



\* IN THE HIGH COURT OF DELHI AT NEW DELHI

% *Judgment Reserved on : 27<sup>th</sup> July, 2022*  
*Judgment Delivered on : 18<sup>th</sup> August, 2022*

+ **CS(OS) 864/2014**

**TOSH APARTMENT PVT. LTD** ..... **Plaintiff**

Through: Mr. Mandeep Singh Vinaik, Mr. Deepak Bashta, Mr. S.K. Sagar, Mr. Pawan Kumar Dhiman, Ms. Geeta Mohante and Ms. Simmi Bhamrah, Advocates.

versus

**THE GOVERNMENT OF NATIONAL CAPITAL TERRITORY OF DELHI & ORS** ..... **Defendants**

Through: Mr. Santosh Kumar Tripathi, Standing Counsel (Civil) GNCTD, Mr. Arun Panwar, Mr. Siddharth Krishna Dwivedi, Mr. Aditya S. Jadhav, Mr. Pradyumn Rao and Ms. Savita Sethi, Advocates for D-1. Mr. Sandeep Sethi, Sr. Advocate with Mr. Anurag Jain and Mr. Shiv Kumar, Advocates for D-3 to D-8. Ms. Sonam Anand and Mr. Yakesh Anand, Advocates for D-9 to D-11.

**CORAM:**  
**HON'BLE MR. JUSTICE AMIT BANSAL**

**JUDGMENT**

**AMIT BANSAL, J.**

1. The plaintiff has filed the present suit seeking a declaration that the six sale deeds, all dated 30<sup>th</sup> May, 1997, executed by late Sh. Pradeep



Kumar Khanna, predecessor-in-interest of the defendants no. 9 to 11, in favour of the defendants no.3 to 8, in respect of the property, being No. 21, Aurangzeb Road, New Delhi (suit property), are null and void. Consequential relief of cancellation of the said sale deeds from the record of the concerned Sub-Registrar is also sought.

**PROCEEDINGS IN THE PRESENT SUIT**

2. An application under Order VII Rule 11 of the Code of Civil Procedure, 1908 (CPC), being I.A. 23802/2015, was filed on behalf of the defendants no. 3 to 8 on the ground that the plaint is time barred and it does not disclose any cause of action. I.A. 7939/2016 was filed on behalf of the plaintiff under Order VI Rule 17 of the CPC seeking amendment of the plaint. Vide order dated 28<sup>th</sup> April, 2017, this Court allowed I.A. 7939/2016 and dismissed I.A. 23802/2015. An appeal filed against the aforesaid order, being FAO(OS) 177/2017, was dismissed by the Division Bench vide judgment dated 30<sup>th</sup> May, 2017. On 14<sup>th</sup> November, 2017, following issues were framed in the suit:

i. Whether late Sh. Pradeep Kumar Khanna (now represented through defendant nos. 9 to 11) executed a valid sale deed dated 30<sup>th</sup> May, 1997 in favour of defendant no. 3 to 8 respectively?  
OPP

ii. Relief.

3. It was further noted that the parties do not wish to lead evidence in the matter and the matter could be adjudicated on the basis of the documents on record. Accordingly, the matter was put up for final hearing.



4. Submissions in the matter were heard on 11<sup>th</sup> July, 2022, 20<sup>th</sup> July, 2022 and 27<sup>th</sup> July, 2022, and judgment was reserved on 27<sup>th</sup> July, 2022. Parties have filed written submissions in support of their oral submissions.

**PLEADINGS IN THE AMENDED PLAINT**

5. In the amended plaint, the plaintiff has pleaded that:

- i. Late Sh. Pradeep Kumar Khanna was the owner of the suit property.
- ii. Late Sh. Pradeep Kumar Khanna entered into an Agreement to Sell dated 13<sup>th</sup> September, 1988 (Agreement to Sell) with the plaintiff in respect of the suit property.
- iii. Since late Sh. Pradeep Kumar Khanna failed to execute the sale deed in favour of the plaintiff, the plaintiff filed a suit, being CS(OS) 425/1993, before this Court for specific performance, damages and injunction.
- iv. In the said suit, vide order dated 18<sup>th</sup> February, 1993, this Court restrained the defendants therein from creating third party rights in respect of the suit property. The aforesaid order was confirmed on 31<sup>st</sup> January, 2000.
- v. On 19<sup>th</sup> February, 1997, late Sh. Pradeep Kumar Khanna executed six agreements to sell in respect of the suit property in favour of the defendants no. 3 to 8 for a total consideration of Rs.2,88,00,000/-.
- vi. Subsequently, six registered sale deeds were executed by late Sh. Pradeep Kumar Khanna in favour of the defendants no. 3 to 8 on 30<sup>th</sup> May, 1997.



- vii. The aforesaid sale deeds were executed by late Sh. Pradeep Kumar Khanna despite there being an injunction order passed by this Court.
- viii. Sh. Pradeep Kumar Khanna died on 12<sup>th</sup> January, 2002, leaving behind his wife and two daughters as his legal representatives, who are the defendants no. 9 to 11 in the present suit.
- ix. In 2008, the defendants no. 3 to 8 filed an application, being I.A. 1861/2008, under Order I Rule 10 of the CPC for impleadment as defendants in CS(OS) 425/1993.
- x. The said application was dismissed by a Single Judge of this Court on 26<sup>th</sup> May, 2008.
- xi. The aforesaid order by the Single Judge was challenged by way of an appeal, being FAO(OS) 324/2008, filed by the defendants no. 3 to 8. The said appeal was dismissed by a Division Bench of this Court vide order dated 20<sup>th</sup> February, 2009.
- xii. A Special Leave Petition (SLP) preferred against the said order of the Division Bench, being SLP(C) No. 11501/2009, was dismissed by the Supreme Court vide judgment dated 21<sup>st</sup> August, 2012. Review against the said order was also dismissed by the Supreme Court on 13<sup>th</sup> December, 2012.
- xiii. Defendants no. 3 to 8 filed a suit, being CS(OS) 3195/2012, for declaration, possession and injunction against the plaintiff and the defendants no. 9 to 11 herein.
- xiv. After the Supreme Court order dismissing the SLP filed by the defendants no. 3 to 8, the plaintiff sent a notice dated 12<sup>th</sup>



November, 2013 calling upon the defendants no. 1 and 2 (Sub-Registrar-III, Asaf Ali Road, New Delhi) to cancel the registrations of the six sale deeds in the names of the defendants no. 3 to 8 from their records and restore the name of late Sh. Pradeep Kumar Khanna.

- xv. A consent decree dated 1<sup>st</sup> September, 2015 was passed in CS(OS) 425/1993, in terms of which the defendants no. 9 to 11 agreed to transfer the suit property in favour of the plaintiff and the possession of the suit property was handed over to the plaintiff.
- xvi. Since the defendants no. 1 and 2 failed to cancel the sale deeds in favour of the defendants no. 3 to 8, the plaintiff filed the present suit.

#### **PLEADINGS IN THE WRITTEN STATEMENTS**

6. Written statement was filed on behalf of the defendants no. 9 to 11 essentially supporting the case of the plaintiff. In the said written statement, it has been pleaded that fraud was played upon late Sh. Pradeep Kumar Khanna by the defendants no. 3 to 8 and therefore, late Sh. Pradeep Kumar Khanna filed a suit, being CS(OS) 161/1999, before this Court seeking a declaration that the said agreements to sell and sale deeds were null and void.

7. Written statement was filed on behalf of the defendants no. 3 to 8, wherein it has been pleaded that:

- i. The present suit is time barred.
- ii. The plaint does not disclose any cause of action in favour of the plaintiff.



- iii. Six sale deeds were executed by late Sh. Pradeep Kumar Khanna in favour of each of the six defendant companies for a total consideration of Rs.48,00,000/- each, for 1/6<sup>th</sup> share of the suit property, totaling Rs.2,88,00,000/-.
- iv. On 18<sup>th</sup> March, 1997, the defendant companies entered into an agreement to sell in respect of the suit property with one M/s Bhagwati Developers Pvt. Ltd. for a total consideration of Rs.4,26,00,000/-.
- v. M/s Bhagwati Developers Pvt. Ltd. instituted arbitration proceedings against the defendants no. 3 to 8 seeking specific performance of the agreement to sell in their favour in which the sole arbitrator passed an award in favour of M/s Bhagwati Developers Pvt. Ltd. In the execution proceedings initiated by M/s Bhagwati Developers Pvt. Ltd., a receiver was appointed by the High Court of Calcutta, who took physical possession of the suit property. Subsequently, this Court, vide order dated 9<sup>th</sup> September, 2007 in CS(OS) 425/1993, appointed a receiver in respect of the suit property.
- vi. An application for impleadment was filed on behalf of the defendants no. 3 to 8 in CS(OS) 425/1993 and the same was dismissed by the Single Judge of this Court and subsequently affirmed by a Division Bench of this Court and the Supreme Court.
- vii. The observations of the Supreme Court in the judgment dated 21<sup>st</sup> August, 2012 were only in the context of the impleadment



application filed on behalf of the defendants no. 3 to 8 and have to be read in that context.

- viii. A suit for declaration, being CS(OS) 3195/2012, was filed on behalf of the defendants no. 3 to 8 before this Court in respect of the suit property. The plaint in the said suit was rejected by a Single Judge of this Court vide order dated 31<sup>st</sup> May, 2013 under provisions of Order VII Rule 11 of the CPC.
  - ix. An appeal, being RFA(OS) 61/2013, was filed by defendants no. 3 to 8 against the said order and a Division Bench of this Court set aside the said order and remanded the said order back to the Single Judge.
  - x. Defendants no. 3 to 8 are *bona fide* purchasers of the suit property without prejudice to the injunction order passed by this Court in CS(OS) 425/1993.
8. In the replication to the written statement filed on behalf of the defendants no. 3 to 8, the plaintiffs, while reaffirming the averments made in the plaint, have further pleaded that:
- i. The cause of action for filing the present suit arose only after the judgment of the Supreme Court on 21<sup>st</sup> August, 2012 and therefore, the present suit is not barred by limitation.
  - ii. None of the defences raised by the defendants survive in light of the findings of the Supreme Court in the judgment dated 21<sup>st</sup> August, 2012.

#### **SUBMISSIONS ON BEHALF OF THE PLAINTIFF**

9. Counsel appearing on behalf of the plaintiff strongly placed reliance on the observations in the judgment dated 21<sup>st</sup> August, 2012 to contend that



in light of the aforesaid observations of the Supreme Court, the six sale deeds impugned in the present suit are liable to be cancelled. He further submitted that the civil suit for declaration, possession and injunction filed on behalf of the defendants no. 3 to 8, being CS(OS) 3195/2012, has been dismissed by a Single Judge of this Court vide judgment dated 28<sup>th</sup> June, 2017. No appeal has been filed against the said dismissal and therefore, the same has attained finality. An earlier suit filed on behalf of the defendants no. 3 to 8, being CS(OS) 1675/1997, pertaining to the same property was unconditionally withdrawn by the said defendants in the year 2011.

10. The right to sue for filing the present suit accrued in favour of the plaintiff for the first time on 21<sup>st</sup> August, 2012, when the judgment was delivered by the Supreme Court and therefore, the present suit is within the period of limitation. This issue was duly considered by a Single Judge of this Court while considering the application filed by the defendants under Order VII Rule 11 of the CPC. The said application was rejected by a Single Judge of this Court on 28<sup>th</sup> April, 2017 and the appeal filed against the judgment was dismissed by the Division Bench on 30<sup>th</sup> May, 2017. SLP against the said order has also been dismissed by the Supreme Court on 14<sup>th</sup> May, 2018.

#### **SUBMISSIONS ON BEHALF OF THE DEFENDANTS No. 9 TO 11**

11. The counsel for the defendants no. 9 to 11, while adopting the submissions of the plaintiff, has submitted that in view of the dismissal of the application under Order VII Rule 11 of the CPC filed on behalf of the defendants and its subsequent affirmation by the Division Bench, no issue with regard to limitation was framed by this Court.



12. The compromise entered into by the plaintiff and the defendants no. 9 to 11 in CS(OS)425/1993 was challenged by the defendants no. 3 to 8 by filing CS(OS) 3364/2015, which suit was dismissed vide judgment dated 24<sup>th</sup> November, 2015. An appeal against the said judgment, being RFA(OS) 18/2016, was dismissed by the Division Bench vide order dated 20<sup>th</sup> July, 2016 and subsequently, SLP against the aforesaid judgment has also been dismissed vide order dated 22<sup>nd</sup> March, 2022.

**SUBMISSIONS ON BEHALF OF THE DEFENDANTS NO. 3 TO 8**

13. Senior counsel appearing on behalf of the defendants has made following submissions:

- i. By way of the present suit, the plaintiffs have sought cancellation of the six sale deeds dated 30<sup>th</sup> May, 1997. The plaintiffs knew about the aforesaid sale deeds in favour of the defendants as far back as in 2001 and at the very latest, in 2008, when I.A. 1861/2008 under Order I Rule 10 of the CPC was filed on behalf of the defendants in CS(OS) 425/1993. Therefore, the present suit is barred by limitation in terms of Article 59 of the Limitation Act, 1963.
- ii. The contention of the plaintiff that the limitation for filing the present suit would commence from the date of the judgment of the Supreme Court on 21<sup>st</sup> August, 2012, is wholly untenable. The Supreme Court judgment did not create a fresh cause of action for filing of the present suit, which had accrued much earlier. Reliance has been placed on the judgment of the Supreme Court in *Khatri Hotels Pvt. Ltd. And Anr. v. Union of India And Ors.*, (2011) 9 SCC 126 to contend that the word



“first” has been used in Article 59 of the Limitation Act, 1963 to mean that the period of limitation will begin to run from the date when the right to sue first accrues. Further reliance is placed on the judgment of the Supreme Court in **Prem Singh And Ors. v. Birbal And Ors.**, (2006) 5 SCC 353 to contend that once a suit is filed by the plaintiff for cancellation of a document, it would be governed by Article 59 of the Limitation Act, 1963.

- iii. CS(OS) 425/1993 was filed by the plaintiff for specific performance, however, the said suit was compromised on 31<sup>st</sup> August, 2015 between the plaintiff and defendants no. 9 to 11. Therefore, the agreement to sell in favour of the plaintiff was never held to be valid by a court of law. Consequently, subsequent compromise cannot give the plaintiff a better title than the defendants.
- iv. A sale during the pendency of suit would not be void *ab initio* and would only be voidable. Therefore, subsequent purchaser has to be impleaded in the suit. Reliance in this regard is placed on the judgments of the Supreme Court in **Thomson Press Press (India) Limited v. Nanak Builders and Investors Private Limited and Ors.**, (2013) 5 SCC 397 and **Lala Durga Prasad and Anr. v. Lala Deep Chand and Ors.**, AIR 1954 SC 75.

#### **ANALYSIS AND FINDINGS**

14. I have considered the rival submissions and examined the record of the case.



15. In CS(OS) 425/1993, the defendants no. 3 to 8 herein filed an impleadment application under Order I Rule 10 of the CPC in the year 2008. The said impleadment application was dismissed by the Single Judge of this Court vide order dated 28<sup>th</sup> May, 2008 and appeal therefrom was also dismissed by the Division Bench vide order dated 20<sup>th</sup> February, 2009. The order of the Division Bench was challenged by the defendants no. 3 to 8 before the Supreme Court by filing an SLP.

16. The Supreme Court, by way of a detailed judgment dated 21<sup>st</sup> August, 2012 titled ***Vidur Impex and Traders Private Limited and Ors. v. Tosh Apartments Private Limited and Ors.***, reported as (2012) 8 SCC 384 gave a detailed finding while rejecting the petition of the defendants. Relevant observations of the Supreme Court are set out below:

*“42. In the light of the above, we shall now consider whether the learned Single Judge and the Division Bench of the High Court committed an error by dismissing the appellants' application for impleadment as parties to Suit No. 425 of 1993. At the cost of repetition, we consider it necessary to mention that Respondent 1 had filed suit for specific performance of agreement dated 13-9-1988 executed by Respondent 2. **The appellants and Bhagwati Developers are total strangers to that agreement. They came into the picture only when Respondent 2 entered into a clandestine transaction with the appellants for sale of the suit property and executed the agreements for sale, which were followed by registered sale deeds and the appellants executed agreement for sale in favour of Bhagwati Developers. These transactions were in clear violation of the order of injunction passed by the Delhi High Court which had restrained Respondent 2 from alienating the suit property or creating third-party interest. To put it differently, the agreements for sale and the sale deeds executed by Respondent***



**2 in favour of the appellants did not have any legal sanctity.** *The status of the agreement for sale executed by the appellants in favour of Bhagwati Developers was no different. These transactions did not confer any right upon the appellants or Bhagwati Developers. Therefore, their presence is not at all necessary for adjudication of the question whether Respondents 1 and 2 had entered into a binding agreement and whether Respondent 1 is entitled to a decree of specific performance of the said agreement. That apart, after executing the agreement for sale dated 18-3-1997 in favour of Bhagwati Developers, the appellants cannot claim to have any subsisting legal or commercial interest in the suit property and they cannot take benefit of the order passed by the Calcutta High Court for appointment of an arbitrator which was followed by an order for appointment of Receiver because the parties to the proceedings instituted before that Court deliberately suppressed the facts relating to Suit No. 425 of 1993 pending before the Delhi High Court and the orders of injunction passed in that suit.*

43. We are in complete agreement with the Delhi High Court that the application for impleadment filed by the appellants was highly belated. Although, the appellants have pleaded that at the time of execution of the agreements for sale by Respondent 2 in their favour in February 1997, they did not know about the suit filed by Respondent 1, it is difficult, if not impossible, to accept their statement because the smallness of time-gap between the agreements for sale and the sale deeds executed by Respondent 2 in favour of the appellants and the execution of agreement for sale by the appellants in favour of Bhagwati Developers would make any person of ordinary prudence to believe that Respondent 2, **the appellants and Bhagwati Developers had entered into these transactions with the sole object of frustrating the agreement for sale dated 13-9-1988 executed in favour of Respondent 1 and the suit pending before the Delhi**



**High Court.** In any case, the appellants will be deemed to have become aware of the same on receipt of summons in Suit No. 161 of 1999 filed by Respondent 2 for annulment of the agreements for sale and the sale deeds in which Respondent 2 had clearly made a mention of Suit No. 425 of 1993 filed by Respondent 1 for specific performance of the agreement for sale dated 13-12-1988 and injunction or at least when the learned Single Judge of the Delhi High Court entertained IA No. 625 of 2001 filed by Respondent 1 and restrained Respondents 2 and 4 from transferring possession of the suit property to the appellants. However, in the application for impleadment filed by them, the appellants did not offer any tangible explanation as to why the application for impleadment was filed only on 4-2-2008 i.e. after 7 years of the passing of injunction order dated 22-1-2001 and, in our considered view, this constituted a valid ground for declining their prayer for impleadment as parties to Suit No. 425 of 1993.

44. The ratio of the judgment in *Kasturi v. Iyyamperumal* [*Kasturi v. Iyyamperumal*, (2005) 6 SCC 733] on which heavy reliance has been placed by the learned Senior Counsel for the appellants, does not help his clients. **In the present case, the agreements for sale and the sale deeds were executed by Respondent 2 in favour of the appellants in a clandestine manner and in violation of the injunction granted by the High Court. Therefore, it cannot be said that any valid title or interest has been acquired by the appellants in the suit property** and the ratio of the judgment in *Surjit Singh v. Harbans Singh* [*Surjit Singh v. Harbans Singh*, (1995) 6 SCC 50] would squarely apply to the appellants' case because they are claiming right on the basis of transactions made in defiance of the restraint order passed by the High Court. **The suppression of material facts by Bhagwati Developers and the appellants from the Calcutta High Court, which was**



*persuaded to pass orders in their favour, takes the appellants out of the category of bona fide purchaser.* Therefore, their presence is neither required to decide the controversy involved in the suit filed by Respondent 1 nor required to pass an effective decree.”

17. In the paragraphs set out hereinabove, the Supreme Court has categorically held that the sale agreements/sale deeds in favour of the defendants no. 3 to 8 did not have any legal sanctity as they were executed in a clandestine manner and were in violation of the injunction orders passed by this Court. It was further observed that the sale deeds in favour of the defendants no. 3 to 8 were entered into only to frustrate the agreements to sell between the plaintiff and late Sh. Pradeep Kumar Khanna; and no valid title or interest has been acquired by the defendants no. 3 to 8 in the suit property.

18. In view of the aforesaid judgment, it is clear that the sale deeds in favour of the defendants no. 3 to 8 have no legal sanctity and are hence, *non-est*. The aforesaid judgment, in fact, amounts to a decree of cancellation of the sale deeds in favour of the defendants no. 3 to 8 and the defendants no. 1 and 2 ought to have rectified their record and deleted the names of the defendants no. 3 to 8 in respect of the suit property.

19. I do not find merit in the submission of the defendants no.3 to 8 that the judgment of the Supreme Court has to be taken only in the context of impleadment of the defendants no. 3 to 8 as parties in the suit for specific performance. The Supreme Court categorically held that the aforesaid sale deeds did not have any legal sanctity and the defendants no.3 to 8 did not acquire any valid title or interest in the suit property and on that basis,



rejected the impleadment application. Therefore, observations made by the Supreme Court with regard to the question of validity of the sale deeds have to be given full effect and are binding on the defendants. The defendants cannot be heard to say that the findings of the Supreme Court do not have relevance for the purposes of the present suit, where the sole issue is as to the validity of the aforesaid sale deeds.

20. In fact, the same submission of the defendants has already been rejected by a Co-ordinate bench of this Court. After passing of the aforesaid judgment by the Supreme Court, the defendants no. 3 to 8 filed CS(OS) 3195/2012 before this Court seeking a declaration that they be declared as owners of the suit property on the basis of the six sale deeds in their favour. Following the judgement of the Supreme Court, a coordinate bench of this Court dismissed the suit, by way of a detailed judgment dated 28<sup>th</sup> June, 2017. The relevant observations of the Id. Single Judge are set out below:

*“88. Thereafter considering the law on impleadment, including lis pendens, the Supreme Court came to the following conclusions in paragraphs 42 to 44:*

*(141) Vidur and Bhagwati were aliens to the litigation pending between Khanna and Tosh [CS (OS) 425/1993].*

*(ii) They entered the foray upon execution of the Agreements to Sale and Sale Deeds in their favour and between them.*

***(iii) Since these transactions were in clear violation of the injunction order passed by this Court, “they did not have any legal sanctity” and “did not confer any right upon the appellants [Vidur] or Bhagwati Developers.”***

*(iv) Vidur had no subsisting right in the Suit Property after execution of the Agreement of Sale in favour of Bhagwati.*



89. It was the findings in (ii), (iii) and (iv) above that led the Supreme Court to come to the conclusion that the presence of Vidur or Bhagwati was not at all necessary. The Apex Court went on to hold that the application for impleadment was highly belated and Vidur had knowledge of the lis pending between Khanna and Tosh for years.

90. Accordingly, it is clear that the adjudication of the nature of the right of Vidur and Bhagwati in the Suit Property was deemed necessary by the Supreme Court of India and in this background, it had observed that the sale transactions did not have any legal sanctity and did not confer any right in the Suit Property. It cannot be said that the findings were mere orbitur not affecting the rights of Vidur/plaintiff. Such a judicial pronouncement can neither be ignored nor taken lightly by any judicial forum in India. Therefore, I am of the view that the Supreme Court has sealed the fate of the plaintiffs and the present suit is liable to be dismissed on this ground alone.

91. Another reason I am unable to accept the submissions of the learned counsel for the plaintiff/non-applicant is that Vidur had preferred a review petition before the Supreme Court, it could have easily sought a clarification as to the nature of the observations, but they failed to do so.

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140. I sum up my findings as under:

(i) The present applications are maintainable under Section 151 as none of the provisions of the Code expressly or by necessary implication exhaust or limit the inherent power of this Court;

(ii) The judgment of the Supreme Court in Vidur Impex has sealed the fate of the plaintiffs herein holding the Sale Deeds as having no legal sanctity conferring no title upon the plaintiffs and Vidur having no subsisting right in the Suit Property;



(iii) *The present suit is barred by the provisions of Order XXIII Rule 1 owing to the withdrawal of the 1997 Suit without seeking liberty to file afresh;*

(iv) *The additional relief of damages sought in the present suit is barred as having been relinquished under Order II Rule 2 of the Code;*

(v) *The present suit is liable to be dismissed as having been filed after the expiry of the period of limitation on 18.10.2012, when the limitation period elapsed on 19.05.2009 or best on 14.07.2009; and*

(vi) *The plaintiffs/Vidur are guilty of concealing and suppressing the filing and withdrawal of the 1997 Suit from this Court and therefore, are not entitled to any relief.*

141. *Consequently, the applications are allowed; the suit is dismissed as being an abuse of process of this Court.”*

21. The aforesaid judgment has not been challenged by the defendants no. 3 to 8 and has consequently attained finality.

22. In the present case itself, the defendants no. 3 to 8 had filed an application under Order VII Rule 11 of CPC, being IA 23802/2015, seeking rejection of the plaint, *inter alia* on the ground of limitation. A Co-ordinate Bench of this Court dismissed the said application vide order dated 28<sup>th</sup> April, 2017. Subsequently, a Division Bench of this Court, vide order dated 30<sup>th</sup> May, 2017, dismissed the appeal filed on behalf of the defendants no. 3 to 8 and imposed costs of Rs.1,00,000/-. The relevant paragraphs of the said judgment are set out below:

**“12. In fact, the Supreme Court of India has rejected all such contentions raised by the present appellant in the detailed judgment noted above and clearly held that the agreements for sale and the sale deeds executed by Pradeep Kumar Khanna in favour of the present appellant “did not have any legal**



sanctity”. It has been further clearly declared that “these transactions did not confer any right upon the present appellant”. These findings bind the appellant.

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14. In the impugned order dated 28<sup>th</sup> April, 2017, the ld. Single Judge has noted the submission of the plaintiff/respondent no.1 herein, that after dismissal of the proceedings before the Supreme Court of India, he had filed proceedings before the Sub-Registrar seeking deletion of name of the appellants whose name has been entered in the record of the Sub-Registrar for the reason that the sale deeds now stood nullified by the order of the Supreme Court. No heed was paid to his request. The plaintiff’s suit being CS(OS)No.425/1993 seeking performance against Pradeep Kumar Khanna (then represented through his legal heirs – defendant nos.9 to 11) was still pending. In CS(OS)No.425/1993, stay was operating in favour of the plaintiff/respondent no.1.

15. In view of the above, we are unable to agree with the contention of ld. counsel for the appellants that the plaint was barred by time and that in the facts and circumstances of the case, Article 59 of the First Schedule of the Limitation Act would not come to the aid of the present appellants/defendant nos.3 to 8.”

23. The SLP against the judgment of the Division Bench was also dismissed by the Supreme Court vide order dated 14<sup>th</sup> April, 2018. The same submissions with regard to limitation were taken in the application under Order VII Rule 11 of the CPC by the defendants, as are being raised now. Therefore, in my view, the issue regarding limitation has been conclusively decided against the defendants no. 3 to 8 and cannot be re-examined at this stage. Perhaps that was the reason no issue with regard to limitation was framed by this Court while framing issues on 14<sup>th</sup> November, 2017. In this



view of the matter, the judgments cited on behalf of the defendants no. 3 to 8 with regard to limitation cannot come to the aid of the said defendants. Similarly, the judgment in *Thomson Press (India) Ltd.* supra would also not come to the aid of the defendants no. 3 to 8 as the application for impleadment filed on behalf of the defendants no. 3 to 8 in CS(OS)425/1993 has been rejected right up till the Supreme Court and the said defendants have been held not to be *bona fide* purchasers.

24. It is pertinent to note that the defendants no. 3 to 8 had also challenged the compromise decree in CS(OS) 425/1993 by filing CS(OS) 3364/2015, which was dismissed by this Court vide judgment dated 24<sup>th</sup> November, 2015. The appeal against the said judgment, being RFA(OS) 18/2016, was also dismissed by the Division Bench vide judgment dated 20<sup>th</sup> July, 2016. Paragraph 11 of the judgment dated 20<sup>th</sup> July, 2016 is reproduced as under:

*“11. After considering the documents, pleadings and the suit records, this court is of opinion that there is no infirmity in the impugned judgment. The earlier orders of this court and the judgment of the Supreme Court and decisively ruled on two issues: one that the present appellant/plaintiff had sought to belatedly enforce its rights, by filing an application in a pending suit. It had not approached the court in time, to seek relief, within the time stipulated in law. The second, and more important – as well as damaging finding regarding the appellant, was its conduct. It had colluded with another party, i.e Bhagwati Developers in approaching the Calcutta High Court; it had also clandestinely entered into the agreement which it now relies upon, to put in the words of the Supreme Court were with a view to frustrate the rights of the parties in the pending suit, and defeat the interim orders made therein. As a result the plaintiffs, who had no right to enforce in the first place, in*



**respect of the suit property, cannot complain that the compromise decree is the result of a fraud.”**

25. Vide judgment dated 22<sup>nd</sup> March, 2022, even the SLP against the aforesaid judgment was dismissed by the Supreme Court and the review petition filed thereagainst was also dismissed vide order dated 5<sup>th</sup> May, 2022. In fact, the final hearing in the present suit was adjourned to await the outcome of the said SLP and this fact was recorded in the order dated 19<sup>th</sup> December, 2019. Now that the aforesaid SLP has been dismissed by the Supreme Court, none of the defences raised on behalf of the defendants no. 3 to 8 survive.

26. Consequently, the plaintiff is entitled to a decree of declaration, declaring that the six sale deeds executed by late Sh. Pradeep Kumar Khanna in favour of defendants no. 3 to 8 are null and void. The plaintiff is further entitled to a decree of cancellation of the six registered sale deeds as detailed in prayer ‘b)’ of the suit.

27. Plaintiff shall be entitled to costs of the present suit, assessed at Rs.2,00,000/- and payable by the defendants.

28. Decree sheet be drawn up.

**AMIT BANSAL, J.**

**AUGUST 18, 2022**

sr.