AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on 15.03.2018

Delivered on 05.04.2018

First Appeal No. 142 of 2011

- Amit Kumar Singh S/o Prakash Singh aged about 40 years, R/o A-1 Shailendra Nagar Raipur (C.G.)

---- Appellant

Versus

1. Smt. Ashraf Bano W/o Late Mehandi Mohammed Farishta, R/o Army Welfare Housing Colony, Hyderabad District Hyderabad (A.P.)
2. Murad Farishta S/o Late Mehandi Mohammed Farishta R/o Army Welfare Housing Colony, Hyderabad District Hyderabad (A.P.)
3. Malik Mohammed Farishta S/o Late Mehandi Mohammed Farishta, R/o Army Welfare Housing Colony, Hyderabad District Hyderabad (A.P.)
4. Union Bank of India, Mahaveer Gaushala Complex, K.K. Road, District Raipur (C.G.)
5. Satyaprakash Jhunjhunwala S/o R.P. Jhunjhunwala, R/o MIG D-12 Shailendra Nagar, Raipur, (C.G.)

---- Respondents

For Appellant	:	Shri Ashish Surana, Advocate
For Respondent No.4	:	Shri Ashok Kumar Dubey, Advocate
For Respondent No. 5	:	Shri Shree Kumar Agrawal, Senior Advocate with Shri Anand Kumar Gupta and Shri Yogesh Pandey, Advocates

Hon'ble Shri Thottathil B. Radhakrishnan, Chief Justice
Hon'ble Shri Sharad Kumar Gupta, Judge

C.A.V. JUDGMENT

Per Sharad Kumar Gupta, Judge

1. In this appeal, the challenge is levied to the judgment and decree dated 21.06.2011 pronounced by the Fourth Additional District Judge, Raipur in Civil Suit No. 11-A/2011 (Annexure A-1) whereby and whereunder he dismissed the appellant's suit.

2. This is admitted by respondents No. 4 and 5 that the building No. A-1, Shailendra Nagar, Raipur under Plan No. 27, total area 5300 Sqft.; the construction area of the ground floor 2284 Sqft and first floor 2050 Sqft, is the disputed building, respondents No. 1, 2, 3 and late Mehandi Mohammed Farishta had mortgaged the disputed building to respondent No.4 to secure the debt given to M/s Raipur Luggage Private Limited, respondent No.4 had obtained an order from the Debts Recovery Tribunal, Jabalpur, after the auction being held by the Recovery Officer, Jabalpur, the disputed building was sold to respondent No.5 on 12.01.2004. The appellant had filed Writ Petition No. 194/2004 before this Court, which was decided on 27.04.2004, the appellant's appeal No. 12/2004, pending before the Debts Recovery Tribunal, was disposed off on 13.07.2004.

3. In brief, the appellant's case is that firstly respondents No. 1, 2, 3 and late Mehandi Mohammed Farishta had purchased the disputed building from Vinod Kumar Barlota on 16.12.1993 by registered sale deed at worth Rs. 6,38,350/-. Subsequently, respondents No. 1, 2, 3 and late Mehandi Mohammed Farishta sold out the disputed building at worth Rs. 8,10,500/- on 21.12.1993 to the appellant vide Ex. P-2, also handed over the possession and executed the sale agreement on the same day. In that document, it was mentioned that respondents No. 1, 2, 3 and late Mehandi Mohammed Farishta will obtain permission from the Raipur Development Authority, No Objection Certificate from the Income Tax Department and then intimate the same to the appellant in writing so that the sale deed may be registered before the office of the Deputy Registrar at Raipur. Thereafter, respondents No. 1, 2, 3 and late Mehandi Mohammed Farishta left Raipur in the year 1994, without giving their address to the appellant. In the month of January, 2002 the appellant received a caveat notice from the advocate of the respondents No. 1, 2, 3. On 22.04.2002 vide Ex.P-5, the appellant gave notice to respondents No. 1, 2, 3 and late Mehandi Mohammed Farishta through his advocate which returned back unserved.

4. Further, the appellant's case is that before execution of the mortgage, respondents No. 1, 2, 3 and late Mehandi Mohammed Farishta had sold the disputed building to him. From the purchase till now, he is in continuous possession of the disputed building. Respondents No. 4 and 5 have no right over the disputed building. The Recovery Officer has no right to deliver the possession of disputed building to respondent No.5 from him.

5. Respondents No. 1, 2, 3 were ex-parte in the Trial Court and they had not filed written statement.

6. In brief, the case of respondents No. 4 and 5 is that on 17.03.1994, respondents No. 1, 2, 3 and Smt. Jeenat Farishta had executed an equitable mortgage of the disputed building to secure the debt given to M/s Raipur Luggage Private Limited including the interest and costs in favour of respondent No.4. Respondent No. 4 had filed an application No. 19/2000 before the Debts Recovery Tribunal, Jabalpur for the sale of the disputed building. The Debts Recovery Tribunal pronounced the judgment on 27.09.2000 in favour of respondent No.4 observing that respondent No. 4 may recover an amount of Rs. 48,93,766.43/- from respondents No. 1, 2, 3 by selling the mortgaged properties. The appellant had filed an objection on 28.08.2003 which was rejected. Thereafter, he again filed another objection on 06.01.2004 which was also rejected. This Court had directed the appellant that he may file an appeal within 30 days before the Appellate Tribunal. Respondent No.5 had purchased the disputed building at worth Rs. 30,42,000/-. As per Section 30 of the Recovery of Debts Due To Banks and Financial Institutions Act, 1993 (in brevity 'the Act, 1993') the jurisdiction lies to the Appellate Tribunal against the order of the Recovery Officer, no other forum including Civil Court has the jurisdiction regarding debts recovery proceedings. The alleged sale agreement is forged and the agreement for sale does not confer any title in favour of whom it is executed. The suit is barred by limitation. The appellant has not properly valued the suit and not paid proper court fees.

7. The Trial Court dismissed the appellant's suit as aforesaid. Being aggrieved, the appellant preferred this appeal. Respondents No. 4 and 5 also have preferred the cross objection.

8. Shri Ashish Surana, learned counsel for the appellant strenuously argued that the Trial Court did not appreciate the evidence in its proper perspective, respondents No. 1, 2, 3 and late Mehandi Mohammed Farishta earlier executed Ex. P-2, thereafter, they had executed equitable mortgage thus respondent No. 5 has no right on the disputed building, the appellant is entitled to protect his possession over the disputed building, in the case in hand mortgage deed was not proved before the Trial Court, thus, the judgment and decree of the Trial Court, concerned with the dismissal of the suit, may be set aside.

9. Shri Ashok Kumar Dubey, learned counsel for respondent No. 4 and Shri Shree Kumar Agrawal, learned Senior Counsel for respondent No. 5 argued that the suit is not maintainable, it is barred by limitation, sufficient court fees has not been paid, looking to the facts and circumstances of the case, the Court can exercise its discretion not to grant the decree of the specific performance of the contract.

10. **<u>Points for determination:-</u>**

There are following points for determination in this case :-

1. Whether alleged contract of sale dated 21-12-1993, Ex. P-2 is forged and fake ?

2. Whether the appellant entered into contract for purchase of the disputed building with respondents No. 1, 2 and 3 and late Mehandi Mohammad Farishta vide Ex. P-2 ?

3. Whether, after execution of Ex. P-2, the respondents No. 1, 2, 3 and late Mehandi Mohammad Farishta, while executing equitable mortgage before respondent No. 4, committed cheating by not disclosing the execution of Ex. P-2 ?

4. Whether the suit of the appellant is not maintainable ?

5. Whether the suit of the appellant is barred by limitation ?

6. Whether there is non-joinder of the necessary parties in the appellant's suit ?

7. Whether the appellant has properly valued the suit and paid the proper court fees ?

8. Whether the respondents may be ordered to execute the registered sale deed of the disputed building in favour of the appellant ?

9. Relief and costs.

Point for determination No. 1- Findings with reasons:-

11. D.W. 2 Gopal Krishna Panda says in para 9 that in the alleged registered sale deed Ex. D-1 (Ex. P-1), the worth is Rs. 6,38,350/-. In the alleged registered sale deed Ex. D-2, the worth is Rs. 3,00,000/-, as in Ex. P-2 the worth is Rs. 8,10,500/- therefore, Ex. P-2 is forged.

12. Mere this fact that in Ex. P-2, consideration amount is lesser than the total consideration amount of the Ex. D-1 and Ex. D-2 itself is not sufficient to establish that some forgery has been played at the time of the alleged execution of Ex. P-2. Moreover, in Ex. P-2, the respondents No. 4 and 5 are not party. In Ex. P-2, the alleged parties are respondents No. 1, 2 and 3 and late Mehandi Mohammad Farishta, respondents No. 1, 2 and 3 did not appear in the Trial Court and not raise the question that Ex. P-2 is not genuine and some forgery has taken place. Instead of doing so, they have chosen to remain ex-parte. The remaining legal heirs of late Mehandi Mohammad Farishta also have not initiated any legal proceeding where they had raised that forgery has been committed regarding Ex. P-2.

13. Moreover, there is no such other evidence that Ex. P-2 is allegedly suffering from forgery.

14. Looking to the above-mentioned facts and circumstances of the case, this Court finds that the alleged contract of sale dated 21-12-1993, Ex. P-2 is not forged and fake. Thus, this Court decides the point for determination No.1 accordingly. Thus, this Court affirms the finding of the Trial Court regarding this point for determination.

Point for determination No. 2- Findings with reasons:-

15. Ex. P-2 reveals that the respondents No. 1, 2, 3 and late Mehandi Mohammad Farishta were allegedly agreed to sell the disputed building to the appellant on 21-12-1993 at worth of Rs. 8,10,500/-, entire consideration amount was allegedly received by the respondents No. 1, 2, 3 and late Mehandi Mohammad Farishta, alleged possession was also delivered to the appellant, allegedly the respondents No. 1, 2, 3 and late Mehandi Mohammad Farishta would obtain permission from the Raipur Development Authority and No Objection Certificate from the Income Tax Department, then intimate the same to the appellant in writing to get the Ex. P-2 registered.

16. Respondents No. 1, 2, 3 had not specifically and strongly put forward this case that allegedly they never executed Ex. P-2. Moreover, the remaining heirs of late Mehandi Mohammad Farishta also had not initiated any legal proceeding that allegedly late Mehandi Mohammad Farishta had not executed Ex. P-2.

17. This has been earlier decided that Ex. P-2 is not forged and fake document.

18. Looking to the above-mentioned facts and circumstances, this Court finds that the appellant has succeeded to prove that he had entered into contract for purchase of the disputed building with respondents No. 1, 2 and 3 and late Mehandi Mohammad Farishta vide Ex. P-2. Thus, this Court decides the point for determination No.2 accordingly. Thus, this Court affirms the finding of the Trial Court regarding this point for determination.

Point for determination No. 3. Findings with reasons:-

19. The appellant had not given any suggestion to D.W. 2 Gopal Krishna Panda that the respondents No. 1, 2, 3 and late Mehandi Mohammad Farishta had not disclosed before the respondent No. 4 that at the time of execution of the alleged equitable mortgage Ex. D-9, they had already executed Ex. P-2.

20. In Ex. D-9, the appellant is not a party.

21. This is not the case of the respondent No. 4 that allegedly at the time of execution of Ex. D-9, the respondents No. 1, 2, 3 and late Mehandi Mohammad Farishta had not disclosed this fact that they had already executed Ex. P-2.

22. Looking to the above-mentioned facts and circumstances of the case, this Court finds that the appellant has failed to prove that after execution of Ex. P-2, the respondents No. 1, 2, 3 and late Mehandi Mohammad Farishta while executing equitable mortgage Ex. D-9 before respondent No. 4 committed cheating by not disclosing the execution of Ex. P-2. Thus, this Court decides the point for determination No.3 accordingly. Thus, this Court sets aside the finding of the trial Court regarding this matter.

Point for determination No. 4 :- Finding with reasons:-

23. The appellant has filed a suit for title declaration of the disputed building, permanent injunction against the respondents No. 4 and 5, specific performance of the contract regarding the disputed building against respondents.

24. It would be apt to quote the provisions of Sections 18 and 17 of the Act, 1993 which reads as under:-

> "**18. Bar of jurisdiction.**—On and from the appointed day, no court or other authority shall have, or be entitled to exercise, any jurisdiction, powers or authority (except the Supreme Court, and a High Court exercising jurisdiction under Articles 226 and 227 of the Constitution) in relation to the matters specified in Section 17:
>
> Provided that any proceedings in relation to the recovery of debts due to any multi-State co-operative bank pending before the date of commencement of the Enforcement of Security Interest and Recovery of Debts Laws (Amendment) Act, 2012 under the Multi-State Co-operative Societies Act, 2002 ((39 of 2002) shall be continued and nothing contained in this section shall, after such commencement, apply to such proceedings.
>
> **17. Jurisdiction, Powers and Authority of Tribunals.**—(1) A Tribunal shall exercise, on and from the appointed day, the jurisdiction, powers and authority to entertain and decide applications from the banks and financial institutions for recovery of debts due to such banks and financial institutions.
>
> (2) An Appellate Tribunal shall exercise, on and from the appointed day, the jurisdiction, powers and authority to entertain appeals against

any order made, or deemed to have been made, by a Tribunal under this Act."

25. In the matter of **Authorized Officer, State Bank of Travancore and Another -v- Mathew K.C.** (2018 SCC Online SC 55), the Hon'ble Supreme Court referred the decision of **Punjab National Bank -v- O.C. Krishnan and others [(2001 6 SCC 569].** Para 10 of the decision is quoted below **:-**

"**10.** Even prior to the SARFAESI Act, considering the alternate remedy available under the DRT Act it was held in *Punjab National Bank* v. *O.C. Krishnan*, (2001) 6 SCC 569, that:—

"6. The Act has been enacted with a view to provide a special procedure for recovery of debts due to the banks and the financial institutions. There is a hierarchy of appeal provided in the Act, namely, filing of an appeal under Section 20 and this fast-track procedure cannot be allowed to be derailed either by taking recourse to proceedings under Articles 226 and 227 of the Constitution or by filing a civil suit, which is expressly barred. Even though a provision under an Act cannot expressly oust the jurisdiction of the court under Articles 226 and 227 of the Constitution, nevertheless, when there is an alternative remedy available, judicial prudence demands that the Court refrains from exercising its jurisdiction under the said constitutional provisions. This was a case where the High Court should not have entertained the petition under Article 227 of the Constitution and should have directed the respondent to take recourse to the appeal mechanism provided by the Act."

26. As per the alleged certificate of sale of immovable property Ex. D-11, the sale of the disputed building became absolute on 17-2-2004 in favour of the respondent No. 5.

27. P.W. 1 Amit Kumar Singh says in para 27 that this is true that he had raised the objection thrice before the Debts Recovery Tribunal which have been rejected.

28. From the above-mentioned facts and circumstances of the case, from the appellant's case that he had filed the writ petition before this Court against the auction which has been decided, his appeal has also been decided from the Debts Recovery Tribunal, Jabalpur, this is evident that the appellant has filed this civil suit to challenge the proceedings of the Debts Recovery Tribunal, Jabalpur, proceedings of the Recovery Officer, Ex. D-11 to prevent the Recovery Officer to deliver the possession to respondent No.5 in the garb of the suit for declaration, injunction and specific performance of the contract. Thus, looking to the aforesaid provisions of the Act, 1993, the judicial precedent laid down by the Hon'ble Supreme Court in **Authorized Officer (Supra)**, this Court finds that the suit of the appellant is not maintainable. Thus, this court decides the point for determination No.4 accordingly. Thus, the finding of the Trial Court that the suit is maintainable against respondents No.1, 2, 3 is set aside.

29. Shri Ashish Surana, learned counsel for the appellant argued that alleged mortgage deed had not been proved as per the provisions of the Evidence Act. Thus, the Debt Recovery Officer could not recover the possession of the disputed building from the appellant.

30. This has been earlier decided that the suit of the appellant is not maintainable. Thus, this Court is not impressed with the aforesaid argument raised by the learned counsel for the appellant.

Point for determination No. 5 :- Findings with reasons:-

31. The Trial Court did not frame issue regarding bar of limitation, for determination, though it ought to have been done by the Trial Court. The evidence available on record shows that the appellant and the respondents have adduced evidence regarding this point for determination. The evidence available on record is sufficient to enable this Court to pronounce the judgment. Non-framing of additional issue regarding this point for determination does not cause any prejudice to either of the parties. Thus, looking to the provisions Order 41 Rule 24 of the Civil Procedure Code, 1908 (in brevity ' the CPC'), this Court finds that it may pronounce the judgment in this appeal.

32. It would be pertinent to mention the provisions of Article 53 of the Limitation Act, 1963 (in brevity 'the Act, 1963') which reads as under:-

Description of suit	Period of Limitation	Time from which period begins to run
53. By a vendor of immovable property for personal payment of unpaid purchase-money	Three years	The time fixed for completing the sale, or (where the title is accepted after the time fixed for completion) the date of the acceptance.

33. A.W. 1 – Amit Kumar Singh in para-24 during his cross examination stated that he came to know in the year 1994 that the intention of late Mehandi Mohammed Farishta was to cheat and commit fraud to him. He filed the suit beyond 3 years from 1994.

34. Looking to the above mentioned facts and circumstances, this Court finds that the suit of the appellant is barred by limitation. Thus, this Court decides points for determination No.5 accordingly. Thus, this Court affirms the finding of the Trial Court regarding this point for determination.

Point for determination No. 6 :- Findings with reasons:-

35. The Trial Court did not frame issue regarding non-joinder of necessary parties, for determination, though it ought to have been done by the Trial Court. The evidence available on record shows that the appellant and the respondents have adduced evidence regarding this point for determination. The evidence available on record is sufficient to enable this Court to pronounce the judgment. Non-framing of additional issue regarding this point for determination does not cause any prejudice to either of the parties. Thus, looking to the provisions Order 41 Rule 24 of the CPC, this Court finds that it may pronounce the judgment in this appeal.

36. A.W.1 – Amit Kumar Singh says in para-23 that this is true that he has not made any of the daughters of late Mehandi Mohammed Farishta a party.

37. Regarding the land admeasuring 5300 Sqft, the lessor is the Raipur Development Authority. The appellant has also not incorporated the Raipur Development Authority as defendant in his suit.

38. Looking to the facts and circumstances of the case, this is quite vivid that the daughters of late Mehandi Mohammed Farishta, the Raipur Development Authority are the necessary parties.

39. Looking to the above mentioned facts and circumstances of the case, this Court finds that there is non-joinder of the necessary parties in the appellant's suit. Thus, this Court decides point for determination 6 accordingly. Thus, this Court affirms the finding of the Trial Court regarding this point for determination.

40. In the light of the aforesaid finding that the suit is bad for non-joinder of necessary parties, in the usual course, the appellant/plaintiff is entitled to an opportunity to apply for impleadment of those necessary parties. But, in the case in hand, such opportunity is not required to be extended because it has already been held that the suit is bound to fail as barred by limitation and also because no relief as sought for by the plaintiff could be granted. Therefore, no useful purpose would be served in giving opportunity to implead further parties. We, therefore, decline to make any such order.

Point for determination No.7 :- Findings with reasons:-

41. The appellant valued the suit for declaration as Rs. 8,10,500/- and paid fixed court fees Rs. 500/- which is in accordance with the provisions of the Article 17 (III) of the 2nd Schedule of the Court Fees Act, 1870 (in brevity ' the

Act, 1870'). He has valued the suit for the permanent injunction as Rs. 500/- and paid a minimum court fees Rs. 100/- which is in accordance with the provisions of Section 7 (d) of the Act, 1870. The appellant neither valued the suit for the relief specific performance of the contract nor paid any court fee. As per the provisions of the Section 7(x)(a) of the Act, 1870 the appellant was bound to value the suit for the specific performance of the contract on the consideration stated in Ex. P-2 i.e. Rs. 8,10,500/- and should have paid the court fees on it. Thus, this Court finds that the appellant has not properly valued the suit and paid the proper court fees. Thus, this Court decides the point for determination No. 7 accordingly. Thus, this Court affirms the finding of the Trial Court regarding this point for determination.

Point for determination No. 8 :- Findings with reasons:-

42. This has been earlier decided that the suit of the appellant is not maintainable, it is barred by limitation, it is suffering from non-joinder of the necessary parties.

43. The provisions of Section 20(1) of the Specific Relief Act, 1963 is noteworthy and is reproduced herebelow:-

> **“20. Discretion as to decreeing specific performance.**—
>
> (1) The jurisdiction to decree specific performance is discretionary, and the court is not bound to grant such relief merely because it is lawful to do so; but the discretion of the court is not arbitrary but sound and reasonable, guided by judicial principles and capable of correction by a court of appeal.”

44. Para-7 of the judgment of the Hon'ble Supreme Court pronounced in **Govind Ram vs. Gian Chand [AIR 2000 SC 3106]** is relevant in this matter which reads as under :-

> “7. It is the settled position of Law that grant of a decree for specific performance of contract is not automatic and is one of discretion of the Court and the Court has to consider whether it

> will be fair, just and equitable. Court is guided by principle of justice, equity and good consensus. As stated in Parakunnan Veetill Joseph's Son Mathew vs. Nedumbara Kuruvila's Son and Others [AIR 1987 SC 2328] the court should meticulously consider all facts and circumstances of the case and motive behind the litigation should also be considered."

45. The para-7 of the judgment of the Hon'ble Supreme Court pronounced in **Jayakantham and Others vs. Abaykumar [(2017) 5 SCC 178]** is also noteworthy in this matter which reads as under :-

> "7. While evaluating whether specific performance ought to have been decreed in the present case, it would be necessary to bear in mind the fundamental principles of law. The court is not bound to grant the relief of specific performance merely because it is lawful to do so. Section 20(1) of the Specific Relief Act, 1963 indicates that the jurisdiction to decree specific performance is discretionary. Yet, the discretion of the court is not arbitrary but is "sound and reasonable", to be "guided by judicial principles". The exercise of discretion is capable of being corrected by a court of appeal in the hierarchy of appellate courts. Sub-section (2) of Section 20 contains a stipulation of those cases where the court may exercise its discretion not to grant specific performance."

46. If, for the sake of argument, it is assumed that allegedly granting a decree for the specific performance of the contract in favour of the appellant is lawful to do so, though this Court does not find so, then looking to the above mentioned facts and circumstances of the case, material placed on record, this Court finds that it would be unfair, unjust and unequitable. Looking to these circumstances, aforesaid provisions of the Specific Relief Act, 1963, looking to the aforesaid judicial precedents laid down by the Hon'ble Supreme Court in **Govind Ram (Supra)** and **Jayakantham (Supra)**, this Court finds that this Court is not bound to grant the relief of specific performance.

47. After the appreciation of the evidence discussed herebefore, this Court finds that the respondents may not be ordered to execute the registered sale deed in favour of the appellant. Thus, this Court decides the point for determination No. 8 accordingly. Thus, this Court affirms the findings of the Trial Court regarding this point for determination.

Point for determination No. 9 :- Findings with reasons:-

48. The learned counsel for the appellant raised this issue that the appellant is entitled to retain possession of the disputed building under the principles of part performance of the Transfer of Property Act, 1882 (in brevity 'the Act, 1882').

49. It would be pertinent to mention the provisions of Section 53 of the Act, 1882 which reads as under :-

> "**53-A. Part performance** - Where any person contracts to transfer for consideration any immovable property by writing signed by him or on his behalf from which the terms necessary to constitute the transfer can be ascertained with reasonable certainty:
>
> and the transferee has, in part performance of the contract, taken possession of the property or any part thereof, or the transferee, being already in possession, continues in possession in part performance of the contract and has done some act in furtherance of the contract,
>
> and the transferee has performed or is willing to perform his part of the contract,
>
> then, notwithstanding that, where there is an instrument of transfer, that the transfer has not been completed in the manner prescribed therefor by the law for the time being in force, the transferor or any person claiming under him shall be debarred from enforcing against the transferee and persons claiming under him any right in respect of the property of which the transferee has taken or continued in possession, other than a right expressly provided by the terms of the contract :
>
> Provided that nothing in this section shall affect the rights of a transferee for consideration who has no notice of the contract or of the part

performance thereof."

50. The appellant has not made any pleading regarding the provisions of Section 53-A of the Act, 1882. He has raised this question for the first time in the present appeal. The Trial Court has neither framed the issue nor given any finding regarding this matter. Thus, this Court finds that the appellant could not get protection under the principles of part performance.

51. In the matter of **Suraj Lamp and Industries Pvt. Ltd. Though Director vs. State of Haryana and Another** [(2012) 1 SCC 656] observation of the Hon'ble Supreme Court in para 17 is extracted below:-

> “17. In *Rambhau Namdeo Gajre v. Narayan Bapuji Dhotra* [2004 (8) SCC 614] this Court held:
>
> > "Protection provided under Section 53-A of the Act to the proposed transferee is a shield only against the transferor. It disentitles the transferor from disturbing the possession of the proposed transferee who is put in possession in pursuance to such an agreement. It has nothing to do with the ownership of the proposed transferor who remains full owner of the property till it is legally conveyed by executing a registered sale deed in favour of the transferee. Such a right to protect possession against the proposed vendor cannot be pressed in service against a third party."

52. Moreover, in the case in hand in Ex. P-2 the respondents No. 4 and 5 were not party, thus, looking to the judicial precedent laid down by the Hon'ble Supreme Court in **Suraj Lamp (Supra)** this Court finds that the appellant shall not protect the possession over the disputed building against the respondents No. 4 & 5.

53. Looking to the above mentioned facts and circumstances of the case, this Court rejects the argument of the counsel for the appellant regarding this matter.

54. In **Suraj Lamp (Supra)** the Hon'ble Supreme Court has observed in para-16 as under:-

> "16. Section 54 of TP Act makes it clear that a contract of sale, that is, an agreement of sale does not, of itself, create any interest in or charge on such property. This Court in *Narandas Karsondas v. S.A. Kamtam [(1977) 3 SCC 247], observed:*
>
> 32. A contract of sale does not of itself create any interest in, or charge on, the property. This is expressly declared in Section 54 of the Transfer of Property Act. (See Ram Baran Prasad v. Ram Mohit Hazra [(1967)1 SCR 293]. The fiduciary character of the personal obligation created by a contract for sale is recognised in Section 3 of the Specific Relief Act, 1963, and in Section 91 of the Trusts Act. The personal obligation created by a contract of sale is described in Section 40 of the Transfer of Property Act as an obligation arising out of contract and annexed to the ownership of property, but not amounting to an interest or easement therein."

55. Looking to the aforesaid judicial precedent laid down by the Hon'ble Supreme Court in **Suraj Lamp (Supra)**, this Court finds that mere an agreement of sale does not create any interest in, or charge on, the property. Now, it is well settled law that mere a contract for sale does not confer any title on the person in whose favour the contract is executed.

56. After appreciation of the evidence discussed herebefore, this Court dismisses the appeal and partly allows the cross objection.

57. In view of above, the interim order of status-quo dated 07.07.2011 stands automatically vacated.

58. The appellant has not paid *ad valorem* court fee of Rs. 79,100/- on the consideration stated in Ex. P-2 i.e. Rs. 8,10,500/- on the plaint in the trial Court. Thus, he is ordered to pay the *ad valorem* court fee of Rs. 79,100/- on the plaint, within a period of one month from today, failing which the trial Court shall proceed to recover the aforesaid Court fee from the appellant in accordance with law.

59. No order as to costs.

60. The decree be drawn accordingly.

Sd/-
(Thottathil B. Radhakrishnan)
CHIEF JUSTICE

Sd/-
(Sharad Kumar Gupta)
JUDGE

pathak/kishore