IN THE HIGH Court OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No. 3295 of 2008

Decided on 02.05.2018

Hisar Geeta Coop. House Building Society Hisar.

...... Appellant

Versus

Suresh Kumar and others ..... Respondents

CORAM : HON'BLE MR. JUSTICE RAJBIR SEHRAWAT.

Present : Shri Anupam Gupta, Senior Advocate with
Shri Bhavnik Mehta, Advocate for the appellant.
Shri Vinod S.Bhardwaj Advocate and
Shri Amit Kohar, Advocate for the respondents.

RAJBIR SEHRAWAT, J.

Regular Second Appeal No. 3295 of 2008 and Regular Second Appeal No. 4821 of 2017 were ordered to be heard together vide order dated 09-01-2018 passed in RSA No.4821 of 2017. This is how both these appeals were heard together and are being decided simultaneously.

These appeals have arisen from two different suits. Further, although some of the facts are common in both the suits yet the parties, the relief sought and the cause of action in the two suits; from which these appeals have arisen; are different in type, nature and quality. Although some of the documents led in evidence by the parties are also the same, however these documents are numbered differently in the two suits. So these appeals, though heard together, are being decided by two separate judgments of the even date.

RSA No. 3295 of 2008

The RSA No. 3295 of 2008 is the second appeal filed by the defendant against concurrent judgments and decrees in a suit filed by the plaintiffs claiming separate possession of the suit land by way of partition. It deserves mention here that during the pendency of the suit; the original plaintiffs, Jagdish Chander and Subhash Chander sons of Chandgi, had sold their share in the suit land to the respondents No. 1 and 2 in the present appeal. Hence the respondents No. 1 and 2 herein got themselves substituted as plaintiffs in the suit; in place of the original plaintiffs; through an application moved for that purpose. However, for the purpose of the present appeal the parties herein shall be referred to as the plaintiffs and the defendant.

Brief facts of the case are that Chandgi Ram was a tenant on the land measuring 48K-10M comprised in Khewat No. 275, Khasra No. 1782//13/2/3 (2-0), 14/4 (4-0), 15/2 (4-0), 16 (8-0), 17 (8-0), 18/1 (4-0), 23/2 (4-0), 24 (8-0), 25/1 (6-1) and 25/2 (0-9) situated at Bir, Hisar. He acquired the ownership over this land from the Government being an occupancy tenant. However, before the sale deed could be executed in his favour by the Government ; he expired. Hence the sale deed of the above-said land was executed in favour of wife and daughter and six sons of the said Chandgi Ram on 30-10-1989. Hence the land came to be owned; on 30-10-1989; by the eight legal representatives of Chandgi Ram, namely, Smt. Sarwan Devi, Saroj, Suresh Chander, Ramesh, Surender, Naresh, Jagdish Chander and Subhash Chander. Out of the above-said land the defendants had purchased 3/4th share, measuring 36K-7½ M from six persons, namely, Smt. Sarwan Devi, Saroj, Suresh Chander, Ramesh, Surender, Naresh vide sale deed date 15-06-1995.

After purchasing the 3/4th share, measuring 36K-7½M; as mentioned above; the defendants started carving out plots in the entire land measuring 48K-10M, which also included the share of remaining two owners, namely, Jagdish Chander and Subhash Chander, who had not sold their shares to the defendants. Aggrieved of this, the said two owners, namely, Jagdish Chander and Subhash Chander, filed the suit for partition claiming that they were the owners of 1/4th share in the above-said land measuring 48K-10M as per the jamabandi for the year 1990. The defendants had purchased only 3/4th share in the said land. However, without obtaining the license from the Government, it had started carving out the plots in the entire land including the land of the plaintiffs. As a result thereof, there remains a dispute between the parties. There have been several litigations between the parties regarding the title and possession of the land. Even a separate suit for specific performance has been filed regarding the suit land by another party. It was further pleaded that the defendants and its President are influential and strong-headed persons. They are not permitting the plaintiffs to enjoy their land. To get their share separated, the plaintiffs had also filed a partition petition before the Assistant Collector 1st Grade. However, before the Assistant Collector 1st Grade, the defendants produced mutation No.453 dated 23-09-1997 regarding 3/4th share in their favour, where plots were carved out. Hence the partition petition was not maintainable before Assistant Collector 1st Grade because the land had become Gair Mumkin for residential purpose, therefore, the present suit for partition was filed before the Civil Court claiming separate possession of 1/4th share.

On being put to notice the defendants appeared and filed written statement taking routine preliminary objections of maintainability, locus standi, estoppel and limitation. Besides, it was pleaded that the suit was barred under Order 2 Rule 2 and Order 9 Rule 9 of the CPC. On merits, it was averred that plaintiffs are not the co-sharers to the extent of 1/4th share as alleged. In fact, the present plaintiffs along with other six legal representatives of Chandgi Ram had executed an agreement to sell dated 25-09-1989 in favour of **Rajesh Kumar** son of Gursharan Dass and **Vinod Awashi** son of Mohan Lal for the entire land measuring 48K-10M for a consideration of ₹1,32,500/- per acre and had obtained ₹70,000/- on 25-09-1989 at the time of execution of the agreement. The target date of execution of sale deed was fixed for 31-03-1990. The plaintiffs and other legal heirs of Chandgi Ram had executed a registered General Power of Attorney in favour of one of them, namely, Naresh Kumar. Thereafter, said Naresh Kumar was conducting all the transactions on behalf of all the legal heirs of said Chandgi Ram regarding the suit land. It was further averred that said Naresh Kumar was paid 5 Lakh on 23-01-1990 by Rajesh Kumar and possession of the land was handed over to the vendees. Still further, it was claimed that the balance amount of 2,33,081/- was paid by Rajesh Kumar and Vinod Awasthi on 02-03-1990 making it full and final payment. It was further pleaded that since the vendors could not arrange the Income Tax Clearance Certificate by that time, so vide writing executed by the GPA holder Naresh Kumar on 12-03-1990 it was agreed that the vendors shall arrange the Income Tax Clearance Certificate and inform the vendees by a Registered AD notice and thereafter the sale deed would be got executed within 15 days from the date of receipt of notice by the vendees. The vendors could not arrange the Income Tax Clearance Certificate immediately. Therefore, the delay occurred in getting the sale deed executed. It was averred that said Naresh Kumar was acting on behalf of all the Legal Representatives, therefore, all of them were bound by his actions.

However, in the meantime the plaintiff got greedy. Therefore without notice to the said vendees, namely, Rajesh Kumar and Vinod Awasthi, the plaintiffs cancelled their GPA in favour of Naresh Kumar vide a registered deed dated 21-03-1990 and started backing out of the agreement to sell dated 25-09-1989. However, except the two plaintiffs, the remaining vendors/legal representatives of Chandgi Ram stood by the agreement to sell. They could get the Income Tax Clearance Certificate only on 27-04-1995. Thereafter they got the sale deed executed regarding their 3/4th share measuring 37K-7½ M in the suit land. This sale deed was executed on 15-06-1995 in favour of the defendant/appellant Society. Therefore, the defendant-Society is the prospective buyer of the remaining 1/4th portion of the suit land also. Plaintiffs Jagdish Chander and Subhash Chander had no authority to cancel the GPA in favor of Naresh Kumar since it was irrevocable; as the entire sale consideration for the entire suit land stood paid. Therefore the Plaintiffs were bound to execute the sale deed regarding their 1/4th share as well in favor of the defendant Society. The plaintiffs are left with no right title or interest in the suit land. The defendant Society was in possession of the entire suit land, including the 1/4th share of the plaintiffs, in part performance of the agreement to sell. Hence the Society was rightly carving out the plot in the entire suit land measuring 48K-10M. All the other averments of the plaint were also denied in the written statement.

Taking into consideration the pleading of the parties the trial Court framed the following issues:-

1. Whether the plaintiffs are entitled to possession by way of partition of the land measuring 48 kanals 10 marlas comprised in khewat No.275 khatoni No.705 and khasra Nos. 1782//13/2/3(2-0), 14/4(2-0), 15/2(4-0), 16(8-0), 17(8-0), 18/1(4-0), 23/2(4-0), 24(8-), 25(6-1), 25/2(0-9) as per fully detailed in the jamabandi for the year 1991-92 and mutation No.453 sanctioned on 23.09.1997 situated at Bir, Hisar, Tehsil and district Hisar or not ?OPP

2. Whether the present suit is not maintainable in its present

form ?OPD

3. Whether the plaintiff has no locus standi to file the present suit ? OPD
4. Whether the plaintiffs are estopped by their own act and conduct from filing the present suit ?OPD
5. Whether the civil Court has no jurisdiction to try and entertain the present suit ?OPD
6. Whether the suit is time barred ?OPD
7. Whether the suit of the plaintiff is bad for mis-joinder of the necessary parties ?OPD
8. Whether the plaintiff has not affixed the advolrem Court fee with the plaint ?OPD
9. Relief.

The parties led their respective evidence. Plaintiff Subhash Chander appeared as PW1 and Jagdish Chander appeared as PW2. The plaintiffs led in evidence documents Ex.PA to Ex. PE and Ex.P1 to Ex. P11. The defendants examined DW1 to DW16. Out of these DW5 Sushil Kumar, DW8 Ashutosh and DW10 Devender were signatory to agreement and receipt as witness. DW15 Shamsher Singh is the hand-writing expert examined to prove the signatures of the plaintiffs Jagdish Chander and Subhash Chander on the documents. Beside this documents Ex. D1 to Ex.D68 were led in evidence. However, one aspect which needs to be made explicit is that out of the two vendees-parties to the agreement to sell; Rajesh Kumar was not examined as witness because, statedly, he had become of unsound mind by the time of leading evidence and Vinod Awasthi; though examined in examination-in-chief; was not produced for cross-examination because, statedly, he had expired.

After hearing the parties and appreciating the evidence, the trial Court decreed the suit filed by the plaintiffs, and by a preliminary decree, held them entitled to the separate possession of their 1/4th share, in equal share, by partition of the suit land. The trial Court held that although the argument of the defendant is that it is the prospective buyer yet it has not been able to prove this fact. Otherwise also, it is a suit for partition. So in this suit it has to be seen whether the plaintiffs have any share in the joint holding or not. The trial Court held that the revenue record shows that the plaintiffs have 1/4th share in the suit land. Even the agreement Ex.D7, claimed by the defendant reveals the 1/4th share of the plaintiffs. Dealing with the plea of the defendant regarding it being a prospective buyer, the trial Court held that even the documents relied upon by the defendant Society; Ex D7 and Ex. D18 to Ex. D20; show that the agreement was entered into by Rajesh Kumar and Vinod Awasthi and all the payments were made only by them and the endorsements were also in their favour only . So, there is nothing on record that said Rajesh Kumar and Vinod Awasthi and the defendant Society are one and the same thing. There is no averment in the written statement to this effect. There is no privity of contract between the plaintiffs and the Society. Merely because, said Rajesh Kumar and Vinod Awasthi may be connected with the Society does not; ipso facto; make their action to be on behalf of the Society. The Society works through resolutions. There is no such resolution passed by Society in favour of Rajesh Kumar and Vinod Awasthi. Referring to the sale deed Ex.D1 in favour of the defendant Society, it was held that under the agreement to sell Ex. D7 the said Rajesh Kumar and Vinod Awasthi had the right to get the sale deed in their favour or in favour of any other person. Hence this sale deed for 3/4th share might have been executed by the other co-sharers in favour of the defendant Society on asking of the vendees Rajesh Kumar and Vinod Awasthi. However, this in itself does not show that Rajesh Kumar and Vinod Awasthi entered into the said agreement to sell on behalf of the defendant Society. This inference is strengthen by the fact that Rajesh Kumar and Vinod Awasthi had filed separate suit for specific performance in their individual capacity regarding the remaining 1/4th share belonging to the plaintiffs and mentioned in the agreement to sell. Regarding protection of the alleged possession of the defendant Society under section 53-A of the Transfer of Property Act; the trial Court held that the document Ex.D7 and the receipts/writings Ex.D18 to Ex.D20 show that the defendant Society is not a party to the agreement to sell and the possession was never given to the Society. It was, at the best, given to Rajesh Kumar and Vinod Awasthi. The defendant Society got possession of the 3/4th share of the suit property subsequently; only under the sale deed Ex.D1. So the defendant Society is not entitled to the protection under section 53-A of the Transfer of Property Act regarding remaining 1/4th Share belonging to the plaintiffs. The trial Court also held that the defendant failed to show anything against the plaintiffs which estopped them from filing the present suit. Accordingly the suit was decreed by the Trial Court. Aggrieved against the judgment and decree passed by the trial Court the defendant Society preferred appeal before the lower Appellate Court.

However the lower Appellate Court dismissed the appeal filed by the defendant Society. The lower Appellate Court also upheld the findings recorded by the trial Court that there is no privity of contract between the defendant Society and the plaintiffs, the plaintiffs have 1/4th share in the suit land, the possession was never given to the Society and that there is nothing on record that Rajesh Kumar and Vinod Awasthi were acting on behalf of the Society. While dealing with the arguments of the defendants; the lower Appellate Court held that there is absolutely no recital in Ex.D7; the agreement to sell; that Rajesh Kumar and Vinod Awasthi have purchased this land on behalf of the defendant Society. No document or bank statement of Society has been placed on record to show that the consideration was paid by Rajesh Kumar and Vinod Awasthi with the money drawn from the account of the Society or was paid on behalf of the Society. The parties to the agreement are bound only by the terms of agreement. So any recital in the subsequent sale deed Ex.D1; regarding payment of consideration having been paid for the entire land; cannot be used against the plaintiffs; who are not even party to the sale deed Ex.D1, particularly when such recital is not supported by any documentary evidence. The defendant Society is a body-incorporate and works through resolutions. There is no such resolution proved on record either to authorize Rajesh Kumar and Vinod Awasthi to enter into agreement with the plaintiffs or authorizing them to make the payment on behalf of the defendant Society or even to reimburse them. So far as the oral evidence of the defendant is concerned, the lower Appellate Court held that although PW10 Devender Kumar; who was Secretary of the Society and DW16 Vinod Shelly; subsequent President of the defendant Society, have stated that Rajesh Kumar and Vinod Awasthi were authorized to enter into the agreement on behalf of the defendant Society however, they have admitted that there is no such resolution of the Society authorizing the said Rajesh Kumar and Vinod Awasthi to act on behalf of the Society. At the same time other witness of the defendant Society DW8 Ashutosh has admitted that there was no agreement to sell in favour of the Society. Still further another witness of defendant DW9 Naresh Kumar has admitted that the possession of the land was given to Rajesh Kumar.

The lower Appellate Court further held that even in the written statement of the defendant Society, there is nothing to claim that Rajesh Kumar and Vinod Awasthi and the defendant Society are the same person. On the contrary, the evidence led on file shows that; regarding the suit land itself, said Rajesh Kumar and Vinod Awasthi have been litigating in their individual capacity and even the defendant Society has been litigating in its independent capacity. The defendant Society filed a Civil Suit on 21-02-1990 against the original plaintiffs of the present case claiming that the Society had become the owners of the suit property by way of 'adverse possession' since it has made the land cultivable and is in possession of the same for the past 15 years; whereas Chandgi Ram had no connection with the land. Naresh Kumar, the alleged GPA of the plaintiffs made a statement in collusion with the defendant Society and suffered a fraudulent decree. The plaintiffs of the present case challenged that fraudulent decree in appeal. The Appellate Court accepted the Civil Appeal No 10 of 1990 vide order dated 20-12-1990 and negated the plea of 'adverse possession' claimed by the Society and held that Naresh Kumar was not authorized to sell the land or to do anything regarding the suit land and that he acted in collusion with the Society in that case. Further the Appellate Court held that the present plaintiffs, who were the defendants in that case, were not served any notice in person, in those proceedings. Therefore, that case was remanded by the Appellate Court to the trial Court. But the Society went in 'SAO' (Second Appeal against Order - of Remand) vide SAO No. 8 of 1991 before the High Court, which was ultimately treated as 'Civil Revision' by the High Court. The High Court also dismissed that Civil Revision filed by the Society, the present appellant/defendant, upholding the finding that Naresh Kumar, the stated holder of GPA, had no authority to deal with the suit property and that he was acting in collusion with the Society, the present defendants. So, remand order was upheld by the High Court. No further remedy was availed by the Society. But after remand, the suit filed by the defendant Society was not prosecuted further by it and the same was dismissed in default. Those proceedings had ended there.

Regarding the title of the present plaintiffs in the suit property, the lower Appellate Court in the present case held that this issue was considered in another suit also; which was filed by the plaintiffs for injunction against Smt. Sarwan etc. in which the present defendant Society was also arrayed as defendant No.8; and in which it was held that the plaintiffs and the defendants No.1 to 7 were the joint owners of the suit land. Further even the alleged agreement to sell

Ex.D7 admits that the plaintiffs are joint owners of the suit land. The subsequent execution of sale deed Ex.D1 cannot bind the plaintiffs because the same was executed by Naresh Kumar whereas the plaintiffs had already cancelled the GPA in favour of Naresh Kumar. For the same reason, the endorsement on Ex D19 and Ex.D20 have no effect on the plaintiffs because the same were made by only Naresh Kumar.

Regarding protection under section 53-A of the Transfer of Property Act, the lower Appellate Court held that it was not available to the defendant Society, in view of the fact that there is nothing on record to show that there was any agreement between the plaintiffs and the defendant Society and further that even the witnesses of the defendant Society has admitted that the possession was given to Rajesh Kumar and not to the defendant Society. The Society has not been given any possession of the 1/4th share under any agreement nor is there any agreement of the defendant Society with Rajesh Kumar and Vinod Awasthi, on record, regarding transferring possession to the defendant Society. Hence the appeal filed by the Society was dismissed by the Lower Appellate Court. Aggrieved of that confirming judgment and decree the present appeal has been filed by the defendant Society.

While admitting the present appeal; vide the Order dated 15-07-2009, the following substantial question of law was framed by the Court:-

> "Whether the defendant-appellant is in possession in part performance of the agreement Ex. D7 dated 25-09-1989; keeping in view the fact that 3/4th share of the estate of Chandgi Ram stands already conveyed to the present appellant vide registered sale deed dated 13-06-1995."

While arguing the case the learned counsel for the appellants submitted that since the similar suit filed earlier based on the same agreement to sell; was pending for specific performance of agreement Ex. D7; so the trial Court should have refrained from proceeding with the subsequent, i.e. the present suit as per the mandate of section 10 of CPC; and further that the subsequent suit shall be hit by res-judicata as per section 11 of CPC. This position would have been more obvious had both the suits been clubbed together by the trial Courts. Since the parties in the other suit and the present suit are different, so to overcome the language of section 11 of CPC; which mandates application of res-judicata only in a case where the parties are same and matter is substantially the same, the counsel submits that the provision of section 11 of CPC is not exhaustive. The basis of the principle of res-judicata is the public policy; to put an end to a cause of action. The legislature could not foresee all the possible situations requiring putting an end to cause of action. But the public policy behind this principle always remains in place. The counsel relies upon the judgment of the Hon'ble Supreme Court in **1977 (2) SCC 806, State of U.P. versus Nawab Hussain** in this regard. Relying upon the judgment of the Supreme Court in **(2006) 4 SCC 683, State of Karnataka versus All India Manufacturers Organisation and others**, the counsel has submitted that the res-judicata applies not only to the issues involved between the parties, but even to the issues which are part of the issues actually raised by the parties and since the provision of section 11 CPC is not exhaustive, so the res-judicata has been applied by the Courts even if, strictly, the ingredients of section 11 CPC are absent in a case. He has placed reliance upon the judgment of the Hon'ble Supreme Court rendered in **AIR 1960 SC 94, Satyadhyan Ghosal and others versus Smt. Deorajin Debi and another** in this regard and argued that it is for the Court to apply the res-judicata, as a public policy by going to the essence of the issues involved and decided between the parties; by applying their intellectual creativity. That is why the Courts are chosen to find the meaning of provision changing from time to time.

Taking the arguments further, the learned counsel for the appellant has submitted that since a suit for specific performance of the above-said agreement to sell; qua the share of the plaintiff; had already been filed by the vendees Rajesh Kumar and Vinod Awasthi, so the present suit should have been clubbed and consolidated with that suit to avoid possibility of different findings. To surmount the fact that there is no provision in CPC for clubbing of suits, the counsel submitted that the Court should have exercised its inherent power under section 151 CPC to club the two suits. The counsel relies upon the judgments of the Apex Court reported in **2015(3) SCC 624, Sri GangaiVinayagar Temple and another versus Meenakshi Ammal and others** and **2004(3) SCC 85, Chitivalasa Jute Mills versus J P Rewa Cement** in this regard and submitted that even in the absence of specific provision, the equity required that the both suits should have been clubbed together. The counsel has submitted that the clubbing was more imperative, which is also shown by the fact that the Courts below have made detailed reference to the earlier suit in their judgments, the witness examined in both the suits are the same and even the documents exhibited are the same in both the suits. The agreement to sell has been upheld by the concurrent Courts in the said other suit and this finding has not even been challenged by the present plaintiffs so far. Therefore the Courts should have arisen above the ordinary plane and ordered clubbing of suits instead of returning the findings in piecemeal. Both the Courts below, at subsequent stages, could not have visualized the case in the hindsight, at the initial stages of the suits. Hence, since the Courts failed to club the two suits; it has resulted in an illegality and inequity in the proceedings which has vitiated the entire result of adjudication in impugned judgment and decrees.

Arguing the case further on merits; the learned counsel for the appellant, at the outset, admitted that there is no specific document to directly show that the said Rajesh Kumar and Vinod Awasthi were authorized by the Society to act on its behalf or to show that Rajesh Kumar and Vinod Awasthi ever assigned their right to the possession of the suit land; got under the agreement; to the defendant Society. Therefore, as an attempt to indirectly establish that Rajesh Kumar and Vinod Awasthi were acting on behalf of the defendant Society; the counsel made reference specifically to the documents Ex. D7-agreement to sell dated 25-05-1989, Ex. D9 -Income Tax Clearance dated 27-04-1995, Ex. D18-receipt of part payment dated 23-01-1990, Ex.D19- receipt of money and endorsement for giving possession, Ex. D20- endorsement for extension of time and undertaking for getting Income Tax Clearance dated 12-03-1990 and Ex.D1-sale deed dated 15-06-1995 for 3/4th share in favour of the defendant Society. Referring to these documents, the learned counsel has submitted that functionary of the defendant Society are the signatory to these documents, although as witnesses only. Further that even Vinod Awasthi was the President of the Society and Rajesh Kumar was a member of the defendant Society at the time of the agreement to sell in their favour. So, the agreement to sell in favour of Rajesh Kumar and Vinod Awasthi is, essentially, required to be read as in favour of the defendant Society. For the same purpose the learned counsel also referred to the oral evidence in the form of the statements made by the witnesses DW5-Sushil Kumar, DW8-Ashutosh, DW10-Devender Kumar, DW11-Vinod and DW15-Shamsher Singh to contend that the statements of these witnesses proved that there was an agreement to sell and that agreement was entered into by Rajesh Kumar and Vinod Awasthi on behalf of the defendant Society and further that the possession of the entire suit land was given to the defendant society under the said agreement to sell. The learned counsel has submitted that the learned Courts below have gone wrong in law only referring to the documentary evidence and in ignoring the oral evidence in this regard.

Introducing the equity in the case the learned counsel has submitted that not only in the field of public law but the equity permeates into even the field of private law of contract. Therefore, the Courts have converted the contractual liability into tortuous liability by applying equity to the terms of contract. Hence, his argument is that the terms of the agreement should be read in a way so as to further equity and to hold that Rajesh Kumar and Vinod Awasthi were acting on behalf of the defendant Society. The technicalities of statutory law regarding status of the defendant Society as body-incorporate and the requirement of privity of contract under the Indian Contract Act, should not be insisted upon. Justice demands that the balance has to be made between law and equity. He has relied upon the judgment reported in **(2014) 16 SCC 96, K. K. Sharma versus High Court of Delhi and othe** The counsel has further relied upon the judgment of Supreme Court in **(1997) 6 SCC 370, Manju Bhatia and another versus New Delhi Municipal Council** to contend that the equity has to be pressed into service to prevent a legal fraud. The counsel has relied upon the judgment of the Supreme Court reported in **(2010) (10) SCC 677, Ritesh Tewari and another versus State of Utter Pardesh and othe** Hence it is submitted by the counsel that since the agreement to sell was entered into by the plaintiffs themselves under their own signatures and it was regarding entire chunk of land and subsequently the sale deed qua the land mentioned in the agreement to sell minus the share of these two plaintiffs has already been executed in favour of the defendant Society, therefore, the plaintiffs cannot be permitted to take shelter under the technicalities of law to commit a legal fraud and equity must step-in to find out the real intention of the parties that, said Rajesh Kumar and Vinod Awasthi entered into agreement on behalf of the defendant-Society only; and it was the defendant Society which was given possession of the suit land through Rajesh Kumar.

Learned counsel has further argued that since the defendant Society was given possession of the land; therefore; the Society is entitled to protect the possession as provided under Section 53-A of the Transfer of Property Act. Hence the suit filed by the plaintiff for joint possession cannot succeed. It is submitted by the counsel that the possession of the defendant Society has even been admitted by the plaintiffs by averring in the plaints that the defendant Society was carving out the plots in the entire chunk of land including the share of the plaintiffs.

The learned counsel has further submitted that the concept of privity of contract has been taken too far by the learned Courts below by giving strict interpretation to the terms of agreement. The Courts have referred to only the documentary evidence to hold that there was no privity of contract. The oral testimony of the witnesses has been ignored by the Courts below. The Courts should have applied the doctrine of lifting the veil to find out the real nature of the transaction. The counsel has relied upon the judgment of Supreme Court reported as **(2004) 7 SCC 1, Singer India Ltd. Versus Chander Mohan Chadha and others** to contend that the doctrine of lifting the veil has to be applied to all kind of transactions. The counsel has submitted that though the agreement was entered into by Rajesh Kumar and Vinod Awasthi yet it was intended to be on behalf of the Society for the purpose of execution of the sale deed. This fact is also made clear by the fact that out of the total chunk of land; sale deed regarding the remaining 3/4th share has already been executed in favour of the defendant Society; by the other co-sharers and vendors of the agreement to sell. Hence, said Rajesh Kumar and Vinod Awasthi were acting as nominees of the Society only. Therefore, the Society has to be treated as the prospective buyer for the purpose of Section 53-A of the Transfer of Property Act. The defendant Society is not an imposter or alien or virtual entity. It has been made a party to the proceedings by the plaintiffs themselves. The plaintiffs have denied the agreement to sell as such but the same has been upheld in another proceedings. They are denying the possession of the defendant Society whereas the site plan Ex.D61 deals with the entire area of 48K-10M. So, the reality should be seen by the Court instead of upholding the false plea taken up by the plaintiffs by taking shelter behind some provisions of law. Accordingly, he has argued that since the provision of Section 53-A itself is based on equity in contract therefore a purposive interpretation should be given to this provision so as to protect the possession of the defendant-Society.

The Counsel has relied upon the judgment of Supreme Court in **(2016) 3 SCC 619, Shailesh Dhairyawan versus Mohan Bal Krishna Lulla** to contend that not the text per se but the goal of the provision and the values involved therein should be the basis for interpretation of the provision. For the same purpose, the learned counsel has relied upon the judgment of Supreme Court in **(2016) 4 SCC 179 Richa Sharma versus State of Chhattisgarh and other** and **(2016) 10 SCC 329 Lanco Anpara Power Limited versus State of Utter Pradesh and othe**

However, while concluding his argument the learned counsel for the appellant has clarified that he is not pleading res-judicata in the suit as such as an independent embargo against the present suit. But he is raising it as an argument supporting his claim that the suits should have been clubbed together and in that situation findings could have been different; as have been regarding the validity of agreement to sell Ex.D7 in the other suit. In such a situation, the claim of the plaintiffs could have been hit by res-judicata extended to issue estoppels. While referring to the bare language of the Section 53-A of Transfer of Property Act, the learned counsel has further clarified that the defendant Society was not 'claiming under' the vendees in the agreement to sell, rather the defendant-Society is claiming 'as' the vendee, acting through its nominees Rajesh Kumar and Vinod Awasthi.

Replying to the arguments the learned counsel for the respondents/plaintiffs has argued that it is a simpliciter suit for partition. In this suit; what matters is - the title of the plaintiff and the jointness of possession. If, at all, any other rights and obligations are to be claimed by the parties qua the suit property then the same shall be separately claimed and decided by the competent Court. It is nobody's case that the plaintiffs did not have title qua 1/4th share in the suit property. Even the alleged agreement to sell; very heavily relied upon by the defendant Society; confirms the title of the plaintiffs qua 1/4th share in the suit land. The defendant Society has even admitted in the pleadings that it was carving out plots in the entire suit land whereas the sale deed in its favour was only for 3/4th share. So jointness of possession is also not in dispute since no partition is even pleaded by the Society. Hence the suit for partition was rightly filed by the plaintiffs and rightly decreed by both the Courts below. There is nothing wrong, illegal or perverse in it.

The counsel has further argued that so far as the clubbing of the two suits is concerned, the defendant Society had not even made a prayer to the Courts below for clubbing of the two suits. It is further argued that otherwise also there was no ground for the trial Court to club together the two suits by exercising its inherent powers under section 151 CPC because there was nothing common in the two suits. The parties, the cause of action, the relief claimed and the nature and scope of enquiry in the trial; all were different in the two suits. Even pleadings of the defendant Society in the present suit and the pleading of their claimed nominee Rajesh Kumar and Vinod Awasthi in the other suit; filed for specific performance were diametrically opposed to each other. Hence there was no reason or scope for clubbing of the two suits. The learned counsel for the respondents argued that nothing has been pointed out by the appellant in this case to show as to how the ends of justice required clubbing of the two suits. The appellant has raised only a perceptive argument at the hypothetical level that the result of the suits could possibly have been different.

Regarding the argument of the appellant on the point of stay of suit under Section 10 CPC and the res-judicata under Section 11(IA) of the CPC, the learned Counsel for the respondents, while relying upon judgment of Supreme Court in **(2005) 2 SCC 256, National Institute of Mental Health & Neuro Sciences versus C. Parameshwara,** has contended that the test for invoking section 10 CPC is that it is to be applied if the final decision in previous suit would operate as res-judicata in subsequent suit, where whole of the subject matter in both the suits is the same. Accordingly, the learned counsel has submitted that the Section 10 CPC would come into play if the parties to the two suits are the same or claiming under the same title. Further the matter involved in the two cases should be substantially and materially the same. Similar is the situation for plea of res-judicata. Additionally; to attract the principle of res-judicata, one of the suits should have been finally decided to abort the decision of the second suit. But this was not the situation against the suit filed by the plaintiffs. Therefore, none of the ingredients of either Section 10 CPC or of Section 11 CPC are available in the present case. These ingredients have not even been pleaded by the defendant Society. In the other suit filed for specific performance; Rajesh Kumar and Vinod Awasthi are the plaintiffs against the plaintiffs of the present case; whereas in the present suit for partition filed by the present plaintiffs the Society is the defendant. So the parties are neither the same nor claiming under the same title. The defendant Society has not even pleaded in the written statement merger of its identity with Rajesh Kumar and Vinod Awasthi. The Society in its written statement has pleaded that agreement to sell was entered with Rajesh Kumar and Vinod Awasthi, Payment of consideration was made by the said Rajesh Kumar and Vinod Awasthi and even possession was taken by Rajesh Kumar. The Society has not even pleaded that the said Rajesh Kumar and Vinod Awasthi were acting on its behalf. The Society has not even pleaded that it ever owned and ratified the action of the said Rajesh Kumar and Vinod Awasthi for entering into agreement to sell in question. On the contrary, the defendant Society has claimed that it is in possession of the suit property as prospective buyer and was legally carving out plots in the suit land. The pleadings of the other suit filed by Rajesh Kumar and Vinod Awasthi and still another suit filed by the Society against the respondents herein clearly show that the defendant Society and the said Rajesh Kumar and Vinod Awasthi were claiming independent, distinct and separate rights qua the suit property. Moreover, despite the fact that the said Rajesh Kumar and Vinod Awasthi had got the sale deed of $3/4^{th}$ share of the suit land executed in favour of the defendant Society and being aware of the present suit regarding $1/4^{th}$ share, they never came forward to support the case of the Society by becoming party to the present suit; nor the Society had impleaded them as the party in this suit. They continued to claim separately qua this $1/4^{th}$ share. They continued with their independent suit for specific performance, claiming it to be decreed in their independent and individual capacity. So, the counsel has relied upon the judgment of the Hon'ble Apex Court in **(2015) 3 SCC 624, Sri Gangai Vinayagar Temple and another Versus Meenakshi Ammal and others** to contend that since the ingredients prescribed in Section 11 CPC are not present and pleaded so the principle of res-judicata cannot be invoked to scuttle the present suit.

Replying the arguments, the learned counsel for the respondents has further argued that earlier the appellant/defendant Society had filed a suit on 21-02-1990, against the respondents/plaintiffs claiming title to the suit property, not on the basis of the said agreement to sell dated 25-09-1989 but in defiance of this agreement to sell, on the basis of adverse possession; claiming that the defendant Society had been in possession of the suit property for the past more than 15 yea Although in that case notice was issued for 02-05-1990 yet since the respondents/present plaintiffs had come to know of the suit so the defendant Society; in a hasty manner, got a collusive written statement filed through alleged GPA of the present plaintiffs and got it decreed in a collusive manner on 02-03-1990 itself. This collusive decree was challenged in appeal by the present plaintiffs. The appeal was allowed on 20-12-1990 in favour of the present plaintiffs holding that the alleged GPA holder was acting in collusion with the present defendants and that the alleged GPA holder Naresh Kumar had no authority to deal with the suit property on behalf of the present plaintiffs. The case was remanded to the trial Court after hearing the present plaintiffs. This finding was upheld even by the High Court vide its judgment dated 21-05-1991; in SAO which was treated as Civil Revision. After remand to the Trial Court, when caught committing fraud, the present defendant Society did not pursue their suit and got it dismissed in default on 08-03-1993. Hence, the defendant Society can neither claim any benefit under the alleged agreement to sell dated 25-09-1989 nor under any act done by the said alleged GPA holder Naresh Kumar. Still further the defendant Society cannot be heard to plead equity after having been caught committing fraud even upon the Court; regarding the suit property.

It is further argued by the counsel for the respondents that the right of the plaintiffs to seek partition was also affirmed by the fact that the present plaintiffs had filed another suit for injunction in the years 1990; against the other six LRs of Chandgi Ram; restraining them from selling any specific Khasra No. on the basis of the alleged same agreement to sell dated 25-09-1989. That suit was decreed in the year 1994 and the other co-sharers of the plaintiffs were restrained from selling any specific Khasra numbers. No further appeal was filed in that case, despite the fact that the appellant/Society was a party in that suit. So, the Co-sharers of the present plaintiffs had executed the sale deed dated 15-06-1995 only qua their 3/4th share on the basis of the alleged agreement to sell dated 25-09-1989, leaving the 1/4th share of the plaintiffs to be intact. Hence, the plaintiffs have every right to seek partition of their 1/4th share.

Regarding the oral testimony of the witnesses relied upon by the counsel for the appellant/defendant Society, learned counsel for the respondents has submitted that although some of the witnesses examined by the defendant Society have tried to portray that the agreement to sell was entered into on behalf of the Society yet they have failed to substantiate the same with reference to any document on record. DW16 Vinod Shelly, though says that the Rajesh Kumar and Vinod Awasthi and the defendant Society are one and the same thing however they have not mentioned by which resolution the Society had authorized them to enter into agreement on its behalf. This witness does not say that the money; allegedly paid by Rajesh Kumar and Vinod Awasthi had come from the account of the Society or it was the Society money. This witness has positively deposed that the possession was given to the said Rajesh Kumar and does not further say that the said Rajesh Kumar had given the possession to the Society. Hence, this oral testimony does not enhance the case of the defendant Society.

Regarding the claim of the defendant Society qua protection of its possession under Section 53-A, Transfer of Property Act, the learned counsel for the respondents has argued that though the learned counsel for the appellant himself has stated that the defendant/appellant Society is claiming 'as' the vendee in the agreement to sell and it is not 'claiming under' the vendee Rajesh Kumar and Vinod Awasthi, however; even if the defendant wanted to stake its claim qua protection of its alleged possession as 'claiming under' the vendees of the alleged agreement to sell; Rajesh Kumar and Vinod Awasthi; then also it could not have sustained its claim as per the law. It is his submission that assignment of right to possession of an immovable property in favour of another entity is a transfer of interest in the immovable property. Hence, if the value of the property is more than 100/- then even the interest in property qua its possession could not have been assigned except through registered deed. To support his argument he relies upon the judgment of the Supreme Court rendered in **1987 AIR SC 180, C.G. Ghanshamdas and others Versus Collector of Madras**. In the present case, there is no registered deed executed by the vendees Rajesh Kumar and Vinod Awasthi in favour of the defendant Society. So, there is no assignment by the said Rajesh Kumar and Vinod Awasthi. His further submission is that otherwise also the right to possession acquired by a vendee under Section 53-A of the Transfer of Property Act is not transferable. Only the original vendee in the agreement to sell is entitled to the protection of possession under section 53-A of the Transfer of Property Act. To support his argument the learned counsel has relied upon the judgment of the Supreme Court rendered in **(2004) 8 SCC 614, Rambhau Namdeo Gajre versus Naran Bapuji Dhotra (Dead) through LRs.**

Countering the argument of the appellant regarding heavily relying upon equity, the learned counsel for the respondents has submitted that where there is a specific provision of law, the equity cannot be invoked to sidetrack the law. In case of the conflict between law and equity, the latter has to give in to the former. To support his argument the learned counsel has relied upon the judgment of Supreme Court rendered in **2007 (4) RCR (Civil) 515, Shiv Kumar Sharma Versus Santosh Kumari**.

Having heard the learned counsel for the parties and perused the record with their able assistance, this Court is of considered opinion that despite his strenuous efforts, the learned counsel for the appellant has not succeeded in making out a case sufficient to turn the fate of the present appeal in favour of the appellant/ defendant Society. The voluminous arguments by the learned counsel for the appellant could not impeach the validity of the concurrent findings recorded by the Courts below against the appellant/defendant Society. Hence, the substantial question of law framed at the time of admission of this appeal turns against the appellant-defendant Society for the reasons coming in the succeeding paragraphs.

Pitched in a tight spot due to pleadings and proceedings already undertaken by the appellants-defendant; in this case and other cases between the parties; as well as in the other suit filed for specific performance by Rajesh Kumar and Vinod Awasthi, which tended to take away the very basis of the claim of the appellant-defendant, the learned counsel for the appellant, with all sharpened intellect and refined understanding of law at his command, has very heavily relied upon the 'Equity' to provide the life-support to the case of the appellants. His submissions on equity are so extensive and pervasive as sought to be applied at three different levels. Firstly, he has argued for applying equity in the private laws of contract and prayed for reading in altered form the parties to the contract, the terms of contract and the consequence of the contract. Secondly, he has sought to apply the equity to the procedure adopted by the Courts so as to submit that due to not following equity in procedure, the decree passed by the Courts below has been vitiated. Thirdly, the learned counsel has argued that the substantive law governing the respective rights of the parties to the contract should be given a purposive interpretation in terms of equity, as per the latest trend of interpretation of statutes. Hence, it would be compulsively pertinent for this Court to visualize the place of 'equity' in its application to adjudicate the legal rights of the parties in a *lis*.

Equity as a basis of dispensing justice has its origin from the King's conscience actuated by justness, who in turn was believed to be of 'Devine Origin' in early Monarchical system of governance. So strong a concept the equity was that the King had to issue decree and punishment even to his family members to establish the purity of his conscience and uphold the reign of equity. With the growth of the expanse of the writ of the King, it was not possible for the King to dispense justice; all on his own. This led to the requirement of the decentralization of the 'Kings conscience' by delegating the King's authority to dispense justice to chosen Nobles. Hence, in ancient India the Kings had what is known as 'Dharmadhikaris' and in relatively modern times and claimed awakened system like that of England; the King had Chancellors of Equity for Civil disputes and Justices of Peace for Criminal justice. Since the equity had something to do with the justness/conscience and the prevalent value system therefore; with the delegation of authority by the King; the meaning of equity tended to be uncertain and undefined as per the understanding of the individual, leading to a situation where the equity changed with the 'Foot of the Chancellor'. This brought in the craving for standardization of principles to be applied for dispensing justice. Hence, the requirement of defined 'Law' replacing the undefined 'Equity' stepped in.

As materialistic realism of Machiavelli would tell us; every human being strives self aggrandizement by attempting for 'Power', 'Fame' and 'Greatness'; in that order; so the lesser mortals started having an urge to share power with or independent of the King. Hence, the advent of 'Democracy'. In democracy, it is the 'Will of People' which rules the system. 'Will of People' is again an undefined concept. The 'Will of People' is not the aggregate of the 'Wills' of the entire populace of a nation. Rather it is a product of 'Wills' of the citizen of a nation. But still, the "Will of People' remains an amorphous and unmeasurable concept. This led to creation of a device in the form of a basic document containing the agreed principles of governance, called the 'Constitution' which the people of the nation give to themselves. This ultimate form of democracy manifests itself in creating a 'Republic' where the people give the Constitution to themselves and endorse to be governed by themselves only. Republicanism works through representative law making and representative governance. All such laws have to confirm to the basic document i.e. the Constitution; so as to reflect the 'Will of the People'. Everything has to be governed by such Constitution confirming laws. Hence the 'Rule of Law' is the basic tenant of Republicanism. In India also; though not so written in the Constitution, the 'Rule of Law' has been held to be a basic feature of the Constitution of India by the Hon'ble Supreme Court of India in **Keswanand Bharti case**. Hence, it is obvious that India has chosen to be governed by 'Rule of Law' and such 'law' being confirming to the norms as laid down in the Constitution of India.

Merely because our legal system enshrines 'Rule of Law', does it altogether does away with the equity? The answer is a definite 'No'. But does the equity still enjoy the place of pride as the main basis of dispensing justice? Again the answer is definite 'No'. We can and we are having 'Laws' which are in direct negation of every notion of equity. We are having such laws because they are constitutionally valid and thus reflect the 'Will of the People'. The laws relating to class legislation and the providing for 'affirmative state actions qua classes' are the classical example of it. No 'equity' can countenance that two persons living in the same state of penury be treated differently or that the validly held property of one be taken away from him against his will and be given to other. But the 'Will of People' as reflected in the Constitutional Vision permits these laws for the purpose of ensuring equitable distribution of resources and equitable power sharing. Needless to say that the ‘Equity’ and the ‘Equitable Distribution of Resources’ is not the same thing. The former may have to sacrifice itself for the latter to succeed. Therefore, there are the ‘laws’ which simply do not bother about the ‘equity’.

In the Indian legal system whatever equity the system thought appropriate to be applied in dispensing justice; has been included in the codified law itself. The Specific Relief Act, Provisions relating to Award of Compensation, provisions relating to Performance and Avoidance of the same under Indian Contract Act, Doctrine of Election and even some principles of law of evidence like Estopple and some Presumptions are some of the examples of codified equity. Beyond what is included in the codified law the ‘equity’ has very limited space in Indian system, more so, where an aspect is expressly governed by the law. The equity cannot supersede law, howsoever severe effect the law may be producing. The situation is best described by the Latin maxim ‘*Dura Lex Sed Lex*’ which means ‘Law is hard, but it is the law’. Fully endorsing this proposition, the Apex Court held in **(1997) 7 SCC 556, P. K. Ram Chandran Versus State of Kerala** that equity is no ground to extend the period of legally prescribed limitation. In the similar vein, the Hon’ble Apex Court in **(2011) 15 SCC 194, State of Uttrakhand Versus Archana Shukla and O** held that the equity can only supplement the law but it cannot supplant law. However Indian legal system still preserves the ‘equity’ in its application by the Constitutional Courts in exercise of their Writ and Special jurisdictions for doing justice to the cause. But the Civil Court; being a Court of law required to decide the *lis* between the parties as per the law; have very limited scope for invoking equity; only in those compulsive situations where law has stopped short of providing an express direction and solution. Another field finding application of equity is in the form of purposive interpretations of statutes; where the express words in the statute are not clear enough to explain the intention of the legislature. This position was also highlighted by the Hon'ble Supreme Court in **(2017) 2 SCC 609, J. Ashoka Versus University of Agricultural Sciences & O** wherein the Hon'ble Apex Court held that the equity and law are twin brother Law is required to be interpreted with aid of equity. However, the equity cannot be permitted to supersede the law.

Hence, it is clear that the equity has to play only the second fiddle, the Law being the master in a system governed by the Rule of Law. The Law can very well quell the equity but the any quantum of equity is not sufficient to dislodge the modicum of express law.

Returning to the facts of the present case, this Court does not find any merit in the argument that the decree passed by the Courts below are nullity or illegal because the Court had not clubbed the two suits despite the fact that some of the facts and evidence were common in both the suits and the Courts had referred the other suit in this suit as well. Viewed through the prism of the above-said propositions of law vis a vis equity, one thing is clear that the trial Court as well as the Lower Appellate Court; both have decided the case by following all the provisions prescribing the procedure and rules of evidence. Therefore, the judgment and decrees passed by the Courts below are passed as per the prescribed law. The law declares these judgments and decrees to be final having been passed by the Courts of competent jurisdiction, unless upset by higher Court in appeal. Therefore, the judgments and decrees passed by the learned courts below cannot be declared to be void or illegal only because the Courts below has not followed some procedure in equity, perceived to be desirable by the appellant in the retrospect. There is no dispute with the observations made by the Hon'ble Supreme Court in the judgments relied upon by the learned counsel for the appellant. However, none of these judgments lays down that an otherwise validly passed decree of a competent Court shall be void or illegal simply for the reason that the said Court had not followed some desirable procedure of perceived 'equity'. The learned counsel for the appellant has failed to bring to the notice of this Court any precedent from any Court to the effect that non-following the equity in procedure would make the otherwise validly passed decree a nullity.

Otherwise also, this argument of the learned counsel for the appellant /defendant Society is nothing but a post operative reflection of a Surgeon after the patient had already died on the operation table. This Court finds force in the argument of the ld. Counsel for the respondent/plaintiff that the defendant Society had not even made a prayer to the Courts below for clubbing of the two suits. No application was ever moved by the defendant Society for clubbing of the two suits. Now in second appeal, non-clubbing of suits cannot be permitted to be taken as a ground for questioning the legality of the decree passed by the competent Court. Further, there was no ground for the trial Court to club together the two suits by exercising its inherent powers under section 151 CPC because there was nothing common in the two suits. The parties, the cause of action, the relief claimed and the nature and scope of enquiry in the trial; all were different in the two suits. The present suit is only for partition whereas the other suit is for specific performance; based on a fact that the present plaintiffs were the lawful owners and agreed to sell their respective shares. So any finding recorded in the other suit qua the validity of agreement or liability of the present plaintiff to execute the sale deed is irrelevant for the purpose of the present case. Even the pleadings of the defendant Society in the present suit and the pleading of their claimed nominee Rajesh Kumar and Vinod Awasthi in the other suit; filed for specific performance were diametrically opposed to each other. Hence there was no reason or scope for the learned courts below to club the two suits. Merely because the learned courts below have made mention of the other case in this case as well is not any ground for compulsory clubbing of two suits. In fact the Courts were bound to mention the other suit and some documents of other suit in this suit because the parties had made a reference to the same. But the nature of the two suits is altogether different, requiring no clubbing. Still further, nothing has been pointed out by the appellant in this case to show as to how the ends of justice required clubbing of the two suits. The counsel for the respondent is right in submitting that the appellant has raised only a perceptive argument at the hypothetical level that the result of the suits could possibly have been different had the suits been clubbed. Mere distant possibility of a different result in favour of one party – as against meeting the ends of justice - is not the sufficient ground to invoke the inherent powers of the civil Court to travel outside the scope of statutorily prescribed civil procedure.

So far as the argument of the learned counsel for the appellant/ defendant Society qua the applicability of sections 10 and 11 of CPC to claim res-judicata against the present suit is concerned, learned counsel for the appellant has already taken the steam out of this argument when he clarified in his arguments that he is not pleading res-judicata in the suit as such; as an independent embargo against the present suit, rather; he is raising it as an argument supporting his claim that the suits should have been clubbed together; and in that situation findings on some issues could have been different and against the respondent/plaintiff and in such a situation the suit of the plaintiffs could have been hit by res-judicata extended to issue estoppels. This hesitant argument itself reflects that even the appellant is aware of the fact that the plea of res-judicata is, strictly, not attracted in this case. Otherwise also since the parties, the cause of action, the relief claimed and the nature and scope of enquiry in the trial; all were different in the two suits, therefore the proposition of stay of suit under Section 10 or res-judicata under Section 11 of CPC are not attracted in this case. The test for invoking Section 10 is that it is to be applied if the final decision in previous suit would operate as res-judicata in subsequent suit. Hence, Section 10 CPC would come into play if the parties to the two suits are the same or claiming under the same title and the case involved in the two cases is substantially and materially the same. Same is the situation for plea of res-judicata under Section 11 CPC. Additionally; to attract the principle of res-judicata one of the suits should have been finally decided to abort the decision of the second suit. But this was not the situation against the suit filed by the plaintiffs. Therefore, none of the ingredients of either Section 10 CPC or of Section 11 CPC are in existence in the present case. The ld. Counsel for the respondents has rightly argued that these ingredients have not even been pleaded by the defendant Society. In the other suit filed for specific performance; Rajesh Kumar and Vinod Awasthi are the plaintiffs against the plaintiffs of the present case; whereas in the present suit for partition filed by the present plaintiffs, the Society is the defendant. So the parties are neither the same nor claiming under the same title. The defendant Society has not even pleaded in the written statement merger of its identity with Rajesh Kumar and Vinod Awasthi. The Society has not even pleaded that the said Rajesh Kumar and Vinod Awasthi were acting on its behalf or that the Society has ever owned and ratified the action of the said Rajesh Kumar and Vinod Awasthi for entering into agreement to sell in question or for filing of the suit for specific performance. On the contrary, the defendant Society has averred that it is in possession of the suit property as prospective buyer in its own capacity and was legally carving out plots in the suit land; whereas; the pleadings, arguments and their evidence in the other suit filed by Rajesh Kumar and Vinod Awasthi clearly show that the said Rajesh Kumar and Vinod Awasthi were claiming independent, distinct and separate rights qua the suit property. Moreover, despite the fact that the said Rajesh Kumar and Vinod Awasthi, being vendees of the agreement to sell; had got the sale deed of 3/4th share of the suit land executed in favour of the defendant Society by assigning their right, yet in the present suit regarding 1/4th share they never came forward to support the case of the Society by becoming party to the present suit; nor the Society had impleaded them as the party in this suit. They continued to claim separately qua this 1/4th share. They continued with their independent suit for specific performance, claiming it to be decreed in their independent and individual capacity. Hence the applicability of res-judicata is obviously excluded.

The argument of the learned counsel for the appellant/ defendant that the res-judicata should be applied even if the ingredients of Section 11 CPC are not present in the case; because the principle of res-judicata is the public policy; to put an end to a cause of action; and the legislature could not foresee all the possible situations requiring putting an end to cause of action– does not find favour with this Court. Although the principle of res-judicata is based on public policy of putting an end to a cause of action; as developed in common law, however, the entire basis for enacting the Section 11 of CPC; with specified boundaries and intricate details in the forms of Explanations attached thereto; is to tame the proverbial 'Unruly Horse' called the public policy and to tether it to the strongly engrafted moors of law. Any attempt by the Court to deviate from the defined parameters of the principle as contained in Section 11 CPC; on the ground that legislature could not foresee all the possible situations for it application; would be antithetical and prejudicial in more than one way, besides being in contradiction to the Constitutional principle of Separation of Power. Before venturing into any such initiative, the Court has to keep in mind the settled proposition of law that when an action is prescribed to be done in a particular manner then that action has to be taken only in that manner and resorting to any other manner would necessarily be statutorily prejudicial and denial of right to equality before law. Secondly, when the legislature has enacted a provision on an aspect of a matter then any omission to legislate on that aspect is always taken to be intentional on the part of the legislature. It is not for the Courts to indirectly legislate what the legislature has intentionally omitted to do. So the Court would be well advised to hold its hand back and not to travel to the unknown frontiers to devise the new facets of the principle of res-judicata by ignoring the statutory provision of Section 11 of CPC, and thereby; again to break-free the public policy to let it transform into an 'Unruly Horse'. The Constitutional Bench of the Hon'ble Supreme Court of India in **2016 AIR (SC) 3506, Anita Kushwaha versus Pushap Sudan**, after thoroughly examining the right to remedy of a citizen, has categorically held that the 'Access to Justice' is a fundamental right; being an integral part of the right to life and liberty guaranteed by Article 21 of the Constitution of India. It has held as under :-

> "28. Given the fact that pronouncements mentioned above have interpreted and understood the word "life" appearing in Article 21 of the Constitution on a broad spectrum of rights considered incidental and/or integral to the right to life, there is no real reason why access to justice should be considered to be falling outside the class and category of the said rights, which already stands recognized as being a part and parcel of the Article 21 of the Constitution of India.
>
> If "life" implies not only life in the physical sense but a bundle of rights that makes life worth living, there is no juristic or other basis for holding that denial of "access to justice" will not affect the quality of human life so as to take access to justice out of the purview of right to life guaranteed under Article 21. We have, therefore, no hesitation in holding that

access to justice is indeed a facet of right to life guaranteed under Article 21 of the Constitution. We need only add that access to justice may as well be the facet of the right guaranteed under Article 14 of the Constitution, which guarantees equality before law and equal protection of laws to not only citizens but non-citizens also. We say so because equality before law and equal protection of laws is not limited in its application to the realm of executive action that enforces the law. It is as much available in relation to proceedings before Courts and tribunal and adjudicatory for a where law is applied and justice administered. The Citizen's inability to access Courts or any other adjudicatory mechanism provided for determination of rights and obligations is bound to result in denial of the guarantee contained in Article 14 both in relation to equality before law as well as equal protection of laws. Absence of any adjudicatory mechanism or the inadequacy of such mechanism, needless to say, is bound to prevent those looking for enforcement of their right to equality before laws and equal protection of the laws from seeking redress and thereby negate the guarantee of equality before laws or equal protection of laws and reduce it to a mere teasing illusion. Article 21 of the Constitution apart, access to justice can be said to be part of the guarantee contained in Article 14 as well."

Therefore, the Court cannot make any undesirable attempt to dilute the statutory right of 'Access to the Justice' much less to deny the same to a citizen mid-way the process by resorting to the extraordinary expertise and equally unforeseen creativity of judicial mind. Any amount of judicial expertise and creativity would not be sufficient to negate even a single word in Section 11 CPC much less to ignore this entire Section and to create new parameters to exclude the right to 'Access to Justice'. In its application the judicial creativity and the expertise has to restrict itself to filling up the gaps, if any, found by the Court in the process of adjudication and interpretation. The emphasis of the Court has to be to further the fundamental right to 'Access to justice' instead of excluding it by devising new methodologies through judicial interpretations. The judicial activism of the Constitutional Courts to create new law by issuing directions is only to ensure the realization of the fundamental rights of the citizen to their maximum and the same cannot be pressed into service to scuttle the same.

Section 9 of CPC prescribes that the Civil Court shall have jurisdiction to entertain and decide all suits involving civil disputes except as otherwise excluded by law expressly or by implication. After the Hon'ble Supreme Court has held the right to 'Access to the Justice' to be a fundamental right; the exclusion part of Section 9 of the CPC has to be read restricting it to as narrow a spectrum as possible. Section 10 and Section 11 of the CPC are two of some of the express provisions excluding the right to 'Access to Justice'. The parameters laid down in these sections are known to the litigant in advance. Still these provisions have to be given strict interpretation so as to minimize their effect on the fundamental right of 'Access to Justice' guaranteed to the citizen. In the same vein any implied exclusion of the right to 'Access the Justice' has to be only on the grounds which can be visualized by a reasonable person of ordinary prudence. Any interpretation of principle of re-judicata based on extraordinary specialty and unforeseen creativity cannot be resorted to by the Courts so as to take a litigant by undue surprise and to suddenly exclude him from the process of adjudication; for reasonably unforeseen reasons. After all, the well defined fundamental right of a citizen cannot be permitted to be defeated by a totally undefined public policy.

In view of the above' this Court does not find any force in the arguments of the learned counsel for the appellant/defendant Society qua the suit of the respondents/plaintiff being hit by any metamorphosed form of the principle of res-judicata.

Although learned counsel for the appellant/defendant Society has relied upon certain judgments to support his argument on general interpretation of principle of res-judicata. However, all those judgments are distinguishable on their facts and law laid down as precedent in them. In none of those judgments the Court has laid down as a precedent that the res-judicata shall be applicable to a suit even if the parties are altogether different and distinct and even if the cause of action and nature of the suits are altogether different. Moreover the argument of the learned counsel of the appellant on res-judicata is suicidal because the present suit was decided first. So even if res-judicata is imported in this matter than also it is the other suit which shall be hit by res-judicata as per Explanation 1A to the Section 11 CPC and not the present suit.

This Court also does not find itself in agreement with the learned counsel for the appellant/defendant Society on the argument that since the Society was in possession of the suit property under the agreement to sell and therefore it was entitled to protect its possession and hence the suit for possession by way of partition filed by the respondents/plaintiffs was not maintainable. The learned counsel for the respondents has rightly argued that for maintaining a suit for partition only things required to be established are that the plaintiff has the title to a share in the suit property and there is a jointness of possession; which is desired by the plaintiff to be severed. In the present case, the title of the plaintiffs qua the 1/4th share has not even been disputed by the appellant. Even the agreement to sell heavily relied upon by the appellant stipulates that the plaintiffs are the owners qua $1/4^{th}$ share in the suit land. Even the sale deed executed by the remaining co-sharers/legal representatives of Chandgi Ram qua $3/4^{th}$ share in favour of the appellant Society shows that the plaintiffs are the owner qua the remaining $1/4^{th}$ share. Even the suit filed by the vendees Rajesh Kumar and Vinod Awasthi against the plaintiffs for specific performance is only regarding this very $1/4^{th}$ share of the plaintiff. Hence the title of the plaintiffs qua $1/4^{th}$ share is clearly established. Jointness of the possession of the suit land is admitted even by the defendant Society in it written statement by saying that although it had purchased only $3/4^{th}$ share. The remaining $1/4^{th}$ share remained with the plaintiffs. Possession follows ownership. The Society is not even claiming that the shares of the parties in the holding were ever partitioned. Since the possession of $1/4^{th}$ share of the plaintiffs was threatened by the Society by making attempt to curve out plot in the entire suit property claiming that it is in possession of the entire suit property; being a prospective buyer even qua the remaining $1/4^{th}$ share of the plaintiffs. Hence, the suit filed by the plaintiffs for possession by way of partition qua $1/4^{th}$ share is fully competent and maintainable. The concurrent findings recorded by the Courts below in this regard do not suffer from any infirmity.

The argument of the learned counsel for the appellant/defendant Society that the vendees of the agreement to sell, Rajesh Kumar and Vinod Awasthi entered into agreement on behalf of the defendant Society only; and it was the defendant Society which was given possession of the suit land through Rajesh Kumar and further that since the defendant Society was given possession of the land; therefore; the Society is entitled to protect its possession as provided under Section 53-A of the Transfer of Property Act, is also liable to be noted only to be rejected. For proper appreciation of the matter it is relevant to have reference to the provision of the Section 53-A of the Transfer of Property Act as given hereinunder :-

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 [*omitted], 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.

A bare perusal of the above-said provision makes it clear that Section 53-A of the Transfer of Property Act is a provision based on equity to protect possession of and to protect from undue harassment a purchaser of a property for consideration through a written agreement. However the equity contained in this section is also circumscribed by strict conditions prescribed in this section. Amongst others; two things are quite clear from this section that the protection of possession is granted by this section only to the 'transferee' or a person 'claiming under him' and this protection is granted only if the said possession is obtained or continued by such transferee or the person claiming under him under the terms of a written agreement signed by the parties to the agreement.

As stated above the learned counsel for the appellant/ defendant Society has very fairly conceded that the defendant Society is not described as a party in the written agreement to sell in the present case and that there is no other documentary evidence to show that the Society as such is a party to the agreement to sell. He has further conceded that there is no documentary evidence to show that the vendees to the agreement to sell in question, namely, Rajesh Kumar and Vinod Awasthi were ever required or authorized by the defendant Society to enter into an agreement for purchasing the suit property or that their action was even ever ratified by the Society subsequently. Hence; within the ambit of the Section 53-A; the appellant/defendant Society, on face of it, is not entitled to any protection of its possession of the suit property under this agreement, even if it is in possession of the same. So, the reliance of the learned counsel for the appellant is upon the oral testimony of some of the witnesses in this regard, which shall be dealt with in the succeeding paras herein.

Faced with the bare language of the Section 53-A of Transfer of Property Act, the learned counsel for the appellant has further clarified his argument that in the present case the defendant Society is not 'claiming under' the transferees in the agreement, rather the appellant/defendant Society is claiming 'as' the transferee, acting through its nominees Rajesh Kumar and Vinod

Awasthi.

The Hon'ble Supreme Court in **(2004) 8 SCC 614, Rambahu Namdeo Gajre versus Narayan Bapuji Dhotra (Dead) through LRs,** has held that Section 53-A of the Transfer of Property Act has nothing to do with the transfer of title. The transferor under the agreement still remains the absolute owner of the property. His rights qua the property are not diluted in any manner except to the extent of protection of possession of the transferee under the written agreement or the person claiming under the transferee. This protection of possession is available under Section 53-A only to the original transferee or a person claiming under him. If the original transferee has further entered into an agreement to sell with a third person and handed over the possession to such third person then such third person is not entitled to the protection of his possession against the original transferor. The reasoning on which this judgment of the Hon'ble Supreme Court is based is that the original transferee itself does not get any transferable interest in the property agreed to be purchased by him. He also gets only a limited protection qua his possession, subject further to some conditions.

So, the only person who can claim protection under this section other than the transferee is the person claiming under the transferee. A person can be said to be 'claiming under' the transferee only if the transferee is bound, in law, for the acts and decision of such person qua that property. Except this, any person who is not a privy to the original agreement as transferee cannot draw any advantage from Section 53-A of the Transfer of Property Act. Hence, a pure stranger to the agreement who has no privity of contract with the original transferor is not entitled to the any protection under Section 53-A of the Transfer of Property Act.

Now, the next question to be considered in this case is whether the appellant has been able to establish on record that it is the transferee in the agreement to sell in question in this case. This question has rightly been answered against the appellant/defendant Society by both the Courts below. As stated above, even the learned counsel for the appellant/defendant Society has admitted that there is no documentary evidence to establish the identity of the appellant/defendant Society as 'transferee' in this agreement to sell. To make the things worst for the defendant Society, the persons expressly described as the transferee in the agreement to sell, namely, Rajesh Kumar and Vinod Awasthi, had already filed a suit for specific performance against the present respondents / plaintiffs; qua this very land claiming as transferees under this very agreement to sell; and in their individual capacity. In their pleadings and arguments in the other case Rajesh Kumar and Vinod Awasthi have specifically said that they and the appellant Society are not the same thing and that they and the Society are two separate entities acting separately and claiming their separate rights. They are even contesting the same in their individual capacity even upto the stage of RSA filed before this Court in that RSA also they have taken ground that they are distinct and separate from the present appellant Society. After this, no scope is left for the appellant/defendant Society to support its plea that it is the transferee under the agreement to sell in question.

Further this Court does not find any force in the argument of the counsel for the appellant that the concept of privity of contract has been taken too far by the learned courts below by giving strict interpretation to the terms of agreement and by referring only to the documentary evidence and by ignoring the oral testimony of the witnesses and to hold that there was no privity of contract between the defendant Society and the plaintiffs in this case. This Court is also of the considered opinion that the learned Courts below have not committed any illegality by relying upon the written agreement to look into the fact as to who is specified to be a transferee therein. It was the statutory obligation upon the Courts below to have due regard to the written document in this regard. Section 53-A of the Transfer of Property Act, recognizes only a written document and not any oral arrangement. Rather Section 91 of the Evidence Act also excludes any other evidence as to the terms of a written agreement or agreement for disposition of the property except the document itself. This section reads as under:-

> 91. Evidence of terms of contracts, grants and other dispositions of property reduced to form of document: -
>
> When the terms of a contract, or of a grant, or of any other disposition of property, have been reduced to the form of a document, and in all cases in which any matter is required by law to be reduced to the form of a document, *no [evidence] shall be given in proof of the terms of such contract, grant or other disposition of property or of such matter, except the document itself*, or secondary evidence of its contents in cases in which secondary evidence is admissible under the provisions hereinbefore contained.
>
> Exception 1. - When a public officer is required by law to be appointed in writing, and when it is shown that any particular person has acted as such officer, the writing by which he is appointed need not be proved.
>
> Exception 2. - Wills [admitted to probate in [India]] may be proved by the probate.
>
> Explanation 1. - This section applies equally to cases in which the contracts, grants or dispositions of property referred to are contained in one document and to cases in which they are

contained in more documents than one.

Explanation 2. - Where there are more originals than one, one original only need be proved.

Explanation 3. - The statement, in any document whatever, or a fact other than the facts referred to in this section, shall not preclude the admission of oral evidence as to the same fact.

Not only this, the Evidence Act also excludes any other evidence to explain any alleged ambiguity in the document relating to agreement for transfer of property. Section 93 of the Act reads as under:-

93. Exclusion of evidence to explain or amend ambiguous document: -

When the language used in a document is, on its face, ambiguous or defective, evidence may not be given of fact which would show its meaning or supply its defects.

Illustrations

(a) A agrees in writing, to sell a horse to B for "1,000 or 1,500". Evidence cannot be given to show which price was to be given.

(b) A deed contains blanks. Evidence cannot be given of facts which would show how they were meant to be filled.

In the present case for claiming benefit under section 53-A of the Transfer of Property Act, a written agreement is mandatory. So, both these sections shall apply with full force. So the appellant was not even entitled to lead any oral evidence to claim explanation of any part of the written agreement to substantiate that the defendant-Society was the actual transferee under the agreement to sell in question instead of the recorded transferees Rajesh Kumar and Vinod Awasthi.

Still further, this Court also does not find any illegality in the finding recorded by both the Courts below that the appellant / defendant Society is a registered Cooperative Society governed by the Haryana Cooperative Societies Act. Therefore, it can function only through the decisions of its governing body taken through the appropriate resolutions. In the present case the Society has not placed on record any decision/resolution of the Society either to show that the Society ever authorized Rajesh Kumar and Vinod Awasthi to act on its behalf to enter into agreement with the plaintiffs or to show that it even subsequently ever ratified their action in entering into this agreement on behalf of the Society. So, by any means, said Rajesh Kumar and Vinod Awasthi cannot be said to be acting on behalf of the Society while entering into this agreement to sell with the plaintiff. On the contrary, the entire record shows that the Society had acted in negation of this agreement because immediately after the said Rajesh Kumar and Vinod Awasthi had entered into the agreement to sell in question with the plaintiffs; the defendant Society had filed a suit against the plaintiffs claiming title to this property on the basis of adverse possession for more than 15 yea It was pleaded in this suit by the defendant Society that this was a forest land made cultivable by the defendant Society in the past 15 years; whereas; Chandgi Ram (father of the plaintiffs) who had never remained a tenant on this land, wrongly got occupancy rights, culminating into his wrong ownership and resultantly the wrong ownership of the plaintiffs. Therefore, the prayer for declaring title and correction of revenue record was made. On the other hand, the agreement to sell in question is based on the fact that Chandgi Ram and after his death, the plaintiffs had become owner of this land. So, the suit filed by the Society was in direct denial and negation of the said agreement. Not only the Society filed this suit but it continued its fight on that suit upto the high Court. Ultimately, when the trick played upon the Court by the defendant Society in that suit, in collusion with the alleged general power of attorney holder of the plaintiffs Naresh Kumar, was exposed and matter was remanded to the trial Court; the defendant Society gave a quiet burial to the suit by getting it dismissed in default. So, the Society cannot be heard to say that the agreement in question was entered into on its behalf. For the reasons of the above-said proceeding the Society, which was caught playing trick even upon the Court, can also not successfully raise an argument that the equity should be pressed into service to prevent the alleged legal fraud by the plaintiffs/respondents upon the Society. Equity demands absolute equity for seeking equity.

Even the plea raised by the learned counsel for the appellant that the oral evidence led in the case, proves the fact that the Society was actually transferee and Rajesh Kumar and Vinod Awasthi were acting on behalf of the Society, does not enhance the case of the appellant Society. Firstly, such oral evidence is excluded from consideration by the mandate of the above-said provisions of the Evidence Act. Secondly, even if that oral evidence is taken into consideration then also this does not help the case of the appellant, rather goes against the appellant Society only. In the oral testimony, although some of the witnesses examined by the defendant Society have tried to portray that the agreement to sell was entered into on behalf of the Society yet they have failed to connect their testimony to any of document on record in this regard. DW16 Vinod Shelly, though stated that Rajesh Kumar and Vinod Awasthi and the defendant Society were one and the same thing, however, he has not mentioned by which resolution the Society authorized them to enter into agreement on its behalf. This witness did not say that the money; allegedly paid by Rajesh Kumar and Vinod Awasthi had come from the account of the Society or it was the Society money.

This witness had positively deposed that the possession was given to the said Rajesh Kumar and he did not further say that the said Rajesh Kumar had given the possession to the Society. Moreover, the oral testimony to declare the Society and Rajesh Kumar and Vinod Awasthi as one and the same thing got fully discredited by the fact that the said Rajesh Kumar and Vinod Awasthi had already filed suit for specific performance of the same agreement in their individual capacity, without even mentioning the defendant Society anywhere in their suit. Hence, this oral testimony did not enhance the case of the defendant Society.

Next argument of the learned counsel for the appellant, that since the sale deed qua remaining 3/4th share out of the total land mentioned in the agreement was executed in favour of the appellant/defendant Society, therefore, it shows that the agreement in question was executed on behalf of the Society only, and hence, by applying the 'equity' in the private law of contract, agreement should be interpreted as having been entered into on behalf of the Society and further by applying 'equity', Section 53-A of Transfer of Property Act, should be interpreted to protect the possession of the defendant Society - is too hollow to attract any legal significance. This argument is an attempt to put such a burden upon 'equity' which the 'equity' is simply unable to carry on its shoulde The contract is an agreement enforceable in law. The enforceability of the agreement presupposes the existence of consent of contracting parties, capacity of a party to contract, passing of the consideration, exclusion of fraud, undue influence or misrepresentation in the contract and whole lot of onerous consequence arising in such enforceability. This defined core of ingredients and consequences cannot be destroyed by the Court by taking recourse to 'equity' and, thereby, to substitute the party to the contract itself. This substitution will destroy the contract itself by denuding it from all the required ingredients and intended consequences. By any means, the equity cannot be stretched thus far, and that too by going against the statutory law relating to the contract and the evidence and by ignoring the express description of a written agreement. Same is the situation regarding the interpretation of Section 53-A of the Transfer of Property Act. As observed above, this section itself is based on 'equity' and whatever equity the legislature intended to apply to the protection of possession of party to the agreement, is already well defined in this section itself. No further expansion of scope of this section is permissible by resorting to further equity; as clarified by the judgment of the Hon'ble Supreme Court in case of **Rambahu Namdeo Gajre (Supra)**. Conditions prescribed to enforce the 'equity' cannot be destroyed by taking recourse to 'equity' only. Hence, this Court finds itself unable to agree with the argument of the learned counsel for the appellant. Although the learned counsel for the appellant has cited some judgments, however only the general observations made by the Court in these judgments has been pressed into service. None of these judgments lays down the law as a precedent that even the party to the contract can be substituted by the Court by taking recourse to the 'equity' in the matter of an agreement to sell.

So far as the execution of sale deed qua $3/4^{th}$ share of the land mentioned in the same agreement by other co-sharers in favour of the appellant Society is concerned, suffices it to say that the agreement to sell in question had a clause that the vendees could get the sale deed executed in their favour or in favour of any other person and could get executed one or more sale deeds. Even the Specific Relief Act enables a vendee in an agreement to assign his rights to get the sale deed executed in favor of an assignee. This assignment of rights could be for umpteen numbers of reasons. For their own reasons the vendees, Rajesh Kumar and Vinod Awasthi, might have thought it fit to assign their rights to the defendant Society qua $3/4^{th}$ share and got the sale deed qua that share executed in favor of the Society. However, they have not assigned their rights under the agreement in question qua 1/4th share involved in the present suit and that is why they had filed the suit for specific performance qua the land involved in the present suit in their own names and in their individual capacity. Otherwise also; as held in the judgment of the Hon'ble Supreme Court in case of **Rambahu Namdeo Gajre (Supra)**, assignment by an original transferee is not a ground to claim protection under Section 53-A of the Transfer of Property Act. The said assignment can be made at a much later stage; at the time of execution of the sale deed pursuant to the agreement. In any case, the learned counsel for the appellant in the beginning itself had clarified that the appellant Society is not 'claiming under' the original transferee Rajesh Kumar and Vinod Awasthi under any kind of assignment. So far as any recital in the sale deed executed qua remaining 3/4th share is concerned, the same cannot have any binding force upon the respondents/plaintiffs because it was executed by the person the GPA in whose favour had already been withdrawn by the plaintiffs. Even in the sale deed the executants Naresh Kumar had specified that he was acting only as the GPA of the co-shares other than the present plaintiffs and was selling the share of only those co-share

No other argument was raised by the learned counsel for the parties.

In view of the above, finding no merits the present appeal, the same is, therefore, dismissed and the judgments and decrees passed by the Courts below are upheld.

(RAJBIR SEHRAWAT)
JUDGE

MAY 02, 2018
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1. Whether speaking/reasoned Yes/No.
2. Whether reportable ? Yes/No.