

IN THE HIGH COURT OF BOMBAY AT GOA**SECOND APPEAL NO. 108 OF 2014**

1. Shri Pradeep Naik,
son of late Shri Gajanan Naik,
of major age, businessman,
and his wife
 2. Smt. Ashwini Pradeep Naik,
of major age, housewife,
(both residents of H.No.379,
Rawandfond, Aquem Baixo,
Salcete Goa.)
- Appellants

V e r s u s

1. Shri Gurdeep Singh Matreja,
of major age, businessman,
and r/o H.No.313, Modsai,
Margao Goa.
 2. M/s. Sir Biotech India Limited,
A Company with registered office
at 6926, Jayapuriya Mills,
Clock Tower, Subzi Mandi,
Delhi 110 007 and Goa Office
At A-2, Solitaire Villas,
Kirbhat, Nuvem, Margao Goa.
- Respondents

Mr. Hanumant D. Naik, Advocate for the appellants.

Mr. C. A. Coutinho, Advocate for the respondent no.1.

Mr. Somnath B. Karpe, Advocate for the respondent no.2.

AND

SECOND APPEAL NO. 13 OF 2015

Shri Gurdeep Singh Matreja,
aged 52 years,
S/o Mr. Gurchan Singh
businessman, residing at
H.No.313, Modsai,
Borda, Margao Goa.

.... Appellant

V e r s u s

1. Shri Pradeep Naik,
aged 49 years,
S/o Gajana Naik,
married, businessman,
and his wife
2. Smt. Ashwini Pradeep Naik,
aged about 45 years,
Both r/o Shantinagar,
H.No.379, Rawandfond,
Margao Goa.
3. Sir Biotech India Limited,
A Company with registered office
at 6926, Jaipuriya Mills,
Clock Tower, Subzi Mandi,
Delhi 110 007 and Goa Office
At A-2, Solitaire Villas,
Kirbhat, Nuvem, Margao Goa.
Through its Director
Mr. Vishal Saxena
aged about 39 years,
s/o Mr. R. K. Saxena
married, residing at

Margao Goa

.... Respondents

Mr. C. A. Coutinho, Advocate for the appellants.

Mr. H. D. Naik, Advocate for the respondent nos. 1 and 2.

Mr. S. Karpe, Advocate for the respondent no.3.

Coram:- F. M. REIS, J.

Date:- 11th August, 2016

ORAL JUDGMENT

Both the above appeals are taken together as both arise from the same judgment and decree passed by the learned Lower Appellate Court. The parties shall be referred to in the manner they so appear in the cause title of the judgment of the learned Trial Judge.

2. I have heard Mr. C. A. Coutinho, learned counsel appearing for the original plaintiff and Mr. H. D. Naik, learned counsel appearing for the original defendant nos. 1 and 2 and Mr. Karpe, learned counsel appearing for the original defendant no.3.

3. Briefly, the facts of the case as stated by the plaintiff are that the suit came to be filed by the plaintiff for specific performance of the agreement dated 24.8.2005 and subsequent addendum dated 08.06.2006 on the basis that the respondent nos. 1 and 2 are the owners of the subject property which they agreed to sell on 24.08.2005 for a total consideration of Rs.32,24,000/-. It is further the contention of the plaintiff that at the time of such execution of the agreement, the defendant nos. 1 and 2 paid a sum of Rs.2,50,000/-. It is further the case of the plaintiff that he thereafter realised that the whole property was subject to Command Area Development Authority (CADA) and also there was an access problem to such property. The plaintiff further contends that by a notice served on 12.10.2005, the plaintiff terminated the agreement and called upon the defendant nos. 1 and 2 to return a sum of Rs.2,50,000/- paid at the time of the execution of such agreement. It is further his case that thereafter in view of the negotiation between the plaintiff and the defendants, an addendum was executed on 08.06.2006 whereby it was inter alia agreed that the consideration was fixed at Rs.12,02,002/-, out of which a sum of Rs.2,50,000/- was already paid and the balance sum of Rs.9,51,998/- was being tendered by the

plaintiff to the defendant nos. 1 and 2 by post dated cheques dated 15.07.2006 and 20.08.2006. It is further his case that in the meanwhile somewhere on 20.09.2006, the defendant nos. 1 and 2 illegally conveyed the property in favour of the defendant no.3 for a total consideration of Rs.23,00,000/- and odd. It is further his case that the defendant no.3 has purchased the property with due prior notice of the agreement in favour of the plaintiff and consequently, the suit was filed for specific performance of the said agreement and the addendum agreement and in the alternative to pay compensation of Rs.1 crore to the plaintiff herein.

4. The defendant nos. 1 and 2 raised a defence disputing the claim of the plaintiff and inter-alia contending that the alleged addendum dated 08.06.2006 was by playing fraud and misrepresenting all the correct position of law and the facts by the plaintiff. It is further their case that the signatures were obtained for a different purpose from the defendant nos. 1 and 2 which document was sought to be misused by the plaintiff. It is further the contention of the defendant nos. 1 and 2 that as the agreement was already terminated, the question of seeking any specific performance by the plaintiff would not at all be justified.

The defendant no.3 raised their contention that they are bonafide purchaser and purchased the property without due prior notice. It is further their contention that the defendant no.3 is not a party to any transaction alleged by the plaintiff and consequently, the suit be dismissed.

5. The learned Trial Judge after framing the issues and recording of evidence by judgment dated 27.02.2012 decreed the suit filed by the plaintiff inter-alia for specific performance of the subject agreement as well as for a sum of Rs.1 crore. Being aggrieved by the said judgment and decree dated 27.02.2012, the appeal filed by the appellant before the learned Lower Appellate Court came to be disposed of by the impugned judgment dated 19.07.2014. The learned Lower Appellate Court upon re-examining the facts on record came to the conclusion that the plaintiffs are otherwise entitled for specific performance of the contract but however as the defendant no.3 was a bonafide purchaser without notice, the defendant no.3 was justified to execute the sale deed with defendant nos. 1 and 2. The learned Judge accordingly came to the conclusion that the sale deed was for a total

consideration of Rs.20,80,000/- which is received by the defendant nos. 1 and 2 from the defendant no.3 and accordingly partly allowed the appeal and directed the defendant nos. 1 and 2 to pay a sum of Rs.23,30,000/- to the plaintiffs inclusive of Rs.2,50,000/- paid as earnest money along with interest at the rate of 8% per annum. Being aggrieved by the said judgment, the plaintiff as well as the defendant nos. 1 and 2 have preferred the above Second Appeals which were ordered to be heard on the substantial question of law by order dated 30.06.2016 on the following substantial question of law.

“Whether the grant of compensation of the sum of Rs.23,30,004/- with interest thereon at the rate of 8% per annum from the date of suit till date of actual payment is erroneous and without considering that admittedly, even in terms of the agreement sought to be specifically performed a sum of Rs.9,51,998/- was due and payable by the respondent no.1/original plaintiff ?

6. Mr. C. A. Coutinho, learned counsel appearing for the plaintiff has pointed out that once the learned Judge has come to the

conclusion that the plaintiff was ready and willing to perform his part of the contract and accepted the validity of the addendum agreement in June, 2006, there was no further discretion for the learned Judge to refuse specific performance. The learned counsel further pointed out that the discretion to be exercised under Section 21 of the Specific Relief Act is judicial discretion and not arbitrary as exercised by the learned Lower Appellate Court in refusing specific performance to the plaintiff. The learned counsel further submits that as the total consideration received by the defendant nos. 1 and 2 is in fact the profit which the plaintiff would otherwise benefit, the learned Lower Appellate Court was justified to award the said amount of Rs.20,80,000/- as compensation besides the refund of a sum of Rs.2,50,000/- which was already received by the defendant nos. 1 and 2. The learned counsel has elaborately taken me through the judgment of the learned Lower Appellate Court and pointed out that the learned Judge has capriciously exercised its jurisdiction by refusing the plaintiff of specific performance of agreement for sale. The learned counsel further submits that the records reveal that the parties have voluntarily executed the addendum agreement in June, 2006 and the validity thereof has been

accepted by both the Courts below. The learned counsel further submits that both the Courts below have concurrently come to the conclusion that the plaintiff was ready and willing to perform his part of the contract and on the face of such findings, the question of any interference by this Court in the present Second Appeals would not at all be justified. The learned counsel as such submits that the impugned judgment of the learned Lower Appellate Court be modified and decree passed by the learned Trial Judge be upheld in favour of the plaintiff herein.

7. Mr. H. D. Naik, learned counsel appearing for the defendant nos. 1 and 2 points out that it is well settled that grant of specific performance is a discretionary relief to be granted by the Courts. In the present case, the original agreement executed between the parties was terminated by the plaintiff and the whole exercise of claiming the addendum agreement is malafide and a fraudulent act committed by the plaintiff by forcing to sign on such document without the knowledge of the defendant nos. 1 and 2 of the contents thereof. The learned counsel further submits that the defendant nos. 1 and 2 had in fact returned the

sum of Rs. 2,50,000/- by post dated cheques in favour of the plaintiff which has never been returned by the plaintiff. The learned counsel has thereafter taken me through the alleged addendum agreement to point out that there is no reference with that regard in such document. It is further submits that even on perusal of the alleged document, it clearly reveals that it is fabricated document to defraud the defendant nos. 1 and 2 of their right to the property. The learned counsel further submits that as the agreement itself was terminated and the plaintiff has no subsisting legal agreement in respect of the subject property, the subsequent sale deed was executed in favour of the defendant no.3. The learned counsel further pointed out that the question of awarding any compensation of a sum of Rs.20,80,000/- as directed by the learned Appellate Court is totally unlawful as according to him, admittedly, even assuming the findings of the learned Judge are accepted, the sum of Rs.10 lakhs was admittedly not paid by the plaintiff to the defendant nos. 1 and 2. The learned counsel further pointed out that the effect of the impugned judgment would be that the property which belongs to the defendant nos. 1 and 2 would have to be conveyed in favour of the plaintiff without receiving any consideration. The learned counsel further pointed out that

the question of awarding any compensation in favour of the plaintiff who is grossly involved in fabricating activities which resulted in false document allegedly executed in June, 2006 is totally untenable. The learned counsel further pointed out that at the most the defendant nos. 1 and 2 would have to be directed to refund Rs.2,50,000/- along with interest. The learned counsel thereafter has taken me through the impugned judgment and pointed out that both the Courts below have erroneously come to the conclusion that the plaintiff is entitled for specific performance of the addendum agreement. The learned counsel further pointed out that the appeal preferred by the defendant nos.1 and 2 deserves consideration on the quantum of compensation awarded by the Appellate Court.

8. Mr. Karpe, learned counsel appearing for the defendant no.3 has pointed out that the defendant no.3 has published a public notice before executing the sale deed and neither the plaintiff or any other persons raised any objection and consequently, the defendant no.3 purchased the subject property without any prior notice of the subject agreement. The learned counsel as such points out that the suit filed

against the defendant no.3 be accordingly rejected.

9. Mr. C. A. Coutinho, learned counsel appearing for the plaintiff in reply to the contention of Mr. Naik, has pointed out that as the learned Lower Appellate Court has fixed the compensation payable to the plaintiff in lieu of specific performance and exercise the discretion, there is no ground for any interference in the present Second Appeal. The learned counsel has pointed out that the learned Lower Appellate Court has justly considered the matter and awarded a sum of Rs.20,80,000/- as compensation to the plaintiff. The learned counsel further pointed out that as such the substantial question of law framed by this Court deserves to be answered against the defendant nos. 1 and 2.

10. I have duly considered the rival contentions and with their assistance, I have also gone through the records. On perusal of the judgment passed by the learned Trial Judge dated 27.02.2012, the learned Judge has framed two issues including one additional issue. While examining the said two issues, the learned Judge found that the

entire dispute revolves around the addendum to the agreement which carries the signature of the defendant nos. 1 and 2 and on the other hand, the claim of the defendant nos. 1 and 2 is that the plaintiff all of a sudden during night time came to the residential flat of the defendants and started shouting stating that he wants the signature of the defendants on the paper and threatened the defendants in case the defendants avoid to sign them. The learned Judge proceeded to examine the evidence and found that it is extremely clear that unless the cheques were realized the agreement would not be cancelled and even for the sake of arguments if it is accepted that the receipt which is at Exhibit 36 was in fact signed by the plaintiff on 16.6.2006 which the plaintiff has denied the realisation of the cheques was important element for cancellation of agreement. The learned Judge further found that there is a clear admission of payment of Rs.2,00,000/- and that PW1 claimed to have paid Rs.50,000/- to the defendant no.1 in his cross examination. The learned Judge after examining the material on record found that the defendant nos. 1 and 2 have not been fair and have been misdirecting the Court by irrelevant arguments and whatever has been stated by the defendant nos. 1 and 2 has not been proved by virtue of evidence and

consequently, the learned Judge directed the defendant nos. 1 and 2 to execute the Deed of Sale transferring the suit property in favour of the plaintiff and the Deed of Sale in favour of the defendant no.3 was ordered to be cancelled and accordingly directed to hand over the vacant possession of the property of the plaintiff and further to pay compensation to the plaintiff to the extent of rupees one crore.

11. On perusal of the judgment of the learned Lower Appellate Court dated 19.07.2014, the learned Judge has framed five points for determination and while examining whether the plaintiff is entitled for specific performance of the agreement has found that the plaintiff was entitled to terminate the agreement under clause 8 of such agreement which provides that in case the plaintiff was unable to get the required licence or permission to fill up the suit property and/or the road/access to the suit property is not made available to the plaintiff, the plaintiff was entitled to terminate such agreement. The learned Judge further noted that there is a clear admission in the cross examination that the letter of termination states that the exercise to terminate the agreement was subject to the refund which was to be refunded within six months. The

learned Judge further noted that as stated in the receipt, all the three cheques were post dated and the cancellation of the agreement is subject to the realisation of the cheques in time mentioned in the cheques. The receipt dated 16.05.2006 was found to be beyond the time limit as set out in the letter of termination dated 12.10.2005. The learned Judge also noted that the defendant nos. 1 and 2 have failed to establish that the cheques issued to the plaintiff were issued only on 16.06.2006 and not on 16.05.2006. The learned Judge further noted that upon reading the letter of termination dated 12.10.2005 and the addendum agreement dated 08.06.2006 makes it clear that the defendant nos. 1 and 2 have delayed the refund of the amount to the plaintiff within the stipulated period of six months fixed under the letter of termination. The learned Judge as such found that the material on record suggests that the receipt is dated 16.05.2006 and not 16.06.2006 as endorsed under the signature of the plaintiff at point 'X'. The learned Judge further noted that the material on record discloses that the defendant nos. 1 and 2 by keeping the plaintiff in the dark have executed the Deed of Sale dated 20.09.2006 at Exhibit C/45 in favour of the defendant no.3 Company which act itself makes the plaintiff entitled for specific performance of the

addendum to the original agreement under Section 19(a) of the Specific Relief Act. The learned Judge further noted on the basis of the material on record and the facts which emerge therefrom that in the absence of the requisite permissions for development and a proper access and absence of refund in time on the part of the defendant nos. 1 and 2, there were reasons to reduce the sale consideration by the addendum executed on 08.06.2006. The learned Judge also examined the right of the defendant no.3 in the facts of the case and noted that there was nothing on record to show that the defendant no.3 was aware of the original agreement or at least the addendum between the plaintiff and the defendant nos.1 and 2. The learned Judge further noted that admittedly the defendant nos. 1 and 2 had not disclosed to the defendant no.3 about their prior transaction with the plaintiff. The learned Judge as such found that the plaintiff is entitled for specific performance of agreement which was modified by way of an addendum with the defendant nos. 1 and 2 without considering that the suit property has already been sold by the defendant nos. 1 and 2 to the defendant no.3 who stands covered by the provisions of Section 19(b) of the said Act. A decree for specific performance in the present case would not at all

be sufficient to satisfy the ends of justice of the case. The learned Judge as such found that the defendant no.3 had discharged his burden by means of evidence led and discussed that there was no issue framed in the suit and consequently, decided the point no.1 by holding partly in the affirmative whereas the point no.2 was decided in the negative and point no.4 decided in the affirmative. The defendant no.3 was held stands covered by the provisions of Section 19(b) of the Specific Relief Act. While examining point no.3, the learned Judge has examined the material on record and has come to the conclusion that the plaintiff is entitled for a refund of Rs.2,50,000/- paid by him to the defendant nos. 1 and 2 at the first instance and further the plaintiff would be entitled for the sale consideration received by the defendant nos. 1 and 2 from the defendant no.3 in a sum of Rs.20,80,000/- which the plaintiff is entitled to receive from the defendant nos. 1 and 2 towards the total amount of compensation in a sum of Rs.23,30,000/- together with interest at the rate of 8% per annum from the date of institution of the suit up to the actual payment. The learned Judge as such allowed the appeal partly and decreed the suit partly by granting the relief by directing the payment of the said amount.

12. On going through the said findings of the learned Judge, both the Courts below have come to the conclusion that the plaintiff was entitled for specific performance of agreement. The Specific Relief Act clearly provides that grant of specific performance is a discretion any relief of the Court and even assuming the agreement is found to be lawful, it is not necessary for the Court to grant specific performance in the facts and circumstances of the case. In the present case, the learned Lower Appellate Court after appreciating the evidence on record has come to the conclusion that the plaintiff was ready and willing to perform his part of the contract. These findings have been rendered on the basis of the addendum agreement executed in June, 2006. The findings of the fact arrived at by the Courts below cannot be reappreciated by this Court in the present Second appeal under Section 100 of the Civil Procedure Code. As already pointed out herein above, in terms of Section 20 of the Specific Relief Act, grant of specific performance is within the discretion of the Court. In the present case, the learned Lower Appellate Court after examining the material on record has noted that considering the peculiar facts in the present case,

the question of exercising discretion to grant specific performance is not at all justified and as such noted that the plaintiff would be entitled for compensation in lieu of specific performance. This exercise by the learned Lower Appellate Court cannot be faulted subject to what has been stated herein above and as such the refusal of specific performance by the Courts below is justified in the facts and circumstances of the case and as such there is no substantial question of law which arises for consideration in the present appeal on that count. In the present case, as already pointed out herein above, the original agreement was in fact terminated by invoking the clause of the agreement on the ground that the licences could not be obtained for the purpose of development. The fact that the defendant nos. 1 and 2 had issued cheques to refund the amount is not in dispute. Even on mere glance of the addendum agreement, the manner in which it has been printed and unauthorised, would itself prima facie draw suspicion of the circumstances in which agreement was disputed. The original agreement dated 24.08.2005 in fact was for a sum of Rs.32,24,000/- whereas the addendum agreement is stated to have been executed on 08.06.2006 was for a sum of Rs.12,02,000/- which was inclusive of Rs.2,00,000/- which was received

at the time of the original agreement. A suspicion can also be drawn on the basis of such drastic change in the consideration by a sum of Rs.20,00,000/- which has not been explained by the plaintiffs by any cogent evidence. Apart from that, the defendant nos. 1 and 2 contend that the addendum agreement was obtained forcefully by the plaintiffs without knowing the contents thereof. In such circumstances, the refusal to grant a discretionary relief of specific performance in the peculiar facts and circumstances of the case cannot be faulted.

13. The Apex Court in the Judgment reported in **(2016) 1 SCC 567** in the case of ***Hemanta Mondal and others V/s Ganesh Chandra Naskar***, has observed at para 14 thus :

“14. Section 20 of Specific Relief Act, 1963 gives discretion to the court, and provides that the court is not bound to grant relief of specific performance merely because it is lawful to do so. It further provides that the discretion is not to be exercised arbitrarily but guided by judicial principles. Sub-section (2) of Section 20 enumerates three conditions when discretion is not to be exercised to

grant decree of specific performance:-

“20.(2)(a) where the terms of the contract or the conduct of the parties at the time of entering into the contract or the other circumstances under which the contract was entered into are such that the contract, though not voidable, gives the plaintiff an unfair advantage over the defendant; or

(b) where the performance of the contract would involve some hardship on the defendant which he did not foresee, whereas its non-performance would involve no such hardship on the plaintiff; or

(c) where the defendant entered into the contract under circumstances which though not rendering the contract voidable, makes it inequitable to enforce specific performance.”

Taking note of the said observations and the facts in the present case as stated herein above, I find that the appeal preferred by

the plaintiffs to modify the impugned Judgment and grant specific performance deserves to be rejected. Hence, the appeal preferred by the plaintiffs stands dismissed.

14. As far as the appeal preferred by the defendant nos. 1 and 2 is concerned, I find that the learned Lower Appellate Court has failed to consider the relevant aspects which are required for determining the compensation payable in lieu of specific performance. Admittedly, in the present case, the plaintiff has not paid a sum of Rs.10,00,000/- which was part of the consideration payable to the defendant nos. 1 and 2 and consequently, the direction by the learned Lower Appellate Court to pay the full consideration of Rs.20,80,000/- received from the defendant no.3 by virtue of the subsequent sale deed without deducting the said sum of Rs.10,00,000/- is erroneous and unsustainable in law. From the amount as awarded by the learned Judge the said sum of Rs.10,00,000/- ought to be first deducted while fixing the compensation payable to the plaintiff by the defendant nos. 1 and 2 based on the addendum agreement dated June, 2006.

15. On perusal of the subject agreement, though the learned

Lower Appellate Court has accepted the validity and authenticity thereof the circumstance which led to execute such agreement would be relevant to examine the relief to be granted to the plaintiff in the facts of the present case. It is not in dispute that the plaintiff himself has terminated the earlier agreement. The records also reveal that the plaintiff has agreed to purchase the property for a sum of Rs.32,00,000/- and odd though it is contended that a substantial amount was thereafter exchanged based on the addendum agreement, there are no recitals to that effect in the addendum agreement executed between the parties. This itself creates a doubt in the conduct of the plaintiff in the execution of the addendum agreement. Besides, the fact that the defendant nos. 1 and 2 have in fact tendered post dated cheques towards the refund of Rs.2,50,000/- has been disputed by the plaintiff. It is the only contention of the plaintiff that the cheques were returned at the time of the execution of the agreement though the plaintiff accepted that post dated cheques were in fact received by the plaintiff. This becomes relevant as it is contended by the plaintiffs that the refund of amount was sought to be paid after six months of the termination as stipulated in the agreement. This clearly shows that such cheques admittedly not

returned to the defendant nos. 1 and 2. Looking at all these facts which emerge from the findings arrived at by the Courts below, I find that refusing specific performance and granting compensation to the plaintiff would be justified.

16. The only aspect to be examined is the amount of compensation to be awarded in the facts and circumstances of the case. As already pointed out herein above, the learned Judge ought to have deducted a sum of Rs.10,00,000/- which was payable by the plaintiff to the defendant nos. 1 and 2. After deducting such sum, the amount payable would work out to a sum of Rs.11,28,000/-. It is not disputed that in fact the defendant nos. 1 and 2 have already received a sum of Rs.2,50,000/- at the time of the execution of the original agreement which amount has not been refunded to the plaintiff. In the present case, there were several lapses on the part of the plaintiff as pointed out herein above and found established in the findings arrived at by the Courts below. In such circumstances, the profit in the transaction would work out to a sum of Rs.11,28,000/- as stated herein above besides the said sum of Rs.2,50,000/- received from the plaintiff. In such

circumstances, as there is no cogent material on record to fix the compensation in terms of Section 73 of the Contract Act, as provided in Section 21 of the Specific Relief Act, I find that in the facts and circumstances of the case, the profit derived by the defendant nos. 1 and 2 is to be shared equally between the plaintiff and the defendant nos. 1 and 2. Consequently, the amount works out to a sum of Rs.5,64,000/-. After adding a sum of Rs.2,50,000/- paid by the plaintiff to the defendant nos. 1 and 2, the total amount payable to the plaintiff by the defendant nos. 1 and 2 would work out to be a sum of Rs.8,14,000/-. In such circumstances, I find that the aggregate compensation to be paid by the defendant nos. 1 and 2 to the plaintiff would work out to a sum of Rs.8,14,000/- instead of the amount as awarded by the learned Lower Appellate Court. The interest awarded by the learned Lower Appellate Court at the rate of 8% per annum from the date of filing of the suit up to the actual payment is justified in the facts and circumstances of the present case. The substantial question of law is answered accordingly.

17. In view of the above, I pass the following :

ORDER

(i) The appeal preferred by the plaintiff bearing Second Appeal No. 13 of 2015 stands dismissed.

(ii) The appeal preferred by the defendant nos. 1 and 2 bearing Second Appeal No. 108 of 2014 stands partly allowed.

(iii) The impugned judgment dated 27.02.2012 passed by the learned Trial Judge and the judgment dated 19.07.2014 passed by the learned Lower Appellate Court stand modified and consequently, the compensation payable by the defendant nos. 1 and 2 to the plaintiff is a sum of Rs.8,14,000/- together with interest at the rate of 8% per annum from the date of the filing of the suit up to the actual payment. The suit filed by the plaintiffs stands partly decreed in the above terms.

(iv) The decree to be drawn accordingly.

(v) Both the appeals stand disposed of accordingly with no orders as to costs.

F. M. REIS, J.

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