

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of decision: 7th January, 2020**

+ **CS(OS) No.72/2019**

AL-FAHEEM MEATEX PVT. LTD. Plaintiff

Through: Mr. Amit Saxena, Adv.

Versus

MOHD. YUNUS & ORS.Defendants

Through: Mr. Asim Naeem & Mr. Sidharth Jalta, Advs. for D-1.

Mr. Bhuvan Gugnani, Mr. Samrath Rekhi & Mr. Lakshay Ambauta, Advs. for D-2.

Mr. Manish Sharma, Mr. Kirish Gandhi & Mr. Ninad Dogra, Advs. for D-3&4.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. The plaintiff, on 19th January, 2019 instituted (re-filed on 30th January, 2019 and 1st February, 2019) this suit against Mohd. Yunus and M.N. Buildcon Pvt. Ltd. (MNBPL), for specific performance of an Agreement to Sell the property bearing No.15, Jaipur Estate, Nizamuddin East, New Delhi, pleading that (i) Mohd. Yunus and MNBPL were the joint owners of the property; (ii) the plaintiff and the defendants have been personally known to each other for a long time; (iii) Mohd. Yunus and MNBPL represented to the plaintiff that they were intending to sell the property; (iv) the plaintiff enquired from Mohd. Yunus and MNBPL regarding any pending litigations / disputes with respect to the said property and to which Shailender Nigam, Director of MNBPL replied that due to the active role and

intervention of Mohd. Yunus, all pending disputes / litigations relating to the property had been sorted out and the property was free from any encumbrances and that Mohd. Yunus and MNBPL jointly owned the property; (v) the plaintiff enquired from Mohd. Yunus and MNBPL the price of the property and after negotiations, the parties agreed to fix a sale price of Rs.16 crores, out of which Rs.6 crores was payable to Mohd. Yunus and the balance Rs.10 crores to MNBPL; (vi) the plaintiff agreed to purchase the property for the said price and further agreed to pay a sum of Rs.1.60 crores as advance towards the same; (vii) on enquiry by the plaintiff from Mohd. Yunus and MNBPL as to in whose name the payment had to be made, there was huge discussion between Mohd. Yunus and MNBPL and after deliberation, the Director of MNBPL asked the plaintiff to make the entire advance payment to Mohd. Yunus as MNBPL did not want to incur any tax liability before the financial year ending 31st March, 2016; (viii) MNBPL also asked for payment of Rs.7.50 crores out of Rs.10 crores, being its share of the sale consideration, through Real-Time Gross Settlement (RTGS) /National Electronic Funds Transfer (NEFT) and the balance payment of Rs.2.50 crores in cash; (ix) Mohd. Yunus and MNBPL also agreed to handover a portion of the property to the plaintiff; (x) the plaintiff, in good faith, on 22nd January, 2016 paid the advance money of Rs.1.60 crores as per the Agreement to Sell and took possession of a portion of the property in furtherance of the Oral Agreement entered into between the parties and which portion remains in possession of the plaintiff; (xi) Mohd. Yunus and MNBPL did not come forward and execute the Sale Deed in favour of plaintiff and

kept avoiding the same on one pretext or the other; (xii) in October-November, 2017, the plaintiff learnt that Mohd. Yunus and MNBPL, with *mala fide* intention to cheat and defraud the plaintiff, had filed a suit for partition being CS(OS) No.598/2016 in this Court, against each other; (xiii) the plaintiff applied for impleadment in the said suit for partition and which application was pending; (xiv) thereafter the parties sat together to negotiate for a settlement but no settlement could fructify; (xv) the plaintiff has always been ready and willing to pay the remaining sale consideration of Rs.14.40 lacs to Mohd. Yunus and MNBPL and to perform its other obligations; and, (xvi) Mohd. Yunus and MNBPL are liable to specifically perform the Agreement.

2. The suit aforesaid, unaccompanied with any application for interim relief, came up for admission before the Joint Registrar of this Court on 4th February, 2019, when summons thereof were ordered to be issued.

3. The defendant no.2 MNBPL, on receipt of summons of this suit, filed IA No.4566/2019 for tagging of the present suit along with CS(OS) No.598/2016 supra titled “***Shailendra Nigam & Anr. Vs. Mohd Yunus***” and denying each and every averment in the plaint and pleading the present suit to have been filed in collusion with Mohd. Yunus. It was further pleaded in the said application, that the owners of the property were Shailendra Nigam, Deepti Nigam and Mohd. Yunus; and, that MNBPL was not even a party to the partition suit.

4. Vide order dated 28th March, 2019, the said application was disposed of by permitting MNBPL to appear before the Court on 3rd

April, 2019 in CS(OS) No.598/2016 and by directing the file of this suit also to be sent to this Court on 3rd April, 2019 when CS(OS) No.598/2016 was listed.

5. Vide common order dated 3rd April, 2019 in this suit and in CS(OS) No.598/2016, (a) the application filed by plaintiff herein for impleadment in CS(OS) No.598/2016 was dismissed; (b) preliminary decree for partition, declaring Shailendra Nigam and his wife Deepti Nigam to be having two-third undivided share in the property and Mohd. Yunus to be having one-third undivided share in the property, was passed and final decree for partition of the property also passed, of sale thereof including by holding *inter se* bids and of distribution of sale proceeds between the parties as per shares declared in the preliminary decree for partition and CS(OS) No.598/2016 disposed of; and, (c) on oral request of the counsel for the plaintiff herein for impleadment of Shailendra Nigam and his wife Deepti Nigam in this suit as defendants no.3 and 4, and without prejudice to the rights and contentions of Shailendra Nigam and his wife Deepti Nigam, Shailendra Nigam and his wife Deepti Nigam were impleaded as defendants no.3 and 4 in the present suit.

6. The plaintiff, in pursuance to the impleadment aforesaid of Shailendra Nigam and Deepti Nigam as defendants no.3 and 4, did not file any amended plaint and only filed an amended memo of parties.

7. Mohd. Yunus has filed a written statement, pleading that (i) Shailendra Nigam and his wife Deepti Nigam are the Directors of MNBPL; (ii) in January, 2016, MNBPL through Shailendra Nigam and Shailendra Nigam for himself, and Mohd. Yunus, had orally

decided to sell the property to the plaintiff for a total sale consideration of Rs.16 crores and a sum of Rs.1.60 crores was also received and contemporaneously the plaintiff put in possession of a specified portion of the property; (iii) Shailendra Nigam, at that time did not disclose that he and his wife Deepti Nigam had clandestinely and illegally sold the two-third share in the property to themselves from MNBPL; (iv) Shailendra Nigam, Director of MNBPL, avoided to take any portion of the advance / earnest money received from the plaintiff, in his own name; (v) the plaintiff approached the defendants several times to complete the sale transaction but Shailender Nigam, Director of MNBPL kept on dilly dallying completion of the sale transaction, on some ground or another; (vi) Mohd. Yunus and MNBPL are the joint owners of the property and MNBPL had transferred the property in an illegal and inappropriate manner in favour of its Directors Shailendra Nigam and his wife Deepti Nigam and the said fact came to the knowledge of Mohd. Yunus for the first time when Shailendra Nigam and Deepti Nigam filed CS(OS) No.598/2016; (vii) Mohd. Yunus had informed the plaintiff of filing of CS(OS) No.598/2016; and, (viii) he is otherwise supporting the plaintiff.

8. The defendant no.3 Shailendra Nigam has contested the suit by filing a written statement, pleading that (a) the plaint does not have any prayers against defendant no.3 Shailendra Nigam; (b) the Oral Agreement to Sell of January, 2016 pleaded by the plaintiff, is of a date after the execution of the Sale Deed dated 3rd July, 2012 of two-third share in the property by MNBPL in favour of Shailendra Nigam

and his wife Deepti Nigam; (c) the plaintiff, after impleadment in this suit on 3rd April, 2019 of Shailendra Nigam and his wife Deepti Nigam as defendants no.3 and 4, has not chosen to add any prayers against defendant no.3 Shailendra Nigam; (d) the prayers made in the suit as originally filed, were only against Mohd. Yunus and MNBPL and the said prayers, without any amendment in the plaint, cannot be read against Shailendra Nigam and his wife Deepti Nigam; (e) the plaintiff, in the plaint has made averments with respect to MNBPL, without disclosing who on behalf of the plaintiff was dealing with MNBPL; only in one of the paragraphs of the plaint, defendant no.3 Shailendra Nigam has been mentioned; (f) the defendant no.3 Shailendra Nigam never had any transaction or conversation with the plaintiff, neither in his personal capacity nor on behalf of MNBPL; (g) Shailendra Nigam and his wife Deepti Nigam, though earlier Directors of MNBPL, have resigned with effect from 29th August, 2012 and on the date of execution of Sale Deed of one-third share each in the property in their respective favour by MNBPL, were not Directors of MNBPL; (h) this suit has been filed by the plaintiff in collusion with defendant no.1 Mohd. Yunus; (i) no portion of the sale consideration has been paid by plaintiff to defendant no.3 Shailendra Nigam; (j) Haji Imran Qureshi, Director of the plaintiff, and defendant no.1 Mohd. Yunus are relatives; (k) the plaintiff, in alternative to the relief of specific performance, has claimed the relief of refund of monies and if at all, is entitled thereto only; (l) no specific performance of the alleged Oral Agreement with MNBPL, which was not the owner of the property, can be ordered; (m) the plaint does not disclose any privity

of contract with defendants no.3 and 4 with regard to the defendants no.3 and 4's share of the property; (n) the defendant no.3 Shailendra Nigam, on the date of the Oral Agreement, was not even a Director of MNBPL and not authorized to act on behalf of MNBPL; (o) no specific date of the alleged Oral Agreement has been pleaded and it is vaguely pleaded that the Oral Agreement was in January, 2016; (p) the plaintiff, on 22nd January, 2016, could not have taken over possession from MNBPL, which on that date was not the owner and not in possession of the property; (q) the defendant no.2, on 3rd July, 2012, by way of registered sale deed sold one-third share each of the property in favour of defendant no.3 Shailendra Nigam and his wife defendant no.4 Deepti Nigam; and, (r) the defendant no.3 Shailendra Nigam never informed the plaintiff that the property was for sale and nothing transpired between the plaintiff and defendant no.3 Shailendra Nigam.

9. The defendant no.4 Deepti Nigam has also contested the suit by filing a written statement, taking the same pleas as by her husband defendant no.3 Shailendra Nigam as aforesaid.

10. No replication has been filed by the plaintiff to either of the three written statements in spite of opportunity.

11. The suit, ripe for framing of issues, came up before this Court on 20th December, 2019 when *inter alia* the following order was passed:

“4. The counsel for the defendant no.2 and counsel for the defendants no. 3 and 4 state that the suit, insofar as for the relief of specific performance, does not lie and no issue arises and the relief of

specific performance is liable to be declined forthwith. The counsel for the defendant no.2 and counsel for the defendants no. 3 and 4 on enquiry, whether are willing to refund the sum of Rs.1 crore 60 lakhs claimed by the plaintiff to have been paid in pursuance to an Agreement to Sell and relief in which respect has been claimed in the alternative, state that the amount was not received by them and according to the plaintiff also, was paid to the defendant no.1.

5. The defendant no.1 as aforesaid is unrepresented.

6. The counsels have been heard.

7. It is the case of the plaintiff,

8. It is informed that though the defendant no.2 M.N. Buildcon Pvt. Ltd. was the owner of the property but has vide Sale Deeds dated 29th June, 2010 and 15th July, 2010 sold one-third share in the property to defendant no.1 Mohammad Yunus and vide Sale Deed dated 3rd July, 2012 sold the remaining two-third share in the property to defendants no. 3 and 4.

9. Thus, what emerges is that in January, 2016, when according to the plaintiff oral agreement to sell took place, defendant no.2 M.N. Buildcon Pvt. Ltd. was not even the owner of the property.

10.

11. In the aforesaid facts, I have enquired from the counsel for the plaintiff, that the plaintiff having pleaded Agreement to Sell by defendant no.2 M.N. Buildcon Pvt. Ltd, which on the date of Agreement to Sell was not the owner, how can the plaintiff be entitled to specific performance.

12. The counsel for the plaintiff has argued that the plaintiff has already pleaded that it was defendant no.3 Shailendra Nigam who was dealing with the plaintiff and has invited attention to paragraph 5 of the plaint. The relevant part of paragraph 5 in this respect is as under:

“That the plaintiff enquired from both of them regarding any pending litigation/dispute with regard to the said property, to which the director of defendant no.2, Mr. Shailender Nigam replied that due to the active role and intervention of defendant no. 1 Mohd. Yunus, all the pending disputes/litigation relating to the said property have been sorted and that the said property was free from all encumbrances and that defendant no.1 and 2 jointly owned the suit property”

and the same nowhere contains any plea of any such representation. There is a difference between pleading Shailendra Nigam to be the Director and pleading Shailendra Nigam to have represented defendant no.2 to be the owner of the property.

13. The counsel for the plaintiff forgets that it is not the plea of the plaintiff that the said Shailendra Nigam falsely represented that defendant No.2 M.N. Buildcon Pvt. Ltd. was the owner and on account of such false misrepresentation, is liable in his personal capacity to convey the property. There is similarly no plea with respect to defendant no.4 Deepti Nigam, stated to be the wife of Shailendra Nigam.

14. The counsel for the plaintiff states that he will amend the written statement. (sic for ‘plaint’)

15. After hearing, the question of permitting amendment does not arise.

16. The counsel for the defendants no. 3 and 4 also points out that the plaintiff applied for impleadment in CS(OS) No.598/2016 as far back as in 2017 and notwithstanding the same when filing the suit in the year 2019, did not implead the defendants no. 3 and 4.

17. It thus indeed appears that the relief of specific performance does not require any issues to be framed and is liable to be dismissed forthwith.

18. On enquiry, it is stated that the defendant no.1 in the written statement has admitted receipt of Rs.1.60 cores.
19. It thus appears that the plaintiff is only entitled to a decree for Rs.1.60 cores which can be passed forthwith.
20. I however refrain from passing a decree for recovery of Rs.1.60 cores with interest against defendant no.1 who is unrepresented today.
21. List for appearance of counsel for the defendant no.1 on Monday i.e. 23rd December, 2019.”
12. On 23rd December, 2019, the following order was passed:
- “1. Today also Mr. Asim Naeem, Advocate is stated to be before the NCLT and is not available and Mr. Sidharth Jalta, Advocate who appears, as also on the last date, has no instructions.
2. The counsel for the plaintiff states that the plaintiff is seeking specific performance against all the defendants. On enquiry that without pleading the existence of agreement with defendants no. 3 and 4, how can the plaintiff be entitled to specific performance against the defendants no. 3 and 4, the counsel reiterates that though defendants no. 3 and 4 were not a party in the suit as originally instituted, but since the word “defendants” was used, they, on impleadment, would be covered thereby.
3. I am unable to agree.
4. The counsel for the plaintiff has during the hearing also stated that the defendant no.1 is still the owner but on it being pointed out that if specific performance is sought only against defendant no.1, it has to be a case under Section 12 of the Specific Relief Act, 1963 which has not been made out the counsel for the plaintiff states that he does not want this part to be recorded.
- ”

5. Subject to the defendant no.1 depositing costs of Rs.25,000/- in the Delhi High Court Lawyers Welfare Trust, list on 7th January, 2020.”

13. Today, Mr. Asim Naeem, Advocate has appeared for defendant no.1 Mohd. Yunus and first states that costs could not be deposited as the order dated 23rd December, 2019 was not available and it were not known where the costs were to be deposited.

14. The counsel for the defendant no.1 Mohd. Yunus has been informed that the costs are to be deposited with the Delhi High Court Lawyers Welfare Trust and asked to deposit the same by tomorrow i.e. 8th January, 2020.

15. The counsel for defendant no.1 Mohd. Yunus now states that he intended to file an application for waiver of costs but could not file the same.

16. I have enquired from the counsel for defendant no.1 Mohd. Yunus, whether the defendant no.1 Mohd. Yunus admits receipt of Rs.1.60 crores from the plaintiff, and is agreeable to refund the same with interest.

17. The counsel for defendant no.1 Mohd. Yunus states that he has already stated so in the written statement.

18. I have next enquired from the counsel for the plaintiff, that (i) the plaintiff, inspite of knowledge prior to institution of the suit, of defendants no.3 and 4 Shailendra Nigam and his wife Deepti Nigam being the owners of two-third undivided share in the property, having not impleaded them as parties; and, (ii) the plaintiff, after impleadment on 3rd April, 2019 of Shailendra Nigam and his wife Deepti Nigam as

defendants no.3 and 4 to the suit, having not amended the plaint to plead any entitlement of the plaintiff to specific performance of Agreement to Sell against defendants no.3 and 4 Shailendra Nigam and his wife Deepti Nigam, how is the plaintiff entitled to the relief of specific performance of the Agreement to Sell even if any of January, 2016 as pleaded in the plaint, against defendants no.3 and 4 Shailendra Nigam and Deepti Nigam.

19. The reply of the counsel for the plaintiff remains the same as on the earlier dates i.e., that the averments in the plaint having used the expression 'defendants', would include defendants no.3 and 4 Shailendra Nigam and his wife Deepti Nigam also; the plaint has to be read as making the averments contained therein against defendants no.3 and 4 Shailendra Nigam and his wife Deepti Nigam also.

20. I am unable to agree.

21. The pleadings have to be read in context and giving meaning thereto, to find out the intention and case of the litigant and to ascertain its true import and in totality and not mechanically. In ***Popat and Kotecha Property Vs. State Bank of India Staff Association*** (2005) 7 SCC 510 it was held that the intention of the party concerned is to be gathered primarily from the tenor and terms of his pleadings taken as a whole. Similarly in ***Bismillah Vs. Janeshwar Prasad*** (1990) 1 SCC 207 it was held that in order to determine precise nature of action, the pleadings should be taken as a whole. When the plaintiff, while filing the suit on 19th January, 2019 against Mohd. Yunus and MNBPL only, used the word 'defendants', the same has to

be understood as referring to Mohd. Yunus and MNBPL, who were then the only defendants to the suit. This is further re-enforced from:

(i) Paragraph 3 of the plaint, where it is pleaded that the ‘defendants were the joint owners of the property’. The plaintiff, prior to institution of this suit was aware of suit for partition being CS(OS) No.598/2016 and wherefrom was aware that Mohd. Yunus, Shailendra Nigam and his wife Deepti Nigam were the only owners of the property, having one-third undivided share each therein vide Sale Deeds executed by MNBPL in their favour, dated 29th June, 2010 and 15th July, 2010 in favour of Mohd. Yunus and vide Sale Deeds dated 3rd July, 2012 in favour of Shailendra Nigam and Deepti Nigam respectively and MNBPL was not the owner of the property neither on the date of Agreement to Sell of January, 2016 nor on the date of institution of suit. Rather, the plaintiff had applied for impleadment in the suit for partition. The plaintiff still did not make Shailendra Nigam and his wife Deepti Nigam as defendants to this suit – the only inference can be that the plaintiff, on its own pleas had no case of specific performance against Shailendra Nigam and his wife Deepti Nigam.

(ii) The plaintiff, in paragraph 5 of the plaint, has pleaded having “....enquired from both of them....” and having been informed “that defendants no.1 and 2 jointly owned the suit property” – again conveying that the averments in the plaint are against defendants no.1 and 2 only and not against defendants no.3 and 4.

(iii) The plaintiff, in paragraphs 6 and 7 of the plaint pertaining to negotiations regarding sale price and modality of payment thereof, has repeatedly pleaded the part of the sale consideration payable to defendant no.1 and part payable to defendant no.2 and the mode of payment to defendant no.1 and defendant no.2 and the only inference wherefrom can be that when the plaintiff in the plaint refers to defendants, the reference is to defendants no.1 and 2 only; there is no plea of payment of any portion of sale consideration to defendants no.3 and 4 Shailendra Nigam and his wife Deepti Nigam.

(iv) The plaintiff, in paragraph 11 of the plaint, has pleaded having applied for impleadment in CS(OS) No.598/2016 and having had negotiations at that stage with “all the parties”, disclosing that at that stage the negotiations claimed are not only with defendants no.1 and 2 but also with defendants no.3 and 4; still while instituting the suit, the defendants no.3 and 4 Shailendra Nigam and his wife Deepti Nigam were not impleaded.

22. There being no plea in the plaint of any Agreement to Sell by defendants no.3 and 4 in favour of the plaintiff and it being now not in dispute that the defendants no.3 and 4 are owners of 2/3rd share in the property and the claim of the plaintiff being for specific performance of Agreement of Sale of the entire property, there is no need to put the suit to trial. Though the plaintiff in paragraph 5 of the plaint has referred to defendant no.3 Shailendra Nigam but in the context of enquiries made from him in his capacity as Director of MNBPL and it

is not the claim of the plaintiff, inspite of order dated 20th December, 2019, that the defendant no.3 Shailendra Nigam having represented to the plaintiff that MNBPL is owner of the property, upon MNBPL being not found to be owner of the property and Shailendra Nigam in his personal capacity being found to be owner of the property, is liable for specific performance in his personal capacity also.

23. As far as the defendant no.4 Deepti Nigam is concerned, there is no reference to her in the plaint and reference to 'defendants' in the plaint as originally filed, in which the defendant no.4 Deepti Nigam was not even a party, cannot, merely by filing amended memo of parties, be deemed to be reference to defendant no.4.

24. There being no pleaded agreement by defendants no.3 and 4, of sale of property to plaintiff, the question of they being directed to specifically perform a nonexistent agreement, does not arise.

25. Though the defendant no.1 Mohd. Yunus has supported the plaintiff but is the owner of one-third undivided share only in the property. The plaintiff, though after 3rd April, 2019 could have amended the plaint to claim relief under Section 12 of the Specific Relief Act, 1963 for specific performance of part of the Agreement to Sell i.e. insofar as against defendant no.1 Mohd. Yunus but has not done so either.

26. Resultantly, merit is found in the contention that the suit, insofar as for the relief of specific performance, is liable to be dismissed forthwith.

27. The defendant no.1 Mohd. Yunus, if so desires and entitled in law, can deal with his one-third undivided share in the property with the plaintiff.

28. The suit, insofar as for the primary relief of specific performance of Agreement of Sale of immovable property bearing No.15, Jaipur Estate, Nizamuddin East, New Delhi is thus dismissed.

29. As far as the relief claimed by the plaintiff in alternative, of recovery of Rs.1.60 crores with interest, the same also can be only against defendant no.1, with whom alone agreement is pleaded and to whom only, payment is claimed.

30. The plaintiff, on the basis of admissions in the written statement of defendant no.1 Mohd. Yunus and the stand of counsel for defendant no.1 Mohd. Yunus before this Court, is found entitled to the alternate relief of recovery of Rs.1.60 crores against defendant no.1 Mohd. Yunus.

31. The counsel for the defendants no.3 and 4 at this stage states that since the claim of the plaintiff for specific performance is being dismissed, the defendants no.3 and 4 Shailendra Nigam and his wife Deepti Nigam are entitled to a decree for recovery of possession from the plaintiff, of part of the property of which the plaintiff claims to have been put into possession in pursuance to the Agreement to Sell. Reliance in this regard is placed on ***Revanasiddayya Vs. Gangamma @ Shashikala*** AIR 2017 SC 5682.

32. I have perused the said judgment. The plaintiffs therein had instituted the suit for declaration of their title and for recovery of possession of immovable property claiming that the defendant was put

in possession of the property under an Agreement of Sale of the property to the defendant, by the predecessor of the plaintiffs, and the time for performance of the Agreement of Sale expired long back, without the defendant enforcing the same but the defendant had remained in possession of the property. The defendant was found to have filed a suit for specific performance which had been dismissed. Supreme Court held, (i) that one of the effects of dismissal of the defendant's suit for specific performance of the Agreement of Sale was that the defendant was not entitled to retain possession; (ii) that possession of the defendant of the land, after the dismissal of the suit for specific performance, became unauthorized and illegal, entitling the plaintiff to claim back the same on the strength of his ownership; and, (iii) though the defendant was entitled to defend his possession by invoking Section 53A of the Transfer of Property Act, 1882 but once the suit for specific performance stood dismissed, the protection available under Section 53A of the Transfer of Property Act was no longer available. Supreme court however in the interest of justice considered it necessary to deal with the question with a view to give quietus to the litigation which was pending for three decades and directed delivery of possession by the defendant subject to the plaintiff refunding the earnest money of Rs.1 lacs received from the defendant to the defendant.

33. It would thus be seen that the facts of the cited case were different. In that case it was the agreement sellers who had sued for recovery of possession and which relief was granted. The defendants

no.3 and 4 herein have not sued for possession and cannot be entitled to said relief in the suit filed by the plaintiff.

34. The dicta in ***Revanasiddayya*** supra is of a Bench of two Judges of the Supreme Court. I have enquired from the counsel for the defendants no.3 and 4, whether not earlier judgments of the Supreme Court, not noticed in ***Revanasiddayya*** supra, hold that Section 53A of the Transfer of Property Act can be invoked notwithstanding dismissal of the suit for specific performance.

35. The counsel for the defendants no.3 and 4 has fairly referred to ***Shrimant Shamrao Suryavanshi Vs. Pralhad Bhairoba Suryavanshi*** (2002) 3 SCC 676 and ***D.S. Parvathamma Vs. Srinivasan*** AIR 2003 SC 3542. In ***Shrimant Shamrao Suryavanshi*** supra it was held that a person obtaining possession of property in part performance of an Agreement of Sale can defend his possession in a suit for recovery of possession filed by the transferor or by subsequent transferee of the property claiming under him, even if a suit for specific performance of Agreement to Sell stood barred by limitation. In ***D.S. Parvathamma*** supra, suit for specific performance of Agreement of Sale was dismissed holding the agreement purchaser to be not ready and willing to perform his part of the agreement; in view of the said finding it was held that possession of said agreement purchaser could not be protected.

36. As far as the directions given in ***Revanasiddayya*** supra are concerned of delivery of possession, the same are not in the suit for specific performance of Agreement of Sale after dismissal thereof but in the suit filed by the plaintiff for recovery of possession.

Revanasiddayya supra thus cannot be read as laying down that on dismissal of a suit for specific performance by an agreement purchaser for specific performance of the agreement, the defendant is also even if has not claimed relief of possession, is entitled to the relief of possession. The defendants no.3 and 4 will have to thus take separate remedy therefor and are not entitled to the said relief in this suit. I may however state that the claim of the plaintiff being of a verbal Agreement to Sell, Section 53A of the Transfer of Property Act being available only in case of written Agreement to Sell, the plaintiff is not entitled to invoke the same.

37. A decree is accordingly passed, (a) dismissing the claim of the plaintiff for specific performance; and, (b) in favour of the plaintiff and against the defendant no.1 Mohd. Yunus, of recovery of Rs.1.60 crores with interest *pendente lite* and future at the rate of 10% per annum.

38. The plaintiff having not impleaded Shailendra Nigam and his wife Deepti Nigam as parties to the suit at the time of institution of the suit inspite of knowledge of the correct facts, is not entitled to any costs of the suit.

Decree sheet be drawn up.

RAJIV SAHAI ENDLAW, J.

JANUARY 07, 2020

‘gsr’