IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.255 OF 2020
WITH
CIVIL APPLICATION NO.246 OF 2020

R. J. Construction,
A Partnership Firm,through its Partner
Shri. Rajiv Ramchandra Dipali ...Appellant
Versus
Sanjay Bhimashankar Thobade & Anr. ...Respondents

WITH
INTERIM APPLICATION NO.19788 OF 2022

Tausif Bashir Shaikh & Anr. ...Intervenors

<u>In the matter of:</u>
R. J. Construction,
A Partnership Firm,through its Partner
Shri. Rajiv Ramchandra Dipali ...Appellant
Versus
Sanjay Bhimashankar Thobade & Anr. ...Respondents

WITH
INTERIM APPLICATION NO.19026 OF 2022

Prakash Devidas Prabhu ...Intervenor

<u>In the matter of:</u>
R. J. Construction,
A Partnership Firm,through its Partner
Shri. Rajiv Ramchandra Dipali ...Appellant
Versus
Sanjay Bhimashankar Thobade & Anr. ...Respondents

Mr. Atul Damle, Senior Counsel a/w. Mr. Vikrant Zunjarrao, Mr. Sarvesh Patil, Ms. Payal Vardhan, i/b. Zunjarrao & Co., for the Appellant.

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Mr. Vineet B. Naik, Senior Counsel, i/b. Mr. Akshay C. Tapkir a/w. Mr. Sharang Chavan, for Respondent No.1.

CORAM : MADHAV J. JAMDAR, J.
DATED : 19th APRIL 2023

P.C. :

1. Heard Mr. Atul Damle, learned Senior Counsel appearing for the Appellant and Mr. Vineet Naik, learned Senior Counsel appearing for the Respondent No.1.

2. The Appellant is original Defendant No.2/Respondent No.2. The Appellant is challeging the legality and validity of the Judgment and Decree dated 29th March 2019 passed by the learned Ad-hoc District Judge-2, Solapur in Regular Civil Appeal No.53 of 2015 by which decree passed by the learned Trial Court of directing refund of the amount received by the Defendant No.1 to Plaintiff is modified by directing execution of registered Sale Deed by Defendant No.1 in favour of the Plaintiff and by directing Defendant No.2 to deliver possession of the suit property in favour of the Plaintiff.

3. Mr. Damle, learned Senior Counsel appearing for the Appellant submitted that the following substantial questions of law arise in this Second Appeal:-

i. Whether the Appellate Court could have granted relief of specific performance in absence of any specific prayer or pleadings to that effect?

ii. Whether the Appellate Court could have granted specific performance of an agreement which is null and void ab-initio i.e. agreement for sale dated 1st March 1994 which was to purchase land which is declared as an excess land under the provisions of the Urban Land (Ceiling and Regulation) Act, 1976?

iii. Whether on the basis of admission of Defendant No.1, the Appellate Court could have decreed the suit for specific performance while ignoring rights of Defendant No.2?

4. Before consideration of the rival submissions and the substantial questions of law raised by Mr. Damle, learned Senior Counsel appearing for the Appellant, it is necessary to set out the factual matrix:-

i. The Respondent No.1 is the original Plaintiff, the Respondent No.2 is the original Defendant No.1 and the present Appellant is original Defendant No.2.

ii. The Respondent No.1 filed Special Civil Suit

No.464 of 1999 on 1st December 1999 seeking specific performance of the suit agreement dated 1st March 1994, possession and for declaration that the agreement of sale executed by Defendant No.1 in favour of the Defendant No.2 on 1st August 1999 be declared as null and void.

iii. The suit agreement is executed between the Respondent No.1 and the Respondent No.2 on 1st March 1994 for a total consideration of Rs.2,51,000/- by which suit land was agreed to be sold by the Respondent No.2 to the Respondent No.1. It is the case of the Respondent No.1 that said entire consideration has been paid.

iv. The various contentions raised in the plaint clearly show that suit is filed for the specific performance and for possession. The prayer clause in the suit reads as under:-

(a) Suit be decreed with costs;

(b) The defendants be ordered and directed to handover the possession of the suit property to the plaintiff for the development of the suit land;

(c) It be declared that, the agreement for sale executed by defendant No.1 in favour of the defendant No.2 on 1-8-1999 as null and void and is not binding on the plaintiff;

(d) In the alternative, the plaintiff states that, the decree be passed directing the defendants to pay Rs.7,51,000/- with future interest at the rate of 18% p.a.;

(e) Other just and equitable orders be passed.

v. Before the execution of the said agreement for sale dated 1st March 1994, irrevocable power of attorney dated 7th February 1994 was executed by Respondent No.2 in favour of Respondent No.1 regarding suit property.

vi. It is admitted position that the entire suit property has been declared as excess property under the provisions of the Urban Land (Ceiling and Regulation) Act, 1976 (for short **"ULC Act"**)

vii. The said power of attorney refers to Revision Application filed under Section 34 of the ULC Act and mentions that the said Revision Application is pending before the Minister of Urban Development.

viii. The entire consideration amount as per suit agreement was paid by the Respondent No.1 to Respondent No.2 and accordingly, receipt (Exhibit-75) dated 30th April 1997 was issued.

ix. By Government Resolution dated 1st October 1997, the suit property was released under the provisions of ULC Act and therefore, the suit property was no more the excess property as declared under the ULC Act.

x. It appears that parties have made correspondence with the authorities for securing possession of the suit property.

xi. In the meanwhile, the Respondent No.2 executed two agreements for sale dated 21st April 1999 and 8th June 1999 in favour of Appellant for total consideration of Rs.7,51,000/-. It further appears that the Appellant received possession of the suit property from MHADA on behalf of Respondent No.2 on 25th October 1999.

xii. Thereafter, the Respondent No.1 filed Special Civil Suit No.464 of 1999 (Renumbered as Special Civil Suit No.219 of 2014) on 1st December 1999 seeking above mentioned reliefs.

xiii. The Respondent No.2 i.e. Defendant No.1 filed written statement dated 2nd May 2001 and accepted the claim of the Plaintiff.

xiv. The Defendant No.2 i.e. present Appellant filed written statement dated 4th August 2001 and also filed additional written statement dated 28th March 2006.

xv. The Respondent No.1 i.e. Plaintiff-Sanjay Thobade has examined himself as P.W.1, Sudhir Thobade as P.W.2, Rajgopal Bhattad as P.W.3. The Respondent No.2 i.e. Defendant No.1 has not laid evidence. The Appellant i.e. Defendant No.2 examined Rajiv Dipali as D.W.1.

xvi. The application bearing Exhibit-130 was filed by the Plaintiff in said Special Civil Suit No.219 of 2014 on 28th November 2014 seeking amendment of the plaint inter alia to include the following reliefs:-

> "B-1) The defendant No.1 and 2 be directed to give possession of suit land also directed to the Defendant No.1 to execute registered Sale Deed in favour of the Plaintiff related with suit land in question and if the Defendant No.1 has not executed the Sale Deed of suit land in favour of the Plaintiff then give direction to complete the said transaction by appointment of Court Commissioner."

However, the said Application was rejected by the learned Joint Civil Judge, Senior Division, Solapur by order dated 28th November 2014 passed below Exhibit-130 in Special Civil Suit No.219 of 2014.

xvii. The learned Trial Court by Judgment and Decree dated 10th December 2014 held that the suit agreement dated 1st March 1994 is proved by the Plaintiff and Plaintiff has also proved that he is ready and willing to perform his part of the contract. However, the learned Trial Court refused to pass the decree of specific performance on the ground that the Plaintiff has not asked for the relief of specific performance of execution of Sale Deed. The learned Trial Court has held that no relief can be granted beyond the pleadings and as there are no pleadings regarding specific performance of the execution of the Sale Deed, the same cannot be granted. Therefore, the learned Trial Court passed the decree of refund of Rs.2,51,000/- along with interest @9% p.a. from the date of institution of suit till the realization of the entire amount to the Plaintiff.

xviii. The original Plaintiff filed Appeal bearing Regular Civil Appeal No.53 of 2015 in the Court of District Court, Solapur. In the said Appeal, order dated 28th November 2014 passed below Exhibit-130 in Special Civil Suit No.219 of 2014 is specifically challenged before the learned First Appellate Court in said Regular Civil Appeal No.53 of 2015.

xix. By the Judgment and Decree dated 29th March 2019 passed by the learned Ad-hoc District Judge-2, Solapur, the suit was decreed by modifying the judgment and decree passed by the learned Trial Court. The learned First Appellate Court directed Defendant No.1 to execute registered Sale Deed in favour of the Plaintiff and directed Defendant No.2 to deliver possession of the suit property to the Plaintiff, after execution of the Sale Deed by Defendant No.1 in favour of Plaintiff.

xx. In the present Second Appeal, challenge is to the said judgment and decree passed by the learned First Appellate Court.

In the light of above factual matrix, it is necessary to consider the substantial questions of law raised by Mr. Damle, learned Senior Counsel appearing for the Appellant and the rival submissions advanced by both the learned Senior Counsel.

5. Mr. Damle, learned Senior Counsel appearing for the Appellant raised the first substantial question of law to the effect that whether the Appellate Court could have granted relief of specific performance in absence of any specific prayer or pleadings to that effect. The prayers of the Plaintiff in the said Special Civil Suit No.464 of 1999 are already set out

hereinabove. It is true that specific prayer regarding execution of Sale Deed is not prayed by the Plaintiff. However, perusal of the plaint shows that, at the top of the plaint, the title is mentioned as **"Suit for Specific Performance and possession"**. In paragraph 3 of the plaint, there is reference to the Revision which is pending regarding decision of the Competent Authority to declare the suit land as excess land. It is also mentioned that the land declared as excess land is given in possession of MHADA. In paragraph 4 of the plaint, there is reference to the execution of power of attorney dated 7th February 1994 and the rights given to the Defendant No.1 by the said Power of Attorney. As already set out hereinabove, the said Power of Attorney is an irrevocable Power of Attorney. In paragraph 5 of the plaint, it is mentioned that entire payment of Rs.2,51,000/- is paid by the Plaintiff to the Defendant No.1 and after receiving the entire payment, the Defendant No.1 has issued a receipt. The said receipt is dated 30th April 1997 (Exhibit-75). In paragraph 6 of the plaint, it is the contention of the Plaintiff that the Defendant No.1 has allotted all the rights in the suit property to the Plaintiff for consideration. It is stated that the

Plaintiff has got all the rights in the suit property. It is mentioned that the Plaintiff has paid a deficit amount to the Collector, Solapur on 24th May 1999 of Rs.6,628/-. In paragraph 7 of the plaint, it is specifically contented that nothing has remained to be performed by the Plaintiff and the Plaintiff is ready and willing at all time to perform his part of the contract. However, the Defendant No.1 is not co-operating with the Plaintiff. In paragraph 8 of the plaint, it is contended that in view of Government Resolution dated 1st October 1997, the suit land is declared as free from ULC Act and therefore, the Defendant No.1 was requested to execute the Sale Deed and handover the possession. As the Defendant No.1 is not performing his part of the contract, the Plaintiff has filed suit for specific performance of the contract. In paragraph 9 of the plaint, it is contended that after said Government Resolution dated 1st October 1997, the entry regarding the excess area is deleted from the Record of Rights. However, the Defendant No.1 has not handed over possession of the suit plot to the Plaintiff but he has entered into an agreement with the Defendant No.2 and has accepted an amount of Rs.3,00,000/- from him and agreed to sell the suit property to the Defendant No.2 for consideration of Rs.7,51,000/-. In paragraph 10 of the plaint, Plaintiff has contended that he is and was always ready and willing to perform his part of the contract and Defendant No.1 is avoiding the performance. It is further contended that Plaintiff has taken suit land for the development purpose and decided to carry out a scheme of housing on the said land. In paragraph 10 and 11 of the plaint, the Plaintiff has stated that if decree of specific performance cannot be granted, then in alternative, the Defendant be directed to pay amount of Rs.7,51,000/-. In paragraph 12 of the plaint, the manner in which the cause of action has arisen is set out. It is inter alia stated that entire payment is made by the Plaintiff to the Defendant No.1 and thereafter, the Plaintiff has requested the Defendant No.1 to perform the contract. In paragraph No.14 of the plaint, it is mentioned that the suit is filed for specific performance of contract in which consideration amount of Rs.2,51,000/- has been paid by the Plaintiff and the alternate claim is of Rs.7,60,000/-. Therefore, reading of the plaint as whole clearly shows that the Plaintiff has filed suit for the specific performance of agreement dated 1st March 1994.

6. It is significant to note that the learned Trial Court has inter alia framed the following issues:-

Sr. No.	***ISSUES***	***FINDINGS***
1]	Does the plaintiff prove an agreement for sale of the suit property dated 01.03.1994 alleged to have been executed and signed in his favour?	***Yes.***
2]	Does the plaintiff prove that he is even ready to perform his part of contract?	***Yes.***
3]	Is plaintiff entitled to the relief of specific performance?	***No.***

7. Both the parties have laid evidence on the basis of above referred issues. It is important to note that the issues inter alia include proof of the execution of suit agreement, the readiness and willingness of the Plaintiff to perform his part of contract and whether Plaintiff is entitled to the relief of specific performance. Thus, both the parties were aware about the pleadings of either of the parties and issues framed. All the parties went to the trial with complete knowledge that the aforesaid issues are involved in the suit.

8. Mr. Vineet Naik, learned Senior Counsel appearing for Respondent No.1 has rightly relied on the decision of the

Supreme Court in the matter of **Ganesh Shet vs. C.S.G.K. Setty & Ors.**[1] He more particularly relied on the paragraphs 36 and 37 of the said decision, which read as under:-

> "**36.** It is stated in Corpus Juris Secundum (Vol. 81 A, Specific Performance) (Para 189) as follows:
>
> > **"In accordance with general rules, the relief awarded in a suit for specific performance would be based on the issues raised by the pleadings and supported by the proof.** More specifically, relief awarded for the plaintiff must be authorised by or be in conformity with his pleading in respect of the contract to be enforced and the parties thereto".
>
> "**37.** As to the 'general relief' in suits for specific performance it is stated:
>
> > "In accordance with the general rules and its qualifications and limitations where the bill or complaint **in a suit for specific performance contains a prayer for general relief, the court may grant relief consistent with the facts pleaded and proved and the court may in some cases grant or award partial relief.**"
> >
> > (Emphasis added)

9. The learned First Appellate Court while considering the

1 AIR 1998 SC 2216

objection of the Appellant that there is no prayer clause seeking specific performance of contract held that Court shall have to take into consideration entire plaint as a whole and documents placed on record by the plaintiff in order to consider pleadings of the Plaintiff. The learned First Appellate Court on consideration of entire plaint, agreement for sale executed by Defendant No.1 in favour of Plaintiff and receipt issued by defendant No.1 (Exhibit-75) for amount of Rs.2,51,000/, held that the suit was filed for specific performance of agreement for sale by Defendant No.1. The various contentions and averments raised in the plaint as set out hereinabove in detail clearly show that the suit is filed for the specific performance of agreement dated 1st March 1994. The prayer clause (a) of the plaint seeks that suit be decreed with costs and by prayer clause (b), delivery of the possession of the suit property was sought from the Defendants. If the plaint is read entirely, it is very clear that the suit is for specific performance of said agreement dated 1st March 1994. In fact accordingly issues were framed by the learned Trial Court as set out hereinabove and both the parties went to trial with complete knowledge of the issues involved in the suit.

10. In the above context, Section 22 of the Specific Relief Act, 1963 reads as under:-

> **"22. Power to grant relief for possession, partition, refund of earnest money, etc.—**
>
> (1) Notwithstanding anything to the contrary contained in the Code of Civil Procedure, 1908 (5 of 1908), **any person suing for the specific performance of a contract for the transfer of immovable property may, in an appropriate case, ask for—**
>
> (a) **possession**, or partition and separate possession, of the property, **in addition to such performance**; or
>
> (b) **any other relief to which he may be entitled**, including the refund of any earnest money or deposit paid or 1[made by] him, in case his claim for specific performance is refused.
>
> (2) **No relief under clause (a) or clause (b) of sub-section (1) shall be granted by the court unless it has been specifically claimed:**
>
> **Provided that where the plaintiff has not claimed any such relief in the plaint, the court shall, at any stage of the proceeding, allow him to amend the plaint on such terms as may be just for including a**

claim for such relief.

(3) The power of the court to grant relief under clause (b) of sub-section (1) shall be without prejudice to its powers to award compensation under section 21."

(Emphasis added)

Section 22 contemplates that any person suing for the specific performance of a contract for the transfer of immovable property may, in an appropriate case, ask for—(a) possession, or partition and separate possession, of the property, in addition to such performance; or (b) any other relief to which he may be entitled, including the refund of any earnest money or deposit paid, in case his claim for specific performance is refused. Sub-Section 2 of Section 22 provides that no relief under clause (a) or clause (b) of sub-section (1) shall be granted by the court unless it has been specifically claimed: Provided that where the plaintiff has not claimed any such relief in the plaint, the Court shall, at any stage of the proceeding, allow him to amend the plaint on such terms as may be just for including a claim for such relief. Section 22 applies to the reliefs which are in addition to specific performance. The relief contemplated under Sub-Section (1)(a) are regarding possession or partition and separate possession and relief contemplated in Sub-Section (1) (b) is any other relief to which he may be entitled, including the refund of any earnest money.

11. It is significant to note that in the present case, the application bearing Exhibit-130 was filed by the Plaintiff in said Special Civil Suit No.219 of 2014 on 28th November 2014 seeking amendment of the plaint inter alia to include the following reliefs:-

> "B-1) The defendant No.1 and 2 be directed to give possession of suit land also directed to the Defendant No.1 to execute registered Sale Deed in favour of the Plaintiff related with suit land in question and if the Defendant No.1 has not executed the Sale Deed of suit land in favour of the Plaintiff then give direction to complete the said transaction by appointment of Court Commissioner."

However, the said Application was rejected by the learned Joint Civil Judge, Senior Division, Solapur by order dated 28th November 2014 passed below Exhibit-130 in Special Civil Suit

No.219 of 2014. It is further significant to note that the said order is specifically challenged before the learned First Appellate Court in said Regular Civil Appeal No.53 of 2015. The learned First Appellate Court in paragraph 17 in that regard has observed as follows:-

> "17. **In view of above discussion I am of the opinion that plaintiff is entitled for relief of performance of contract on the basis of agreement of sale executed on 1/3/1994. Plaintiff is entitled for execution of registered sale deed of the suit property in his favour with possession of the suit property from defendant No.2.** In view of above discussion as the learned trial Court has refused to grant relief of execution of sale deed and possession in favour of plaintiff on technical grounds the judgment and decree requires interference by this Court. **At the same time I am of the opinion that, though orders on Exh. 127, 128 and 131 at appropriate forum are not challenged by the plaintiff his grievance is considered on the basis of merits of the case hence there is no need to pass any separate orders on Exh. 127,128 and 131 while deciding this appeal.** Hence I am of the opinion that plaintiff is entitled for the relief of specific performance of contract as well as possession of suit property therefore decree is

> required to be modified. Hence I answer point Nos.3 and 4 accordingly and proceed to pass following order to answer point No.5."
>
> (Emphasis added)

In said paragraph 17, Exhibit-131 is mentioned incorrectly and the same should be Exhibit-130.

12. Thus, in the present case, a specific issue has been framed whether the Plaintiff is entitled for specific performance of the agreement. The said issue is framed on the basis of the pleadings. It is significant to note that all the parties went to the trial on the basis of said issue and on the basis of pleadings of the parties and laid the evidence accordingly. Both the learned Trial Court and the learned First Appellate Court have concurrently found that Plaintiff has proved the execution of the suit agreement and also that the Plaintiff is ready and willing to perform his part of the contract. The learned Trial Court has refused to pass the decree of specific performance only on the ground of absence of specific prayer. The learned First Appellate Court has taken into consideration entire pleadings and issues framed and that the Plaintiff has proved execution of agreement as well as proved readiness and

willingness and also that even the learned Trial Court has recorded affirmative finding on these issues and granted the said relief. It is also significant to note that specific application has been filed bearing Exhibit-130 to amend the plaint and the same was rejected. Thus, this is not a case where any prejudice has been caused to the Appellant i.e. Defendant No.2 in absence of specific relief not sought by the Plaintiff. If plaint is read as whole, it is clear that the suit is filed for the specific performance. The decree of the specific performance passed by the learned First Appellate Court is supported by the decision of the Supreme Court in **Ganesh Shet** (supra) wherein Supreme Court has held that in a suit for specific performance if a prayer seeking general relief is made then, in that case, Court may grant relief consistent with the facts pleaded and proved and the Court may in some cases grant or award partial relief. As set out hereinabove, the perusal of the plaint shows that, at the top of the plaint, the title is mentioned as **"Suit for Specific Performance and possession"**. The contents of the plaint as discussed hereinabove clearly show that the same is filed for specific performance of the agreement dated 1st March 1994.

The prayer clause (a) contains general prayer that suit be decreed and prayer clause (b) is regarding possession. Thus, the learned First Appellate Court is right in holding that there is no impediment in granting relief directing the Defendant No.1 to execute Sale Deed in favour of the Plaintiff.

13. To substantiate the contention that, in the absence of relief, decree of specific performance could not be granted, Mr. Damle, learned Senior Counsel has relied on the decision of the Supreme Court in the matter of **Akella Lalitha vs. Konda Hanumantha Rao & Anr.**[2] and **Bachhaj Nahar vs. Nilima Mandal & Anr.**[3] As far as the said decision of **Akella Lalitha** (supra) is concerned, it has been observed that absolutely no relief was ever sought by them for the change of surname of the child to that of first husband/ son of Respondents and further observed that it is settled law that relief not found on pleadings should not be granted. If a Court considers or grants a relief for which no prayer or pleading was made depriving the Respondent of an opportunity to oppose or resist such relief, it would lead to miscarriage of justice. The factual position in the present case

2 2022 SCC OnLine SC 928
3 (2008) 17 SCC 491

is totally different. As set out hereinabove, in the plaint averments are raised regarding specific performance of the contract, issues have been framed by the learned Trial Court concerning same and the parties went to trial fully knowing the issues involved in the trial and therefore, this is not a case where the Appellant was deprived of an opportunity as contemplated in paragraph 16 in **Akella Lalitha** (supra), and therefore, there is no miscarriage of justice. Mr. Damle, learned Senior Counsel relied on paragraphs 12, 13, 20 and 23 in **Bachhaj Nahar** (supra), which read as under:-

> "**12. The object and purpose of pleadings and issues is to ensure that the litigants come to trial with all issues clearly defined and to prevent cases being expanded or grounds being shifted during trial. Its object is also to ensure that each side is fully alive to the questions that are likely to be raised or considered so that they may have an opportunity of placing the relevant evidence appropriate to the issues before the court for its consideration.** This Court has repeatedly held that the pleadings are meant to give to each side intimation of the case of the other so that it may be met, to enable courts to determine what is really at issue between the parties, and to prevent any deviation from the

course which litigation on particular causes must take.

13. The object of issues is to identify from the pleadings the questions or points required to be decided by the courts so as to enable parties to let in evidence thereon. When the facts necessary to make out a particular claim, or to seek a particular relief, are not found in the plaint, the court cannot focus the attention of the parties, or its own attention on that claim or relief, by framing an appropriate issue. As a result the defendant does not get an opportunity to place the facts and contentions necessary to repudiate or challenge such a claim or relief. Therefore, the court cannot, on finding that the plaintiff has not made out the case put forth by him, grant some other relief. The question before a court is not whether there is some material on the basis of which some relief can be granted. The question is whether any relief can be granted, when the defendant had no opportunity to show that the relief proposed by the court could not be granted. When there is no prayer for a particular relief and no pleadings to support such a relief, and when defendant has no opportunity to resist or oppose such a relief, if the court considers and grants such a relief, it will lead to miscarriage of justice. Thus it is said that no amount of evidence, on a plea that is not put forward in the pleadings, can be looked into to grant any relief.

(Emphasis added)

20. The pleadings necessary to establish an easement by prescription, are different from the pleadings and proof necessary for easement of necessity or easement by grant. In regard to an easement by prescription, the plaintiff is required to plead and prove that he was in peaceful, open and uninterrupted enjoyment of the right for a period of twenty years (ending within two years next before the institution of the suit). He should also plead and prove that the right claimed was enjoyed independent of any agreement with the owner of the property over which the right is claimed, as any user with the express permission of the owner will be a licence and not an easement. For claiming an easement of necessity, the plaintiff has to plead that his dominant tenement and defendant's servient tenement originally constituted a single tenement and the ownership thereof vested in the same person and that there has been a severance of such ownership and that without the easementary right claimed, the dominant tenement cannot be used. We may also note that the pleadings necessary for establishing a right of passage is different from a right of drainage or right to support of a roof or right to water course. We have referred to these aspects only to show that a court cannot assume or infer a case of easementary right, by referring to a stray sentence here and a stray sentence there in the pleading or evidence.

23. It is fundamental that in a civil suit, relief to be granted can be only with reference to the prayers made in the pleadings. That apart, in civil suits, grant of relief is circumscribed by various factors like court fee, limitation, parties to the suits, as also grounds barring relief, like res judicata, estoppel, acquiescence, non-joinder of causes of action or parties etc., which require pleading and proof. **Therefore, it would be hazardous to hold that in a civil suit whatever be the relief that is prayed, the court can on examination of facts grant any relief as it thinks fit**. In a suit for recovery of Rs.one lakh, the court cannot grant a decree for Rs. Ten lakhs. In a suit for recovery possession of property `A', court cannot grant possession of property `B'. In a suit praying for permanent injunction, court grant a relief of declaration or possession. **The jurisdiction to grant relief in a civil suit necessarily depends on the pleadings, prayer, court fee paid, evidence let in, etc.**"

(Emphasis added)

14. In fact, Mr. Vineet Naik, learned Senior Counsel appearing for Respondent No.1 has relied on the said decision in **Bacchaj Nahar** (supra) and particularly on paragraph 13 of the same. In the said decision, the Supreme Court has held that there should not be miscarriage of justice as a result of Defendant not getting an opportunity to place the facts and contentions necessary to repudiate or challenge a particular claim or relief. The detailed pleadings in the plaint clearly show that the suit is for the specific performance of the agreement dated 1st March 1994. The facts pleaded and proved clearly show that the execution of the agreement is proved, payment of entire consideration as agreed is also proved. Both the Courts have concurrently held that the Plaintiff has proved the agreement and readiness and willingness. The pleadings on record as well as the issues framed by the learned Trial Court clearly show that the Appellant went to the trial with full knowledge that the suit is for the specific performance of agreement dated 1st March 1994

Therefore, there is no substance in the first substantial question of law raised by Mr. Damle, learned Senior Counsel appearing for the Appellant.

15. Mr. Damle, learned Senior Counsel has also raised another substantial question of law that agreement for sale dated 1st March 1994 is illegal and null and void as the same is contrary to the provisions of the ULC Act. He relied on Sub-Section 4 of Section 10 of the ULC Act, which reads as under:-

> "**10. (4)** During the period commencing on the date of publication of the notification under sub-section (1) and ending with the date specified in the declaration made under sub-section (3)—
>
> (i) no person shall transfer by way of sale, mortgage, gift, lease or otherwise any excess vacant land (including any part thereof) specified in the notification aforesaid and any such transfer made in contravention of this provision shall be deemed to be null and void; and
>
> (ii) no person shall alter or cause to be altered the use of such excess vacant land."

To substantiate his contention, Mr. Damle, relied on the decision of the Supreme Court in the matter of **Narayanamma & Anr. vs. Govindappa & Ors.**[4] and particularly, on paragraphs 24, 25 and 26 and also on the decision of the Supreme Court in the matter of **State of Uttar Pradesh & Ors. vs. Adarsh Seva**

4 (2019) 19 SCC 42

Sahkari Samiti Limited[5]**.**

16. In **Narayanamma & Anr.** (supra), the Supreme Court was considering the case where mortgage deed was executed on 23rd April 1990 and within a period of one month, the agreement of sale is executed and at the time of agreement itself the entire consideration amount is said to have been received and also the possession is handed over to the Plaintiff. In view of Section 61 of the Karnataka Land Reforms Act, 1961 which prohibits transfer of land of which tenant has become occupant, it has been held that as there is complete prohibition on such mortgage or transfer for a period of 15 years from the date of grant, the unambiguous legislative intent is that no such mortgage, transfer, sale etc. would be permitted for a period of 15 years from the date of grant. Mr. Damle, learned Senior Counsel has heavily relied on paragraphs 24 and 26 of the said decision, which read as under:-

> "24. The transaction between the late Bale Venkataramanappa and the plaintiff is not disputed. Initially the said Bale Venkataramanappa had executed a registered mortgage deed in favour of the plaintiff. Within a month, he entered into an

5 (2016) 12 SCC 493

agreement to sell wherein, the entire consideration for the transfer as well as handing over of the possession was acknowledged. **It could thus be seen, that the transaction was nothing short of a transfer of property. Under Section 61 of the Reforms Act, there is a complete prohibition on such mortgage or transfer for a period of 15 years from the date of grant. Sub-section (1) of Section 61 of the Reforms Act begins with a non-obstante clause. It is thus clear that, the unambiguous legislative intent is that no such mortgage, transfer, sale etc. would be permitted for a period of 15 years from the date of grant. Undisputedly, even according to the plaintiff, the grant is of the year 1983, as such, the transfer in question in the year 1990 is beyond any doubt within the prohibited period of 15 years.** Sub-section (3) of Section 61 of the Reforms Act makes the legislative intent very clear. It provides, that any transfer in violation of sub-section (1) shall be invalid and it also provides for the consequence for such invalid transaction.

26. However, the ticklish question that arises in such a situation is: "the decision of this Court would weigh in side of which party"? As held by Hidayatullah, J. in *Kedar Nath Motani*, the question that would arise for consideration is as to whether the plaintiff can rest his claim without relying upon

the illegal transaction or as to whether the plaintiff can rest his claim on something else without relying on the illegal transaction. **Undisputedly, in the present case, the claim of the plaintiff is entirely based upon the agreement to sell dated 15.05.1990, which is clearly hit by Section 61 of the Reforms Act. There is no other foundation for the claim of the plaintiff except the one based on the agreement to sell, which is hit by Section 61 of the Act.** In such a case, as observed by Taylor, in his "*Law of Evidence*" which has been approved by Gajendragadkar, J. in *Immani Appa Rao*, although illegality is not pleaded by the defendant nor sought to be relied upon him by way of defence, yet the Court itself, upon the illegality appearing upon the evidence, will take notice of it, and will dismiss the action *ex turpi causa non oritur actio* i.e. No polluted hand shall touch the pure fountain of justice. Equally, as observed in *Story's Equity Jurisprudence*, which again is approved in *Immani Appa Rao*, where the parties are concerned with illegal agreements or other transactions, courts of equity following the rule of law as to participators in a common crime will not interpose to grant any relief, acting upon the maxim *in pari delicto potior est conditio defendentis et possidentis*."

(Emphasis added)

17. In paragraph 24, the Supreme Court has taken into consideration that under the agreement, entire consideration is paid and where possession was received and therefore, held that the transaction is nothing short of transfer of property which is completely prohibited. In that particular case, mortgage was executed on 23rd April 1990 and thereafter, within a period of one month agreement for sale was executed and entire consideration was paid and the possession was also handed over. Thus, in the facts and circumstances of that case, the Supreme Court has held that the transaction is hit by Section 61 of the Karnataka Land Reforms Act, 1961. The said decision will not apply to the present case. In the present case, only agreement for sale was executed on 1st March 1994. Although, entire consideration is paid from time to time and accordingly receipt was issued on 30th April 1997, it is admitted position that the possession is not handed over to the Respondent No.1.

18. Mr. Vineet Naik, learned Senior Counsel appearing for Respondent No.1 has relied on the decision of Supreme Court in

the matter of **Balwant Vithal Kadam vs. Sunil Baburaoi Kadam**[6], wherein it has been specifically held that agreement for sale in itself does not create any third party interest in the land nor does it amount to sale and sale under Section 54 of the Transfer of Property Act, 1882 (for short **"T. P. Act"**). It only enables the intending buyer to claim specific performance of such agreement on proving its terms. In other words, there lies a distinction between an agreement to sell and sale. The latter creates an interest in the land once accomplished as defined under Section 54 of the T.P. Act. He also relied on the decision of Supreme Court in the matter of **Suraj Lamp and Industries Pvt. Ltd.(2) vs. State of Haryana & Anr.**[7] In the said decision, the Supreme Court has taken into consideration Section 54 of the T. P. Act which defines sale. Said Section 54 *inter alia* provides that a contract for the sale of immovable property is a contract that a sale of such property shall take place on terms settled between the parties. It does not, of itself, create any interest in or charge on such property. Mr. Naik, learned Senior Counsel has relied on paragraphs 16 to 19 and 26 of said decision,

6 (2018) 2 SCC 82

7 (2012) 1 SCC 656

which read as follows:-

"Scope of an agreement of sale

16. Section 54 of the TP Act makes it clear that a contract of sale, that is, an agreement of sale does not, of itself, create any interest in or charge on such property. This Court in ***Narandas Karsondas*** v. ***S.A. Kamtam*** observed: (SCC pp. 254-55, paras 32-33 & 37)

"**32. A contract of sale does not of itself create any interest in, or charge on, the property. This is expressly declared in Section 54 of the Transfer of Property Act.** (See ***Ram Baran Prasad*** v. ***Ram Mohit Hazra*)** The fiduciary character of the personal obligation created by a contract for sale is recognised in Section 3 of the Specific Relief Act, 1963, and in Section 91 of the Trusts Act. The personal obligation created by a contract of sale is described in Section 40 of the Transfer of Property Act as an obligation arising out of contract and annexed to the ownership of property, but not amounting to an interest or easement therein.

33. In India, the word 'transfer' is defined with reference to the word 'convey'. ...

The word 'conveys' in Section 5 of the Transfer of Property Act is used in the wider sense of conveying ownership.

* * *

37. ... that only on execution of conveyance, ownership passes from one party to another....”

17. In ***Rambhau Namdeo Gajre*** v. ***Narayan Bapuji Dhotra*** this Court held: (SCC p.619, para 10)

“***10.*** Protection provided under Section 53-A of the Act to the proposed transferee is a shield only against the transferor. It disentitles the transferor from disturbing the possession of the proposed transferee who is put in possession in pursuance to such an agreement. It has nothing to do with the ownership of the proposed transferor who remains full owner of the property till it is legally conveyed by executing a registered sale deed in favour of the transferee. Such a right to protect possession against the proposed vendor cannot be pressed into service against a third party.”

18. It is thus clear that a transfer of immovable property by way of sale can only be by a deed of conveyance (sale deed). In the absence of a deed of conveyance (duly stamped and registered as required by law), no right, title or interest in an immovable property can be transferred.

19. Any contract of sale (agreement to sell) which is not a registered deed of conveyance (deed of sale) would fall short of the requirements of Sections 54 and 55 of the TP Act and will not confer any title nor

transfer any interest in an immovable property (except to the limited right granted under Section 53-A of the TP Act). According to the TP Act, an agreement of sale, whether with possession or without possession, is not a conveyance. Section 54 of the TP Act enacts that sale of immovable property can be made only by a registered instrument and an agreement of sale does not create any interest or charge on its subject-matter.

26. We have merely drawn attention to and reiterated the well-settled legal position that SA/GPA/will transactions are not "transfers" or "sales" and that such transactions cannot be treated as completed transfers or conveyances. They can continue to be treated as existing agreements of sale. Nothing prevents the affected parties from getting registered deeds of conveyance to complete their title. The said "SA/GPA/will transactions" may also be used to obtain specific performance or to defend possession under Section 53-A of the TP Act. If they are entered before this day, they may be relied upon to apply for regularisation of allotments/leases by development authorities. We make it clear that if the documents relating to "SA/GPA/will transactions" have been accepted/acted upon by DDA or other developmental authorities or

> by the municipal or Revenue Authorities to effect mutation, they need not be disturbed, merely on account of this decision.
>
> (Emphasis added)

19. Thus, it is settled legal position that an agreement for sale does not create any right, title and interest in the land in question and the only right created is to seek specific performance of such agreement if the terms and conditions of the contract are proved. Therefore, suit agreement dated 1st March 1994 is not affected by Sub-Section 4 of Section 10 of the ULC Act. Said provision specifies that no person shall transfer by way of sale, mortgage, gift, lease or otherwise any excess vacant land (including any part thereof) and any such transfer made in contravention of this provision shall be deemed to be null and void.

20. In the present case, there is only agreement for sale dated 1st March 1994, the entire consideration is paid from time to time till 30th April 1997. Admittedly, the possession is not received by the Respondent No.1 therefore, the suit agreement cannot be treated as transfer. Mr. Vineet Naik, learned Senior Counsel is right in contending that by said agreement, no right

is transferred or created in favour of Defendant No.1 except, to get the said agreement specifically performed. Therefore, there is no substance in the second substantial question of law raised by Mr. Damle, learned Senior Counsel.

21. Mr. Damle, learned Senior Counsel also raised the third substantial question of law to the effect that whether on the basis of admission given by the Defendant No.1, the learned First Appellate Court could have decreed the suit for specific performance in favour of the Plaintiff ignoring the rights of the Defendant No.2. The evidence on record clearly shows that learned Trial Court as well as learned First Appellate Court has recorded specific finding that the Plaintiff has proved the execution of agreement dated 1st March 1994 and that Plaintiff has further proved the payment of entire consideration from time to time and proved the receipt dated 30th April 1997. Therefore, it cannot be said that only on the basis of admission of Defendant No.1, the finding is recorded that Plaintiff has proved said agreement for sale and further Plaintiff has proved that he is ready and willing to perform his part of the contract. Therefore, there is no substance in the third substantial

question of law raised by Mr. Damle, learned Senior Counsel on behalf of the Appellant.

22. As there is no substance in any of the substantial questions of law raised on behalf of the Appellant, the Second Appeal is dismissed however, with no order as to costs.

23. In view of the dismissal of the Second Appeal, nothing survives in the Civil Application and the Interim Applications and the same are also disposed of.

24. Mr. Damle, learned Senior Counsel appearing for the Appellant states that, by order dated 26th October 2021, statement has been recorded to the effect that Respondents will not proceed with the execution of the impugned judgment and decree. Mr. Damle, learned Senior Counsel states that the said statement be continued for few months so that the Appellant will be able to challenge this order before the Supreme Court. Mr. Vineet Naik, learned Senior Counsel appearing for Respondent No.1 states that till 31st December 2023, the decree will not be executed.

[MADHAV J. JAMDAR, J.]