

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 31st October, 2013.

+ **RFA 18/2003**

OM PRAKASH **Appellant**

Through: Mr. B.K. Sood, Adv.

Versus

SANTOSH CHADDHA **Respondent**

Through: Ms. Divya Attri, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J.

1. The appeal impugns the judgment and decree (dated 18th October, 2002 of the Court of the Additional District Judge (ADJ), Delhi in Suit No.197/2001 filed by the appellant/plaintiff) insofar as declining the relief of specific performance of an Agreement to Sell of immovable property to the appellant/plaintiff, though decreeing the suit for refund of the earnest money paid by the appellant with interest.

2. The appeal was admitted for hearing and vide ad-interim order dated 28th January, 2003 *status quo* directed to be maintained with respect to the suit property. It appears that the respondent/defendant had also preferred RFA No.769/2002 against the same judgment and decree. Vide order dated

27th November, 2009 this appeal was clubbed with RFA No.769/2002 and both appeals were ordered to be heard and listed together. The counsel for the appellant/plaintiff on the same day made a statement that the appellant/plaintiff was not wishing to press CM No.37/2003 for interim relief and on which the earlier interim order directing maintenance of *status quo* was made. Accordingly, the said application was dismissed as not pressed. On 16th February, 2010 the counsel for the appellant/plaintiff stated that the only reason the appellant/plaintiff had been denied the relief of specific performance was on account of interim order passed in Suit No.1776/1998 titled Raj Kumar Chaddha Vs. Smt. Santosh Kapoor & Others and he was not aware of the outcome of the said suit; accordingly, the records of the said suit were requisitioned. On 18th February, 2011, none appeared for either of the parties and both appeals were dismissed in default. However, the appellant/plaintiff applied for restoration and which was allowed vide order dated 31st July, 2012 and the present appeal restored to its original position. No application was however filed for restoration of RFA No.769/2002 preferred by respondent/defendant against the same decree. None appeared for the respondent/defendant thereafter and vide order dated 30th August, 2013 the appeal was directed to be listed with

notation in the Cause List of this Court of ‘notice of default to the counsel for the respondent’. Since the file of Suit No.1776/1998 supra was not available, the same was again requisitioned. The counsel for the appellant/plaintiff was heard on 4th September, 2013 and certain queries were made from him and the matter adjourned to 6th September, 2013. The counsel for the appellant/plaintiff was also requested to telephonically inform the Advocate for the respondent/defendant. The counsels were further heard on 9th September, 2013 when the respondent/defendant also appeared in person and the judgment was reserved.

3. The file of Suit No.1776/1998 has also been received. The file of RFA No.769/2002 since destroyed in physical form has also been called for in digital form.

4. The appellant/plaintiff filed the suit from which this appeal arises, pleading:

- (i) that the respondent/defendant had vide Agreement to Sell dated 24th May, 2001 agreed to sell her house No.RP-29, Pitampura, Delhi admeasuring 126 sq. mtrs. to the appellant/plaintiff for total sale consideration of Rs.4,60,000/-;
- (ii) that the respondent/defendant had acquired the said house form

her husband Sh. Raj Kumar Chaddha by virtue of Agreement to Sell dated 1st July, 1998 for a sum of Rs.4,50,000/- and had represented to the appellant/plaintiff that she was the owner of the said house by virtue of Agreement to Sell, registered General Power of Attorney (GPA) and registered Will executed by her husband in her favour and that she was duly authorized to sell the said house;

- (iii) that the respondent/defendant had further represented to the appellant/plaintiff that the respondent/defendant required the money for herself and for her family needs;
- (iv) that out of the total agreed sale consideration of Rs.4,60,000/-, the appellant/plaintiff paid a sum of Rs.1,00,000/- to the respondent/defendant by bankers cheque dated 23rd May, 2001 and Rs.50,000/- by way of cash at the time of execution of the Agreement to Sell and the balance sale consideration of Rs.3,10,000/- was to be paid at the time of execution and registration of the Sale Deed and delivery of vacant, peaceful and physical possession of the house on or before 30th June, 2001;

- (v) that the respondent/defendant was required to obtain income tax clearance or any other clearances, if required for transferring of the property;
- (vi) that it was also a term of the Agreement to Sell that in case the respondent/defendant was not able to transfer the said house to the appellant/plaintiff free from all encumbrances, then the respondent/defendant will make good all the losses suffered by the appellant/plaintiff besides being liable to pay compensation of Rs.10,00,000/- to the appellant/plaintiff over and above actual losses suffered by the appellant/plaintiff;
- (vii) that the respondent/defendant did not intimate to the appellant/plaintiff about having obtained the requisite clearances/permissions for sale of the property, though the appellant/plaintiff was ready and willing to perform his part of the contract;
- (viii) that upon the appellant/plaintiff approaching the respondent/defendant, she initially sought further time on account of her husband being not well but thereafter started avoiding the appellant/plaintiff and ultimately in September,

2001 stated that she was willing to go ahead with the transaction provided sale consideration thereof was increased by Rs.1,00,000/-;

- (ix) that in the circumstances, the appellant/plaintiff got issued a legal notice dated 24th September, 2001 to the respondent/defendant calling upon her to perform her part of the Agreement to Sell;
- (x) that the respondent/defendant in reply to the said legal notice falsely disputed the entire transaction;
- (xi) that the respondent/defendant had turned dishonest;
- (xii) that the appellant/plaintiff accordingly sued for specific performance and in the alternative for recovery of Rs.4,60,000/- with interest.

5. The respondent/defendant contested the suit, by filing a written statement, on the grounds:

- (a) that the appellant/plaintiff in collusion with the husband of the respondent/defendant had played a fraud on the respondent/defendant and had obtained signatures of the

- respondent/defendant on various papers under threat and force;
- (b) that the respondent/defendant was married to Sh. Raj Kumar Chaddha; the respondent/defendant purchased the said house from her husband; that for some time the respondent/defendant lived peacefully with her husband in the said house but thereafter the husband of the respondent/defendant started harassing the respondent/defendant and their relations became strained and the husband of the respondent/defendant filed a petition for divorce and a suit for injunction against the respondent/defendant and which proceedings were then still underway;
- (c) that the husband of the respondent/defendant however continued to live with the respondent/defendant in the said house;
- (d) that in the second week of May, 2001, the husband of the respondent/defendant asked the respondent/defendant to compromise the matter and to which she agreed; in pursuance thereto the appellant/plaintiff along with attesting witnesses to the Agreement to Sell namely Sh. Manoj Chauhan and Sh. Raj

Kumar Gupta took the respondent/defendant representing that her husband was also sitting in their office, for sale of the house; however the respondent/defendant did not find her husband at the premises of the appellant/plaintiff but the appellant/plaintiff and other persons made the respondent/defendant put her signatures on some papers and the said persons only took her to Punjab National Bank (PNB), Karol Bagh, New Delhi and opened an account in her name and deposited Rs.1,00,000/- therein and which was also subsequently withdrawn by the husband of the respondent/defendant; all this was done to throw the respondent/defendant out of the property;

- (e) that else the value of the property was approximately Rs.70 lakhs as on 9th November, 2001 when the suit was filed and it was incomprehensible that she would agree to sell for Rs.4,60,000/-.

6. The appellant/plaintiff filed a replication but with no new plea therein.

7. On the pleadings aforesaid of the parties, the following issues were

framed in the suit on 12th July, 2002:

- “1. *Whether the present suit of the plaintiff is not maintainable as has not been properly valued as alleged in P.O. No.3?OPD*
2. *Whether the suit of the plaintiff is not maintainable as there is no cause of action as alleged in P.O. No.4?OPD*
3. *Whether the plaintiff is entitled for the decree of specific performance of agreement to sell and possession of suit property? OPP*
4. *Whether the plaintiff is entitled for damages?OPD*
5. *Relief.”*

8. The appellant/plaintiff besides himself examined three other witnesses. The respondent/defendant besides herself examined the witness from the Delhi Development Authority (DDA).

9. The learned ADJ declined the relief of specific performance and decreed the suit for recovery of double of earnest money, finding/observing/holding:

- (i) that the suit as filed was maintainable and properly valued;
- (ii) that the appellant/plaintiff had cause of action for the suit;
- (iii) that the appellant/plaintiff had proved that the respondent/defendant had entered into an Agreement to Sell;
- (iv) that the respondent/defendant had failed to prove as to how she was forced, influenced and coerced into signing the Agreement

to Sell and her said plea was false and concocted;

- (v) that however since the respondent/defendant, vide interim order dated 25th August, 1998 in Suit No.1776/1998 (supra) filed by her husband against her, had been restrained from alienating, encumbering or parting with possession of the said house, the appellant/plaintiff was not entitled to the relief of specific performance;
- (vi) that the respondent/defendant had not disclosed to the appellant/plaintiff that there was an interim order dated 25th August, 1998 restraining her from dealing with the property and on the contrary had represented to the appellant/plaintiff that she was entitled to sell the property;
- (vii) that the respondent/defendant had thus failed to perform her part of the Agreement and was liable to pay double the amount received from the appellant/plaintiff to the appellant/plaintiff;
- (viii) that the appellant/plaintiff was also awarded interest @ 8% per annum on the said amount of Rs.3,00,000/- from the date of filing of the suit till payment.

10. The counsel for the appellant/plaintiff has argued:

- (a) that the appellant/plaintiff has been declined the relief of specific performance only for the reason of the interim order dated 25th August, 1998 in Suit No.1776/1998 filed by the husband of the respondent/defendant, restraining the respondent/defendant from dispossessing her husband from the property and/or transferring, alienating or disposing of the property to any other person;
- (b) that the husband of the respondent/defendant died in the year 2010 (the respondent/defendant appearing in person on 9th September, 2013 has informed that her husband died on 31st December, 2011);
- (c) that the respondent/defendant even in the written statement in the suit from which this appeal arises did not disclose of the interim order restraining her from dealing with the property;
- (d) that though the Agreement to Sell is of the year 2001 and the interim order in Suit No.1776/1998 restraining the respondent/defendant from selling the property was operative till the husband of the respondent/defendant was alive but there is now no impediment to decreeing the suit for specific

performance by balancing the equities; reliance in this regard is placed on ***Surinder Kumar Vs. Brahm Prakash*** (2012) IV AD Delhi 466 where a Single Judge of this Court finding the case of genuine hardship, directed payment of additional compensation by the purchaser to the seller to bring the sale price at par with the prescribed circle rates; it is argued that the appellant/plaintiff is willing to pay the sale consideration as per the circle rate, even if higher than the agreed sale consideration, to the respondent/defendant.

11. It was on 4th September, 2013, enquired from the counsel for the appellant/plaintiff whether an Agreement to Sell in violation of an injunction order would be void and even if not void, whether discretion implicit in the grant of relief of specific performance was to be exercised in favour of the appellant/plaintiff in such circumstance.

12. The counsel for the appellant/plaintiff in response to the aforesaid query, on 9th September, 2013 invited attention to ***Thomson Press (India) Limited Vs. Nanak Builders and Investors Private Limited*** (2013) 5 SCC 397 and ***A.K. Chatterjee Vs. Ashok Kumar Chatterjee*** 156 (2009) DLT 475 to contend that transfer/sale *pendente lite* in disregard of injunction/restraint

order of the Court though may make the party committing breach liable to be punished therefor but sale by itself remains valid between the parties, subject to any directions which competent Court may issue and that such sale is not a nullity. It was further argued:

- (i) that an interim injunction is against a person and not against the property;
- (ii) relying upon *Sewa Singh Vs. R.S. Malhotra* AIR 2004 Delhi 152, it is contended that specific performance of an Agreement to Sell entered into by the vendor in violation of an interim injunction of the Court should be granted, subject to the interim injunction being vacated; it is argued that upon the demise of the husband of the respondent/defendant, the interim injunction stands vacated and now there is no such impediment to the grant of the relief of specific performance. Relying on *Yeshoda Rani Vs. Maneesh Kumar* 67 (1997) DLT 340 (DB), it is contended that the respondent/defendant cannot be allowed to take advantage of her own wrong;
- (iii) that appeal is a continuance of the suit and the relief which could have been granted in suit can also be granted in the

appeal taking note of the subsequent event of the vacation of the interim injunction on account whereof the relief of specific performance has been declined in the suit;

- (iv) relying on ***Kusuma Dei Vs. Malati Bewa*** AIR 1969 Orissa 195 and ***Pranakrushna Vs. Umakanta Panda*** AIR 1989 Orissa 148, it is argued that an Agreement to Sell in violation of an interim injunction is voidable at the instance of the purchaser and not at the instance of the seller who has acted in violation of the interim order;
- (v) attention is invited to ***Kuldip Gandotra Vs. Shailendra Nath Endlay*** AIR 2007 Delhi 1 laying down that a seller in breach of the Agreement to Sell cannot be permitted to resile from his commitment simply because the seller could now get a better deal elsewhere or simply because *ex post facto* other party stands to gain from the transaction and further laying down that the sanctity of the binding contract would be otherwise lost.

13. The counsel for the respondent/defendant has not addressed any argument and on enquiry has only informed that the husband of the respondent/defendant has not left any children.

14. I have perused the file of Suit No.1776/1998 filed by the husband of the respondent/defendant. The case of the husband of the respondent/defendant was, (i) that his first two marriages in the year 1958 and in the year 1968 resulted in divorce; (ii) that he was thereafter residing only with his mother who also died in June, 1994; (iii) that he married the respondent/defendant on 10th November, 1997 at the age of 66 years when he was the owner of the property No.RP-29, Pitampura, Delhi and residing there; and (iv) that the respondent/defendant in conspiracy with her son and daughter from previous marriage stole the documents of the said property and started harassing him and the respondent/defendant openly told him that she had married him for his property and his money and started threatening to sell the property and to dispossess him therefrom. Accordingly, on 21st August, 1998 i.e. in less than one year from the marriage, the suit was filed for injunction restraining the respondent/defendant from dealing with the property or from dispossessing him from the property. Vide *ex-parte* ad-interim order dated 25th August, 1998 in the said suit, the respondent/defendant was, as aforesaid, restrained from dispossessing her husband or in any manner transferring, alienating or disposing of the property. The respondent/defendant of course contested the said suit

pleading that her husband had transferred the said house to her vide Agreement to Sell, GPA etc. The said suit remained pending with the said interim order. One Sh. Hari Chand and Sh. Wazir Chand applied for impleadment therein pleading that the respondent/defendant had vide Agreement to Sell dated 10th July, 1998 agreed to sell the said property to them and had delivered possession thereof to them and her husband had filed the said suit in collusion with her. The respondent/defendant in her reply denied any Agreement to Sell in favour of said Sh. Hari Chand and Wazir Chand. The husband of the respondent/defendant also filed a reply to the said application stating that he was even then in possession of the property and in fact the said Sh. Hari Chand and Wazir Chand had attempted to kidnap him and in which regard an FIR No.40/2006 was registered with the Police Station Shalimar Bagh. The said application was however dismissed on 26th February, 2009. Issues were framed in the suit and during the recording of the examination-in-chief of the husband of the respondent/defendant, the respondent/defendant on 18th April, 2009 made a statement that she and her husband were in possession of the suit property and she had not sold the property to any third party and that she was not going to sell the property or part with possession thereof during her lifetime

or the lifetime of her husband, whichever is later in time and that she would not dispossess her husband from the property without due process of law. Binding the respondent/defendant thereto, the suit was disposed of.

15. A perusal of the evidence in the suit from which this appeal arises, reveals:

- (i) that the Agreement to Sell of which specific performance is claimed was executed neither in the suit property where the respondent/defendant was residing nor at the residence of the appellant/plaintiff but at the office in Karol Bagh of one Sh. Subhash Chand carrying on business of food grains and transportation and who did not know the respondent/defendant and who admitted to being a childhood friend of the appellant/plaintiff and from whom enquiries were made by the police within about four months of the Agreement to Sell dated 24th May, 2011, on the complaint of the respondent/defendant;
- (ii) that though the Agreement to Sell is attested by a Notary Public but the said Sh. Subhash Chand admitted that the said attestation was not at the time of execution;
- (iii) that PW-2 Sh. Manoj Chauhan who claimed to have brokered

the deal, claimed to have been introduced to the respondent/defendant by his friend and could not establish that he was carrying on business as a broker and could not even tell the name of the husband of the respondent/defendant;

- (iv) that the Notary Public who had attested the Agreement to Sell had not made entry of such attestation in the register usually and mandatorily required to be maintained by him and could not even identify the respondent/defendant;
- (v) that a complaint was made by the respondent/defendant on 1st June, 2001 with the Police Station Prasad Nagar about her signatures having been taken on some documents on 24th May, 2001;
- (vi) that upon action being taken by the police on the complaint dated 1st June, 2001 of the respondent/defendant, the respondent/defendant filed a criminal complaint on 16th October, 2001 about the said incident on 24th May, 2001;
- (vii) that the appellant/plaintiff at least on 18th September, 2002 i.e. on the date of cross-examination of the respondent/defendant, if not earlier, was aware of the suit filed by the husband of the

respondent/defendant against the respondent/defendant and in which there was interim injunction restraining the respondent/defendant from selling the property;

- (viii) that the record of PNB, Karol Bagh in which the bank draft aforesaid of Rs.1 lakh was deposited was summoned in the Court and which confirmed that the said account was opened only on 25th May, 2001 and the respondent/defendant was introduced by PW-2 Sh. Manoj Chauhan and the sum of Rs.1 lakh was withdrawn by a self cheque on 31st May, 2001 and the account closed on 11th September, 2001;
- (ix) that the signatures behind the self cheque vide which the amount of Rs.1 lakh was withdrawn are not of the respondent/defendant;
- (x) that the land rate as per the DDA in the Pitampura area as on 1st April, 2002 was Rs.22,000/- per sq. mtr. and the price of a similar property in that area as per DDA as on 24th September, 2002 was Rs.29,83,816/-;
- (xi) that a criminal complaint of offences under Section 420, 468, 471, 341, 506 & 34 I.P.C. was filed by the

respondent/defendant against her husband and the appellant/plaintiff and Sh. Manoj Chauhan etc. of having coerced her into signing of the documents on 25th May, 2001.

16. Neither the counsel for the appellant/plaintiff during the hearing nor the counsel for the respondent/defendant, who chose not to address any arguments, highlighted the aforesaid facts, which have emerged on perusal of the record. For the same reason, the outcome of the complaint filed by the respondent/defendant also cannot be known, though I recollect the counsel for the appellant/plaintiff informing that the same is still pending consideration. I feel no hesitation in taking into consideration the record of Suit No.1776/1998 filed by the husband of respondent/defendant, in adjudication of this appeal, the same having been requisitioned at the instance of the appellant/plaintiff.

17. The first question for consideration is, what is the status of an Agreement to Sell entered into by the seller in violation of an order of injunction by a Court of Law restraining the seller from alienating/encumbering/selling the property – whether it is a nullity and void or merely voidable at the instance of the purchaser if the purchaser at the time of entering into the agreement was not in the know of injunction

order. The question arises because if such an agreement were to be a nullity and void, the question of specific performance thereof would not arise.

18. I find the Supreme Court, in ***Surjeet Singh Vs. Harbans Singh*** (1995) 6 SCC 50, to have held that if alienation/assignment made in defiance of an injunction order is permitted, it would defeat the ends of justice and the prevalent public policy. It was further held that when Courts intend a particular state of affairs to exist while in seisin of a *lis*, that state of affairs is not only required to be maintained but also presumed to exist till the Court orders otherwise and the Court in these circumstances has the duty as also the right to treat the alienation/assignment as having not taken place at all and the alienee/assignee in violation of the interim order thus cannot claim to be impleaded on the basis of assignment as the same would be in disobedience of the order of injunction.

19. The Supreme Court again in ***Vidur Impex & Traders Private Limited Vs. Tosh Apartments Private Limited*** (2012) 8 SCC 384 held that the agreement of sale in clear violation of order of injunction does not have any legal sanctity and does not confer any right upon the alienee/assignee and no valid title or interest can be said to have been acquired thereunder. The aforesaid observation in ***Surjit Singh*** was reiterated

20. The aforementioned two judgments suggest that an Agreement to Sell entered into in violation of an injunction order is void and a nullity. If that is so, then the question of specific performance of such an agreement would not arise.

21. That brings me to *Thomson Press (India) Limited* and *A.K. Chatterjee* supra relied upon by the counsel for the appellant. The Supreme Court in *Thomson Press India Ltd.*, noticed not only *Surjeet Singh* and *Vidur Impex & Traders Pvt. Ltd.* supra but also a host of other judgments and:-

- (i). held that the question involved in *Surjit Singh* was of impleadment of an assignee under an Assignment Deed executed in violation of the injunction order and impleadment was refused for the reasoning aforementioned;
- (ii). further held that subsequently a three Judge Bench in *Savitri Devi Vs. District Judge, Gorakhpur* (1999) 2 SCC 577 also faced with the question of impleadment of an assignees in violation of an injunction order had allowed such impleadment, holding that the plea of the assignees of being a *bona fide* transferee for value in good faith may have to be decided

before it could be held that the assignment in their favour created no interest in the property and that if the application for impleadment is thrown out without a decision on the said plea, the assignees will certainly come up with a separate suit to enforce their alleged rights and which would result in multiplicity of proceedings; the assignees were thus held to be necessary and proper parties; ***Surjit Singh*** was distinguished by observing that in that case there was no dispute that the assignees had knowledge of order of injunction whereas the same was to be decided in ***Savitri Devi***;

- (iii). gave no reasoning as to why the observations aforementioned in ***Vidur Impex & Traders Pvt. Ltd.*** did not apply;
- (iv). held the impleadment of subsequent transferee to be permissible by Section 19(b) of Specific Relief Act;
- (v). found the assignee seeking impleadment to have entered into a clandestine transaction with full knowledge of injunction order but nevertheless allowed impleadment as a party for enforcing performance against him;
- (vi). Justice T.S. Thakur in his supplementing judgment held that it

was a settled legal position that a transfer *pendente lite* is not illegal *ipso jure* but remains subservient to the pending litigation and further held that though it was so held in the context of *lis pendens* and not in the context of transfer in breach of an order of injunction but there was no reason why the breach of any such injunction should render the transfer ineffective in as much as though the party committing breach may incur liability for consequences thereof but the sale or transfer by itself may remain valid as between the parties thereto subject only to any direction which the Court which had granted the injunction may issue against a transferor or vendor.

22. Thus, we on the one hand have judgments of ***Surjit Singh*** and ***Vidur Impex & Traders Pvt. Ltd.*** holding a sale/transfer or assignment in violation of injunction order to be not conferring any title and to be ignored and on the other hand the judgment in ***Thomson Press*** holding such transfer/sale assignment in violation of injunction order to be valid between the parties thereto though remaining subject to directions/orders of the Court granting the injunction. All the said three judgments are by Benches presided by two Judges. ***Savitri Devi*** which is a judgment of a three Judge Bench does not

deal with the said aspect.

23. In view of the subsequent judgment in *Thomson Press*, need is not felt to deal with my own judgment in *A.K. Chatterjee*.

24. Though there appears to be a dichotomy of views as aforesaid but it is worth highlighting that all the cases aforesaid were concerned with the question of allowing impleadment or not of assignee in violation of an injunction order in the proceeding/suit in which the injunction order was issued. While in *Surjit Singh* and *Vidur Impex & Traders Pvt. Ltd.*, for the reason of holding such assignment to be conferring no title, impleadment was refused, in *Thomson Press* it was allowed, not by holding such assignment to be valid but for the reason of such assignee being bound by the final judgment/decreed in such suit/proceeding. *Savitri Devi* though also allowed impleadment, but for the reason of adjudicating whether the assignee had knowledge of order of injunction or not

25. The factual matrix at hand is however different. Even though an assignee in violation of injunction order may be entitled to impleadment in the suit in which injunction order was granted, for the reason of being bound by the ultimate judgment in such suit/proceeding, the question in hand is whether a Court other than the Court which had granted injunction can,

inspite of being informed of such injunction, grant specific performance of an agreement entered into in violation of injunction order and make the same subject to the final outcome of the suit/proceeding in which injunction order was granted.

26. I have wondered whether not the same would tantamount to the Court before which specific performance of such an agreement is sought, aiding and abetting violation of the order of injunction issued by another Court and whether not the same would result in conflicting orders or decisions. I have also wondered whether not in such a situation the principle of Comity of Courts, though generally raised in the context of international law, would be applicable.

27. In my view, the Court which is approached for specific performance of an agreement entered into in violation of the order of injunction of another Court, cannot after acquiring knowledge of such violation of order of injunction of another Court proceed with the adjudication of the suit for specific performance or pass a decree therein and make the same subject to the outcome of the suit/proceeding in which injunction has been granted. The proper course in such a situation would be to direct the plaintiff in such a suit to approach the Court which had granted the injunction for permission

to proceed with his claim for specific performance and only if that Court grants such permission, to proceed with the suit for specific performance. If the Court, inspite of being informed that the claim for specific performance before it is of an agreement entered into in defiance of an order of injunction of another Court, proceeds with the suit, it would defeat the ends of justice and the prevalent public policy and result in one Court which had granted injunction proceeding with the presumption that the state of affairs which was required to be maintained continues to exist and treating alienation /assignment in breach thereof having not taken place at all and the other Court proceeding to adjudicate claims, cause of action whereof is seeped in such violation.

28. The contention of the counsel for the appellant/plaintiff that the decree for specific performance should have been granted, subject to the outcome of the other suit, is incomprehensible. Reliance on judgments where specific performance was granted subject to the grant of permissions requisite/necessary for sale, is misconceived. The restrictions in law or in perpetual lease of land, prohibiting alienation without prior permission, have in *Vishwa Nath Sharma Vs. Shyam Shanker Goela* (2007) 10 SCC 595, *K. Raheja Constructions Ltd. Vs. Alliance Ministries* 1995 Supp. (3) SCC 17

and *Van Vibhag Karamchari Griha Nirman Sahkari Sanstha Maryadit Vs. Ramesh Chander* (2010) 14 SCC 596 been held to be not a bar for entering into the Agreement to Sell, only after execution of which the permission can be sought/applied for. However an interim injunction of a Court, restraining a person from dispossessing the person in possession of the property or from alienating, encumbering or parting with possession of the property in any manner whatsoever, stands on a different footing and is an express bar to the very entering into of the argument and decreeing a suit for specific performance subject to the outcome of the interim injunction would clearly be a case of the Court becoming privy in violation of the interim order in another proceeding. It is only the Court which has granted the injunction which is competent to permit such suit for specific performance to be pursued.

29. Merely because the Supreme Court in *Savitri Devi* and in *Thomson Press (India) Limited* allowed the assignees in violation of injunction order to be impleaded in the same *lis* for the reason of binding them with the final order and did not decline impleadment for the reason of such assignment not conferring any rights as was done in *Surjit Singh* and *Vidur Impex & Traders Pvt. Ltd.* does make such agreement independently enforceable

before other Courts.

30. The doctrine of comity of jurisdictions of Courts was invoked before the Supreme Court in *Vidur Impex* supra. The Supreme Court held that if the Calcutta High Court had been apprised of the interim order earlier passed by the Delhi High Court, it would have been slow in passing an order in conflict with the order passed by the Delhi High Court and approved of the order of the Calcutta High Court, upon being subsequently apprised of the earlier order of the Delhi High Court, showing due respect to the same and making its order subject to the orders of the Delhi High Court. The said course of action was held to be in consonance with the notion of judicial propriety.

31. The question however arises as to the course of action to be taken by the Court from which the relief is claimed in conflict of an earlier order in another proceeding – whether the Court has to restrain its hands or is to proceed to decide the *lis* on its own merits and to proceed to pass an order even though in conflict with the earlier order in another proceeding and making it subject to the outcome/order in the proceedings in which the earlier order had been made. In my view, judicial propriety demands the Court to restrain its hands and to leave it open to the parties to approach the

Court which had granted the earlier order of injunction for appropriate direction/enforcement of their rights.

32. I find the Supreme Court, as far back as in ***Mulraj Vs. Murli Raghunathji Maharaj*** AIR 1967 SC 1386, to have also held that the Court which unknowingly acts in defiance of a stay order is required to, upon subsequently being apprised of the stay order, undo what was done in violation of stay, again indicating that the Court cannot knowingly allow to be done or order what has been enjoined by another Court.

33. Unless such comity is observed by the Courts, the Courts would become a tool in the hands of unscrupulous litigants who by obtaining conflicting orders from different Courts will spin a web of litigation to their own advantage and thereby subverting the judicial process.

34. Reference in this regard can be made to Section 41 (b) of the Specific Performance Act, 1963 which bars an injunction from being granted to restrain any person from instituting or prosecuting any judicial proceeding in a Court not subordinate to that from which injunction is sought and which illustrates the principle of the *inter se* relation of the Courts. The suit filed by the husband of the respondent/defendant was instituted on the original side of this Court and was till the impugned judgment pending in this Court,

though subsequently was transferred to the Court of the learned ADJ, Delhi. Grant of relief of specific performance in the suit from which this appeal arises by the learned ADJ would have been in conflict with the restraint order of this Court against dispossession and alienation.

35. I may mention that Section 52 of the Transfer of Property Act, 1882 itself prohibits alienations during the pendency of a *lis*. Though at one time a view was taken, particularly by the Punjab and Haryana High Court that owing to the doctrine of *lis pendens* enshrined in Section 52 of the Transfer of Property Act, there is no need for grant of injunction but the view of this Court in *Ashoka Builders & Promoters Vs. Edward Keventer Pvt. Ltd.* MANU/DE/0577/1993 and *Mohan Overseas Pvt. Ltd. Vs. Goyal Tin & General Industries* 169 (2010) DLT 487 (DB) has been that there is a need for restraining alienation in appropriate cases and the parties cannot be left to rely on the doctrine of *lis pendens* alone for the reason of the inherent delays in impleadment of transferees *pendente lite* and to protect innocent alienees/transferees/purchasers and as equities may arise in favour of such alienees and yet further that fear of contempt acts as a deterrent against such alienation. This Court, after having held so, cannot possibly take a view that the injunctions issued by it can be so violated with the assistance

of another Court.

36. I have wondered, why the appellant/plaintiff, though aware prior to the impugned judgment, of the injunction operating against sale, did not file an application in the suit filed by the husband of the respondent/defendant for impleadment or for directions for permitting specific performance in his favour, subject to the ultimate decision in that suit. That would have been a natural thing to have been done by the appellant/plaintiff, if his conduct had been *bona fide*. On the contrary, the appellant/plaintiff continued to press for specific performance of the entire Agreement and as per which Agreement, not only was the Sale Deed to be executed by the respondent/defendant in favour of the appellant/plaintiff but possession of the property also to be delivered to the appellant/plaintiff against payment by the appellant/plaintiff of the balance sale consideration and both of which were not possible in view of the interim injunction order. The appellant/plaintiff at that time did not state that upon learning of the injunction order, he was willing to purchase the property and pay the balance sale consideration subject to the outcome in the suit filed by the husband of the respondent/defendant. In my view, the appellant/plaintiff ought to have at that stage shown his willingness to perform his part of the

Agreement by taking such a stand and which he did not do and which axiomatically means that he was not ready and willing to perform his part of the Agreement to Sell without the respondent/defendant performing entire part of her Agreement and which she could not be asked to perform owing to the interim injunction in the other suit.

37. The appellant/plaintiff cannot now be heard to express his readiness and willingness.

38. The next question which arises is as to what is the effect of the subsequent event of the demise of the husband of the respondent/defendant on 31st December, 2011 and the implicit vacation of the injunction order. In my view, the said subsequent event of ten years after the date contemplated in the Agreement to Sell for completion of the transaction cannot make an Agreement enforceable which was unenforceable on the date fixed for completion. The test to be applied in such cases is of the date fixed for completion and not of the vagaries of circumstances happening at any time thereafter.

39. Moreover, the grant of relief of specific performance is discretionary under Section 20 of the Specific Relief Act and I am for the reasons hereinafter appearing not inclined to exercise such discretion in favour of

the appellant/plaintiff:

- (i) The execution of the Agreement to Sell is shrouded in suspicious circumstances;
- (ii) The learned ADJ has failed to notice the factum of the respondent/defendant having within about a week of the date of the signing of the Agreement to Sell made a complaint to the police station about the circumstances in which her signatures were taken and upon the police not taking any action in the matter having filed a criminal complaint about the same and which criminal complaint at least till the impugned judgment was not reported to have been dismissed;
- (iii) Though a payment of Rs.1,50,000/- out of which Rs.1 lakh was by way of a bank draft is shown under the Agreement to Sell but the opening of the bank account, in which the said draft of Rs.1 lakh was deposited, on the same day as of the Agreement to Sell and under introduction from Sh. Manoj Chauhan who has otherwise been unable to show to have acted as a broker, is also suspicious;
- (iv) Similarly, the withdrawal of the said amount of Rs.1 lakh by a

self cheque from the said account within few days of deposit and the signatures on the reverse of the said cheque made while obtaining money thereunder being different from those of the respondent/defendant also raises suspicion;

- (v) The aforesaid also raises a doubt about the payment of Rs.50,000/- in cash;
- (vi) The aforesaid transaction of deposit and withdrawal of Rs.1 lakh being the only transactions in the bank account is also a suspicious circumstance;
- (vii) The filing of application for impleadment in the Suit No.1776/1998 by Sh. Hari Chand and Sh. Wazir Chand in the suit for injunction filed by the husband of the respondent/defendant, claiming to be purchasers and the said Sh. Hari Chand and Sh. Wazir Chand having not pursued the matter further, shows diverse claims being made with respect to the property not only by the husband of the respondent/defendant and the respondent/defendant but also by others and the property being a disputed one;
- (viii) All the aforesaid circumstances, in my opinion gave the

appellant/plaintiff an unfair advantage over the respondent/defendant;

- (ix) The sale consideration of Rs.4,60,000/- is found to be much below the then prevalent price of Rs.29,83,816/- deposed by the DDA witness;
- (x) Even if it were to be believed that the plea of the respondent/defendant of being forced to enter into the Agreement to Sell is not established, the dispute then pending between the respondent/defendant and her husband relating to the property and for the reason whereof the Agreement by the respondent/defendant was an act of one-upmanship on her husband, would make it inequitable to enforce specific performance;
- (xi) The fact that the sale consideration under the Agreement to Sell by the husband of the respondent/defendant in favour of the respondent/defendant is Rs.4,50,000/- would not reflect the prevalent market price owing to the relationship between them; moreover, the said Agreement itself was disputed;
- (xii) A perusal of the file of Suit No.1776/1998 filed by the husband

of the respondent/defendant against the respondent/defendant unequivocally establishes that the dispute between the respondent/defendant and her husband was genuine and not collusive and the settlement ultimately reached between them is also not found to be collusive but on account of old age and the two being exhausted by litigation;

(xiii) The appellant/plaintiff in the Agreement to Sell of which specific performance is claimed had sufficiently protected himself by making the respondent/defendant liable for compensation of Rs.10 lakhs over and above the actual loss suffered by him in the event of it being proved that the representation made by the respondent/defendant to him of the property being free from all injunctions, was false;

(xiv) An Agreement to complete a transaction within a certain time, if incapable of being performed within that time, cannot be made timeless in a suit for specific performance inasmuch as the parties having entered into an Agreement on the premise of the transaction being completed within a short time, cannot be forced to abide by the transaction, if the same is incapable of

being complete within that time;

(xv) It is the case of the respondent/defendant that the appellant/plaintiff is in collusion with her husband. The complaint to the police as well as criminal complaint filed is not only against the appellant/plaintiff but also against the husband of the respondent/defendant;

(xvi) The Trial Court failed to address the issue whether the appellant/plaintiff was aware of the injunction order or not, inasmuch as if it were to be held that the appellant/plaintiff entered into the Agreement to Sell with the knowledge of the injunction order, then he is equally to blame and in any case the discretion implicit in the grant of the relief of specific performance cannot be exercised in his favour and a violator of injunction order of the Court is not entitled to any relief;

(xvii) Though there is no evidence of the knowledge of the appellant/plaintiff of the said injunction order but it is not in dispute that the husband of the respondent/defendant was in possession of the property;

(xviii) Once, it is so, in my view, the appellant/plaintiff as purchaser is

deemed to have notice of all the claims of the husband of the respondent/defendant to the property and consequently of the injunction order;

(xix) Section 3 of the Transfer of Property Act, 1882 provides that a person is said to have notice of a fact when he actually knows that fact, or when, but for wilful abstention from an enquiry or search which he ought to have made, or gross negligence, he would have known it. Explanation II thereof provides that any person acquiring any immovable property or any share or interest in any such property shall be deemed to have notice of the title, if any, of any person who is for the time being in actual possession thereof;

(xx) The Supreme Court in ***R.K. Mohammed Ubaidullah Vs. Hajee C. Abdul Wahab*** AIR 2000 SC 1658 has held that such notice under Section 3 is deemed not only of the title of the person in possession when entering the property but of subsequent claims and interest of such person also. It was thus held that subsequent purchaser is deemed to have notice of the mortgage in favour of the tenant in possession of the property. The same

view was followed in *Guruswamy Nadar Vs. P. Lakshmi Ammal* (2008) 5 SCC 796 and in *Har Narain Vs. Mam Chand* (2010) 13 SCC 128 as well;

(xxi) The appellant/plaintiff is thus from the admitted fact of possession of the husband of the respondent/defendant of the property deemed to have notice of all the disputes raised by the husband of the respondent/defendant of the documents under which the respondent/defendant was claiming title to the property and also of the injunction order in the suit filed by the husband of the respondent/defendant;

(xxii) It is not the case of the appellant/plaintiff that the son or daughter from the previous marriage or any other family members of the respondent/defendant was present at the time of execution of the Sale Deed. Had the transaction taken place in the normal course, the appellant/plaintiff would have made the said son or daughter of the respondent/defendant from previous marriage, witness to the Agreement to Sell if voluntarily executed by the respondent/defendant and even if the respondent/defendant till then did not have a bank account,

the draft received under the Agreement to Sell would have been deposited in a bank account introduced by the said son or daughter of the respondent/defendant.

40. I am therefore, unable to even at this stage when the injunction on account of which the appellant/plaintiff was denied the relief of specific performance by the Trial Court is not in force, find the appellant/plaintiff to be entitled to the relief of specific performance.

41. The appeal has no merit and is resultantly dismissed. The counsel for the respondent/defendant having not rendered any assistance, no costs.

Decree sheet be drawn up.

RAJIV SAHAI ENDLAW, J

OCTOBER 31, 2013

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