

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

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Second Appeal No.750 of 1998
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JUDGMENT:

This Second Appeal under Section 100 of the Code of Civil Procedure Code, 1908 by the unsuccessful 4th defendant is directed against the judgment and decree dated 05.08.1998 of the learned Additional District Judge, Srikakulam passed in A.S.No.109 of 1994. The learned Additional District Judge while allowing the said first appeal had set aside the decree and judgment dated 22.08.1994 of the learned Principal District Munsif, Srikakulam passed in O.S.No.119 of 1991 and had decreed the said suit for specific performance and had directed the defendants to execute a registered sale deed after receiving the balance of sale consideration of Rs.4,051/- from the sole plaintiff.

1.1 Be it noted that the sole plaintiff/1st respondent had died during the pendency of this second appeal and the legal representatives of the deceased sole plaintiff are brought on record as the respondents 5 to 8.

2. I have heard the submissions of the learned counsel for the appellant/4th defendant and the learned counsel for the respondents 5 and 7 and the 8th respondent, who are the legal representatives of the deceased sole plaintiff/1st respondent in this second appeal. The respondents 2 to 4 in this appeal are the defendants 1 to 3 in the suit. The respondents 2 and 4 are represented by their counsel. The appeal against the 3rd respondent/3rd defendant is dismissed for default on 01.08.2001. During the pendency of the second appeal, the 6th respondent, who was added as one of the legal representatives of the deceased plaintiff/1st respondent had also died. However, no steps were taken and the appeal against the 6th respondent was dismissed as abated on 25.06.2014.

3. At the time of the admission of this second appeal on 14.09.1998, this Court had taken note of the following substantial questions of law mentioned in the grounds D, E, F and G of the memorandum of grounds of appeal. The said questions read as under:

(d) **Whether the limitation of 3 years for seeking relief of specific performance of sale as per law of limitation does not apply to the facts of the present case where the agreement is dated 21.07.1977 and the suit is filed in the year 1991?**

(e) **Whether the appellate court is right in refusing the benefit of exemption under Section 19(2) of the Specific Relief Act when the appellant herein is a *bona fide* purchaser of the property for valuable consideration and without notice or knowledge of the agreement of sale?**

(f) **Whether the oral evidence can be relied upon for deciding an issue when the documentary evidence clinchingly establishes a fact that the entire consideration was already paid as per the recitals in exhibit A3?**

(g) **Whether the appellate Court is right in observing that the appellant herein failed to establish that she purchased the property without notice of the agreement of sale merely on the basis of admission in the evidence of DWs 2 and 3 that they have executed exhibit A1, Agreement of sale prior to execution of exhibit A3 sale deed in favour of the appellant herein when the entire evidence does not show about any knowledge or notice of the exhibit A-1 to the appellant herein?"**

[Reproduced verbatim]

In this second appeal, for convenience and clarity, the contesting legal representatives of the deceased sole plaintiff shall hereinafter be referred to as 'the plaintiffs' and the appellant/the 4th defendant shall hereinafter be referred to as 'the 4th defendant'.

4. To adjudicate the *lis* and answer the substantial questions of law, it is necessary to first refer to the pleadings of both the parties and the facts that lead to the filing of this appeal by the 4th defendant.

5. The case of the plaintiffs, in brief, is this:

The defendants 1 to 3, who had remained *ex parte* in the suit, are the owners of the suit schedule property in an extent of 120 square yards in T.S.Nos.134/1 and 135 of Srikakulam town, more fully described in the schedule annexed to the plaint. The defendants 1 to 3 had together executed an agreement of sale in favour of the sole plaintiff (since died) on 21.07.1977 agreeing to sell the subject property for a consideration of Rs.13,051/- and had received an advance sale consideration of Rs.9,000/- on the date of the agreement of sale. The said defendants had agreed to execute the sale deed within two years from the date of the final decision in favour of the defendants 2 and 3 by the appellate Court after receiving the balance sale consideration of Rs.4,051/-. They had further agreed to deliver vacant possession of the suit schedule property. A suit in O.S.No.194 of 1973 was filed by Md. Fazuddin against the defendants 2 and 3 on the file of the Principal District Munsif, Srikakulam not only in respect of the plaint schedule property but also some other properties; and, that suit was decreed on 17.03.1985. Therefore, the defendants 2 and 3 had preferred an appeal in A.S.No.117 of 1983 and the said appeal was allowed by the learned Additional Subordinate Judge, Srikakulam by a judgment dated 21.08.1985. And, accordingly, the said suit of Mohd. Fazuddin in O.S.No.194 of 1973 was dismissed. The further second appeal in S.A.No.966 of 1985 preferred by the unsuccessful plaintiff in the said suit was also dismissed by this Court on 13.09.1988. As per the terms of the agreement of sale, the defendants 1 to 3 have to execute the sale deed in favour of the deceased plaintiff at his expenses by receiving the balance sale consideration and register the sale deed on or before 13.09.1990, i.e., within two years from the date of the disposal of the second appeal S.A.No.966 of 1985. After the disposal of the second appeal on 13.09.1988, the plaintiff was ready and willing to perform his part of the contract and obtain a regular registered sale deed by paying the balance sale consideration to the defendants 1 to 3. The sole plaintiff is always ready and willing to perform his part of the contract. The 4th defendant and her husband-Sk.Vazeer know that the defendants 1 to 3 had executed an

agreement of sale dated 21.07.1977 in respect of the suit schedule property in favour of the sole plaintiff; Nonetheless, they had obtained a registered sale deed dated 11.01.1982 in respect of the suit schedule property in favour of the 4th defendant for a nominal consideration. In that sale deed, the Western boundary is wrongly given as the shop-room and appurtenant vacant site of Pyari Begum @ Begum instead of the vacant site of the two executants of the sale deed. The 4th defendant is not a *bona fide* purchaser for value without notice of the suit agreement of sale. Therefore, the sale deed in favour of the 4th defendant is invalid and is not binding on the sole plaintiff. The sole plaintiff is not a party to the suit O.S.No.194 of 1973 filed by Md.Fazuddin, which ultimately ended in favour of defendants 2 and 3 on the dismissal of the second appeal by this Court as stated above. Since the defendants 1 to 3 had backed out of the agreement for sale dated 21.07.1977 without executing the sale deed in favour of the sole plaintiff and as the defendants 2 and 3 had executed a sale deed in respect of the plaint schedule property in favour of the 4th defendant, the sole plaintiff was constrained to file the suit for specific performance of the agreement to sell dated 21.07.1977 and to direct the defendants 1 to 3 to execute the sale deed in respect of the plaint schedule vacant site in favour of the sole plaintiff and register the same and receive the balance of sale consideration from the sole plaintiff and put the sole plaintiff in possession of the plaint schedule vacant site.

5.1 The defence of the 4th defendant, who alone had contested the suit, in brief, is this:

The 4th defendant is not aware of the proceedings in O.S.No.194 of 1973, A.S.117 of 1983 and S.A.966 of 1985, which are referred to in the plaint. The 4th defendant is not a party to the said proceedings. The 4th defendant is also not aware of the agreement to sell dated 21.07.1977 and the terms therein. The 4th defendant and her husband have no knowledge of the alleged agreement to sell dated 21.07.1977 in respect of the plaint schedule vacant site in favour of the sole plaintiff herein. The allegation in

the plaint that the 4th defendant and her husband having knowledge of the agreement to sell in favour of the plaintiff executed by defendants 1 to 3 had obtained a registered sale deed in favour of the 4th defendant in respect of the plaint schedule property for a nominal consideration is false. Further, the averment that the Western boundary is wrongly mentioned by the executants of the sale deed of the 4th defendant is also not correct. The 4th defendant had no notice from the defendants 2 and 3 or from the plaintiff about the existence of agreement for sale dated 21.07.1977. In case, the 4th defendant had such notice of the agreement to sell in favour of the plaintiff, the 4th defendant would not have purchased the property by obtaining a sale deed from the defendants 2 and 3. The 4th defendant is a *bona fide* purchaser for a valuable consideration. The plaint schedule property and the property covered by the sale deed of the 4th defendant are not one and the same. The suit is filed by the plaintiff in collusion with the defendants 1 to 3.

5.2 Taking into consideration the above pleadings, the trial Court had framed the follows issues:

- 1) Whether the agreement of sale dt.21.7.1977 is true, valid and binding on the defendants?**
- 2) Whether the defendant obtained a registered sale deed dt.11.01.1982 for the plaint schedule vacant site for a nomination consideration knowingly about the agreement dt.21.7.99?**
- 3) Whether the plaint schedule property and the property covered by sale deed dt.11.1.1982 are not one and the same?**
- 4) Whether the plaintiff is entitled to the specific performance of contract as prayed for?**
- 5) Whether the suit is barred by limitation?**
- 6) To what relief?**

5.3 At trial, PWs 1 to 3 were examined and exhibits A1 to A3 are marked on behalf of the sole plaintiff. DWs 1 to 3 were examined and no documents were marked on the side of the defendants. After full-fledged trial and on merits, the trial court had held that the plaintiff is not entitled for the specific performance of the agreement for sale and had decreed the suit for refund of the advance sale consideration of Rs.9,000/- paid by the sole plaintiff to

defendants 1 to 3 and had dismissed the suit against the 4th defendant. The first appeal preferred by the sole plaintiff was allowed. Hence, the 4th defendant had preferred this second appeal.

6. Now the substantial questions are taken up.

6.1 The defendants 1 to 3 had executed an agreement to sell dated 21.07.1971 under exhibit A1 in favour of the sole plaintiff agreeing to sell the plaint schedule property for a total consideration of Rs.13,051/- and they had received Rs.9,000/- as advance and part of sale consideration and the defendants 1 to 3 had agreed to execute a regular registered sale deed in respect of the plaint schedule property within two years from the date of final decision in favour of the defendants 2 to 3 in the suit in O.S.No.194 of 1973 that was filed by Md. Fazuddin against the defendants 2 and 3 herein on the file of the Principal District Munsif, Srikakulam are all not in dispute as the defendants 1 to 3 who had executed the aforementioned agreement had remained ex parte and the defence of the 4th defendant is that she is not aware of the said agreement and that she was not informed about the existence of the said agreement by the defendants 2 and 3 and also the sole plaintiff. Further, the said facts are sufficiently established by the evidence borne out by record. That former suit of the year 1973 was filed by a third party against the defendants 2 and 3 herein not only in respect of the plaint schedule property but also some other properties; and, that suit was decreed on 17.03.1985 and that therefore, the defendants 2 and 3 herein had preferred an appeal in A.S.No.117 of 1983 and that the said appeal was allowed by the learned Additional Subordinate Judge, Srikakulam by a judgment dated 21.08.1985 and that accordingly, the said suit of Mohd. Fazuddin in O.S.No.194 of 1973 was dismissed and that the second appeal in S.A.No.966 of 1985 preferred by the said unsuccessful third party was also dismissed by this Court on 13.09.1988 are all undisputed and established facts. As per the terms of the exhibit A1, the sole plaintiff is entitled to seek specific performance within two years from the date of the final disposal of the aforementioned suit of the year 1973. As already noted that litigation of the

year 1973 became final and ended in favour of the defendants 2 and 3 herein on 13.09.1988 with the dismissal of the second appeal by this Court. On the said litigation attaining finality, the sole plaintiff had brought this suit for specific performance of exhibit A1-agreement for sale in the year 1991.

6.2 The first amongst the substantial questions of law formulated is in regard to law of limitation. In the above stated factual matrix, the 4th defendant who is a subsequent purchaser of the property from the defendants 2 and 3 would contend that the suit for specific performance of the agreement for sale of the year 1977 filed by the sole plaintiff in the year 1991 is barred by law of limitation. Dealing first with the issue of bar of limitation, it is to be noted that the trial Court had first taken up the issue no.5 in regard to bar of limitation and had recorded a finding that the plaintiff's suit is not barred by law of limitation. On issue no.3 as regards the identity of the property, the trial Court had also held that the plaint schedule property and the property covered by the sale deed of the 4th defendant are one and the same. On issue no.1 in regard to the truth, validity and binding nature of the suit agreement to sell on the defendants, the trial Court had held that the defendants 1 to 3 have executed exhibit A1, agreement to sell, and had received consideration of Rs.9,000/- and that the same is true, valid and binding on the defendants. No specific question of law is raised stating that there is perversity either in the appreciation of evidence or application of law to the facts of the case insofar as the issue of bar of limitation. Be it reiterated that the defendants 1 to 3 who had executed the agreement for sale under exhibit A1 had remained *ex parte* and did not contest the suit by raising any plea much less the plea of bar of limitation. It is needless to mention that the issue of bar of limitation is not a pure question of law and it is a blend of fact and law. Even the 4th defendant's contention is that she is not aware of the exhibit A1, suit agreement for sale in favour of the plaintiff executed by defendants 1 to 3 and that she is a *bona fide* purchaser of the property from the defendants 2 and 3 for a valuable consideration. The scribe of the suit agreement to sell is none other than the 3rd defendant and he was examined as DW3 in the suit. He had admitted the execution of the exhibit A1. In the

sale agreement, there is a clear term that the sale deed has to be executed in terms of the agreement to sell within two years after the final disposal of the suit O.S.No.194 of 1973, which was pending. Exhibit A2 is certified copy of the suit register extract in O.S.No.194 of 1973 on the file of the learned Principal District Munsif's Court, Srikakulam. Though the suit filed by Md. Fazuddin against the defendants 2 and 3 in respect of the present plaint schedule property and some other properties was decreed on 17.03.1985, the appeal in A.S.No.917 of 1983 preferred by the defendants 2 and 3 herein was allowed by the learned Additional Subordinate Judge, Srikakulam on 21.08.1985. The second appeal in S.A.No.966 of 1985 preferred by unsuccessful 3rd party/plaintiff in the said suit was dismissed by this Court on 13.09.1988. In that suit, the defendants 1 and 3 are the defendants 2 and 3 herein. The 1st defendant therein is the husband of the 1st defendant herein and the father of the defendants 2 and 3 herein. Since that suit was finally disposed of on 13.09.1988, the sole plaintiff herein had got two years time from that date for seeking specific performance and the period of limitation is three years from the time fixed. In the case on hand, the time fixed is two years from the date of the disposal of the second appeal. The suit is filed on 10.07.1991 within three years from the date of disposal of the second appeal. Therefore, on an analytical examination of the facts and evidence brought on record, this Court finds that the trial Court is justified in holding that the suit is well within time. The court of first appeal had allowed the appeal of the plaintiff and decreed the suit of the sole plaintiff for specific performance. Therefore, there is no substance in the first substantial question of law.

6.3 The other substantial questions are with reference to the issue as to whether or not the 4th defendant is a *bona fide* purchaser of the plaint schedule property for valuable consideration and without notice of execution of the exhibit A1-suit sale agreement executed by defendants 1 to 3 in favour of the sole plaintiff herein. On this issue, the trial Court had recorded a finding in favour of the 4th defendant and against the plaintiff and therefore, dismissed the suit as a sequel to the said finding though the other issues

were answered by the trial Court in favour of the sole plaintiff. The Court below had reversed the finding of the trial Court on the said issue and had held that the plaintiff is entitled to seek specific performance as the 4th defendant is not a *bona fide* purchaser. Both the Courts below held that the suit agreement to sell under exhibit A1 is true, valid and binding on the defendants. Therefore, the initial onus of proof and the legal burden are on the 4th defendant to show that the 4th defendant is a bona fide purchaser for valuable consideration and that she had no knowledge of the exhibit A1-the suit agreement to sell at the time of purchase of the property under the original of exhibit A3-the sale deed dated 11.01.1982.

6.4 Dealing with the aspects as to whether the 4th defendant is a bona fide purchaser for valuable consideration and whether she had no knowledge of the prior agreement for sale, it is necessary to note that the learned senior counsel for the 4th defendant had contended that the 4th defendant can only plead and state in her evidence that she has no knowledge of the suit agreement for sale by the date she had purchased the subject property under the original of exhibit A3-sale deed and that she is a *bona fide* purchaser of the subject property for value and that the 4th defendant cannot be expected to do anything more than that as it is not always possible to adduce positive evidence to prove a negative. In support of the said contention, he had placed reliance on the decision in **Vomisetti Paparao v. Jannada Venkataramana**^[1]. The questions that fell for consideration in this cited case were as to whether the 3rd defendant therein was a bona fide purchaser or not and whether at the time of registration of his sale deed, he had knowledge about the prior agreement of sale in favour of the plaintiff therein. In this cited decision a Division Bench of this Court had held as follows: 'It is true that the burden is on the transferee to show that he is a bona fide purchaser for value without notice and he had paid the entire consideration amount before he knew about the prior agreement of sale. No authority is needed for this. If any authority is needed Sri Krishna Murthy has placed before us two Privy Council decisions which laid down the same proposition

of law and they are Bhup Narain Singh v. Gokul Mahton and others and Shankar Lal Narayandas Munade v. The New Moffusil Co. Ltd and Others.’ It appears from the facts of the case that this cited case was decided on the facts peculiar to the case and there was no ratio, which squarely applies to the facts of the instant case. Moreover, this decision is not helpful to advance the contentions of the 4th defendant. In the next decision, i.e., **Bhup Narain Singh v. Gokul Chand Mahton and others**^[2], it was held as follows: ‘Section 27 lays down a general rule that the original contract may be specifically enforced against a subsequent transferee, but allows an exception to that general rule, not to the transferor, but to the transferee, and, therefore, it is clearly for the transferee to establish the circumstances which will allow him to retain the benefit of a transfer which *prima facie*, he had no right to get. In the cited decision, one of the questions that fell for consideration was: ‘Whether, in respect of the registered sale deed dated 22nd December 1926, the defendant 4 was a transferee for value who had paid his money in good faith and without notice of the appellant’s prior contract of 26th November 1926, with the consequent exclusion of the appellant’s claim for specific relief, in view of Section 27(b), Specific Relief Act, 1877.’ In this decision while recording concurrence with the view of the Subordinate Judge that the onus is upon defendant 4 to bring himself within the exception in Section 27 of the Specific Relief Act, it was held as follows:

‘Their Lordships accordingly agree with, the view of the Subordinate Judge that the onus is upon defendant 4 to bring himself within the exception in S.27 Specific Relief Act, and, as already indicated, their Lordships agree with the learned Judges of the High court that there is no sufficient evidence either on the question of payment or on the question of notice. The appellant is therefore entitled to the relief sought by him.’

The learned counsel for the plaintiffs had placed reliance on **Shankarlal Narayandas Mundade v. The New Mofussil Co. Ltd. And others**^[3]. The facts of the cited case disclose that after entering into a contract for the sale of

certain property with the plaintiff, the vendor had subsequently contracted to sell the same property to the defendant; in this factual backdrop, in a suit by the plaintiff under S.27 for the specific performance of the contract in his favour, it was held that the burden of proving good faith and lack of notice of the contract lies upon the defendant. The Privy Council had held that the burden of proving good faith and lack of notice of the contract lies upon the defendant. Reliance was placed upon the decision in **Bhup Narain Singh** (2 supra). Having gone through the decisions cited this Court is unable to accept the contention advanced on behalf of the 4th defendant that the burden/onus of proof is not on the 4th defendant in the instant case.

6.5 Therefore, the contention of the learned senior counsel that the 4th defendant is a *bona fide* purchaser of the property for a valuable consideration and that he had no knowledge of the agreement for sale cannot be proved by positive evidence and that it is difficult and impossible at times to prove such a defence by adducing positive evidence cannot be countenanced. The bare denial of the case of the plaintiff by the 4th defendant an assertion by her that she had no knowledge of the prior agreement for sale coupled with the assertion that she is a bona fide purchaser for a value are sufficient to discharge the initial onus and the legal burden, which are upon the 4th defendant, cannot be accepted for the reason that the 4th defendant's contentions that she is a *bona fide* purchaser for a value can be proved by adducing necessary evidence that the 4th defendant had purchased the property for a price which any ordinary prudent man would have paid as on the date of the sale and that the actual consideration has passed and that the defendants 1 to 3 did not inform her about the existence of any prior agreement for sale. Therefore, in a case of this nature, it is not impossible to adduce positive evidence that the 4th defendant is a *bona fide* purchaser and she had no knowledge of the prior agreement for sale. Be it noted that in respect of this property there was a prior litigation and the execution of the sale deed in favour of the plaintiff pursuant to the suit agreement for sale was deferred by the terms of the agreement till the final

disposal of the said litigation and the said litigation had attained finality when this Court had dismissed the second appeal on 13.09.1988. After the dismissal of the said second appeal, the specific performance of the suit agreement was sought as per the terms of the agreement for sale, and both the Courts below had concurrently held that the relief of specific performance claimed is not barred by law of limitation and that the suit agreement for sale is true, valid and binding on the defendants. In this factual matrix, had the 4th defendant made enquiries, which a bona fide purchaser of immovable property ought to have made at the time of the purchase, she would have known about the said former litigation and also the agreement for sale in favour of the plaintiff. Further, as already observed supra, the 4th defendant pleads ignorance of the earlier litigation, i.e., the suit filed by Faziuddin in O.S.No.194 of 1973 against defendants 2 and 3 and their father and the 1st appeal in A.S.No.117 of 1983 and the second appeal preferred by the unsuccessful plaintiff in the suit in S.A.No.966 of 1985 which arose out of the said suit. The very fact that the 4th defendant pleads ignorance of the aforementioned litigation would show that she did not make any enquiries which a bona fide purchaser was expected to have made before purchasing the property.

6.6 It is to be reiterated that in the case on hand, the defendants 1 to 3 did not put in appearance and contest the suit before the trial Court by taking any defence much less a defence that the 1st defendant did not execute the agreement by affixing her thumb impression; and that her thumb impression is fabricated. They did not also defend the suit by filing any defence to the effect that the suit agreement for sale was obtained by the plaintiff from the defendants 1 to 3 in spite of his being informed about the sale deed in favour of the 4th defendant and that the sale deed of the 4th defendant is prior in point of time than the suit agreement for sale and that the agreement for sale is ante-dated. Even the 4th defendant did not take such a defence in her written statement and had not specifically denied the execution of the suit agreement under exhibit A1 by the defendants 1 to 3 in favour of the plaintiff.

The 4th defendant had only pleaded that she is not aware of the agreement for sale in favour of the plaintiff. It is also her case that the defendants 1 to 3 are in collusion with the sole plaintiff. In fact, the defendants 1 and 3, who had executed the exhibit A1 agreement for sale in favour of the plaintiff, are sailing with the 4th defendant for the reasons best known to them and at the same time, they did not file a written statement pleading any defence to non-suit the plaintiff. Adverting to the evidence brought on record, it is apt to note that it was not suggested to PW1 that the suit sale agreement was ante dated and was brought into existence after the sale deed was executed in favour of the 4th defendant by the defendants 2 and 3. It was also not suggested to PW1 that in spite of being informed about the sale deed executed in favour of the 4th defendant by the defendants 2 and 3, the suit agreement for sale was obtained by him. The 1st defendant was examined as DW2 and the third defendant was examined as DW3 on the side of the 4th defendant. DW2, the 1st defendant went to the extent of denying the execution of the agreement itself in her examination-in-chief. Strangely, the DW3 had stated for the first time in his cross-examination that inspite of his informing the plaintiff about the sale deed in favour of the 4th defendant, the plaintiff had obtained the agreement for sale under exhibit A1. It was for the first time sought to be introduced in evidence that the thumb impression of the 1st defendant on exhibit A1 agreement was fabricated. However, if all these contentions of the 4th defendant, which are sought to be introduced in the evidence during trial, were to be true, the 4th defendant should have taken this defence in her written statement or in the alternative, the defendants 1 to 3 ought to have contested the suit by filing a written statement. They did not do so. Without any defence on the above aspects, any amount of evidence on the side of the 4th defendant through DWs 2 and 3 need not be countenanced. The 4th defendant, who is claiming to be a *bona fide* purchaser for a value and consideration without knowledge of exhibit A1-suit agreement, did not appear as a witness to prove her own defence and case and did not tender herself for cross-examination. Even if her contention that she is a pardanashin lady

were to be true, nothing prevented the 4th defendant from taking steps for her examination on a commission. No such steps were taken for her examination. Her non-examination as a witness is fatal to her defence, in the well considered view of this court. Further, it is also unexplained as to why the sale deed was obtained by the 4th defendant from the defendants 2 and 3 only when the 1st defendant, who is their mother, is also the owner of the property. The Courts below after analyzing the evidence had recorded a concurrent finding of fact that exhibit A1-suit agreement is true, valid and binding on the defendants. A harmonious consideration of the evidence brought on record would show that the 4th defendant had failed to establish that she is a *bona fide* purchaser without knowledge of the prior agreement for sale in favour of the plaintiff. As regards the consideration said to have been paid under the sale deed of the 4th defendant, the son of the 4th defendant who was examined as DW1 had categorically stated in his cross-examination that he is not aware as to whether any consideration had passed under exhibit A3 sale deed obtained by the 4th defendant from the defendants 2 and 3. DW1 was aged 28 years as on the date of his evidence in the year 1994. Therefore, as on the date of the sale deed of his mother, he was a minor of about 15 or 16 years of age. He had stated that he does not know whether any consideration had passed under the sale deed executed in favour of his mother. A perusal of registration extract of the sale deed of the 4th defendant would show that it was recited therein that the sale consideration was already paid. The 4th defendant, while denying the plaint averments and while pleading in her defence that she and her husband had no knowledge of the alleged agreement dated 21.07.1977 in respect of the plaint schedule vacant site in favour of the plaintiff, did not specifically plead in her written statement about the passing of the consideration under her sale deed. She had pleaded in her defence that it is not true to say that she being fully aware of the suit agreement had obtained the registered sale deed for a nominal consideration; she had further pleaded in her written statement that she is a *bona fide* purchaser, without notice, for a valuable consideration by virtue of sale deed dated 11.01.1982. She did not even specifically plead as

to whether or not the consideration had passed to her vendors. As already noted, a perusal of the exhibit A3 would show that there is only a recital that consideration was already paid. DW1 had only stated that his mother had purchased the suit schedule property for about Rs.15,000/- and that he does not know from whom his mother had purchased the property and that his mother is a pardanashin lady. In his cross-examination, he had stated that the sale deed was obtained by paying consideration, but he had not witnessed the payment of consideration and he is not aware as to whether consideration was paid at the time of registration of sale deed or prior thereto. The evidence discussed supra and the inconsistent stands at trial taken by the 4th defendant would show that her defence is false and that she has been trying to somehow get over the suit sale agreement which is true, valid and binding and which is to her knowledge. Therefore, on a careful and analytical examination of the evidence, this Court finds that the court below is justified in holding that the 4th defendant had failed to establish that she is a *bona fide* purchaser of the plaint schedule property for value and without knowledge of the exhibit A1 agreement for sale in favour of the plaintiff.

7. Looking at the facts and the evidence brought on record and the findings recorded by the Court below, this Court finds that the questions raised in this second appeal are not substantial questions of law and there is no substance in the questions raised and that the appeal is devoid of merit and is liable to be dismissed.

8. In the result, the second appeal is dismissed. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this appeal shall stand closed.

M. SEETHARAMA MURTI, J

23rd September 2015
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[\[1\]](#) APLJ-1971-1-95

[\[2\]](#) AIR 1934 PRIVY COUNCIL 68

[\[3\]](#) AIR (33) 1946 PRIVY COUNCIL 97