

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 4TH DAY OF APRIL, 2025

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PRESENT

THE HON'BLE MR JUSTICE KRISHNA S DIXIT

AND

THE HON'BLE MR JUSTICE G BASAVARAJA

RFA NO.178 OF 2015 (SP)

C/W

RFA CROB NO.19 OF 2015 (SP)

IN RFA NO.178/2015:

BETWEEN:

M/S SUN RAMA EXPORTS PRIVATE LIMITED,
A COMPANY REGISTERED UNDER THE
INDIAN COMPANIES ACT, 1956
HAVING ITS REGISTERED OFFICE AT
SANJAY PLAZA, 6TH FLOOR, A.B. NAIR ROAD,
JUHU, MUMBAI-400 049.

REPRESENTED BY HEREIN BY ITS AUTHORISED SIGNATORY
MR. SANJAY ABBAS KHAN

...APPELLANT

(BY SRI.S S NAGANAND., SENIOR COUNSEL A/W
SRI.VIJAYKUMAR DESAI., ADVOCATE)

AND:

- 1 . SMT. SHANTHA SRINIVAS,
W/O SRI. D. SRINIVASA MURTHY,
AGED ABOUT 41 YEARS,
RESIDING AT NO. 1399, 12-B, CROSS ROAD,
SECOND STAGE, BASAVESWARANAGAR,
BANGALORE-560 096.
- 2 . SRI. G. PRASAD REDDY
SON OF SRI. G. SRINIVAS REDDY
AGED ABOUT 62 YEARS,

RFA No.178 OF 2015
C/W RFA CROB NO.19 OF 2015

RESIDING AT NO.659,5TH CROSS,
3RD BLOCK, KORAMANGALA,BANGALORE-560 034.

...RESPONDENTS

(BY SRI.JAYAKUMAR S PATIL., SENIOR COUNSEL A/W
SRI.H N BASAVARAJU., ADVOCATE FOR R1;
SRI.M R RAJAGOPAL., SENIOR COUNSEL A/W
SRI.B M SHIVAJI., ADVOCATE FOR R2)

THIS RFA IS FILED UNDER SEC.96 AND ORDER XLI RULE
1 OF CPC., AGAINST THE JUDGMENT AND DECREE DATED
13.1.2015 PASSED IN O.S.NO.271/2009 ON THE FILE OF THE
SENIOR CIVIL JUDGE, NELAMANGALA, PARTLY DECREETING THE
SUIT FOR SPECIFIC PERFORMANCE.

IN RFA CROB NO.19/2015:

BETWEEN:

SMT SHANTHA SRINIVAS
W/O SRI.D.SRINIVASA MURTHY,
AGED ABOUT 38 YEARS,
REPRESENTED BY HER POWER OF
ATTORNEY HOLDER,
SRI.D.SRINIVASA MURTHY,
S/O LATE DODDAMUTHAIAH,
AGED ABOUT 48 YEARS,
R/O NO.1399, 12-B, CROSS ROAD, II STAGE,
BASAVESWARANAGAR, BANGALORE-560 096.

...CROSS OBJECTOR

(BY SRI.JAYAKUMAR S PATIL., SENIOR COUNSEL A/W
SRI.H N BASAVARAJU., ADVOCATE)

AND:

- 1 . M/S SUN RAMA EXPORTS PRIVATE LTD.,
A COMPANY REGISTERED UNDER THE INDIAN
COMPANIES ACT,1956
HAVING ITS REGISTERED OFFICE AT
SANJAY PLAZA,6TH FLOOR, A.B.NAIR ROAD,
JUHU, MUMBAI-400049.
REPRESENTED HEREIN BY ITS
AUTHORISED SIGNATORY
MR.SANJAY ABHAS KHAN.

2 . SRI.G.PRASAD REDDY,
S/O SRI.G.SRINIVASA REDDY,
AGED ABOUT 56 YEARS,
R/AT NO.659, 5TH CROSS, 3RD BLOCK,
KORAMANGALA, BANGALORE-560 034.

...RESPONDENTS

(BY SRI. S S NAGANAND., SENIOR COUNSEL A/W
SRI. VIJAYKUMAR DESAI., ADVOCATE FOR R1;
SRI.M R RAJAGOPAL., SENIOR COUNSEL A/W
SRI.B M SHIVAJI., ADVOCATE FOR R2)

THIS RFA CROB IS FILED UNDER ORDER 41 RULE 22(2)
OF CPC., AGAINST THE JUDGMENT AND DECREE DATED
13.01.2015 PASSED IN OS.NO.271/2009 ON THE FILE OF THE
SENIOR CIVIL JUDGE, NELAMANGALA, PARTLY DECREERING THE
SUIT FOR SPECIFIC PERFORMANCE.

THIS RFA AND RFA CROB. HAVING BEEN HEARD AND
RESERVED FOR ORDER, THIS DAY, **KRISHNA S. DIXIT.J.**,
PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MR JUSTICE KRISHNA S DIXIT
AND
HON'BLE MR JUSTICE G BASAVARAJA

CAV JUDGEMENT

(PER: HON'BLE MR JUSTICE KRISHNA S DIXIT)

These twain appeals seek to call in question the
same judgment & decree entered by a learned Sr. Civil
Judge at Nelamangala whereby a specific performance suit
in O.S.No.622/2005, later re-numbered as
O.S.No.271/2009 having been negatived so far as the
prayer for decree of specific performance of Agreements to
Sell, plaintiff is held to be entitled to recover advance

earnest money in a sum of Rs.25 lakh from the 1st defendant with 6% interest per annum from the date of agreement i.e., 17.02.2001. Appeal in R.F.A.No.178/2015 is by the plaintiff whereas Cross Objection is by the defendant inasmuch as refund of advance amount with interest, is directed.

2. FOUNDATIONAL FACTS OF THE CASE:

2.1 Plaintiff is a Company incorporated under the provisions of erstwhile Indian Companies Act, 1956. It is carrying on the business of developing resorts & health clubs. 1st defendant Smt.Shantha vide agreement dated 17.02.2001 had agreed to sell the suit lands for a consideration of Rs.74,80,000/- only. On the date of agreement, an advance of Rs.25 lakh was paid by the plaintiff, of which Rs.22,30,000/- was by cash and Rs.2,70,000/- was by bank cheque.

2.2 On the same day, another agreement to sell was duplicated wherein a lesser consideration amount ie., Rs.52,50,000/- was shown, all other terms & conditions of

the first agreement having been retained intact. Plaintiff alleges that this was done at the instance of and to help the 1st defendant who did not want to reflect the cash component of Rs.22,30,000/- in record. The agreement *inter alia* stipulated the condition of getting the suit lands converted to non-agricultural user and of obtaining clearance/permission from the Income Tax Department, for facilitating the sale transaction.

2.3 Plaintiff alleges that because of coercive tactics, he agreed to increase the sale consideration by an additional amount of Rs.5 lakh and for this, defendant obtained Post Dated Cheques aggregating to Rs.54,80,000/-. The defendant without complying with the conditions tried to encash one of the cheques by presenting it before the specified date and contrary to what was agreed between the parties. The drawee bank did not honour the presentation. Plaintiff purchased a Demand Draft for Rs.20 lakh in favour of the said defendant, which he did not collect despite intimation.

2.4 The 1st defendant neglected to comply with the conditions of agreement and was not showing any inclination to discharge the contractual obligations resting on her shoulders. Strangely she got issued a legal notice dated 25.02.2004 'purporting to terminate the agreement' unilaterally, making false allegations. The plaintiff sent reply dated 03.03.2004. It is the case of plaintiff that despite being ready & willing, the 1st defendant is avoiding the agreement with no justification whatsoever. In the backdrop of these assertions, the subject suit came to be filed seeking a decree for specific performance.

2.5 The 1st defendant after service of summons entered appearance through her advocate and filed the Written Statement resisting the suit, principally contending that despite her readiness & willingness to perform all terms & conditions, the plaintiff himself was not ready & willing to perform his part of obligations; he has committed breach of essential terms of contract; the suit in its present form & substance was not maintainable; the plaintiff has not approached the court with clean hands and therefore is

not entitled to any relief; she has sold the suit land to another person vide registered sale deed dated 26.11.2005 and entries in the property records have been accordingly mutated.

2.6 Buyer of the suit land came to be impleaded as defendant No.2 and he too has filed Written Statement denying execution of subject agreements to sell; he has acquired marketable title over the schedule property for consideration and after *bona fide* enquiry; the subject land has been got converted to residential purpose; suit is barred by limitation; plaintiff has suppressed material facts and therefore is not entitled to any relief. He has also filed Additional Written Statement, eventually resulting into amendment of the plaint.

3. AS TO ISSUES FRAMED BY THE TRIAL COURT:

3.1 On the basis of pleadings of parties and accompanying documents, initially five principal issues were framed and later on 17.08.2009, two additional issues came to be added. On 11.11.2014, one more

additional issue came to be framed. Thus in all, eight issues were enlisted in the following form:

"1. Whether the plaintiff proves that the defendant entered in to an agreement with him to sell the suit property for Rs.74,80,000 on 17.02.2001?

2. Whether the plaintiff father proves that the defendant received Rs.25,00,000 as an earnest money and executed an agreement of sale?

3. Whether the plaintiff is ever ready and willing to perform his part of the contract?

4. Whether the defendant proves that he has created rights of one C. Prasad Reddy under sale deed dated 26.11.2005.

5. Whether the plaintiff is entitled for the relief of specific performance of contract as sought for?

6. Whether the plaintiff proves that suit schedule property and the property purchased by defendant No.2 is one and same?

7. Whether the defendant No.2 proves that he is the bonafide purchaser of the suit schedule property without the knowledge of the agreement of sale between the plaintiff and the 1st defendant?

8. Whether Defendant No.2 proves that the Suit of Plaintiff is barred by law of limitation?"

4. TRIAL OF THE SUIT:

4.1 From the side of plaintiff-company, one Mr.Sanjay Abbas Khan being the Managing Director filed his affidavit evidence dated 23.10.2010. His examination-in-chief was done on 24.10.2010 through the Court Commissioner. Subsequently he was cross examined on several dates. In his deposition, as many as twelve documents came to be produced & marked as Exs.P1 to P12. Amongst other, these documents comprised of Company's Authorization Resolution, two agreements to sell, letter from I.T. Dept., defendant's legal notice, plaintiff's reply notice, records/extracts from bank, etc.

4.2 From the side of defendants, the 1st defendant-Smt.Shantha Srinivas did not enter the witness box. However, her husband Sri.Srinivas filed his affidavit evidence dated 15.1.2014. His examination-in-chief and cross-examination were conducted on several dates. Similarly, from the side of 2nd defendant, one Mr.Syed Aleemuddin being the Special Power of Attorney holder deposed as DW.2, filed his affidavit evidence dated

10.9.2014. He was subjected to examination-in-chief and cross-examination. In the deposition of defendants, as many as 33 documents came to be produced and got marked as Exhibits D1 to D33 which *inter alia* comprised of agreement, power of attorney, cheque, bank debit slips and endorsements, notices, reply notice, sale deed, MR order, etc.

4.3 The trial Court heard the submissions at the Bar in the light of pleadings and evidentiary material loaded to its record and entered the impugned judgment & decree. That is how the appeal by the plaintiff and cross-objections by the defendants have been placed at our hands. We tried to explore the possibility of amicable settlement, that however did not bear fruit, is beside the point.

5. Having heard learned Sr. Advocates appearing for the parties and having perused Appeal Paper Books along with the original LCR, we have framed the following questions for consideration:

5.1 Whether execution of first Agreement dated 17.2.2001 at Ex.P2 is proved, and if answer is in the affirmative, can it be held that 1st defendant has received Rs.22,30,000/- in cash towards consideration amount...?
(This is answered by the Trial Court in the affirmative)

5.2 Whether the second Agreement dated 17.2.2001 at Ex.P4 does constitute *novatio*...?
(This is not articulately discussed by the Trial Court)

5.3 Under the subject Agreement(s), what are the obligations respectively resting on the shoulders of parties i.e., plaintiff & 1st defendant...?
(This aspect is to some extent discussed by the Trial Court)

5.4 Whether learned trial Judge is justified in rejecting 1st defendant's application for amendment of Written Statement...?
(This question obviously did not arise before the Trial Court)

5.5 Whether the plaintiff was ready & willing to perform his part of obligations under the subject Agreement(s)...?
(This issue is answered in the Negative by the Trial Court)

5.6 Whether the 1st defendant has performed her part of obligations under the subject Agreement(s)...?
(This aspect is frugally discussed by the Trial Court)

5.7 Whether alleged culpable conduct of 1st defendant in selling the suit property to the 2nd in violation of T.I. order has any bearing on the matter...?

(This issue was not framed nor properly discussed by the Trial Court)

5.8 Whether the 2nd defendant who is a buyer *pendente lite* is entitled to retain the suit land...?

We have framed the above questions being conscious that a few of them do overlap, only for methodically deciding the sustainability of impugned judgment & decree, and for granting appropriate relief.

6. AS TO PROOF OF EXECUTION OF AGREEMENTS AT EXHIBITS P2 & P4 AND ENDORSEMENTS AT EXHIBITS P3 & P5:

6.1 Averredly, there are two Agreements to Sell, both being dated 17.2.2001; first is produced & marked as Ex.P2 and the other is produced & marked as Ex.P4; the first ENDORSEMENT/RECEIPT at Ex.P3 and the second ENDORSEMENT/RECEIPT at Ex.P5 are ditto in all respects as if they are copied from each other; both they are dated 25.12.2003; they mention about additional sum of Rs.5,00,000/- and enlist three bank cheques. These

documents are produced and marked in the deposition of PW.1. We hasten to add that the second Agreement at Ex.P4 is admitted in the pleadings of the parties and in their evidence as well. There is no dispute that all these Exhibits relate to suit property only. The signatures appearing on Ex.P2, Ex.P3 & Ex.P5 are specifically admitted by DW.1 who is none other than the husband of 1st defendant. He has also admitted Ex.P3 Endorsement, in para 4 of his cross-examination dated 3.9.2014 and therefore, he cannot deny Ex.P5 endorsement. It is relevant to note that Ex.P3 is written on the back page of Ex.P2 and similarly Ex.P5 is written on the back page of Ex.P4. That being the position, the execution of agreement at Ex.P2 has to be held as having been duly proved. The net effect of this is the proof of receipt of Rs.22,30,000/- as a cash component, there being nothing to rebut the shifted burden. This view gains support from the decision of Apex Court in **KALIANNA GOUNDER vs. PALANI GOUNDER¹**.

¹ AIR 1970 SC 1942

6.2 We repeat that both the Agreements namely Ex.P2 & Ex.P4 bear signatures of PW1 & 1st defendant as parties on each of their pages. In the last of the pages, DW1 admits, his signature as a witness also appears. Both these agreements have the same terms & conditions; they mention the very same cheque bearing No.171955 dated 17.2.2001 drawn on the same bank namely the Global Trust Bank, M.G. Road Branch, Bangalore. That being said, there is one significant difference: in Ex.P2, the sale price is stated as Rs.74,80,000/- only whereas, in Ex.P4, it is Rs.52,50,000/-. At paragraph 2(i)(a) of Ex.P2, receipt of Rs.22,30,000/- paid in cash is mentioned. Paragraph 2(i)(b) mentions about receipt of Rs.2,70,000/- by cheque. Same paragraph reads '*... total sum of Rs.25,00,000/- (Rupees Twenty five lakhs only) as advance the vendor hereby adjust and acknowledge...*'. Paragraph (ii) reads '*A sum of Rs.34,80,000.00 (Rupees Thirty Four lakhs and Eighty Thousand only) on or before 05.03.2001.*' Paragraph (iii) says that the plaintiff shall pay the balance of Rs.15,00,000/- to the 1st defendant on

the date of execution & registration of the sale deed, before the Sub-Registrar.

6.3 DW.1, who is none other than the husband of 1st defendant specifically admits in his cross-examination dated 20.8.2014 that both Exs.P2 & P4 are signed by PW.1 & 1st defendant as parties and he has signed them as a witness. Further, he has admitted that the ENDORSEMENTS/RECEIPTS i.e., Exs.P3 & P5 appearing on the back page of both Exs.P2 & P4 bear the signatures of himself, his wife & PW.1. Added, in 1st defendant's Legal Notice dated 25.02.2004 at Ex.D14 and her Rejoinder Notice dated 18.3.2004 at Ex.D20, the said endorsement is admitted. Ex.P4 is an admitted document. Further, at para 4 of his cross-examination dated 3.9.2014, DW.1 has specifically admitted Ex.P3 Endorsement. He further says that in terms of said Endorsement, plaintiff has to pay additional sum of Rs.5,00,000/-. By way of extra caution we also compared the signatures of the parties and of DW1 appearing on all these documents by using the lens, keeping in view the factors such as pen pressure, pen run,

slant, size, shading, letter forms, etc. There is nothing to doubt their authenticity. We are conscious that ordinarily courts would not on their own undertake forensic examination of handwritings. However, in the light of certain admissions both in pleadings and in evidence coupled with attending circumstances, we venture such an examination. We noted the signatures on Ex.P4 which is an admitted document.

6.4 The ENDORSEMENT/RECEIPT dated 25.12.2003 came to be drawn between the parties at Ex.P3. Although, para 8 of the plaint avers this, the Written Statement at para 8 denies the same. Obviously, the endorsement bears the signatures of PW1 & 1st defendant as parties, and of DW.1 as a witness. The 1st defendant in her Written Statement dated 2.2.2008 at paragraph No.2 has specifically admitted Ex.P4, although she has denied execution of Ex.P2. PW.1 in his cross-examination dated 13.11.2012 has specifically stated that Ex.P4 was drawn mentioning lesser sale price by excluding the cash component stated in Ex.P2 at the instance of 1st defendant only. Regard

being had to general tendency of commoners, we assume that, it is done by the plaintiff to lessen her financial burden in terms of stamp duty which is payable *ad valorem* and also Capital Gains Tax, since the property is in the vicinity of Bangalore City Corporation. DW.1 in his cross-examination dated 3.9.2014, at paragraph 2, admits about the liability of Capital Gains Tax. Every page of Ex.P2 is signed by PW.1 & 1st defendant as parties and DW.1 as a witness. He has also admitted that the 'ENDORSEMENT/RECEIPT' dated 25.12.2003 which is on the back page of Ex.P2 bears the signatures of 1st defendant and plaintiff and that he has signed it as one of the witnesses.

6.5 Ex.P3 extends the stipulated period for accomplishment of sale transaction; the plaintiff had agreed to pay additional sum of Rs.5,00,000/- also and handed three Punjab National Bank cheques; one bearing No.786342 dated 25.2.2004 is for a sum of Rs.29,80,000/-, the second bearing No.786343 dated 15.3.2004 for a sum of Rs.20,00,000/- and the third

bearing No.786344 dated 5.4.2004 for a sum of Rs.5,00,000/- (toward additional amount); all the cheques are drawn in favour of 1st defendant. However, she did not enter the witness box and no explanation is offered for herself not deposing as a witness; DW.1 has specifically stated that his wife is a graduate and can read & write English. Of course, he had made one stray sentence that she does not know English. He also admits that she is hale & healthy and residing in Bangalore. Very importantly he admits that 1st defendant has no difficulty to come to court and that she in fact had visited court.

Conclusion: We are of the considered opinion that the subject documents ie., Ex,P2, P3 & P5 are genuine documents. As a concomitant of this, the receipt of cash component i.e., Rs.22,30,000/- is proved beyond doubt; further Rs.2,70,000/- has been admittedly received by cheque. Therefore we **concur** with the finding of the trial court on its Issue Nos.1 & 2 that the 1st defendant on 17.02.2001 agreed to sell the suit property to the plaintiff for Rs.74,80,000/-, and that she has received a sum of Rs.25,00,000/- as earnest money. In other words, the execution of first Agreement at Ex.P2 is perfectly proved.

7. AS TO THE INVOCABILITY OF DOCTRINE OF NOVATIO:

7.1 As already observed above, there are two agreements namely Exhibits P2 & P4 successively drawn on the same day, substantially with same terms & conditions, except as to price variation. In the former, price is shown to be Rs.74,80,000/-, whereas in the latter it is Rs.52,50,000/-; we repeat rest all remains same. Ordinarily, mere change of price alone may not amount to *novatio*. It is more so when there is a tacit understanding between the parties that for all practical purposes, higher price should be kept in consideration and only for the limited purpose of saving stamp duty, capital gains tax, etc., the official figure should be lesser. In a sense, to that extent, it is a case of tax avoidance which is culpable both legally and morally. One cannot gainfully argue that it is a case of tax planning, intent being corrupt. However, that has been done at the instance of the 1st defendant, at whose hands plaintiff's substantial amount was already placed and thus, he had no much say in the matter, lest the intended transaction should fail. Therefore, much culpability cannot be laid at the threshold of the plaintiff,

in this regard. This aspect of the matter has not been adverted to by the Trial Court from this angle, although such an angular view assumes significance, while adjudging conduct of a party to the transaction.

7.2 Section 62 of the Indian Contract Act, 1872 which enacts doctrine of novatio, reads as under:

"If the parties to a contract agree to substitute a new contract for it, or to rescind or alter it, the original contract need not be performed."

Apex Court in **LATA CONSTRUCTION** vs. **DR.RAMESHCHANDRA RAMNIKLAL SHAH²**, has observed as under:

"...One of the essential requirements of 'Novation'; as contemplated by Section 62, is that there should be complete substitution of a new contract in place of the old. It is in that situation that the original contract need not be performed. Substitution of a new contract in place of the old contract which would have the effect of rescinding or completely altering the terms of the original contract, has to be by agreement between the parties. A substituted contract should rescind or alter or extinguish the previous contract. But if the terms of the two contracts are inconsistent and they cannot stand together, the subsequent contract cannot be said to be in substitution of the earlier contract..."

² AIR 2000 SC 280

Mere alteration to the structure of the terms of the contract is insufficient. The substitution must have the effect of completely rescinding, altering or extinguishing the previous contract vide **LUCKNOW DEVELOPMENT AUTHORITY vs. M.M.GUPTA**³. Keeping this in mind, if we peruse the terms & conditions of Exs.P2 & P4, we cannot readily jump to the conclusion that Ex.P4 has brought about novation. If there is no case of *novatio* in the light of discussion in the immediately preceding subparagraph (a), both agreements namely Exs.P2 & P4 have to be read together in ascertaining the content & intent of the transaction between the parties.

7.3 In fact, the first issue framed by the Trial Court having been answered in the affirmative by it, logically supports the view that the doctrine of *novatio, stricto sensu* is not invocable in the case at hand. However, in the light of artificially altered price factor, should there be any conflict between the two agreements, then obviously the prior one has to yield to the latter. Whether there is

³ (1994) 1 SCC 243

novation or not, depends on the intention of parties, as seen from the substance of the agreement and not merely from its form. If there is no intention to rescind the prior arrangement altogether, there is no substitution, and the original contract still remains enforceable. This being the settled position of law, governs the case of parties at hand, a few stray sentences uttered by PW.1 from the witness box that the suit is founded on Exhibit P4, notwithstanding.

Conclusion: Case of the parties does not admit the doctrine of *novatio*, all terms & conditions of Exhibits P2 & P4 being substantially same, except the price component, the differential thereof paid in cash having been retained by the 1st defendant herself and further this having been clandestinely done for the purpose of duty/tax avoidance.

8. AS TO THE OBLIGATION OF PARTIES TO THE AGREEMENTS/ENDORSEMENTS:

8.1 Since pleadings of the parties are essentially founded on the second agreement at Exhibit P4, argued novation vide Exs.P3/P5, let us examine what obligations which party undertook: We have already recorded a finding that the sale price was Rs.74,80,000/- of which Rs.22,30,000/- was paid in cash and Rs.2,70,000/- by cheque has been

received by the 1st defendant. This is on the basis of Ex.P2 which learned trial Judge has rightly held as proved. Thus, more than 1/3rd of the price component is already paid and what remains to be paid is Rs.49,80,000/-. Vouchsafing the title to property is a predominant obligation of the vendor, vide condition Nos.6, 7 & 8 in Ex.P4, is not disputed before us. Paragraph 2 stipulates that the plaintiff has to pay this amount in two installments: First installment of Rs.34,80,000/- to be paid on or before 5.3.2001 and the other installment i.e., balance of Rs.15,00,000/- to be paid before the Sub-Registrar, when the sale deed after due execution is presented for registration.

8.2 Para 3 of Ex.P4 stipulates a period of sixty days for execution of sale deed, and this has to be reckoned from the date of agreement, and alternatively, within a period of seven days reckoned from the obtainment of No Objection under Chapter XXC and Certificate under section 230A of the Income Tax Act, 1961, as per the requirement of law, then obtaining. 1st defendant has to obtain

conversion of the subject land to non-agricultural user under section 95 of the Karnataka Land Revenue Act, 1964 inasmuch as the plaintiff could not acquire and hold the suit land because of bar enacted in section 79A of Karnataka Land Reforms Act, 1961, as the provision then existed. This bar has been done away with by 2020 Amendment which is held to have retrospective effect.

8.3 So far as the obligation in relation to the requirement of obtaining No Objection and Certificate mentioned above, condition No.4 of Ex.P4 rests it on both the parties, the requirement of law itself being that way. In fact, both the parties have walked hand in hand in filing necessary statement in Form 37-I of the 1961 Act as stipulated under condition No.4 of Ex.P4. However, this is not the end of matter: Condition No.5 of Ex.P4 specifically stipulates that the vendor herself has to obtain Income Tax Clearance Certificate under section 230A. Further, condition No.6 stipulates as many as 11 obligations to be discharged by the vendor. The text in which these clauses appear makes it abundantly clear that they are

meticulously stipulated by & between the parties with all seriousness and not as a matter of formality. In fact, the subject agreements themselves mention involvement of a law firm of repute.

8.4 Condition No.7 specifically states that the sale shall be subject to clear & marketable title of the vendor. Even otherwise, that is the normal legal position. This obviously rest on the shoulders of the 1st defendant vendor. A bit reverting to condition No.6(x), the vendor has undertaken to produce all documents in original and also a necessary Certificate from the Assistant Commissioner that there is no tenancy claim and that the suit land is not an Inam Land, within thirty days from the date of agreement Ex.P4. Further, condition No.6(xi) obligates the 1st defendant to apply for conversion of suit land for non-agricultural (commercial use) immediately after the execution of agreement and to take all steps to expeditiously get such conversion. Of course, it also says that the expenses towards this to be borne out/reimbursed by the plaintiff only.

8.5 Under the ENDORSEMENTS/RECEIPTS both dated 25.12.2003 at Exs.P3 & P5, at unnumbered first paragraph, delay 'to complete the sale deed in favour of the purchaser' is mentioned. Obviously, this delay cannot be attributed to the plaintiff merely because he has undertaken to pay additional sum of Rs.5,00,000/- escalating the payables from Rs.49,80,000/- to Rs.54,80,000/-. The plaintiff has handed to the 1st defendant three cheques of Punjab National Bank, IFB, M.G. Road, Bangalore, in that connection, as under:

- (a) Cheque bearing No.786342 dated 25.2.2004 for a sum of Rs.29,80,000/-.
- (b) Cheque bearing No.786343 dated 15.3.2004 for a sum of Rs.20,00,000/-.
- (c) Cheque bearing No.786344 dated 5.4.2004 for a sum of Rs.5,00,000/-.

The plaintiff has to secure necessary permission for conversion of suit land as stipulated in Ex.P4 and only thereafter, has to execute/register the sale deed, is again stipulated in this document also.

9. AS TO WHO PERFORMED THE OBLIGATIONS AND WHO BREACHED THEM:

9.1 The vehement submission of learned Sr. Advocate Mr.Jayakumar S Patil that the obligation to obtain land conversion to commercial user in the text & context of Exs.P2, P3, P4 & P5 rests with the plaintiff himself, is difficult to agree with. As already mentioned above, the stipulation at Para 6(xi) reads:

"The vendor undertakes to apply for conversion of the schedule property for non-agricultural commercial use immediately after the execution of this agreement and to take all steps to expeditiously get such conversion..."

The very same condition stipulates that the plaintiff has to reimburse the expenditure of obtaining such conversion. It is not that the payment of likely expenditure towards the same is a precondition for the 1st defendant applying for and securing such conversion order under section 95 of 1964 Act.

9.2 Mr.Patil's contention that condition No.8 of Exs.P2/P4 is in the nature of stand-alone obligation whereunder, the plaintiff should have paid second installment of

Rs.34,80,000/- so that the 1st defendant could have handed over all original documents of title along with a Power of Attorney in his favour for getting conversion, is difficult to sustain. Let us see how this condition is texted:

"The Vendor shall hand over all the original documents of title relating to the schedule property and grant a Power of Attorney in favour of the Purchaser or their nominee authorizing them to apply for conversion of the land and to do all acts necessary in that regard before the appropriate authorities on receipt of the second installment of Rs.34,80,000/- (Rupees Thirty Four Lakhs Eighty Thousand only) as stipulated in clause 2(ii) above."

Prime purpose of interpretation of a document is to ascertain the intention of parties manifested at the time when the document was executed. When an instrument is couched in a language which is clear and definite, there is no need to resort to the rules of interpretation. Lord Davey in **N.E.RAILWAY CO. vs. HASTINGS**⁴ observed:

"...the deed must be read as a whole in order to ascertain the true meaning of its several clauses, and ... the words of each clause should be so interpreted as to bring them into harmony with the other provisions of the deed if that interpretation does no violence to the meaning of which they are naturally susceptible..."

⁴ [1900] AC 260, HL

Courts cannot be carried away by the mere letters found in an instrument. One single clause of a document cannot be read in isolation of other clauses. Very exceptions to the rule prove the rule. Viewed from this angle, the above reproduced condition in Exhibit P2/P4 cannot be construed as diluting the primary obligation of 1st defendant to apply for and obtain *inter alia* land conversion to commercial user. We also do not agree that the obligation to do this is contingent upon plaintiff making payment of Rs.34,80,000/- inasmuch as the 1st defendant has right of reimbursement under condition No.6(xi).

9.3 Learned Sr. Advocate Mr.S.S.Naganand is right in submitting that it is the statutory obligation under section 55 of the Transfer of Property Act, 1882 mounted on the shoulders of vendor to vouch a clear and marketable title, unless contrary is contracted. It has been held by the Privy Council in **MOTILAL vs. NANHELAL**⁵ that there is an implied covenant by the vendor to do all things necessary to effect a transfer; so when a vendor contracts to sell

⁵57 IA 333, p.338

such land, which can only be transferred after obtaining sanction at the hands of authorities, he must apply for such sanction and obtain one. The Delhi High Court in **RAGHUNATH RAI vs. JAGESHWAR PRASHAD SHARMA**⁶ has held that the vendor cannot avoid the agreement on his own *ipse dixit* for non-performance of the terms on his part. Condition No.8 enabled the plaintiff to obtain GPA to apply for conversion of land on behalf of 1st defendant by making the payment of second installment of Rs.34,80,000/- as stipulated in condition No.2(ii) of Exs.P2 & P4. This view gains support from the following paragraph of the ENDORSEMENT/RECEIPT at Exs.P3 & P5:

"The Vendor agrees to execute the sale deed transferring the schedule property in favour of the Purchaser or her nominee/s after securing necessary permission for conversion of the schedule property under the Karnataka Land Revenue Act."

Thus subsequent documents both dated 25.12.2003 reinforce the obligation. Added, it is not the case of 1st defendant in her Legal Notice at Ex.D14 and Rejoinder

⁶AIR 1999 Del 383

Notice at Ex.D20 that she had applied for and obtained the land conversion and that despite demand, the plaintiff was not reimbursing the expenditure incurred or to be incurred towards it. The 1st defendant post revocation of agreement in question applied for conversion of land and obtained the conversion certificate on 10.6.2014 at the hands of Special Deputy Commissioner, Bengaluru District. There is absolutely no explanation whatsoever as to why she did not do this within the period stipulated in Exs.P2, P3, P4 & P5, that too having received substantial amount from the plaintiff.

10. AS TO READINESS & WILLINGNESS OF PLAINTIFF TO PERFORM HIS PART OF OBLIGATION:

10.1 The reasoning of learned trial Judge as to readiness & willingness lacking on the part of plaintiff, does not much impress us. DW1 in his cross examination dated 28.02.2014 has specifically admitted that the Conversion Order u/s.95 of 1964 Act has been obtained only on 10.06.2004 and that till then the suit land had agricultural character. He has also admitted receipt of cheques issued

by the plaintiff as has been mentioned in Exs.P3 & P5. His version that he has given back these cheques to the plaintiff does not merit acceptance inasmuch as he has specifically admitted in the very same cross-examination that he had made use of these cheques while giving instructions to his lawyer for issuing the subject Legal Notice and Rejoinder Notice. On which subsequent date, at what place and to whom these cheques were handed back has not been pleaded. Had he handed back as claimed, some evidentiary record would have been generated in all probability. In her letter dated 30.8.2001, the 1st defendant has falsely claimed that she was ready with all the documents for execution of the sale deed, when admittedly there was no order converting the land to non-agricultural user. That came long thereafter as mentioned above.

10.2 The version of the plaintiff that he had instructed 1st defendant not to present the subject cheques for encashment till after 24.2.2004 inasmuch as he had bought two demand drafts dated 25.2.2004, one bearing

No.567805 for Rs.15,00,000/- and another bearing No.757526 for Rs.5,00,000/- in favour of 1st defendant. The trial Court has recorded a finding at paragraph 41 of impugned judgment that as on 28.2.2004, plaintiff had a bank balance of Rs.51,70,656.93/- vide Bank Account Ledger Extract at Ex.P12. It sounds strange that the 1st defendant got issued Legal Notice dated 25.2.2004 i.e., the day on which BANK DRAFTS were bought by the plaintiff. It can be justifiably presumed that this, 1st defendant did after she was telephonically informed of the said Drafts and apparently it is a clandestine act designed to suit her intent.

10.3 The vehement submission of Mr. Patil appearing for the 1st defendant that the plaintiff has bought the subject Bank Drafts only to generate evidence in his favour as an afterthought, cannot be accepted: Firstly, it is not the case of 1st defendant that the plaintiff knew that on the same day when he bought the Bank Drafts, the 1st defendant was issuing notice rescinding the Agreements in question. Throughout evidence of PW1 & DW1, there is

not even a whisper in this regard. Mr.Patil's submission that even assuming that the plaintiff had bought these Bank Drafts to handover them to the 1st defendant, still the amount comprised therein is only Rs.20 lakh as against Rs.29,80,000/- plus Rs.5,00,000/- (additional amount), is true. However, as already mentioned above, there was no obligation on the part of plaintiff to make said payment when admittedly the 1st defendant had not obtained Conversion Order as undertaken.

10.4 Plaintiff already having parted with about 1/3rd of consideration amount, was holding the subject Bank Drafts and that there was a huge amount i.e., Rs.51,70,656.93/- in his Bank Account vide Ledger Extract at Ex.P12. Therefore, presumably he would not have refused to make good the deficit, which apparently was a small part. There is no reason to doubt the version of plaintiff that he had told the 1st defendant not to present the subject cheques for encashment. That is the reason why he bought the said bank drafts, gains credence. It cannot be readily presumed in the totality of circumstances that the plaintiff was not

ready & willing or that he had failed to discharge his part of obligation.

Conclusion: *Plaintiff was ready & willing to perform his part of obligation and therefore the finding of learned trial Judge to the contrary is unsustainable. Further we hold that it is the 1st defendant who has not performed her part of obligations.*

11. AS TO LEGALITY OF PARTLY REJECTING 1ST DEFENDANT'S I.A.No.26 FOR AMENDMENT OF WS:

11.1 Learned Sr. Advocate Mr.Patil contended that the learned trial Judge grossly erred in rejecting 1st defendant's application filed under Order VI Rule 17 of CPC seeking leave to amend the Written Statement dated 31.01.2012 and that having prejudiced her, the companion Cross-Objection is filed laying a challenge to the decree for refund of the earnest money with interest. He drew attention of the court to the contents of said application wherein para 5 of the Written Statement was sought to be amended. Learned Sr. Advocate Mr.Naganand appearing for the plaintiff made submission in justification of rejection of the said application. He told us that the rejection order was challenged in

W.P.Nos.4956-4959/2012 (GM-CPC) and the same came to be rejected vide order dated 23.02.2012; even their applications in I.A.Nos.1 & 2/2014 seeking restoration of Writ Petitions were also negatived by the learned Single Judge vide order dated 26.8.2014 and therefore, legality of rejection of amendment application cannot be now reopened; even otherwise, the order disallowing amendment is well structured and therefore, it should be left with impunity. Let us examine these rival contentions.

11.2 The vehement submission of Sri.S.S.Naganand that the 1st defendant lost the challenge to the trial court's order rejecting Amendment Application, going by the record, is partly true. Defendant's W.P.Nos.4956-4959/2012 (GM-CPC) challenging said order along with other orders were disposed off on 23.02.2012 as having become infructuous since on the same day, learned Trial Judge had pronounced the judgment by decreeing the suit. Therefore, learned Single Judge has not examined the validity of trial Judge's orders on merits. Even 1st defendant's applications to recall dismissal order in these

Petitions were not favoured because in R.F.A.No.852/2012 C/w R.F.A.No.833/2012 filed by the defendants herein, a Coordinate Bench vide order dated 24.06.2013 having set aside the judgment & decree, remanded the matter to the trial Court for consideration afresh. This happened much before the subject Recall Applications were taken up for consideration, as rightly submitted by Mr.Patil appearing for the 1st defendant. These applications came to be disposed off by the learned Single Judge with certain observations, a relevant part of which we discuss in due course. However, much of the contention raised by Mr.Naganand would pale into insignificance in view of our discussion *infra*.

11.3 Originally, the suit for specific performance was filed in 2005 vide O.S.No.622/2005 and because of alteration of pecuniary jurisdiction, the same having been transferred to the Court of Civil Judge (Sr. Dn), Nelamangala, it was re-numbered as O.S.No.271/2009. 1st defendant had filed her Written Statement on 2.2.2008. Originally, the issues were framed on 13.3.2008. Plaintiff

had filed I.A.No.20 seeking a direction to the 1st defendant to produce the original Bank Cheque bearing No.786342 drawn for a sum of Rs.29,80,000/-. The said application was founded on a specific ground that on the blurb of said cheque, it was specifically instructed in writing that the 1st defendant would present it for encashment on or after 25.02.2004. At this stage, for the first time, defendant took up the stand in her objections to the said I.A. that the subject cheque was different from the one issued to her.

11.4 The learned trial Judge vide order dated 15.12.2011 disposed off the said application of the plaintiff observing that adverse inference could be drawn against the said defendant should original cheque be not produced. Only after this, the subject Amendment Application in I.A.No.26 came to be filed on 31.1.2012. The stand taken in the said application seeking leave to amend the Written Statement if permitted, virtually amounted to permitting the 1st defendant to withdraw the admissions in the pleadings, as rightly observed by the learned trial Judge; he also said

that it would amount to setting up a new case from the side of answering defendant. Learned trial Judge repelled the prayer for amendment that was sought to be introduced at line No.8 of para 5 of Written Statement, as sought for in para 2 of the application. However, he permitted amendment relating to cheque numbers since it was a matter of typographical error. Learned Judge has rightly referred to Apex Court decision in **AJENDRAPRASADJI PANDEY vs. SWAMI KESHAVPRAKESHDASJI**⁷. He has also recorded an adverse finding against the 1st defendant that the prayer for amendment lacked *bonafide* and that it was moved very belatedly.

11.5 Post 2002 amendment to CPC, ordinarily leave to amend the pleadings cannot be granted once the trial of suit commences, subject to few just exceptions into which argued case of the 1st defendant is not shown to fit. Mr.Naganand is right in telling us that the 1st defendant vide subject application had sought for leave to introduce

⁷ AIR 2007 SC 806

altogether new cheques that were not mentioned in Ex.P3/P5 and that nothing about them was mentioned in the Legal Notice at Ex.D14 & Rejoinder Notice at Ex.D20. There was no whisper made to PW.1 whilst he was in the witness box. Added whatever amendment was reasonable has been permitted by the trial Judge in his accumulated wisdom. A discretionary order of the kind may give scope for arguing on either side. A different conclusion could have been arrived at on the same set of facts pleaded in the amendment application, is a poor ground for upsetting such an order. This order of learned Judge cannot be faltered on any count.

11.6 There is one finer aspect which we cannot leave unattended:

i) As already mentioned above, the amendment application having been substantially rejected vide order dated 04.02.2012, the trial was accomplished and the learned trial Judge decreed the suit on 23.03.2012. The 1st defendant filed RFA No.852/2012 and the 2nd defendant filed RFA No.833/2012 laying a challenge to the said decree. A Co-ordinate

Bench of this court vide common order dated 24.06.2013 allowed these appeals, set aside the impugned judgment & decree and remanded the matter for fresh consideration. The order rejecting amendment application admittedly is not enlisted under Order XLIII Rule 1 of CPC, 1908 and therefore was not appealable. However, that could have been made one of the grounds in the subject appeals for laying a challenge to the impugned decree, as is provided under Order XLIII Rule 1A of the Code. Such a ground admittedly was not taken up and this aspect of the matter has been a bit discussed by the learned Single Judge in his order dated 26.08.2014 whereby 1st defendant's I.A.Nos.1 & 2 of 2014 were not entertained. These applications were filed seeking recall of the order dated 23.02.2012 whereby her W.P.No.4956 & 4959 of 2012 were disposed off, as having become infructuous in view of suit itself being decreed.

ii) Absolutely no explanation is offered as to why the trial Court's order partly rejecting amendment application was not made a ground in the said RFAs. This conduct on the part of both the defendants gives scope for assuming

that they had acquiesced in the validity of said order or that they have waived their right to challenge it. That being the position, the ground now taken up in the Cross Objection filed by the 1st defendant is only an afterthought to secure dismissal of plaintiff's appeal, in any circumstance. Therefore, the finding of trial Judge that the subject application for amendment lacked *bona fide is further strengthened*.

12. AS TO DISCRETION TO GRANT DECREE FOR SPECIFIC PERFORMANCE IN VIEW OF 2018 AMENDMENT TO 1963 ACT:

12.1 The suit in O.S.No.622/2005 was filed on 14.03.2005 and on transfer on account of change in pecuniary jurisdiction, it was renumbered as O.S.No.271/2009. Amongst other Sec. 10 of Specific Relief Act, 1963 came to be amended w.e.f. 01.08.2018 greatly diminishing discretion of Courts to decline decree for specific performance, which otherwise availed to them. Learned Sr. Advocate Mr.Naganand submits that the amendment is with retrospective effect whereas Mr.Patil appearing for the 1st defendant and Mr.M.R.Rajagopal

representing the 2nd defendant (*pendente lite buyer*) submit that it is prospective in operation. This debate need not be carried forward since the matter is no longer *res integra* because of Apex Court decision in **KATTA SUJATHA REDDY vs. SIDDAMSETTY INFRA PROJECTS PVT.LTD.,⁸** wherein it has been categorically held that the subject amendment bringing change in substantive law, is prospective in effect. Though this decision was reviewed on 8.11.2024 vide 2024 INSC 861, the declaration of law as such is left intact. Therefore, amendment would not enure to the benefit of plaintiff. That being said, decree of specific performance cannot be denied to him inasmuch as, his case demonstrably falls within the spectrum of granting primary relief, merits galoring in his favour and equity too shifting to his side because of culpable conduct of the 1st defendant.

13. AS TO CULPABLE CONDUCT OF 1ST DEFENDANT:

13.1 It hardly needs to be stated that a suit for specific performance of contract to sell immovable property is

⁸ (2023) 1 SCC 355

treated in equitable jurisdiction in the sense that despite proof of all essentials, Court may decline primary relief of specific performance and instead, accord secondary relief like refund of amount paid, *quantum meruit*, damages, *etc.,*. In other words, granting a decree for specific performance as such is discretionary. However, it is not the discretion which a Moghul Emperor would have exercised. Lord Halsbury in **SUSANNAH SHARP vs. WAKEFIELD**⁹ observed that discretion to be exercised in accordance with the rules of reason & justice. Equity demands that. In all civilized jurisdictions, conduct of parties in relation to the case concerned assumes relevance when such discretion is invoked by the litigants. Therefore, if conduct is culpable in relation to subject matter of litigation, ordinarily Courts would not come to the aid & rescue of culpable party. Eventually, the other party like the plaintiff herein would stand to gain some points in his favour because of shifting of equity, which otherwise would have availed to other party. Of course, this is a broad perspective and exceptions do exist.

⁹ (1891) AC 173

13.2 Learned trial Judge has declined to grant the primary relief namely, a decree for specific performance of the contract to sell the suit land. Instead, he has granted the secondary relief namely the decree for refund of advance sale consideration of Rs.25 lakh with 6% interest per annum. A contract is concluded between the parties essentially for the purpose of accomplishing a particular transaction, notwithstanding a clause, if any, specifying the consequence of its non-performance. The culpable conduct of 1st defendant disentitled her to any leniency; conversely, the plaintiff is entitled to the decree for specific performance and not just to the refund of amount paid, *albeit* with interest. Reasons for this are specified below:

a) During the pendency of suit, learned trial Judge after hearing the parties, vide order dated 15.03.2005, had directed them to 'maintain *status quo* regarding title of the property' and this order was continued throughout. In flagrant violation of this order, 1st defendant sold the suit land to 2nd defendant vide registered sale deed dated 26.11.2005 vide Ex.D31. At internal page 5 i.e. covenant No.4 of the conveyance, the 1st defendant has stated '*The*

vendor further declares and assures unto the purchaser that there are no litigation/s pending in any Court.... nor any injunction restraining the alienation....'. Thus, she has no respect for the Court orders. Nothing prevented her from making an application under Section 52 of 1882 Act seeking permission for alienation. No explanation, much less plausible one is offered in justification of this order. This is highly culpable on her part.

b) Apparently, apart from violating court order, the 1st defendant has played fraud not only on the Court but, on plaintiff as well, if not on the 2nd defendant too. Merely because more than double the sale price *qua* plaintiff's transaction was given, she has readily sold the suit land. Only money matters to her and not law & justice. The Apex Court in ***S.P.CHENGALVARAYA NAIDU vs. JAGANNATH***¹⁰, observed that fraud vitiates everything. A party seeking justice at the hands of court should have '*clean heart, clean hand & clean head*'. All that is lacking in the 1st defendant.

c) 1st defendant disputed the execution of first agreement 17.2.2001 at Ex.P2 both in her pleadings and evidence. We have specifically recorded a finding that Ex.P2 is proved by very admission of her husband who was examined as DW.1, she having stayed away from the witness box, with no plausible justification. Secondly,

¹⁰ AIR 1994 SC 853

DW.1 has specifically admitted all the signatures appearing on all the pages of Ex.P2, including his own. Under this instrument, 1st defendant had received an amount of Rs.22,30,000/- in cash and Rs.2,70,000/- by cheque. If version of the 1st defendant was accepted, the plaintiff would have been defrauded at least to the extent of cash component. What dismays us is, that she denied Ex.P2 though Ex.P3 which she admitted has been returned on the back pages of Ex.P2.

d) 1st defendant sent the legal notice dated 25.02.2004 at Ex.D14/Ex.P7 rescinding the agreement in question. In the ultimate paragraph it is written ".....u may arrange to collect the advance paid by you under the agreement from my client..." In all fairness, she should have sent a cheque or bank draft or even cash back to the plaintiff. This is another act of fraud. Clandestinely, she does not mention the specific amount which she was asking the plaintiff to collect back. Obviously, this is because of cash component involved in the transaction, which he would have retained with impunity.

e) To add insult to the injury, 1st defendant has filed Cross Objections laying a challenge to the decree for refund of the amount with interest. Admittedly, she has received Rs.1.20 crore of which, Rs.1.10 crore is through Bank Drafts/Cheques and remaining Rs.10 Lakh is by cash. The amount roughly approximates to Guideline Value of

Registration, presumably, market value being far in excess. This is not a case of greed simpliciter but a celebration of fraud. What equity such a guilty mind can be bestowed with, is not a question.

f) Ordinarily courts in their discretion can deny decree for Specific Performance where the subject matter is land or building, is true. This is *inter alia* on the premise that the vendor and his family would have emotional attachment to the property. In the case involving land, Rulings do galore to support the view that land may be a source of livelihood and therefore, at times, vendor is permitted to retain the land subject to refund of money paid or payment of damages or the like. However, that is not the case here inasmuch as the 1st defendant has sold the suit land to the 2nd defendant by registered instrument for a much higher price and that is done in gross violation of court order. Therefore, not only equity does not avail to the defendants but it shifts to the side of plaintiff.

14. AS TO 2ND DEFENDANT'S RIGHT TO RETAIN SUIT LAND PURSUANT TO HIS SALE DEED:

14.1 Learned Sr. Advocate Mr.M.R.Rajagopal appearing for the 2nd defendant vehemently argued that his client being innocent has bought the property for a valuable consideration with no notice of plaintiff's agreement and much less restraint order of the court below and therefore, for the fault of 1st defendant, he should not be punished.

Learned Sr. Advocate Mr.Naganand *per contra* submitted that when property is bought in violation of restraint order of the court, it is no transaction at all even if it is assumed that the buyer *pendente lite* had made all reasonable enquiry and only thereafter he innocently bought it. He also pressed into service the doctrine of *lis pendens*, enacted in section 52 of 1882 Act which does not depend upon absence of notice. He also pointed out admission of DW.1 that 1st defendant had informed the 2nd about the pendency of suit and restraint order. To put it shortly, he told us that there is absolutely no justification whatsoever for the 2nd defendant to retain the property to the disadvantage of plaintiff.

14.2 As already mentioned, the Agreement to Sell is of the year 2001, be it disputed document at Ex.P2 or admitted ones at Exs.P3, P4 & P5; plaintiff has paid about 1/3rd of the price. He had also kept ready the bank draft for a sum of Rs.20 lakh on 25.2.2004 and on the very same day, surprisingly, 1st defendant got issued revocation notice through her lawyer. Plaintiff had a huge amount of money in his bank account. Suit was originally filed in 2005 and court directed *status quo qua* transfer of title. It is not the case of 1st defendant that she was not aware of this order that was continued after hearing her. She has stated in her cross-examination that 2nd defendant was informed of the transaction of plaintiff. A feeble attempt was made

from the side of defendants that the *status quo* order essentially relates to possession and not alienation. That attempt should fail, because of textual clarity of the order itself which specifically employs the word 'title'.

14.3 True it is, courts in order to maintain equities, grant interim protection in their discretion. If language of court lacks precision & clarity, the intelligibility of its order will be at crisis, may be to the potential advantage of one or the other party. Ordinarily, *status quo* simplicitor relates to possession of property, is also true. Court below vide ad interim order dated 15.6.2005 had said '*status quo regarding title of the property*'. Mr.Rajagopal in his rhetoric style tried to impress upon us that this interim order cannot be construed as restraining alienation of suit land. We do not subscribe to this view. This is a tricky argument. Of course to put it humorously, law is an avocation and lawyering is art of tricks. It is not impertinent to reproduce what Professor of Law Ms.Wendy Nicole Duong¹¹ in her Article "LAW IS LAW AND ART IS ART AND SHALL THE TWO EVER MEET? — LAW AND LITERATURE: THE COMPARATIVE CREATIVE PROCESSES" wrote:

"1. As disciplines, law and the literary art share commonalities. For example, both disciplines depend and thrive on the artful use of language. Both disciplines can, and have, become effective tools for advocacy and social

¹¹ Vol.15:1, Southern California Interdisciplinary Law Journal, pg.2

reform. Law can benefit from the craft of the literary art, and can borrow therefrom. Conversely, the drama of the law practice and notions of jurisprudence can, and have, become a rich source of material for the literary artist to explore human nature and society.

2. Yet, in my view, these two disciplines remain divergent and incompatible in three core aspects: (i) the mental process of creation and the utilization of facilities, (ii) the work product or output, and (iii) the raison d'etre of law versus art. For example, the mental process and utilization of facilities inherent in law has little to offer the creation of art, and the two creative processes are antagonistic and hence should not intermingle or be treated as the same. In fact, the rationality and logic properties of law — the objective of rendering certainty to future outcomes that are uncertain in order to maintain order — will interfere with, and can even destroy, the creation of art.”

14.4 More than century & a half, the Chancery Court in **BELLAMY vs. SABINE**¹², observed that the property in dispute could not be transferred in a way that would affect the rights of the parties involved in the lawsuit. The sale of property by Mr. Sabine during the pendency of the litigation was deemed invalid and the subsequent purchaser held to have acquired no rights to the property. Years thereafter, the 1882 Act came into force and Section 52 broadly enacts the English doctrine of *lis pendens* which does not depend upon notice/knowledge of litigation or consideration for the transfer. This view is reiterated by

¹² (1857) 1 De G&J 566

the Apex Court decision in **SHINGARA SINGH vs. DALJIT SINGH**¹³. For the first time, the 1st defendant disclosed about the transfer made in favour of 2nd, when she filed the Written Statement. Therefore, plaintiff's impleading application having been rightly favoured, the 2nd defendant was added to the Cause Title of the suit. He too has filed his Written Statement separately. It is not his case that the plaintiff perpetrated any fraud against him. A beneficiary of fraud cannot retain the benefit to the disadvantage of an innocent party.

14.5 Mr.Naganand is right in submitting that the case of defendants is not one of *lis pendens simplicitor* but of transfer of suit land in gross violation of restraint order of the court. Ordinarily, any transaction accomplished by the parties in violation of restraint order of the kind cannot be taken cognizance of; such a transaction would not have any efficacy in law, subject to a few just exceptions into which argued case of the 2nd defendant does not fit. There is a sea difference between transfer *pendente lite simplicitor* and transfer in violation of court order. It is true that the transfer *pendente lite* automatically does not become void, but the decree for Specific Performance binds the transferee vide **HARDEV SINGH vs. GURMAIL SINGH**¹⁴, whether he is a party *eo nomine* to the proceeding or not. In the latter, the transaction is void, if

¹³ 2024 INSC 770.

¹⁴ AIR 2007 SC 1058

not *ab initio void*. An argument to the contrary would amount to placing premium on illegality. This view is well established by a catena of decisions of Apex Court e.g., **SUJIT SINGH vs. HARBANS SINGH**¹⁵. It hardly needs to be stated that no person can be permitted to retain the benefit of a transaction brought about in violation of court order, even if his innocence is demonstrated. In **DELHI DEVELOPMENT AUTHORITY vs. SKIPPER CONSTRUCTION CO. (P) LTD.**¹⁶, it is observed that the Court has a duty to issue appropriate directions for remedying or rectifying the things done in violation of the orders. In that regard, the Court may even take restitutive measures at any stage of the proceedings.

14.6 It is not that the 2nd defendant is a poor farmer or a labourer. In his cross-examination dated 25.9.2014, he has admitted that he is carrying on real estate business. Admittedly, he resides in Bangalore city and not in some remote village. His registered sale deed dated 26.11.2005 produced & marked as Ex.D31, mentions Rs.1.20 crore as being the price paid for the land in question. Therefore, there is no scope for plea of poverty. It has come in the evidence of DW.1 that this defendant was informed of plaintiff's transaction. As a businessman, he ought to have made reasonable enquiry, obviously that would include about the court proceedings. What enquiries were made as

¹⁵ AIR 1996 SC 135

¹⁶ AIR 1996 SC 2005,

a scrupulous businessman, in this regard, is not forthcoming with material particulars. It cannot be readily presumed that this defendant did not know about the pendency of suit. A host of statute law, in these circumstances would come to the aid of plaintiff.

15. INTERPLAY OF SEVERAL STATUTES THAT ENTITLE THE PLAINTIFF TO SPECIFIC PERFORMANCE QUA THIRD PARTY BUYER:

15.1 There is interplay of Section 91 of the Indian Trusts Act, 1882, Section 3, illustration (g) of Specific Relief Act, 1963 and illustration to Section 40 of Transfer of Property Act, 1882. Section 91 of Trusts Act reads as under:

"Property acquired with notice of existing contract:

Where a person acquires property with notice that another person has entered into an existing contract affecting that property, of which specific performance could be enforced, the former must hold the property for the benefit of the latter to the extent necessary to give effect to the contract."

Section 3, illustration (g) of Specific Relief Act has the following text:

"A buys certain land with notice that B has already contracted to buy it, A is a trustee, within the meaning of this Act, for B, of the land so bought."

Illustration to Section 40 of T.P. Act, runs as under:

"A contracts to sell Sultanpur to B. While the contract is still in force he sells Sultanpur to C, who has notice of the contract. B may enforce the contract against C to the same extent as against A."

15.2 The matter was comprehensively considered by the Apex Court keeping provisions/illustrations of above several statutes in focus and their interplay, in **LALA DURGA PRASAD vs. LALA DEEP CHAND**¹⁷. It is observed as under:

"...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. Section 91 of the Trusts Act, does not make the 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

¹⁷ AIR 1954 SC 75

says is that specific performance 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."

15.3 It is not that the 2nd defendant is left to the lurch and remediless. He can institute appropriate proceedings against the 1st defendant to recover what has been paid for the property and also other reliefs. We need not state that for such a proceeding, the cause of action arises and becomes choate on the pronouncement of this judgement. It is also open to the 1st defendant to take up whatever defence that avails in law, should such a proceeding is instituted against her. Had the 2nd defendant structured his pleadings *qua* the 1st and led evidence to vouch the same, arguably the court below itself would have granted appropriate relief to him. Perhaps, we too would have. However, there is no sufficient pleading muchless the evidence for us to do it in these appeals. Therefore, we reserve liberty to the 2nd defendant to take up appropriate proceedings, if he is so advised. That being said, whatever amount deposited by the plaintiff in the court below needs to be paid to the 2nd defendant in the fitness of things.

In the above circumstances, we make the following:

ORDER

[i] Appeal in R.F.A.No.178/2015 is allowed and the impugned judgment & decree of court below are set at naught; appellant's suit in O.S.No.271/2009 is hereby decreed for Specific Performance of the contract for sale of suit land, with costs. The 2nd defendant is directed to execute & register the sale deed(s) in favour of appellant-Plaintiff affecting the suit land, within eight weeks, usual terms & conditions applying thereto.

[ii] The amount deposited in the court below by the plaintiff shall be paid to the 2nd defendant on his executing & registering the sale deed(s) as directed above. However, if he fails to do it, the court below shall execute & register or cause that to be done by taking all requisite steps therefor within three months.

[iii] R.F.A.Cross-Objection No.19/2015 filed by the 1st defendant is dismissed with a cost of Rs.1,00,000/- (Rupees One Lakh) only, which she shall remit to the plaintiff within eight weeks, failing which she shall be liable to pay Rs.500/- per day of delay for the first month and Rs.1,000/- per day for the period next following.

[iv] It is open to 2nd defendant-buyer *pendente lite* to institute appropriate proceedings against the 1st defendant-seller for refund of money paid by him, minus

the amount which he is entitled to receive from the court deposit as mentioned in para [ii] above and for such other reliefs.

Sd/-
(KRISHNA S DIXIT)
JUDGE

Sd/-
(G BASAVARAJA)
JUDGE

Snb, cbc
List No.: 1 Sl No.: 1