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A.Nos.538 and 539 of 2020
and A.No.7799 of 2019
in C.S.No.718 of 2006

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N.SESHASAYEE.J.,

A.Nos.538 and 539 of 2020 have been taken out by a *pendente lite* purchaser of the suit property from the 3rd defendant in a suit for specific performance. It is principally opposed by the learned counsel for the plaintiff on the ground that there was an order of injunction operating against the 3rd defendant from alienating the property, and despite that this Court has been hoodwinked in selling the property through the power of attorney of the 3rd defendant to the *pendente lite* purchaser / the applicant herein. Earlier, an application for initiating action in contempt was taken out by the plaintiff but owing to his death, it was closed.

2.That the 3rd defendant has violated an order of injunction, need not necessarily imply that the applicant might not be heard. After all, in a suit for specific performance, the burden is fundamentally on the plaintiff to prove his case, and with the sole defendant having parted with the property in favour of these applicants, it is important to ensure that the applicants interests are represented before the Court. It may be underscored that mere sale agreement does not create



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any interest over the land, and the presence of the subsequent purchaser is essential to transfer title to the plaintiff in the eventuality of plaintiff succeeding in his pursuit for a decree for specific performance.

3.Hence A.No.538 of 2020 and A.No.539 of 2020 are allowed. The plaintiff is required to carryout necessary amendment today.

4.Inasmuch as the applicant herein knew about the litigation, and inasmuch as they have volunteered to enter appearance in the case, this Court may have to waive certain aspects of procedure and has to break the rule to insist the defendants to file their written statement within a period of 30 days. After all, procedure is only a handmaid of justice and it cannot be glorified far beyond its real utility. The defendants are entitled to a notice and a hearing and that has already been extended by this Court. Now, it is their duty not to fall back on certain aspects of procedure which sets unnecessary time line for a person, who knew about the litigation, for filing their written statement.



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5.Learned counsel for the plaintiff is directed to circulate plaint and other documents today, to which the learned counsel concurs.

6.Post the matter on 20.02.2023.

06.02.2023

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