and Anr. [(1968) 3 SCR 648 : AIR 1968 SC 1355] that it is well settled hat in a suit for specific performance the plaintiff should allege that he is ready and willing to

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perform his part of the contract and in the absence of such an allegation the suit is not maintainable."

6.7) He further relied on the judgment of co-ordinate Bench of this Court delivered in the matter of **Shubh Laxmi Grih Nirman Sahakari Sanstha Maryadit Vs. Suresh@ Gopal and Others** reported in **2018 (2) JLJ 159** and relied on the following paragraphs:

"17. This Court has carefully gone through the entire record of the case and has also given a patient hearing to all the parties. The plaint before this Court reveals that with respect to readiness and willingness to perform contract / agreement by the appellant, Sec. 16(1)(c) of the Specific Relief Act, 1963 read with Form 47 is very material in the peculiar facts and circumstances of the case. In a suit for specific performance of contract the plaintiff has to plead and prove readiness and willingness who is seeking performance of the contract against the defendant and in case and readiness and willingness of fact is not pleaded in the plaint then no evidence can be adduced in support of such pleadings nor any findings can be recorded by the trial Court for want of pleadings, meaning thereby, if there are no pleadings, no evidence can be adduced or can be looked into to prove the case.

25. This Court is of the considered opinion that after going through the plaint, this Court has not been able to notice such averment much less proper averments in respect of readiness and willingness of the plaintiff in relation to the contract in question. It was certainly obligatory upon the plaintiff to have pleaded that he was throughout ready and willing to perform his part of the contract and, therefore, in absence of the aforesaid material pleadings, the trial Court

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was justified in dismissing the suit, as basic requirement of pleadings, as provided u/S. 16(1)(c) of the Specific Relief Act, 1963 read with Form 17 Appendix A of the Code of Civil Procedure, 1908 was not fulfilled."

6.8) Mr. Sethi further relied on the judgment of Chhattisgarh High Court in the matter of **Ajit Singh and Others Vs. Baijnath Agrawal** reported in **2005 (4) MPHT 20 (CG)** and relied on following paragraph:

"12. As per plaint averment, agreement to sell was executed on 28.7.1984 and as per agreement the sale to be completed by 6.10.1984 by respondent receiving the balance of the consideration of Rs. 51,000/- Only when the respondent served a notice on appellants who are admittedly tenants of the suit house for eviction and arrears of rent vide notice dated 4.7.1987 thereafter on 9.7.1987 the appellants agitated to it and called the respondent to execute the sale deed and to receive the balance amount. Neither any specific averment unveiling the date, month or year when the appellants called on respondent to receive the amount and execute the sale deed has been made by the appellants, nor any evidence in specific term has been adduced by them. Therefore, it can be accepted that the appellants since the date or agreement i.e, 28.7.1984 till receipt of notice dated 4.7.1987, never asked the respondent to receive the balance of the consideration of Rs. 51,000/- and to execute the registered sale deed. Even to establish that all along since 28.7.1984 to 4.7.1987 appellants were in possession of Rs. 51,000/- no substantial evidence has been adduced. To prove their willingness and readiness neither they made any effort to purchase stamps nor get the recital of sale written on the stamp paper. Even the statement

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of Samir Jeet Singh (P.W/2) in para 4 of his statement, did not say that on 28.7.1984 any agreement to sell the suit house took place. Therefore, no doubt, agreement (Ex. P/4) has been executed under the signature of respondent, but the said evidence only suggests that as a result of Rs. 24,000/- given to respondent, the said document has been obtained."

6.9) Mr. Sethi submits that the remaining sale consideration was neither paid nor tendered nor deposited in the Court and the plaintiff has not proved that the remaining sale consideration was available with the plaintiff and therefore, in the absence of pleading and proof to this effect that the plaintiff is having the monetary potential to pay the balance consideration and mental preparedness to perform the part under the contract, no decree for specific performance of contract can be passed.

6.10) He further relied on the judgment delivered by the co-ordinate Bench of this Court in the matter of **Gyaneshwar Vs. Smt. Moongabai @ Muneshwaribai and Another** reported in **(2006) 2 JLJ 170**, wherein the co-ordinate Bench has held that if the availability of fund is not pleaded and proved, no decree for specific performance of contract can be granted, which is a discretionary relief.

6.11) Mr. Sethi raised the issue of the registration of the sale agreement and submits that the sale agreement was neither properly stamped nor registered and therefore, on the basis of the said document, the suit for specific performance of contract could not have been filed and the decree of specific performance of the contract could not be passed in favour of the plaintiff and therefore, the decree passed by the

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learned Trial Court in favour of the plaintiff is liable to be set aside. Mr. Sethi submits that the Trial Court has committed error in granting the decree of permanent injunction and declaring the sale deed executed by the defendants No. 1 to 3 in favour of the defendants No. 5 and 6 *null* and *void* and ineffective to the rights of the plaintiff.

6.12) Mr. Sethi submits that the Trial Court wrongly shifted the burden upon the defendants to disprove the contract. The plaintiff has not come with the clean hands and filed the suit for specific performance of the contract with ulterior motive and *mala fide* intention and therefore, no decree of equitable relief could be granted in favour of the plaintiff. He submits that neither the agreement was duly proved nor the same was admissible in evidence. Mr. Sethi prays for allowing the appeal and setting aside the judgment and decree passed by the Trial Court.

ARGUMENTS ON BEHALF OF THE PLAINTIFF:

7) Mr. Yoesh Kumar Mittal, learned counsel appearing on behalf of the plaintiff opposed the appeals and submits that the agreement to sell was executed between the plaintiff and defendants No. 1 to 3 for sale of suit lands for a total sale consideration of Rs. 3,71,46,900/- on 17/02/2021 and all the conditions had been duly recorded therein and sum of Rs. 1,58,11,469/- were paid to the defendants / sellers by the plaintiff as part performance of their part of the contract between 15/02/2021 to 16/09/2022 and these amount were paid through bank

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transfers and it has been duly proved and can be verified from the bank statement submitted by the plaintiff before the Court and exhibited as Ex.-P/5.

7.1) Mr. Mittal submits that to show the *bona fides* plaintiff sent a notice on 13/12/2022 to the defendants to perform their part of the agreement and requested the defendants for the execution of the sale deed of the suit lands in favour of the plaintiff, which was served upon the defendants on 16/12/2022. However, the defendants failed to respond to the notice and consequently, the plaintiff filed the suit for specific performance of the contract without wasting the time on 16/03/2023 before the Trial Court.

7.2) He further submits that within a period of one month from the date of filing of the suit on 12/04/2023, the defendants No. 1 to 3 transferred the suit lands by executing a sale deed in favour of the defendants No. 5 and 6 and they purchased the land having knowledge of the fact that a civil suit is pending between the plaintiff and the defendants. The execution of sale deed was even not disclosed by the defendants No. 1 to 3 in their written statement dated 09/12/2024, more so, the written statement was not signed by any of the defendants and thus, the pleadings of the defendants are not considerable according to the provision of Order VI Rule 14 of CPC. The Trial Court after considering the pleadings and evidence of the parties, duly decreed the suit in favour of the plaintiff.

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7.3) Mr. Yogesh Kumar Mittal, learned counsel submits that the objection in respect to the non-filing of the authorization letter was not raised by the defendants before the Trial Court and this objection has been raised for the first time in the instant appeal. In fact Mr. Rahul Sharma entered into the contract with the defendants on behalf plaintiff Company, signed the agreement, filed the suit and he was duly authorized to act on behalf of the plaintiff Company. He submits that as the agreement was also signed by Mr. Rahul Sharma on behalf of the plaintiff Company, there was no need to submit any formal document of authorization, thus, the objection raised by the defendants that the suit filed by the person, who purportedly lacked authorization, is wholly untenable. In the absence of pleading of the defendants, no issue was framed by the Trial Court in respect of authorization of Mr. Rahul Sharma and the same cannot be examined for the first time at appellate stage.

7.4) Mr. Mittal further submits that Mr. Rahul Sharma is an employee of the plaintiff Company and was duly authorized to represent the Company, as all dealings and communications with the defendants were done by him in his capacity as the Company's local authorized representative. He submits that the plaintiff Company's Headquarter is situated in Delhi.

7.5) Mr. Mittal relied on the judgment delivered by the Supreme Court in the matter of **United Bank of India Vs. Naresh Kumar and**

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Others reported in **(1996) 6 SCC 660** wherein the Supreme Court held as under :

> *"12. The Courts below having come to a conclusion that money had been taken by respondent no.1 and that respondent no.2 and husband of respondent no.3 had stood as guarantors and that the claim of the appellant was justified it will be a travesty of justice if the appellant is to be non suited for a technical reason which does not go to the root of the matter. The suit did not suffer from any jurisdictional infirmity and the only defect which was alleged on behalf of the respondents was one which was curable.*
>
> *13. The court had to be satisfied that Sh. L.K. Rohatgi could sign the plaint on behalf of the appellant. The suit had been filed in the name of the appellant company; full amount of court fee had been paid by the appellant bank; documentary as well as oral evidence had been led on behalf of the appellant and the trial of the suit before the Sub Judge, Ambala, had continued for about two years. It is difficult, in these circumstances, even to presume that the suit had been filed and tried without the appellant having authorised the institution of the same. The only reasonable conclusion which we can come to is that Sh. L.K. Rohatgi must have been authorised to sign the plaint and, in any case, it must be held that the appellant had ratified the action of Sh. L.K. Rohatgi in signing the plaint and thereafter it continued with the suit."*

He submits that Supreme Court has held that substantive rights should not be allowed to be defeated on technical grounds of procedural irregularity so as to ensure that no injustice done by any party. He further referred to Section 99 of CPC in this regard, which reads as under:

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> *"99. No decree to be reversed or modified for error or irregularity not affecting merits or jurisdiction.—No decree shall be reversed or substantially varied, nor shall any case be remanded, in appeal on account of any misjoinder or non-joinder of parties or causes of action or any error, defect or irregularity in any proceedings in the suit, not affecting the merits of the case or the jurisdiction of the Court:*
>
> *Provided that nothing in this section shall apply to non-joinder of a necessary party."*

7.6) Replying to the objection raised by the opposite side in respect of the registration of the agreement, Mr. Mittal submits that in terms of the Proviso to Section 49 of the Registration Act, 1908, an agreement to sell, even if not registered, is admissible as evidence in a suit for specific performance. In support of his contention, he relied on the judgment delivered by the co-ordinate Bench of this Court in the matter of **Tahir Khan and Another Vs. Monesh Kataria and Another** reported in **2024 (2) MPLJ 78** and relied on following paragraphs:

> *"12. Though the agreement to sale is unregistered and as per Section 17(f) of Indian Registration Act the same was required to be registered but as per the proviso to Section 49 thereof an unregistered document effecting immovable property and required by that Act or the Transfer of Property Act to be registered may be received as evidence of a contract in a suit for specific performance. Thus, as per the aforesaid proviso the agreement to sale can be received as evidence of a contract in this suit for specific performance. This aspect of the matter has already been considered by this Court in the*

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case of Manish (supra) in which it has been held as under :-

6.....

Section 17(f) of the Act has been inserted by the Registration (Madhya Pradesh Amendment) Act, 2009 with assent of the President by way of notification dated 14th January, 2010. The relevant part of amended Section 17 of Act reads as under:

> *17. **Documents of which registration is compulsory-***
>
> *(1) The following documents shall be registered, if the property to which they relate is situate in a district in which, and if they have been executed on or after the date on which, Act, XVI of 1864, or the Indian Registration Act. 1866, or the Indian Registration Act, 1871 or the or this Act came or comes into force, namely:*
>
> *.....*
>
> *.....*
>
> *17(f) any document which purports or operates to effect any contract for sale of any immovable property."*

7. In terms of the above provision an agreement to sale is required to be registered.

8. Section 49 of The Registration Act, which is relevant for the present purpose provides as under:

> *"**49. Effect of non-registration of document required to be registered--***
>
> *No document required by section 17 [or by any provision of the Transfer of Property Act, 1882 (4 of 1882)], to be registered shall--*
>
> *(a) affect any immovable property comprised therein, or*

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(b) confer any power to adopt, or

(c) be received as evidence of any transaction affecting such property or conferring such power, unless it has been registered :

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

9. Under section 49 of the Act a document required to be registered under section 17 of Act or by any provision of Transfer of Property Act, 1882 cannot be received as evidence of any transaction affecting such property or conferring such power, unless it has been registered, but an exception has been carved out by way of proviso in respect of suit for specific performance to the effect that such a document can be received as evidence of a contract in a suit for specific performance or as evidence of any collateral transaction not required to be effected by registered instrument.

10. Supreme Court in the matter of S. Kaladevi vs. V. R. Somasundaram and others, reported in 2010(3) MPLJ (S.C.) 500 = AIR 2010 SC 1654 while considering similar issue in respect of an unregistered sale deed filed in a suit for specific performance has held as under :

"The main provision in section 49 provides that any document which is required to be registered, if not registered, shall not affect any immovable property

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comprised therein nor such document shall be received as evidence of any transaction affecting such property. Proviso, however, would show that an unregistered document affecting immovable property and required by 1908 Act or the Transfer of Property Act, 1882 to be registered may be received as an evidence to the contract in a suit for specific performance or as evidence of any collateral transaction not required to be effected by registered instrument. By virtue of proviso, therefore, an unregistered sale deed of an immovable property of the value of Rs. 100/- and more could be admitted in evidence as evidence of a contract in a suit for specific performance of the contract. Such an unregistered sale deed can also be admitted in evidence as an evidence of any collateral transaction not required to be effected by registered document. When an unregistered sale deed is tendered in evidence, not as evidence of a completed sale, but as proof of an oral agreement of sale, the deed can be received in evidence making an endorsement that it is received only as evidence of an oral agreement of sale under the proviso to section 49 of 1908 Act."

13. Thus in view of the relevant provisions and the pronouncement as aforesaid, the agreement to sale even though not registered can very well be received as evidence in the present suit which is for specific performance of contract. The document is also sufficiently stamped. The Trial Court has rightly held so. The judgment relied upon by the learned counsel for the petitioners are distinguishable on facts and do not help them in any manner."

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7.7) Mr. Mittal submits that it is well settled that after the amendment of 2018 in Specific Relief Act, 1963, the application of Section 10 of the Specific Relief Act in a suit for specific performance of an agreement to sell is not discretionary, but mandatory and while granting the decree for specific performance, the Court is required to examine only the readiness and willingness of the plaintiff, or the person seeking performance, and the validity of the underlying contract.

7.8) He submits that in the case in hand, both the factors were duly considered by the Trial Court before decreeing the suit and thus, the Trial Court has not committed any error in passing the decree of specific performance of contract. He relied on amended Section 10 of the Specific Relief Act, 1963, which reads as under:

> *"10. Specific performance in respect of contracts.—The specific performance of a contract shall be enforced by the court subject to the provisions contained in sub-section (2) of section 11, section 14 and section 16."*

Further, Mr. Mittal relied on the amended provisions of Section 16(c) of the Specific Relief Act, 1963 and submits that after the amendment, it is not essential to plead readiness and willingness in the suit and the only requirement is to prove the readiness and willingness, which can be proved by direct evidence and/or by the circumstances and the plaintiff has proved the readiness and willingness in the case in hand. Amended provisions of Section 16(c) of the Specific Relief Act, 1963 reads as under:

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*"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 purposes 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."

7.9) In so far as the appeal preferred by the defendants No. 5 and 6 is concerned, the plaintiff submitted that they do not have any right to contest the appeal as they stepped into the shoes of their vendor a s *pendente lite* transferee during the pendency of the suit and the transfer is hit by the doctrine of *lis pendens* and Section 52 of the Transfer of Property Act, 1882, as all the defendants were fully aware of the fact that the suit for specific performance of contract was pending before the Trial Court and despite having the knowledge, the defendants proceeded with the execution of the sale deed.

7.10) In support of his contention that principle of *lis pendens would* apply irrespective of the theory of *bona fide* purchase and the

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principle of caveat *emptor, h*e relied on the judgment delivered by the Supreme Court in the case of **Guruswamy Nandar V. P. Lakshmi Ammal (Dead) Through LRs and Others** reported in **(2008) 5 SCC 796** and relied on the following paragraphs:

> *"10. The principle of lis pendens is still settled principle of law. In this connection, the Full Bench of the Allahabad High Court in Smt. Ram Peary (supra) has considered the scope of Section 52 of the Transfer of Property Act. The Full Bench has referred to a decision in Bellamy v. Sabine [(1857) 44 ER 842 at p.843)wherein it was observed as under:*
>
> > *"4. . . .It is scarcely correct to speak of lis pendens as affecting a purchaser through the doctrine of notice, though undoubtedly the language of the Courts often so describes its operation. It affects him not because it amounts to notice, but because the law does not allow litigant parties to give to others, pending the litigation, rights to the property in dispute, so as to prejudice the opposite party.*
> >
> > *Where a litigation is pending between a plaintiff and a defendant as to the right to a particular estate, the necessities of mankind required that the decision of the Court in the suit shall be finding, not only on the litigant parties, but also on those who derive title under them by alienations made pending the suit, whether such alienees had or had not notice of the pending proceedings. If this were not so, there could be no certainty that the litigation would ever come to an end."*
>
> *12. The Full Bench of Allahabad High Court further referred to the work of Story on Equity 3rd Edition,(para 406) which expounded the doctrine of lis pendens in the terms as*

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follows: (Ram Peary case, AIR p. 319, para 6)

> *"6. . . . Ordinarily, it is true that the judgment of a court binds only the parties and their privies in representations or estate. But he who purchases during the pendency of an action, is held bound by the judgment that may be made against the person from whom he derives title. The litigating parties are exempted from taking any notice of the title so acquired; and such purchaser need not be made a party to the action. Where there is a real and fair purchase without any notice, the rule may operate very hardly. But it is a rule founded upon a great public policy; for otherwise, alienations made during an action might defeat its whole purpose, and there would be no end to litigation. And hence arises the maxim pendent elite, nihil innovetur; the effect of which is not to annul the conveyance but only to refer it subservient to the rights of the parties in the litigation. As to the rights of these parties, the conveyance is treated as if it never had any existence; and it does not vary them."*

14. Our attention was invited to a decision of this Court in R.K.Mohammed Ubaidullah & Ors. v. Hajee C.Abdul Wahab (D) by L.Rs. & Ors. [AIR 2000 SC 1658]. In this case it was observed that a person who purchased the property should made necessary effort to find out with regard to that property, whether the title or interest of the person from whom he is making purchase was in actual possession of such property. In this case, the plaintiff filed the suit for specific performance of contract and during the pendency of the suit, rest of the defendants brought subsequent transaction of sale by the defendant in their favour claiming the title to the suit property on the ground that they were the bona fide

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purchasers for value without notice of prior agreements in favour of plaintiff and they were also aware that the plaintiff was in possession of the suit property as a tenant for last several years and that they did not make any inquiry if plaintiff had any further or other interest in the suit property on the date of execution of sale deed in their favour apart from that he was in possession of the property as a tenant. In that context their Lordships observed that subsequent purchaser cannot be said to be bona fide purchaser of the suit property for value without notice of suit agreement and plaintiff would be entitled to relief of specific performance. Their Lordships after considering the effect of Section 19 of the Specific Relief Act as well as Section 52 of the Transfer of Property Act held that subsequent purchaser has to be aware before he purchases the suit property."

7.11) Mr. Mittal further relied on the recent judgment of the Supreme Court delivered on 21/01/2026 in **Alka Shrirang Chavan & Anr. Vs. Hemchandra Rajaram Bhonsale & Ors.** in SLP (Civil) No. 27660 of 2025 and relied on the following paragraphs:

"39. At the outset, let us advert to Section 52 of the Transfer of Property Act on which the entire lis between the parties are centered around. Section 52 of the Transfer of Property Act reads thus:

***52. Transfer of property pending suit relating thereto.** — During the pendency in any court having authority within the limits of India excluding the State of Jammu and Kashmir or established beyond such limits by the Central Government of any suit or proceeding which is not collusive and in which any right to immovable property is directly and specifically in question, the*

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property cannot be transferred or otherwise dealt with by any party to the suit or proceeding so as to affect the rights of any other party thereto under any decree or order which may be made therein, except under the authority of the court and on such terms as it may impose.

Explanation.— For the purposes of this section, the pendency of a suit or proceeding shall be deemed to commence from the date of the presentation of the plaint or the institution of the proceeding in a court of competent jurisdiction, and to continue until the suit or proceeding has been disposed of by a final decree or order and complete satisfaction or discharge of such decree or order has been obtained, or has become unobtainable by reason of the expiration of any period of limitation prescribed for the execution thereof by any law for the time being in force.

40. This section has been subjected to judicial dissection on numerous occasions. It is not necessary for us to advert to the long line of precedents inasmuch as two recent judgments of this Court have succinctly summed up the essence and amplitude of this provision. Section 52 of the Transfer of Property Act encapsulates the doctrine of lis pendens.

41. In Celir LLP, this Court examined the expression 'lis pendens' in the following manner:

155. The term "lis pendens" as explained in the Law Lexicon is as under:—

"Lis means a suit, action controversy, or dispute, and lis pendens means a pending suit.The doctrine denotes those principles and rules of law which define and limit the operation of the common-law maxim pendente lite nihil innovetur, that is,

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pending the suit nothing should be changed.

A pending suit.

As soon as proceedings are commenced to recover or charge some specific property [Ex parte Thornton [L.R.] 2 Ch. 178] there is "lis pendens" - a pending suit, the consequence of which is that until the litigation is at an end neither litigant can deal with the property to the prejudice of the other.

41.1. Explaining the aforesaid doctrine, this Court has held that nothing new can be introduced during the pendency of a petition and if anything new is introduced, the same would be subject to the final outcome of the petition. This Court explained that the doctrine of lis pendens is duly recognized in Section 52 of the Transfer of Property Act which declares that during the pendency of any suit in which any right to immovable property is directly and specifically in question, the property cannot be transferred or otherwise dealt with by any party to the suit or proceedings. Explanation to Section 52 clarifies that pendency of a suit or proceeding shall be deemed to commence from the date of presentation of the plaint or institution of the proceeding in a court and shall continue until the suit or proceeding is disposed of by a final decree or order and complete satisfaction of the order is obtained, unless it has become unobtainable by reason of expiry of any period of limitation. This Court held thus:

> *156. As per the doctrine of lis pendens, nothing new can be introduced during the pendency of a petition and if at all anything new is introduced, the same would also be subject to the final outcome of the petition, which would decide the rights and obligations of the parties.*
>
> *157. The doctrine of lis pendens is duly recognized in Section 52 of the TPA which states that during the*

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pendency in any court of any suit in which any right to immovable property is directly and specifically in question, the property cannot be transferred or otherwise dealt with by any party to the suit or proceedings. The explanation to the provision states that for the purposes of the Section, the pendency of a suit or proceedings shall be deemed to commence from the date of the presentation of the plaint or institution of the proceeding in a court, and shall continue until the suit or proceeding is disposed by a "final decree or order" and complete satisfaction of the order is obtained, unless it has become unobtainable by reason of the expiry of any period of limitation.

41.2. Elaborating further, this Court culled out five conditions which must be fulfilled for application of the doctrine of lis pendens. It has been noted that the only exception to the principle of lis pendens is when the property is transferred under the authority of the court. But where one of the parties to the suit transfers the suit property or a portion thereof to a third party, the latter would be bound by the result of the proceedings even if he did not have notice of the suit or proceeding. Relevant portion of the decision of this Court in Celir LLP is extracted hereunder:

158. The following conditions ought to be fulfilled for the doctrine of lis pendens to apply:—

i. There must be a pending suit or proceeding;

ii. The suit or proceeding must be pending in a competent court;

iii. The suit or proceeding must not be collusive;

iv. The right to immovable property must be directly and specifically in question in the suit or proceeding;

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v. The property must be transferred by a party to the litigation; and,

vi. The alienation must affect the rights of any other party to the dispute.

159. In short, the doctrine of lis pendens, which Section 52 of the TPA encapsulates, bars the transfer of a suit property during the pendency of litigation. The only exception to the principle is when it is transferred under the authority of the court and on terms imposed by it. Where one of the parties to the suit transfers the suit property (or a part of it) to a third-party, the latter is bound by the result of the proceedings even if he did not have notice of the suit or proceeding.

41.3. It was canvassed on behalf of the subsequent transferee that it was a bona fide third party purchaser of the secured asset since it was neither arrayed as a party to the proceedings in the main appeals nor was issued a notice of the said proceedings either by the petitioner or by the bank. Repelling such contention, this Court referred to its previous decision in Sanjay Verma where it was held that the principle of lis pendens enshrined in Section 52 of the Transfer of Property Act is not only based on equity, good conscience and justice but is also a principle of public policy. No party can claim exemption from the application of this doctrine on the ground of bona fide or good faith. Further, this Court referred to another of its earlier decisions in Guruswamy Nadar Vs. P. Lakshmi Ammal [(2008) 5 SCC 796] where it was held that the principle of lis pendens will apply irrespective of whether the subsequent purchaser had bought the property, which is a subject-matter of a pending proceeding, in good faith or not.

42. It may be mentioned that in a recent judgment of this Court in M/s. Siddamsetty Infra Projects Pvt. Ltd. Vs. Katta

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Sujatha Reddy [2024 SCC OnLine SC 3214] it has been held that the doctrine of lis pendens kicks in the moment a proceeding is instituted irrespective of whether such institution or filing is defective or notice is yet to be issued by the court.

43. One of the questions which fell for consideration in Danesh Singh Vs. Har Pyari [2025 SCC OnLine SC 2805] is whether transfer of the suit property in favour of respondent Nos.1 and 2 is hit by Section 52 of the Transfer of Property Act and the doctrine of lis pendens? It was in that context this Court looked into Section 52 and held as follows:

> *49. Section 52 of the 1882 Act stipulates that during the pendency of any suit in a court of competent jurisdiction in which any right to the immovable property is directly and specifically in question, such property cannot be transferred or otherwise be dealt with by any party to the suit or proceedings with a view to affect or defeat the rights of any other party under any decree or order. The only exception that the provision carves out is with regard to a situation where the transfer of the property is made permissible under the authority of the court and in accordance with the terms imposed by the court.*
>
> *50. The explanation to the section further elaborates that the pendency of a suit or proceeding shall be deemed to commence from the date of the presentation of the plaint and would continue until the suit is disposed of by a final decree, and the "complete satisfaction or discharge of such decree" has been obtained, unless the same cannot be obtained due to the expiry of the prescribed limitation period.*

43.1. This Court also referred to its earlier decision in

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Celir LLP and noted the essentials of Section 52. Thereafter, this Court held thus:

> *52. This Court in Celir LLP (supra) had also emphasized that such a pendente lite transferee would be bound by the result of the proceedings irrespective of whether they had notice of the pending suit or not. In other words, the lack of knowledge of the proceedings would not be a valid defence against the application of the doctrine of lis pendens.*

44. Section 52 has undergone an amendment in the State of Maharashtra by virtue of the Bombay Amendment Act, 1939 (Act XIV of 1939). Section 52, as amended in Maharashtra, stands restructured in as much as there are two sub-sections with an explanation, sub-section (2) being the Maharashtra insertion. Section 52 as amended in Maharashtra reads as under:

> *52. **Transfer of property pending suit relating thereto.** —*
>
> *(1) During the pendency in any court having authority within the limits of India excluding the State of Jammu and Kashmir established beyond such limits by the Central Government, of any suit or proceeding which is not collusive and in which any right to immovable property is directly and specifically in question, if a notice of the pendency of such suit or proceeding is registered under Section 18 of the Indian Registration Act, 1908, the property after the notice is so registered cannot be transferred or otherwise dealt with by any party to the suit or proceeding so as to affect the rights of any other party thereto under any decree or order which may be made therein, except under the authority of the court and on such terms as it may*

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impose.

(2) Every notice of pendency of a suit or proceeding referred to in sub-section (1) shall contain the following particulars, namely:

(a) the name and address of the owner of immovable property or other person whose right to the immovable property is in question;

(b) the description of the immovable property the right to which is in question;

(c) the court in which the suit or proceeding is pending;

(d) the nature and title of the suit or proceeding; and

(e) the date on which the suit or proceeding was instituted.

Explanation.—For the purposes of this section, the pendency of a suit or proceeding shall be deemed to commence from the date of the presentation of the plaint or the institution of the proceedings in a court of competent jurisdiction, and to continue until the suit or proceeding has been disposed of by a final decree or order and complete satisfaction or discharge of such decree or order has been obtained, or has become unobtainable by reason of the expiration of any period of limitation prescribed for the execution thereof by any law for the time being in force.

45. The aforesaid amendment has been examined in Celir LLP. This Court has held that the requirement of registration of notice of pendency of suit or proceeding is to prevent any undue or unwarranted hardship to a third party who even after a reasonable due diligence has bona-fidely purchased the property believing it to be free from the encumbrances of any

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pending proceeding only to later face the adverse consequences of losing the rights by a mechanical application of lis pendens. This additional requirement is only for effective application of the doctrine of lis pendens. The objective is to discourage any thwarting or frustration of rights of the litigating parties by unscrupulous and unanticipated transactions. This Court cautioned against mechanical application of the aforesaid rule because if it is held that absence of notice registration would render the doctrine of lis pendens inapplicable, it would encourage exploitation of procedural gaps and thereby undermine the very sanctity of the judicial process. Such an interpretation would lead to a very chilling effect whereby third parties despite being expected to verify the title and status of the property would simply abdicate their duty to conduct thorough due diligence in transactions involving immovable properties or mischievously execute back dated agreements in collusion with a party to a lis prior to registration of such notice of pendency to circumvent the due court process. This Court held thus:

> *171. We have carefully gone through the aforesaid state amendment made to Section 52 of the TPA. The amended Section 52 sub-section (1) of the TPA casts upon a party who is claiming any right to a property which is a subject matter of any pending suit or proceeding an additional duty to register a notice of pendency in respect of such property so as to caution and put to notice any third-party who might otherwise be unaware of such proceeding or litigation despite the best of due diligence either due to inadvertence or deliberate misleading by one of the parties to the lis and as result might be genuinely*

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considering to purchase or acquire any right in the subject-matter proceeding. The requirement of registration of notice of pendency is to prevent any undue or unwarranted hardship to such third-parties who even after a reasonable due diligence have bona-fidely purchased the property believing it to be free from the encumbrances of any pending proceeding only to later face the adverse consequence of losing their rights by a mechanical application of lis pendens.

172. This additional requirement of registration of notice of pendency is for the benefit of the party claiming any right in such subject-matter property and also for the benefit of any third-party interested in such subject-matter property by enabling the former to claim the benefit of lis pendens as an absolute right after having duly taken steps towards ensuring that the public is well-aware of the impeding litigation in respect of such property by registering a notice of pendency and to enable the latter to ascertain the veracity of title of such property by exercise of its due diligence. Although, the said provision is for the benefit of the third-party, yet such subsequent purchasers cannot as a matter of absolute right claim any title to such property solely on the ground of want of any notice of pendency being registered. To hold otherwise would undermine the object and purpose of the doctrine of lis pendens which is based on the principle of equity, good conscience, and public policy and discourage any thwarting or frustration of rights of the parties so litigating by unscrupulous and unanticipated transactions.

173. The vital essence of this additional duty imposed

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upon the party claiming a right to a property which is a subject matter of a pending proceeding, is only to aid a third-party to exercise its due diligence and obviate the possibility of any dishonesty, misrepresentation or fraud by a party in order to gain an undue advantage or benefit despite the pendency of proceedings. However, if the absence of notice registration were to render the doctrine entirely inapplicable, it would lead to exploitation of procedural gaps by parties who deliberately delay or avoid registering such notices to defeat substantive rights of the parties and undermine the very sanctity of judicial proceedings. Such an interpretation would lead to a very chilling effect whereby, third parties despite being expected to verify the title and status of the property would simply abdicate their duty to conduct thorough due diligence in transactions involving immovable properties or that despite being fully aware of the pendency of such proceedings would be able to deviously claim absolute rights to such property or worse, mischievously execute back-dated agreements in collusion with a party to a lis prior to registration of such notice of pendency to circumventing the very proceedings and render them infructuous.

46. At this stage, we may also advert to the provisions of Section 19 of the Specific Relief Act, 1963 ('the Specific Relief Act' hereinafter). Section 19 is included in Chapter II of the Specific Relief Act which deals with specific performance of contracts. Heading of Section 19 is 'Relief against parties and persons claiming under them by subsequent title'. Section 19 reads thus:

***19. Relief against parties and persons claiming under them by subsequent title.**- Except as otherwise provided*

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by this Chapter, specific performance of a contract may be enforced against—

(a) either party thereto;

(b) any other person claiming under him by a title arising subsequently to the contract, except a transferee for value who has paid his money in good faith and without notice of the original contract;

(c) any person claiming under a title which, though prior to the contract and known to the plaintiff, might have been displaced by the defendant;

(ca) when a limited liability partnership has entered into a contract and subsequently becomes amalgamated with another limited liability partnership, the new limited liability partnership which arises out of the amalgamation;

(d) when a company has entered into a contract and subsequently becomes amalgamated with another company, the new company which arises out of the amalgamation;

(e) when the promoters of a company have, before its incorporation entered into a contract for the purpose of the company and such contract is warranted by the terms of the incorporation, the company:

Provided that the company has accepted the contract and communicated such acceptance to the other party to the contract.

46.1. The only clause which may be of some relevance is clause (b) of Section 19. It says specific performance of a contract may be enforced against any other person claiming under him by a title arising subsequently to the contract except

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a transferee for value who has paid his money in good faith and without notice of the original contract.

46.2. Section 19 in general and clause (b) thereof in particular acknowledges the claim of a person to a contract qua a subsequent transferee. But clause (b) carves out an exception when a subsequent transferee acts in good faith and without notice of the original contract.

47. In K.S. Manjunath Vs. Moorasavirappa [2025 SCC OnLine SC 2378], the subsequent purchasers were seeking to bring themselves within the status of bona fide purchaser under Section 19(b) of the Specific Relief Act. It was in that context, this Court examined Section 19(b) as under:

> *68. ……Section 19 provides for the categories of persons against whom specific performance of a contract may be enforced. Amidst all, Clause (b) of Section 19 states that specific performance may be enforced against any other person claiming under him by a title arising subsequently to the contract except a transferee for value who has paid his money in good faith and without notice of the original contract. Thus, a transferee for value who has paid his money in good faith and without notice of the original contract is excluded from the purview of the said clause. In the case of Ram Niwas Vs. Bano [(2000) 6 SCC 685], this Court had set out three factors that a subsequent transferee must show to fall within the excluded class: (a) he has purchased for value the property, which is the subject matter of the suit for specific performance; (b) he has paid his money to the vendor in good faith; and (c) he had no notice of the earlier contract for sale specific performance of which is sought to be enforced against him. The Court observed that "notice" can be (i) actual notice or (ii) constructive*

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notice, or (iii) imputed notice. As per Section 3 of Transfer of Property Act, 1882, a person is said to have notice of a fact when he actually knows that fact or when but for wilful abstention from inquiry or search which he ought to have made, or gross negligence, he would have known it……..

47.1. Thereafter, this Court referred to a decision of the Madhya Pradesh High Court and held thus:

69. Similarly, in Durg Singh Vs. Mahesh Singh [2004 SCC OnLine MP 9], the Madhya Pradesh High Court had observed that there are two factors that are necessary for the adjudication of suit for specific performance of the contract where the subject matter property has been sold to a subsequent purchaser: (i) that whether the plaintiff remained always ready and willing to perform his part of the contract to purchase the suit property and the readiness and willingness should exist till the date of the passing of the decree, and (ii) that whether subsequent transferee was having prior knowledge of the earlier agreement executed in favour of the plaintiff. Both these factors need to have nexus with the facts of each case and conduct of parties…….

47.2. This Court analysed the expressions 'wilful abstention from inquiry or search', 'notice' and 'good faith' and concluded that to claim protection under Section 19(b), the purchaser must show three things: (a) purchase for value, (b) payment in good faith, and (c) absence of notice of the earlier contract. 'Notice', it has been emphasized, includes not merely actual knowledge but also constructive and imputed knowledge.

48. However, it is evident that Section 19(b) of the Specific Relief Act operates at a stage prior to institution of a

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suit or proceeding.

49. We have already analysed Section 52 of the Transfer of Property Act and the interpretation given thereto by this Court. In our view, the interpretation and understanding of clause (b) of Section 19 has to align with the interpretation given to Section 52 of the Transfer of Property Act as any other interpretation would lead to an incongruous and anomalous situation which should be avoided.

50. As pointed out above, Section 19(b) of the Specific Relief Act would be available to a party to a contract who suffers a subsequent transfer of property. However, the moment a suit or proceeding is instituted by a party to the contract whereafter there is transfer of the suit property, Section 19(b) of the Specific Relief Act would have to give way to Section 52 of the Transfer of Property Act in which event the doctrine of lis pendens would come into force."

7.12) Mr. Mittal further submits that the part payment of the sale consideration of Rs. 1,58,11,469/- was transferred in the account of defendant No. 1 Atmaram and it was duly proved by the plaintiff, however, defendant No.1 Atmaram did not step into the witness box and not appeared before the Court to depose his oral statement or evidence and therefore, the factum of non-examination of the defendant Atmaram should be considered for drawing adverse inference against the defendants.

7.13) He further submits that the issue of proceeding *ex parte* in a suit cannot be raised in an appeal under Section 96 of CPC and for that purpose, he relied upon the judgment delivered by the Supreme Court in

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the matter of **Bhanu Kumar Jain (Supra)** and relied on following paragraph:

> *"38. The dichotomy, in our opinion, can be resolved by holding that whereas the defendant would not be permitted to raise a contention as regards the correctness or otherwise of the order posting the suit for ex-parte hearing by the Trial Court and/ or existence of a sufficient case for non-appearance of the defendant before it, it would be open to him to argue in the First Appeal filed by him against Section 96(2) of the Code on the merit of the suit so as to enable him to contend that the materials brought on record by the plaintiffs were not sufficient for passing a decree in his favour or the suit was otherwise not maintainable. Lack of jurisdiction of the court can also be a possible plea in such an appeal. We, however, agree with Mr. Choudhari that the 'Explanation' appended to Order 9 Rule 13 of the Code shall receive a strict construction as was held by this court in Rani Choudhury (supra), P. Kiran Kumar (supra) and Shyam Sundar Sarma Vs. Pannalal Jaiswal and Others [2004 (9) SCALE 270]."*

7.14) To support his contention, Shri Mittal has further relied on the judgment of Division Bench of this Court in the matter of **Lee Anne Elton Vs. Arunoday Singh** delivered in First Appeal No. 445 of 2020 on 09/07/2022 and relied on the following paragraphs:

> *"23. The Division Bench of this Court in **Ramlal Chaurasia and others Vs. Rewa Coal Fields Ltd., Calcutta** reported in **1966 M.P.L.J. 11, 507** opined as under:-*
>
> *'7. In our opinion, it is open to a defendant, who had filed an appeal against an ex parte decree under section 96 (2) of the Code, to show from the record as it stands that there is, in the order proceeding ex parte against*

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him, any error, defect or irregularity which has affected the decision of the case. If he succeeds in so doing, the ex parte decree will be set aside and the case will be remitted for retrial. But, in the appeal against the ex parte decree he cannot be allowed to show that he was prevented by any sufficient cause from appearing at the hearing. For that purpose, he must have recourse to the special procedure under Order 9, rule 13 of the Code for setting aside the said decree.'

(Emphasis Supplied)

24. The Supreme Court in **Bhanu Kumar Jain Vs. Archana Kumar and another** *reported in* **(2005) 1 SCC 787,** *poignantly held as under :-*

"38. The dichotomy, in our opinion, can be resolved by holding that whereas the defendant would not be permitted to raise a contention as regards the correctness or otherwise of the order posting the suit for ex parte hearing by the trial court and/or existence of a sufficient case for non- appearance of the defendant before it, ***it would be open to him to argue in the first appeal filed by him under Section 96(2) of the Code on the merits of the suit so as to enable him to contend that the materials brought on record by the plaintiffs were not sufficient for passing a decree in his favour or the suit was otherwise not maintainable.*** *Lack of jurisdiction of the court can also be a possible plea in such an appeal. We, however, agree with Mr Chaudhari that the "Explanation" appended to Order 9 Rule 13 of the Code shall receive a strict construction as was held by this Court in Rani Choudhury [(1982) 2 SCC 596] , P. Kiran Kumar [(2002) 5 SCC 161] and Shyam Sundar Sarma v. Pannalal Jaiswal [(2005) 1 SCC 436 : (2004) 9 Scale*

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270]."

(Emphasis Supplied)

25. As per ratio of this judgment, we find substance in the argument of learned Senior Counsel for the respondent that in this regular first appeal which is analogous to a first appeal under Section 96 (2) of CPC, it is not open to the appellant to argue that the family court has committed an error in proceeding ex parte. The appellant can only attack the findings given on merits or on the aspect of jurisdiction of Court below as per the material available on record. For this reason, even otherwise, the order of proceeding ex parte by the Court below cannot be a subject matter of judicial review in this appeal."

7.15) Mr. Mittal submits that in view of the aforesaid judgments, the defendants No. 5 and 6 cannot raise the issue of correctness of proceeding *ex parte* in the suit, in the appeal. The Trial Court has not committed any error in passing the decree of specific performance, permanent injunction and declaration. He prays for dismissal of both the appeals filed by the defendants No. 1 to 3 and defendants No. 5 and 6.

CONSIDERATION:

8) Heard the arguments at length and perused the record of the Trial Court. The Trial Court after considering the pleadings of the parties framed the following issues and recorded its findings as under :

क्र.	वाद प्रश्न	निष्कर्ष
01.	क्या वादी के पक्ष में प्रतिवादी कमांक 01 लगायत 03 ने ग्राम दतौदा तहसील डॉ अम्बेडकर नगर जिला इंदौर में स्थित विवादित भूमि सर्वे कमांक 361/4 रकबा 0.568 हेक्टेयर, सर्वे कमांक 361/2 रकबा 0.569 हेक्टेयर, सर्वे कमांक 361/1/2 रकबा 0.101 हेक्टेयर एवं सर्वे कमांक 361/3 रकबा 0.767 हेक्टेयर कुल रकबा 2.005 हेक्टेयर का विक्रय अनुबंध पत्र दिनांकित 17.02.2021 निष्पादित कर प्रतिफल स्वरूप	"साबित"

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	अग्रिम धनराशि प्राप्त की थी ?	
02.	क्या वादी उक्त विक्रय अनुबंध पत्र के अपने भाग का पालन करने हेतु तत्पर है ?	"साबित"
03.	क्या प्रतिवादी कमांक 01 लगायत 03 द्वारा उक्त विक्रय अनुबंध पत्र के अपने भाग का पालन करने से इंकार किया गया है ?	"साबित"
04.	क्या प्रतिवादी कमांक 01 लगायत 03 ने उक्त विक्रय अनुबंध पत्र निरस्त कर दिया है ?	"नासाबित"
05.	क्या प्रतिवादी कमांक 01 लगायत 03 ने उक्त वादग्रस्त भूमि प्रतिवादी कमांक 05 व 06 को रजिस्टर्ड विकय पत्र दिनांकित 13.04.2023 के माध्यम से विक्रय कर दी है ?	हॉ
06.	क्या प्रतिवादी क. 05 व 06 के पक्ष में निष्पादित रजिस्टर्ड विकय पत्र दिनांकित 13.04.2023 वादी के अधिकारों के विरूद्ध शून्य एवं निष्प्रभावी है ?	हॉ
07.	सहायता एवं खर्च ?	निर्णय की कंडिका 25 क, ख, ग, घ, इ, च के अनुसार वाद पत्र स्वीकार।

9) The following questions are involved in these appeals:

(A) Whether, the finding recorded by the Trial Court are based on due appreciation of evidence ?

(B) Whether, the suit was filed by an authorized person on behalf of the plaintiff ?

(C) Whether, the plaintiff has proved the readiness and willingness and entitled for the decree of specific performance of contract ?

(D) Whether, the Trial Court was justified in decreeing the suit filed by the plaintiff ?

QUESTION 'A':

10) The plaintiff approached to the Court with the pleading that the plaintiff entered into an agreement with the defendants No. 1 to 3 to

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purchase the suit lands @ Rs. 75,00,000/- per acre and paid advance of Rs. 5,00,000/- on 15/02/2021. As per the plaintiff, defendants No. 1 to 3 executed the agreement, wherein the total time period of 24 months was fixed for payment of consideration and total sale consideration of Rs. 3,71,46,900/- was decided. It was also decided that the seller will obtain the NOC from Bank of India and will take appropriate steps for deletion of entry of mortgage from the revenue records with further action for diversion of lands, demarcation and measurement to ascertain the actual amount of consideration.

10.1) The plaintiff pleaded that though the plaintiff paid Rs. 1,58,11,469/- to the defendant No. 1 Atmaram in furtherance of the agreement till 16/09/2022, but the defendants No. 1 to 3 failed to provide any intimation in respect of release of the lands by Bank of India. No NOC was provided to the plaintiff, no intimation of diversion, measurement and demarcation was served and when the plaintiff issued a notice on 13/12/2022, the same was not replied, therefore, the suit for specific performance of the contract, declaration, possession and perpetual injunction was filed.

10.2) The defendants No. 1 to 3 denied the execution of the agreement, receipt of Rs. 5,00,000/- as advance amount and total amount of Rs. 1,58,11,469/- from the plaintiff and prayed for dismissal of the suit on the basis of written statement of denial of all the facts.

10.3) The plaintiff impleaded defendants No. 5 and 6 as they

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purchased the suit lands during the pendency of the suit, however, they remained *ex parte*.

10.4) The plaintiff examined Rahul Sharma (PW-1), who stated that the plaintiff Company entered into an agreement with the defendants No. 1 to 3 through him and total amount of Rs. 1,58,11,469/- was paid to the defendants in furtherance of the agreement, however, the defendants failed to perform their part of contract and therefore, after issuance of notice the suit for specific performance of contract was filed. In the cross-examination of Rahul Sharma (PW-1), nothing could be brought on record to disbelieve him, however, his authority to file the suit on behalf of the plaintiff Company was challenged in the cross-examination.

10.5) The defence of the defendants was that they did not enter into any contract, but at the same time the suggestion was given to the plaintiff witness that upon demand of balance sale consideration by the defendants, the same was not paid to the defendants by the plaintiff and therefore, they executed the sale deed in favour of third party.

10.6) The defendant No. 1 Atmaram did not appear in witness box. The plaintiff transferred all the amounts in the Bank account of Atmaram. As he did not depose in the case, adverse inference can be drawn against him. The defendant examined Nandkishore Patel (DW-1), who accepted the signatures of the sellers, however, stated that the signatures were obtained by the plaintiff Company on blank Stamp

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Papers and the dialogues could not be concluded and therefore, no contract for sale of suit lands was entered between the parties. In the chief examination he himself stated that they demanded the amount of consideration as mentioned in the agreement from the plaintiff several times, but as the plaintiff failed to pay the remaining amount of consideration, they executed the sale deed in favour of the defendants No. 5 and 6.

10.7) When this question was asked to Nandkishore Patel (DW-1) that on different dates amounts were transferred in the account of Atmaram, he had shown his ignorance. He accepted the signatures on the agreement and in the course of examination accepted that no action was taken by them for demarcation and measurement. No other witness was examined by the defendants.

10.8) The Trial Court after considering the pleadings of the parties and oral as well as documentary evidence has held that the plaintiff has able to proved his case that the agreement was executed, part payment was made and the defendants failed to perform their part of contract. The plaintiff has proved payment of Rs. 1,58,11,469/-, which were paid by the plaintiff through bank transaction. The Trial Court considered the conduct of the defendants that on the one hand they denied the execution of the agreement and on the other hand stated in the Court that the plaintiff failed to make the payment of balance sale consideration despite several demands made by the defendants.

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10.9) The defendants tried to avoid the liability to perform the contract on the basis of technicalities only and they could not brought any material on record to establish that payment was not made by the plaintiff, as claimed. The Trial Court has recorded that the plaintiff's witness Rahul Sharma remained constant on the issue of execution of the agreement, payment of part consideration and issuance of notice. These facts were proved by cross-examination of the defendant also and therefore, in view of this Court the Trial Court has not committed any error in recording the finding that the plaintiff proved the execution of contract, payment of part consideration, in the case. The findings recorded by the Trial Court are based on due appreciation of evidence and do not require any interference by this Court in appeal.

QUESTION 'B':

11) The main objection raised by the appellant is that Rahul Sharma, who filed the suit on behalf of the plaintiff Company has not filed any Authorization Letter in the case. It is submitted on behalf of the appellant that the Rahul Sharma is neither a Director nor authorized person, therefore, the suit filed by the unauthorized person could not have been decreed by the Trial Court.

11.1) This objection was neither raised by the appellants before the Trial Court in written statement and nor issue was framed by the Trial Court. There is no finding of the Trial Court in this regard. However, from perusal of the record, pleadings of the plaint and

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statement of Rahul Sharma (PW-1), it appears that Rahul Sharma entered into a contract on behalf of the plaintiff Company with the sellers and notice was issued to the sellers at his instance on behalf of the plaintiff Company. The suit was filed by Rahul Sharma on behalf of the plaintiff Company and he appeared as a witness on behalf of the appellant Company.

11.2) All these acts were done by Rahul Sharma on behalf of the plaintiff Company, which is a registered Company and a juristic person. A juristic person is required to be represented by a living person. Though the plaintiff ought to have submit the document of authorization of Rahul Sharma, but in the absence of any document of authorization, at the stage of appeal, the judgment and decree passed by the Trial Court can not be set aside on this ground. The provision of Section 99 of CPC are relevant, which provides that no decree shall be reversed or substantially varied, nor shall any case be remanded, in appeal on account of any error, defect or irregularity in any proceedings in the suit, not affecting the merits of the case or the jurisdiction of the Court.

11.3) The filing of authorization letter is required only for the purpose of satisfying the Court that plaint has been filed by a competent person on behalf of the plaintiff. However, in the case in hand, the plaint was filed on behalf of the Company, by a person, who entered into an agreement to purchase the lands and conducted all the acts on behalf of the plaintiff company. After considering the facts and circumstances of

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the case, the Trial Court has decreed the suit. The defect of non filing of authorization is a curable defect and could have been cured during the trial, if the defendants would have raised the objection in written statement. Now at the stage of appeal, they are raising this objection. The decree has already been passed against them and this objection does not affect the merits of the case or jurisdiction of the Court, therefore, in view of this Court any technical objection raised by the party at the appellate stage, which does not affect the merits of the case, cannot be accepted to reverse the judgment on the technical grounds.

11.4) The Supreme Court in the matter of **Kiran Singh and Others Vs. Chaman Pawan and Others** reported in **(1954) 1 SCC 710** has held that the judgment and decree should not be reversed purely on technical grounds, unless it had resulted in failure of justice.

11.5) The Supreme Court in the matter of **Kuldeep Kumar Dubey & Ors. Vs. Ramesh Chandra Goyal (D) Through LRs** reported in **(2015) 3 SCC 525** has held that District Judge was not justified in reversing the decree of Trial Court on such technicalities, which did not in any manner affects the merits of the case. Section 99 of the CPC provides that a judgment cannot be reversed on the technicalities.

11.6) Reference may be had to **K. P. Ranga Rao Vs. K. V. Venkatesham and Others** reported in **(2015) 13 SCC 514**, wherein the Supreme Court considering the judgment of **Kiran Singh (Supra)** has held that a judgment cannot be reversed purely on technical grounds,

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unless there is a failure of justice. The relevant paragraphs reads as under:

> *"**9.** In a classic exposition of the law, in Kiran Singh and Others Vs. Chaman Paswan and Others 1955 SCR 117, after stating that a defect of jurisdiction strikes at the very authority of the Court to pass any decree and such a defect cannot be cured even by consent of parties, the law has been laid down as follows:*
>
> > *".....The policy underlying Sections 21 and 99 of the Civil Procedure Code and Section 11 of the Suits Valuation Act is the same, namely, that when a case had been tried by a Court on the merits and judgment rendered, it should not be liable to be reversed purely on technical grounds, unless it had resulted in failure of justice, and the policy of the Legislature has been to treat objections to jurisdiction both territorial and pecuniary as technical and not open to consideration by an appellate Court, unless there has been a prejudice on the merits".*
>
> *__10.__ In the present case, we find this statement of law would apply on all fours. The judgment of the Trial Court has been decided issue wise, on the merits, after hearing both parties. The suit has finally been decreed. Consequently this judgment cannot be reversed purely on technical grounds unless there is a failure of justice, which we have seen, is nobody's case."*

11.7) Considering the aforesaid proposition of law, this Court is of the view that the failure to file Authorization Letter by the person, who filed the suit on behalf of the plaintiff Company, cannot be a ground to set aside the judgment or remand the matter as the same does not cause

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any prejudice to the opposite side and there is no case of failure of justice. Consequently, the issue is decided accordingly.

11.8) It is also objected by the appellants that seller Rahul Sharma could have deposed on behalf of the plaintiff Company. Counsel for the seller relied upon the judgment delivered by the Supreme Court in the matter of **Janki Vashdeo Bhojwani (Supra)**, the judgment of Bombay High Court in the matter of **Uttamram Vithaldas (Supra)** and Gujarat High Court in the **Ajay Kiritakant Ghelani (Supra)**.

11.9) These judgments are not helpful to the appellants as the Supreme Court in the matter of **Janki Vashdeo Bhojwani (Supra)** has held that a Power of Attorney holder can file a suit on behalf of the plaintiff, but cannot appear in the capacity of the plaintiff. In the case in hand, the plaintiff is a registered Company and all the transactions were done by Rahul Sharma on behalf of the plaintiff Company, therefore, he was the best person to appear on behalf of the plaintiff Company and depose in the Court. He has not deposed more than his personal knowledge, therefore, the judgment delivered in the matter of **Janki Vashdeo Bhojwani (Supra)** is not helpful to the appellants.

QUESTION 'C':

12) The subsequent purchaser raised an objection that the plaintiff has not pleaded in the suit that the plaintiff was ready and willing to perform the contract and therefore, in the absence of pleading and proof on behalf of the plaintiff that plaintiff is ready and willing to perform the

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contract, no decree for specific performance of contract can be granted as Section 16(c) of the Specific Relief Act, 1963 specifically requires the same.

12.1) Mr. A. K. Sethi, learned Senior Advocate relied on the judgments delivered by the Supreme Court in the matter of **J. Samuel (Supra)** and **Abdul Khader Rowther (Supra)** and the judgment delivered by co-ordinate Bench of this Court in the matter of **Shubh Laxmi Grih Nirman Sahakari Sanstha Maryadit (Supra)**, the judgment of Chhattisgarh High Court in the matter of **Ajit Singh (Supra)** and submits that in the absence of specific pleading of readiness and willingness, no decree of specific performance of contract could be passed.

12.2) This specific objection of Mr. A. K. Sethi, learned Advocate was replied by Mr. Yogesh Kumar Mittal, learned Advocate appearing on behalf of the plaintiff. He submits that after the amendment in Section 16(c) of the Specific Relief Act, 1963, the word '*pleading*' has been omitted, therefore, it is not essential to plead the readiness and willingness and the same will be judged by the Court from the facts and circumstances of the case and conduct of the parties. He submits that judgment relied by Mr. A. K. Sethi, Senior Advocate have not dealt with amended provision of Specific Relief Act and are of prior to the amendment, thus not applicable to the case in hand.

12.3) Mr. Mittal submits that after amendment it is not essential to

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plead the readiness and willingness. The plaintiff has proved the readiness and willingness from the evidence produced on record, therefore, the Trial Court has not committed any error in passing the decree of specific performance of contract.

12.4) By way of amendment, the provision of Section 10 and 16 of the Specific Relief Act have been amended. Now as per the amended provision of Section 10 the relief of specific performance is not a relief of discretion and amended provision of Section 16 have omitted the requirement to aver the readiness and willingness. Legislature has intentionally omitted the word '*aver*' from Section 16(c) and the present suit was filed after amendment, therefore, if the readiness and willingness has not been pleaded in clear words, the relief of specific performance cannot be denied to the plaintiff.

12.5) By evidence the plaintiff has proved that the plaintiff was ready and willing to get execute the sale deed in its favour as the plaintiff has paid an amount of Rs. 1,58,11,469/- to the defendants in furtherance of the agreement. The notice was issued immediately. The defendants were intimated to execute the sale deed after receipt of balance sale consideration and the suit was also filed without any delay within limitation.

12.6) The Supreme Court in a recent judgment delivered in the matter of **A. Shahul Hameed Vs. N. Malligarjuna and Ors.** reported in **2026 SCC OnLine SC 969** has held that the readiness and willingness

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of the purchaser is to be gathered from the entirety of facts and circumstances of the case, including the overall conduct of the parties prior and subsequent to the filing of the suit. The relevant paragraphs of this judgment reads as under:

> *"17. Insofar as the second issue regarding readiness and willingness under Section 16(c) SPA 1963 is concerned, we find it difficult to sustain the findings returned by the First Appellate Court and as affirmed by the High Court vide the impugned judgment. It is trite law that in order to obtain a decree for specific performance, the plaintiff must aver and prove that he was always 'ready and willing' to perform the terms of the contract which are to be performed by him. Such readiness and willingness of the plaintiff is to be gathered from the entirety of facts and circumstances of the case, including the overall conduct of the parties prior and subsequent to the filing of the suit. [See: Syed Dastagir v. T.R. Gopalakrishna Setty13; Sughar Singh v. Hari Singh14; and Janardan Das v. Durga Prasad Agarwalla, (2024) 19 SCC 276]*
>
> *17.1. In C.S. Venkatesh v. A.S.C. Murthy [(2020) 3 SCC 280 : (2020) 2 SCC (Civ) 90], this Court, on consideration of various decisions, culled out what is implied by the words 'ready and willing'. It was held:*
>
> > *"16. The words "ready and willing" imply that the plaintiff was prepared to carry out those parts of the contract to their logical end so far as they depend upon his performance. The continuous readiness and willingness on the part of the plaintiff is a condition precedent to grant the relief of performance. If the plaintiff fails to either aver or*

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prove the same, he must fail. To adjudge whether the plaintiff is ready and willing to perform his part of 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 which he has to pay the defendant must be of necessity to be proved to be available. Right from the date of the execution of the contract till the date of decree, he must prove that he is ready and willing to perform his part of the contract. The court may infer from the facts and circumstances whether the plaintiff was ready and was always ready to perform his contract.

17. In N.P. Thirugnanam v. R. Jagan Mohan Rao [N.P. Thirugnanam v. R. Jagan Mohan Rao, (1995) 5 SCC 115], it was held that continuous readiness and willingness on the part of the plaintiff is a condition precedent to grant of the relief of specific performance. This circumstance is material and relevant and is required to be considered by the court while granting or refusing to grant the relief. 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 to 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 necessarily be proved to be available.

18. In Pushparani S. Sundaram v. Pauline Manomani James [Pushparani S. Sundaram v.

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Pauline Manomani James, (2002) 9 SCC 582], this Court has held that inference of readiness and willingness could be drawn from the conduct of the plaintiff and the totality of circumstances in a particular case. It was held thus: (SCC p. 584, para 5)

> *"5. … So far these being a plea that they were ready and willing to perform their part of the contract is there in the pleading, we have no hesitation to conclude, that this by itself is not sufficient to hold that the appellants were ready and willing in terms of Section 16(c) of the Specific Relief Act. This requires not only such plea but also proof of the same. Now examining the first of the two circumstances, how could mere filing of this suit, after exemption was granted be a circumstance about willingness or readiness of the plaintiff. This at the most could be the desire of the plaintiff to have this property. It may be for such a desire this suit was filed raising such a plea. But Section 16(c) of the said Act makes it clear that mere plea is not sufficient, it has to be proved.""*

17.2. In Madhukar Nivrutti Jagtap v. Pramilabai Chandulal Parandekar [(2020) 15 SCC 731], this Court held that 'readiness and willingness' of the plaintiff to perform his part of the contract has to be examined with reference to all the facts and circumstances and held as under:

> *"13. When the agreements in question were for the sale of suit property, the plaintiffs were entitled to*

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take up the action seeking specific performance. However, in order to succeed in their claim, the plaintiffs were required to aver and prove that they were always ready and willing to perform their part of the contract. …

… … …

13.2. The question as to whether the plaintiff seeking specific performance has been ready and willing to perform his part of the contract is required to be examined with reference to all the facts and the surrounding factors of the given case. The requirement is not that the plaintiff should continuously approach the defendant with payment or make incessant requests for performance. For the relief of specific performance, which is essentially a species of equity but has got statutory recognition in terms of the Specific Relief Act, 1963 [Its forerunner being the Specific Relief Act, 1877.], the plaintiff must be found standing with the contract and the plaintiff's conduct should not be carrying any such blameworthiness so as to be considered inequitable. 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 with reference to the pleadings and evidence of parties as also to all the material circumstances having bearing on the conduct of parties, the plaintiff in particular. …

… … …

13.5. … when the plaintiffs had the limitation of three years for filing the suit for specific performance, it cannot be said that during the

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aforesaid period, the plaintiffs were required to show overt act by them in furtherance of the agreement in question. … In Pushparani S. Sundaram [Pushparani S. Sundaram v. Pauline Manomani James, (2002) 9 SCC 582], the basic requirements of Section 16 of the 1963 Act were reiterated. In contrast to what is suggested on behalf of the appellants, we may point out that recently, in R. Lakshmikantham v. Devaraji [R. Lakshmikantham v. Devaraji, (2019) 8 SCC 62], this Court has again explained that when the suit for specific performance is filed within the period of limitation, delay cannot be put against the plaintiff. This Court has said: (SCC p. 66, para 11)

> *"11. … In the aforesaid circumstances, the High Court was also incorrect in putting a short delay in filing the suit against the plaintiff to state that he was not ready and willing. In India, it is well settled that the rule of equity that exists in England, does not apply, and so long as a suit for specific performance is filed within the period of limitation, delay cannot be put against the plaintiff — See Mademsetty Satyanarayana v. G. Yelloji Rao [Mademsetty Satyanarayana v. G. Yelloji Rao, 1964 SCC OnLine SC 33 : AIR 1965 SC 1405] (para 7) which reads as under: (AIR p. 1409)*
>
> > *'7. Mr Lakshmaiah cited a long catena of English decisions to define the scope of a court's discretion. Before referring to them, it is necessary to know the*

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fundamental difference between the two systems—English and Indian—qua the relief of specific performance. In England the relief of specific performance pertains to the domain of equity; in India, to that of statutory law. In England there is no period of limitation for instituting a suit for the said relief and, therefore, mere delay—the time lag depending upon circumstances—may itself be sufficient to refuse the relief; but, in India mere delay cannot be a ground for refusing the said relief, for the statute prescribes the period of limitation. If the suit is in time, delay is sanctioned by law; if it is beyond time, the suit will be dismissed as barred by time; in either case, no question of equity arises.""

(emphasis supplied)

18. In the present case, the plaintiff had specifically pleaded that he was always ready and willing to perform his part of the contract. The principal defence set up by the defendant(s) throughout was not that the plaintiff lacked readiness and willingness, but rather that the agreement itself was merely a nominal/security agreement executed in relation to another transaction involving Bangalore Buyers. Once such a defence has concurrently been held to be improbable by the Trial Court and First Appellate Court, there appears no logical reason to hold that the plaintiff lacked readiness and willingness to perform its part under the contract, particularly when a substantial amount of Rs. 9,00,000/-, out of the total

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consideration of Rs. 9,30,000/- already stood paid by him. Only a nominal amount of Rs. 30,000/- was left, which was payable at the time of execution of the sale deed. If the plaintiff was unwilling to perform the contract, he would not have paid nearly 93% of the sale consideration.

19. Merely because the legal notice came to be issued after expiry of four months from the stipulated period mentioned in the agreement, the same by itself cannot lead to an inference that the plaintiff was not ready and willing to perform the contract, especially when the suit itself was instituted well within the prescribed period of limitation. The readiness and willingness of the plaintiff must be assessed in light of the overall conduct of the parties and the attending circumstances of the particular case.

20. The plaintiff, in the present, has consistently pleaded and deposed that he approached the defendant(s) within the stipulated period for completion of the transaction, however, they sought further time. When the plaintiff again approached the defendant(s) in December 2010, they became evasive and demanded additional money. It was only thereafter that the plaintiff issued a legal notice dated 01.02.2011 calling upon the defendant(s) to execute the sale deed upon receipt of the balance consideration. Thus, the legal notice was issued soon after the defendant(s) refused to honour their part of the agreement. Such conduct clearly demonstrates continuous willingness of the plaintiff to perform his part of the contract.

21. It is also pertinent to note that despite admittedly receiving the legal notice, the defendant(s) failed to issue any reply denying the agreement or disputing the assertions made by the plaintiff therein. An adverse inference, therefore, arises against the defendant(s), particularly when the defence sought to be raised appears to be an afterthought. In view of the

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above discussion, we are of the considered opinion that the plaintiff has sufficiently established continuous readiness and willingness within the meaning of Section 16(c) SPA 1963."

12.7) Considering the legal position on the issue of readiness and willingness and considering the evidence available on record as well as conduct of the parties, in view of this Court, the Trial Court has not committed any error in deciding the issue of readiness and willingness in favour of the plaintiff. The plaintiff entered into agreement and thereafter, paid substantial amount and even before expiry of the total period stipulated for payment of the sale consideration, had shown its intention by issuing a notice to the defendants demanding execution of the sale deed in its favour and in that way has proved the readiness and willingness.

12.8) On the contrary, the conduct of the defendants are highly objectionable. They entered into agreement, obtained an amount of Rs. 1,58,11,469/- through bank transaction, thereafter, filed the written statement of denial of the execution of the agreement, receipt of the amount and after filing the civil suit by the plaintiff executed the sale deed in favour of a third person.

12.9) In view of the above facts, the plaintiff has rightly been held entitled for the decree of specific performance of contract by the Trial Court.

QUESTION 'D':

13) As discussed hereinabove, the plaintiff was entitled for decree

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of specific performance of the contract. During the pendency of the suit the seller transferred the lands to the subsequent purchaser by the registered sale deed dated 13/04/2023. Though the subsequent purchasers remain *ex parte* before the Trial Court, but the subsequent purchasers have challenged the judgment and decree passed by the Trial Court in First Appeal and as per the provisions of Section 96(2) of the CPC they are entitled to challenge the decree to the extent that plaintiff failed to prove his case and no decree could be granted in favour of the plaintiff. The sale deed executed by the sellers in favour of the subsequent purchasers have been declared *void* and ineffective to the rights of the plaintiff by the Trial Court.

13.1) Learned Senior Advocate appearing on behalf of the purchasers submits that the subsequent purchasers are the *bona fide* purchasers and purchased the property for consideration without knowledge of the pendency of the suit, therefore, their rights to be protected. In this regard, evidence available on record are required to be considered.

13.2) The first point, which is not in favour of the subsequent purchasers is that the sellers entered in to an agreement with the plaintiff for total sale consideration of Rs. 3,71,46,900/-, whereas they executed the sale deed in favour of the subsequent purchasers for a lessor amount of Rs. 3,18,00,000/-, meaning thereby, the subsequent purchasers purchased the property for a lessor consideration.

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13.3) In the cross-examination Nandkishore Patel (DW-1) has accepted that the subsequent purchaser Shri Sai Samarth Buildcon has not paid the entire sale consideration to the sellers, even after the execution of the sale deed (Ex.-P/6) by the sellers and the sellers have filed the suit for cancellation of the sale deed executed by the sellers in favour of the subsequent purchasers. When this suggestion was put to him during the course of cross-examination that whether, the subsequent purchaser withheld the amount of sale consideration upon the allegation that the sellers did not disclose them the fact of pendency of the subject suit, he denied the suggestion and voluntarily stated that the subsequent purchasers were having the knowledge of the transaction with the plaintiff. In the cross-examination he further stated that possession of the suit lands have not been delivered to the subsequent purchasers. Even in the appeal, it is argued on behalf of the original sellers that they are still in possession.

13.4) A subsequent purchaser can claim the plea of *bona fide* purchaser in accordance with Section 19(b) of the Specific Relief Act, but for the purpose of claiming the status of the *bona fide* purchaser, it is essential to prove that the transferee has purchased the property for value and paid the money in good faith and without notice of the original contract. In the case in hand, Nandkishore Patel (DW-1) in his cross-examination admitted that the subsequent purchaser has not paid the consideration despite execution of the sale deed,

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therefore, he has filed a suit for cancellation of sale deed, possession is with the seller and the subsequent purchaser was having knowledge in respect of the transaction with plaintiff.

13.5) In view of the above, this Court is of the considered view that the subsequent purchasers are not *bona fide* purchasers and cannot claim the status of *bona fide* purchaser. Even otherwise the theory o f *bona fide* purchaser is not applicable in a case of *pendente lite* transferee and provisions of Section 52 of the Transfer of Property Act, 1882 apply in the said situation.

13.6) The Supreme Court in a recent judgment delivered in the matter of **Alka Shrirang Chavan (Supra)** has held that the moment a suit or proceeding is instituted by a party to the contract whereafter there is transfer of the suit property, Section 19(b) of the Specific Relief Act would have to give way to Section 52 of the Transfer of Property Act, in which event the doctrine of *lis pendens* would come into force, therefore, the Trial Court has not committed any error in declaring the sale deed executed in favour of the subsequent purchasers as *void* and not binding on the plaintiff.

13.7) The subsequent purchasers are bound by the judgment and decree passed in the suit and they cannot take any benefit of their own wrong. Section 52 of the Transfer of Property Act provides that during the pendency of any proceeding or suit, if any property is transferred by any party to the suit, the transferee will be bound by the judgment of the

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suit.

13.8) The Trial Court has passed the decree for execution of the sale deed by original defendants No. 1 to 3 in favour of the plaintiff, whereas in a case of *pendente lite* transfer, the proper course should be the execution of the sale deed in favour of the plaintiff by original sellers as well as the subsequent purchasers as held by three Judges' Bench of the Supreme Court in the matter of **Lala Durga Prasad and Another Vs. Lala Deep Chand and Others** reported in **(1953) 2 SCC 509**, wherein the Supreme Court after considering the provisions of law has held that the subsequent transferee steps in the shoes of the original defendants, and is also liable to execute the sale deed and honour the decree of specific performance of contract in favour of the plaintiff. The relevant part of the judgment reads as under:

> *"37. The practice of the courts in India has not been uniform and three distinct lines of thought emerge. (We are of course confining our attention to a Purchaser's suit for specific performance). According to one point of view, the proper form of decree is to declare the subsequent purchase void as against the plaintiff and direct conveyance by the vendor alone. A second considers that both vendor and vendee should join, while a third would limit execution of the conveyance to the subsequent purchaser.*
>
> *38. The only statutory provisions which bear on this point are section 91 of the Indian Trusts Act, 1882, section 3 of the Specific Relief Act, 1877, illustration (g), and section 27 of that Act, and section 40 of the Transfer of Property Act.*
>
> *39. Section 91 of the Trusts Act, does not make the*

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subsequent purchaser with notice a trustee properly so called but saddles him with an obligation in the nature of a trust (because of section 80) and directs that he must hold the property for the benefit of the prior "contractor", if we may so describe the plaintiff,

"to the extent necessary to give effect to the contract."

Section 3 illustration (g) of the Specific Relief Act makes him a trustee for the plaintiff but only for 'the purposes of that Act. Section 40 of the Transfer of Property Act enacts that this obligation can be enforced against a subsequent transferee with notice but not against one who holds for consideration and without notice. Section 27 of the Specific Relief Act does not carry the matter any further. All it says is that specific performance may be enforced against

" 27.(a) either party thereto;

(b)any other person claiming under him by a title arising subsequently to the contract, except a transferee for value who has paid his money in good faith and without notice of the original contract".

None of this helps because none of these provisions directly relate to the form of the decree. It will there- fore be necessary to analyse each form in the light of other provisions of law.

40. *First, we reach the position that the title to the property has validly passed from the vendor and resides in the subsequent transferee. The sale to him is not void but only voidable at the option of the earlier "contractor". As the title no longer rests in the vendor it would be illogical from a conveyancing point of view to compel him to convey to the plaintiff unless steps are taken to revest the title in him either by cancellation of the subsequent sale or by reconveyance from the subsequent purchaser to him. We do not know of any case in which a reconveyance. to the vendor was ordered but*

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Sulaiman C. adopted the other course in Kali Charan v. Janak Deo [AIR 1932 All 694 : 1932 SCC OnLine All 154]. He directed cancellation of the subsequent sale and conveyance to the plaintiff by the vendor in accordance with the. contract of sale of which the plaintiff sought specific performance. But though this sounds logical the objection to it is that it might bring in its train complications between the vendor and the subsequent purchaser. There may be covenants in the deed between them which it would be inequitable to disturb by cancellation of their deed. Accordingly, we do not think that is a desirable solution.

41. We are not enamoured of the next alternative either, namely, conveyance by the subsequent purchaser alone to the plaintiff. It is true that would have the effect of vesting the title to the property in the plaintiff but it might be inequitable to compel the subsequent transferee to enter into terms and covenants in the vendor's agreement with the plaintiff to which he would never have agreed had he been a free agent; and if the original contract is varied by altering or omitting such terms the court will be remaking the contract, a thing it has no power to do; and in any case it will no longer be specifically enforcing the original contract but another and different one.

42. In our opinion, the proper form of decree is to direct specific performance of the contract between the vendor and the plaintiff and direct the subsequent transferee to join in the conveyance so as to pass on the title which resides in him to the plaintiff. He does not join in any special covenants made between the plaintiff and his vendor; all he does is to pass on his title to the plaintiff. This was the course followed by the Calcutta High Court in Kafiladdin v. Samiraddin [AIR 1931 Cal 67 : 1930 SCC OnLine All 154], and appears to be the

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English practice. See Fry on Specific Performance, 6th edition, page 90, Paragraph 207; also Potter v. Sanders [(1846) 6 Hare 1 : 67 ER 1057]. We direct accordingly."

13.9) The ratio decided by the Supreme Court in the matter of **Lala Durga Prasad (Supra)** has been reiterated by the Supreme Court recently in a judgment delivered in the matter of **Maharaj Singh and Others Vs. Karan Singh (Dead) Through LRs and Others** reported in **(2024) 8 SCC 83**, wherein the Supreme Court has held that the plea of *bona fide* purchase by subsequent purchaser is impermissible and the proper relief in such case is that buyer under the prior agreement to sell may claim decree of specific performance against such subsequent purchasers also, rather then cancellation of the subsequent sale deeds. The relevant para reads as under:

*"**20.** Now, we deal with another argument that the plaintiffs ought to have prayed in the suit to cancel the subsequent sale deeds executed by the first defendant. On this aspect, the law has been laid down by a Bench of three Hon'ble Judges of this Court in the case of Lala Durga Prasad & Ors. v. Lala Deep Chand & Ors.[(1953) 2 SCC 509],. Paragraphs 40 to 42 of the said decision read thus: (SCC p. 532)*

"40. First, we reach the position that the title to the property has validly passed from the vendor and resides in the subsequent transferee. The sale to him is not void but only voidable at the option of the earlier "contractor". As the title no longer rests in the vendor it would be illogical from a conveyancing point of view to compel him to convey to the plaintiff unless steps are

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taken to revest the title in him either by cancellation of the subsequent sale or by reconveyance from the subsequent purchaser to him. We do not know of any case in which a reconveyance to the vendor was ordered but Sulaiman, C.J. adopted the other course in Kali Charan Singh v. Janak Deo Singh [Kali Charan Singh v. Janak Deo Singh, AIR 1932 All 694 : 1932 SCC OnLine All 154]. He directed cancellation of the subsequent sale and conveyance to the plaintiff by the vendor in accordance with the contract of sale of which the plaintiff sought specific performance. But though this sounds logical the objection to it is that it might bring in its train complications between the vendor and the subsequent purchaser. There may be covenants in the deed between them which it would be inequitable to disturb by cancellation of their deed. Accordingly, we do not think that is a desirable solution.

41. We are not enamoured of the next alternative either, namely, conveyance by the subsequent purchaser alone to the plaintiff. It is true that would have the effect of vesting the title to the property in the plaintiff but it might be inequitable to compel the subsequent transferee to enter into terms and covenants in the vendor's agreement with the plaintiff to which he would never have agreed had he been a free agent; and if the original contract is varied by altering or omitting such terms the court will be remaking the contract, a thing it has no power to do; and in any case it will no longer be specifically enforcing the original contract but another and different one.

42. In our opinion, the proper form of decree is to direct specific performance of the contract between the

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vendor and the plaintiff and direct the subsequent transferee to join in the conveyance so as to pass on the title which resides in him to the plaintiff. He does not join in any special covenants made between the plaintiff and his vendor; all he does is to pass on his title to the plaintiff. This was the course followed by the Calcutta High Court in Kafiladdin v. Samiraddin [Kafiladdin v. Samiraddin, AIR 1931 Cal 67 : 1930 SCC OnLine Cal 46] and appears to be the English practice. See Fry on Specific Performance, 6th Edn., p.90, Para207;also Potter v. Sanders [Potter v. Sa nders, (1846) 6 Hare 1 : 67 ER 1057]. We direct accordingly."

(emphasis added)

21. Reliance is placed by the appellants on the decision of this Court in the case of B. Vijaya Bharathi3. In paragraph 17 of the said decision, this Court held thus:

"17. It must also be noted that though aware of two conveyances of the same property, the plaintiff did not ask for their cancellation. This again, would stand in the way of a decree of specific performance for unless the sale made by Defendant 1 to Defendant 2, and thereafter by Defendant 2 to Defendant 3 are set aside, no decree for specific performance could possibly follow. While Mr Rao may be right in stating that mere delay without more would not disentitle his client to the relief of specific performance, for the reasons stated above, we find that this is not such a case. The High Court was clearly right in finding that the bar of Section 16(c) was squarely attracted on the facts of the present case, and that therefore, the fact that Defendants 2 and 3 may not be bona fide purchasers would not come in the way of stating that such suit must be dismissed at the threshold

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because of lack of readiness and willingness, which is a basic condition for the grant of specific performance."

(emphasis added)

22. A bench of two Hon'ble Judges has rendered this decision. Unfortunately, the attention of the Bench was not invited to binding precedent in the form of a decision of a larger bench in the case of Lala Durga Prasad & Ors.4. Hence, the decision in the case of B. Vijaya Bharathi3 is not a binding precedent. Therefore, there was no requirement to make a prayer in the plaint for cancellation or setting aside the subsequent sale deeds.

23. Clause (a) to (c) of Section 19 of the Specific Relief Act read thus:

*"19. **Relief against parties and persons claiming under them by subsequent title.**— Except as otherwise provided by this Chapter, specific performance of a contract may be enforced against—*

(a) either party thereto;

(b) any other person claiming under him by a title arising subsequently to the contract, except a transferee for value who has paid his money in good faith and without notice of the original contract;

(c) any person claiming under a title which, though prior to the contract and known to the plaintiff, might have been displaced by the defendant;"

(emphasis added)

24. In view of clause (b) of Section 19, the defendants who are claiming under the sale deeds executed after the execution of the suit agreement can be subjected to a decree of specific performance as the suit agreement can be enforced specifically against such defendants unless they are bona-fide

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purchasers without the notice of the original contract. When, in a given case, the defendants, who are subsequent purchasers, fail to prove that they entered into the sale deed in good faith and without notice of the suit agreement, in view of Section 19(b), a decree for specific performance can be passed against such defendants. Therefore, in such a case where Section 19(b) is applicable, under the decree of specific performance, the subsequent purchasers can be directed to execute the sale deed along with the original vendor. There is no necessity to pray for the cancellation of the subsequent sale deeds."

13.10) In view of the above, the Trial Court has not committed any error in passing the decree of specific performance of contract, delivery of possession and declaration, however, the decree of specific performance of contract is required to be modified to the extent as held by the Supreme Court in the matter of **Maharaj Singh (Supra)**.

CONCLUSION:

14) In the above prospectus, this Court is of the view that the judgment and decree passed by the Trial Court are based on due appreciation of evidence and the Trial court has applied provisions of law correctly and no interference is required in the judgment and decree passed by the Trial Court.

15) Consequently, both the appeals failed and are hereby dismissed. No order as to costs. The judgment and decree passed by the Trial Court are affirmed and slightly modified to the following extent:

(a) The original defendants No. 1 to 3 and 5 and 6 shall

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execute and register the sale deed of the suit lands in favour of the plaintiff after receipt of the balance sale consideration by defendant Nos. 1 to 3 from the plaintiff;

(b) The defendants No. 1 to 3 and 5 and 6, whosoever are in possession, shall deliver the vacant possession of the suit lands to the plaintiff after execution of the registered sale deed;

(c) The defendants Nos. 1 to 3 and 5 and 6 shall not interfere in the possession of the plaintiff themselves or through anyone else after delivery of possession ; and

(d) The sale deed executed by defendant Nos. 1 to 3 in favour of the defendant Nos. 5 and 6 is ineffective and not binding on the plaintiff.

16) Decree be drawn accordingly. Record of the Trial Court be returned along with copy of the judgment and decree.

17) Let a copy of this judgment be kept in the record of connected appeal also.

(VINAY SARAF)
JUDGE

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