Ramnivas Vyas & Others

v.

H. Srinivasa Bhati & Others

(Supreme Court Of India)

HON'BLE MR. JUSTICE G.S. SINGHVI HON'BLE MR. JUSTICE V. GOPALA GOWDA

Civil Appeal No. 628 Of 2003 | 18-09-2013

V. Gopala Gowda, J.

1. This Civil Appeal is filed by the appellants questioning the correctness of the impugned judgment and decree dated 23.8.2002 passed in C.C.C. Appeal No. 102 of 1997 by the High Court of Judicature of Andhra Pradesh at Hyderabad by framing certain questions of law and urging grounds in support of the same and prayed to set aside the same and restore the judgment and decree dated 2.12.1996 passed by the Ist Additional Judge, City Civil Court, Hyderabad (for short the 'trial court') in O.S. No. 2112 of 1988.

2. In this judgment, for the sake of convenience, we would like to refer to the ranking of the parties as assigned to them in the plaint presented before the trial court. Brief facts and necessary legal contentions urged on behalf of the parties are stated herein with a view to examine and find out as to whether the legal representatives of the deceased plaintiff are entitled for the relief as prayed in this appeal.

3. The case of the plaintiff is that defendant Nos.1 & 2, are the owners of the suit schedule property i.e. mulgies bearing Municipal Nos. 15-8- 121 to 15-8-123, Feelkhana, Begum Bazar, Hyderabad, executed Agreement of Sale dated 8.9.1988 (Ex.A3) agreeing to sell the suit schedule property in his favour for consideration of Rs.6,65,000/-. It is his further case that prior to the execution of Ex.A3 defendant Nos.1 & 2 received Rs.10,000/- from the plaintiff by way of advance money on 14.8.1988 (receipt as per Ex. A2) to which receipt the P.W. 2 (brother of the plaintiff) is an attesting witness and the defendant Nos. 1 & 2 delivered the copies of documents relating to the title deeds of suit schedule

property to the plaintiff, marked as Exs. A5 to A8. It is the further case of the plaintiff that he got published the notices as per Exs. A9 and A10 on 29.8.1988 in local dailies, namely, 'Deccan Chronicle' and 'Siasat' inviting objections to the proposed sale in his favour by defendant Nos. 1 & 2 in respect of the suit schedule property. In response to the said publication, defendant Nos. 3 to 5 got published notices as per Exs. A11 and A12 dated 3.9.1988 in the very same daily newspapers alleging that they also have got title and interest in the suit schedule property and the defendant Nos. 1 & 2 are not legally entitled to sell the same. That apart, the plaintiff also received a telegram (Ex. A18) from an advocate, Bhagwan Das Sharma purported to be issued on behalf of his client Smt. Padma Bai w/o Ram Dev raising objections with regard to the sale of the two mulgies of premises Nos.15- 8-121 and 15-8-122. However, the defendant Nos. 1 & 2 received a further advance of Rs.1,50,000/- from the plaintiff on 8.9.1988 under receipt Ex. A4 and also executed the Agreement of Sale (Ex. A3) in favour of the plaintiff asserting that they are the true, legal and lawful owners of the suit schedule property. As per the terms and conditions agreed between the parties in the Agreement of Sale, the transaction of sale in respect of the suit schedule property had to be completed within a period of two months and defendant Nos.1 & 2 were to obtain the necessary sanctions and permission from the concerned authorities for completion of the transaction of sale. The balance sale consideration of Rs.5,05,000/- was decided to be paid to the defendant Nos. 1 & 2 at the time of registration of the Sale Deed. Thereafter, the plaintiff received a notice dated 4.9.1988 (Ex. A19) from Shri Bhagwan Das Sharma, Advocate alleging that the suit schedule property was agreed to be sold by defendant Nos.1 & 2 in favour of his client, as she was residing in the mulgi No. 15-8-122 as a tenant. Further, it is pleaded by the plaintiff that the defendant Nos. 1 & 2 filed R.C. No.1039 of 1987 on the file of 1st Addl. Rent Controller, Hyderabad, against one Bankat Lal which is pending and that the alleged Agreement of Sale in favour of Padma Bai is false. It is further pleaded by him that Shri Bhagwan Das Sharma, Advocate got published notice dated 13.9.1988 as per Ex. A16 in 'Hindi Milap' informing the general public that his client Padma Bai agreed to purchase the three suit schedule mulgies from defendant Nos. 1 & 2. In reply, the defendant Nos. 1 & 2 through their counsel got published a notice dated 8.10.1988 (Ex. A17) denying the allegations made in the public notice dated 13.9.1988 (Ex. A16) and they have categorically stated that the only sale transaction they entered into is with the plaintiff. Therefore, in the facts narrated above, the plaintiff got issued a registered notice dated 5.11.1988(Ex. A21) calling upon the defendants Nos. 1 & 2 to comply with the terms and conditions of the Agreement of Sale (Ex. A3) and asked them to execute a Sale Deed in his favour. Since they failed to respond to the

legal notice, the plaintiff filed the original suit against defendant Nos. 1 to 5 and thereafter filed an application (I.A. No. 689 of 1993)for impleadment of defendant No. 6 as he was necessary and proper party to the proceedings as he got four Sale Deeds executed (Exs. A32 to A35) on different dates in April 1993 in respect of the suit schedule property in his favour from defendant Nos. 1 & 2. The trial court passed an order dated 17.9.1993 in I.A. No. 689 of 1993 and the plaint was amended seeking a direction to defendant No. 6 to join the defendant nos.1 & 2 for execution of Sale Deed in favour of the plaintiff and also for delivery of vacant possession of suit property. In the amended plaint, it was stated that defendant No.6 was a tenant in the suit mulgi bearing No. 15.8.123 wherein he was carrying on business under the name of Srinivasa Satyanarayana Bhati Kirana Shop. It was further alleged by the plaintiff that defendant No.6 was fully aware of the pendency of the suit as well as the suit transaction between the plaintiff and defendant Nos. 1 & 2 and despite the same he had obtained Sale Deeds (Exs. A32 to A35) in collusion with defendant Nos. 1 & 2 and the same are in violation of the order of temporary injunction dated 5.12.1988 passed in I.A. No.1233 of 1988 in the suit. It was further contended in the original suit proceedings that the sale in respect of the suit property in favour of the defendant No. 6 is hit by lis pendens. Therefore, the plaintiff pleaded that defendant No. 6 was also bound to join defendant Nos. 1 & 2 to execute the Sale Deed in his favour in the event of the decree being passed in his favour and to deliver vacant possession of the suit schedule property.

4. Defendant Nos. 1 & 2 contested the suit claim by filing a written- statement on 27.12.1989 whereby they denied the aforesaid plaint averments and further denied the execution of Agreement of Sale as per Ex. A3 and they received Rs.1,60,000/- in total towards the part sale consideration as an advance amount from the plaintiff. Further, they stated that the documents i.e. receipt dated 14.8.1988 (Ex. A2), Agreement of Sale dated 8.9.1988 (Ex. A3) and receipt dated 8.9.1988 (Ex.A4) are forged, fabricated and created in collusion with defendant Nos. 3 to 5 who are inimical to them. Further, they stated that they are not aware of any notice that got published by the plaintiff in the Newspapers nor the reply notices published by defendant Nos. 3 to 5 in the daily newspapers as averred in the plaint. They also stated that they were unaware of any notice having been issued by Shri Bhagwan Das Sharma, Advocate. They also denied having entered into any transaction in favour of the plaintiff for the sale of the suit schedule property and pleaded the trial court to dismiss the suit with compensatory costs.

5. Defendant Nos. 3 to 5 filed separate written-statement contesting the suit claim of the plaintiff. They denied Agreement of Sale (Ex. A3) and further stated that in the suit schedule property they are also entitled for their respective share. Further, they contended that the Agreement of Sale (Ex. A3) is collusive and illegal which is alleged to have been entered with the defendant Nos. 1 & 2 with a view to harass them.

6. Defendant No. 6 filed his written-statement denying the execution of Agreement of Sale(Ex. A3) in favour of the plaintiff by defendant nos.1 & 2 in respect of the said schedule property as well as the payment of advance amount said to have been paid to them towards the part sale consideration. Further, it is pleaded by him that he was in possession of mulgi bearing No. 15-8-123 as a tenant and running Kirana Shop and defendant Nos. 1 & 2 are the owners of the same who have been collecting rent from him since long time. It is further stated that defendant Nos. 1 & 2 offered to sell all the three mulgies of the suit schedule property to him and accordingly they executed the Agreement of Sale dated 5.6.1988 (Ex.B4) in his favour for consideration of Rs.7,00,000/-, before the alleged Agreement of Sale (Ex.A3) is said to have been executed by defendant Nos. 1 and 2 with the plaintiff. He also pleaded that apart from Rs.50,000/- paid under receipt dated 5.6.1988 marked as Ex.B1 to defendant Nos. 1 & 2, he had further made payment of Rs.2,00,000/- by way of pay order drawn on Syndicate Bank, N.S. Road, Hyderabad dated 30.12.1988 under Ex. B2 receipt and another receipt of Rs.1,00,000/- was made through an account payee cheque dated 10.1.1989 drawn on Syndicate Bank, under Ex. B3, towards payment of advance money out of the sale consideration as agreed under the Agreement of Sale (Ex. B4). Further, he had pleaded that since no Sale Deed was executed within the time stipulated under the Agreement of Sale dated 5.6.1988 (Ex. B4), defendant Nos. 1 & 2 executed Ex. B5, another Agreement of Sale dated 19.1.1990, by way of renewal. Thereafter, defendant Nos. 1 & 2 executed 4 Sale Deeds dated 23.4.1993, 29.4.1993, 28.4.1993 and 26.4.1993 in favour of defendant No.6 as per Exs. A32 to A35 respectively and the balance sale consideration was paid by him to them at the time of registration of Sale Deeds. He further stated that there is no dispute as to the title of the defendant Nos. 1 and 2 in respect of the suit schedule property and defendant Nos. 3 to 5 have no right in the suit schedule property. He further pleaded that the plaintiff having shop in front of the suit schedule mulgi in occupation of defendant No.6 was fully aware of the sale transaction in his favour. By virtue of Sale Deeds

executed by defendant Nos. 1 & 2 in his favour in respect of the suit schedule property he has absolute right and interest in respect of the same. Therefore, he has stated that the suit claim of the plaintiff against the defendants is misconceived and the same is liable to be dismissed.

7. On the basis of the pleadings, the trial court framed the following three issues for its determination:-

1) Whether the suit is bad for mis-joinder and non-joinder of parties?

2) Whether the Agreement of Sale and payments under it are true, valid and binding on the defendants?

3) Whether the plaintiff is entitled to specific performance or the alternative relief of refund with interest against defendants 1 and 2?

8. The suit went for trial. The plaintiff and his brother were examined as P.W.1 and P.W.2 (attesting witness) and he got marked documents A1 to A45 in support of the suit claim. The defendant No. 6 got himself examined as D.W.1 and also examined another witness as D.W.2 and marked documents as Ex. B1/receipt dated 5.6.1988 for Rs.50,000/-, Ex.B2/receipt dated 30.12.1988 for Rs.2,00,000/-, Ex. B3 receipt dated 10.1.1989 for Rs.1,00,000/- and Ex. B4/the Agreement of Sale dated 5.6.1988 and Ex. B5/Agreement of Sale dated 19.1.1990 to substantiate his case before the trial court.

9. The trial court on appreciation of the pleadings and evidence on record has answered the issue Nos. 1 to 3 in favour of the plaintiff and come to the conclusion and recorded the finding of fact holding that the Agreement of Sale (Ex. A3) executed in favour of the plaintiff by defendant Nos. 1 & 2 is true, valid and binding and therefore it has answered the issue No.3 holding that the plaintiff is entitled to decree for specific performance of the Agreement of Sale (Ex. A3) in respect of the suit schedule property and defendant Nos. 1, 2 & 6 are directed to execute the Sale Deed in favour of the plaintiff in respect of the

suit schedule property. Accordingly, the trial court directed the plaintiff to deposit the balance sale consideration of Rs.5,05,000/- within one month and on such deposit the defendant Nos. 1, 2 and 6 were directed to execute the registered sale deed in his favour within two months thereafter.

10. The defendant No. 6 being aggrieved by the judgment and decree dated 02.12.1996 passed by the trial court preferred appeal before the High Court of Judicature at Andhra Pradesh, Hyderabad urging various legal grounds inter alia urging that the findings and reasons recorded on the contentious issue Nos. 2 & 3 are not only erroneous but also suffer from error in law. Therefore, he prayed for setting aside the same. It is necessary to mention here that defendant Nos. 1 & 2 did not choose to challenge the trial court judgment.

11. The appellate court, after hearing the learned counsel on behalf of the defendant No.6 and the legal representatives of the plaintiff who were impleaded as respondent Nos. 7 to 21 in the appeal before it, passed the impugned judgment after framing the point - whether in the facts and circumstance of the case the plaintiff is entitled to a decree for specific performance of Agreement of Sale (Ex. A3)? The appellate court at paragraphs 18,23,24,29,30,31 & 32 of the impugned judgment on re-appreciation of pleadings and evidence on record and careful examination of the findings of fact recorded by the trial court, has held that the plaintiff cannot be granted a decree for specific performance in respect of the suit schedule property and set aside the findings of the trial court recorded on the above contentious issue Nos. 2 and 3 after holding that Ex. B4,the Agreement of Sale executed in favour of the defendant No.6 by defendant nos.1 & 2 is true, valid and binding on them by recording its reasons in the impugned judgment and further held that defendant No.6 is a bonafide purchaser of the suit schedule property for valid consideration under Ex. B4 which is a prior agreement than the Agreement of Sale, Ex.A3 alleged to have been executed in favour of the plaintiff and consequently held that the plaintiff is not entitled to a decree for specific performance of the agreement Ex. A3 and set aside the finding and reasons recorded by the trial court on the contentious issue Nos.2 and 3. Consequently, the High Court allowed the appeal and set aside the judgment and decree passed by the trial court. The legal representatives of the deceased plaintiff aggrieved by the impugned judgment and decree filed this civil appeal seeking the relief to set aside the impugned judgment and decree and prayed for restoration of the judgment and decree of the trial court.

12. The correctness of the findings and reasons recorded by the High Court on the contentious point framed by it is challenged in this Civil Appeal, urging various grounds in support of the questions of law framed. It was urged by the learned counsel, Mr. Manu Shankar Mishra for the plaintiff that the High Court has failed to see that along with the plaint, the plaintiff filed Ex. A3, the Agreement of Sale dated 8.9.1988, and the High Court should have read the answer given in the cross examination by P.W. 1, with reference to the receipt dated 14.8.1988 which was issued to him by defendant Nos. 1 & 2 for receipt of part of sale consideration. He further contended that, the High Court has erroneously passed judgment by placing reliance on the following sentence from the cross examination of P.W. 1 which is adverted to at para 24 of the impugned judgment which reads thus:-

"defendant-respondent Nos. 1 & 2 never entered into any agreement with me to sell the suit property for Rs.6,65,000/-".

He has further contended that the evidence of the P.W. 1 could not have been read in isolation when there was Agreement of Sale, Ex.A3, executed by defendant Nos.1 & 2, in favour of the plaintiff. Therefore, the finding recorded on the contentious point is liable to be interfered with by this Court in exercise of its appellate jurisdiction.

13. Further, it is urged by the learned counsel that the High Court has failed to see that defendant Nos. 1 & 2 did not cross examine P.W. 1 (plaintiff), therefore, the documents Exs. A1, A2 and A3 executed by them are proved. The trial court has compared the signatures found on Exs. A1, A2 and A3 with the undisputed signatures of defendant Nos. 1 & 2 found on the certified copies of Sale Deeds Exs. A32 to A35, and other documents viz. Exs. A36 to A44 in the pleading filed in the original suit proceeding and recorded the finding of fact on the contentious issue No. 2 and rightly held that the plaintiff has proved the execution of the Agreement of Sale by defendant Nos. 1 & 2 in respect of the suit schedule property. Therefore, the appellate court has erred in re-appreciating the said documentary evidence and reversing the finding of fact recorded by the trial court on the contentious issue No. 2, and the same is liable to be set aside as it is an erroneous finding.

14. It is further contended by Mr. Manu Shanker Mishra, learned counsel on behalf of the plaintiff that the High Court has failed to see the evidence elicited in the cross examination of P.W. 1 & P.W.2 by the 6th defendant's counsel. He had no right to question the Agreement of Sale executed in favour of the plaintiff by the defendant Nos.1 & 2, therefore, the evidence of P.W. 1 regarding execution of Ex. A3, the Agreement of Sale by his vendors remained unchallenged and no rebuttal evidence was adduced on their behalf in this regard. Therefore, the entire cross examination made to P.W. 1 on behalf of the 6th defendant is not at all relevant, hence the same could not have been relied upon to set aside the finding of fact of the trial court on the relevant contentious issue. Further, the High Court should have considered that the defendant Nos. 1 & 2 did not enter the witness box before the trial court to prove their plea that their signatures on Exs. A2 to A4 are forged. It is further contended that the High Court has failed to see that the signatures of defendant Nos. 1 & 2 on Exs. A2, A3 and A4 were compared with their admitted signatures on the counter affidavit filed to I.A. No. 1133 of 1988, the written statement filed in the original proceeding suit, on the Vakalat filed in the suit and on documents Exs. A36 to A44 which would clearly disclose the fact that the signatures found on Exs. A2, A3 and A4 are that of defendant Nos. 1 & 2. Therefore, the trial court has rightly compared the same and appreciated the documentary evidence on record and recorded the finding of fact while answering the issue No. 2 and rightly held that Ex. A3, the Agreement of Sale executed in favour of the plaintiff is valid and binding on defendant Nos. 1 & 2. Further, it is contended by the learned counsel that the High Court failed to notice the relevant averment made in the counter affidavit filed by them to the application of the plaintiff for grant of temporary injunction and also in the written statement filed by them on 27.12.1989, wherein they have not mentioned anything about the execution of the agreement of sale in favour of the 6th defendant on 5.6.1988. The High Court has further failed to consider the notice dated 8.10.1988 (Ex. A17) wherein the defendant Nos. 1 & 2 have stated that they have not entered into any agreement with anyone except with the plaintiff. It is further contended that the High Court failed to see that if defendant Nos. 1 & 2 really had no collusion with the defendant No. 6 there could not have been any possibility of obtaining registered sale deeds in favour of the 6th defendant in respect of the suit schedule property, particularly, when the original suit is pending before the trial court and an order of temporary injunction was passed after satisfying that the plaintiff has made out the prima facie case against defendant Nos. 1 & 2 and they were restrained from alienating the suit schedule property. The High Court

has gravely erred in holding that defendant Nos. 1 & 2 have executed Ex. B4, the Agreement of Sale dated 5.6.1988 in favour of the defendant No. 6 and it denied the relief granted by the trial court in favour of the plaintiff. The High Court failed to notice the fact that if Ex. B4, the Agreement of Sale, was true and genuine, there was no necessity for the defendant Nos. 1 and 2 to execute another renewal agreement, Ex.B5 and even according to the recital contents of the Agreement of Sale, time was fixed for execution of registered Sale Deed as 31.3.1989 which was altered to 30.6.1989. Therefore, the defendant No.6 could have enforced Ex. B4 the Agreement of Sale within 3 years from the date fixed for registration i.e. 31.3.1989 or 30.6.1989. Therefore, the defendant No.6 had time till 1992 to enforce Ex. B4 Agreement of Sale dated 5.6.1988, and there was no necessity for the defendant No.6 to obtain a renewal agreement in 1990 from the defendant Nos. 1 & 2. But in 1990 itself the 6th defendant obtained renewal of the Agreement of Sale, Ex.B5. Therefore, the learned counsel submits that the above circumstances would also support the case of the plaintiff that there was collusion between defendant Nos. 1, 2 & 6 to defeat the right of the plaintiff which is the most important aspect of the case and this has not been properly appreciated by the High Court while setting aside the findings of fact recorded on the contentious issue Nos. 2 and 3 by the trial court, by answering the contentious point No. 1 in the impugned judgment.

15. He further urged that the High Court also failed to notice another aspect of the matter namely, that in the Agreement of Sale in favour of defendant No. 6, the consideration was Rs.7,00,000/-, but four Sale Deeds were executed by defendant nos.1 & 2 to circumvent the provisions of the Income Tax Act by valuing the property at less than Rs.2,00,000/- in each Sale Deed. It is further submitted by him that if the Agreement of Sale dated 5.6.1988 between defendant Nos. 1 & 2 on one hand and defendant No. 6 on the other, really came to be executed by them on the said date, there is no reason why the rent from defendant No. 6 was waived from February 1989 and also there was no need for execution of another agreement on 19.1.1990 by way of renewal of the same in his favour.

16. It is further contended by the learned counsel for the plaintiff that the High Court has not noticed that the trial court granted ex-parte temporary injunction on 5.12.1988, not to alienate the suit schedule property and the defendant Nos. 1 and 2 received a part of the consideration i.e. Rs.50,000/- on 05.06.1988 as per Ex. B1, Rs.2,00,000/- on 30.12.1988 as per Ex. B2 and Rs.1,00,000/- on

10.01.1989 as per Ex. B3. The alleged Agreement of Sale dated 05.06.1988 (Ex. B4) in favour of defendant No.6, is in contravention of the said order of temporary injunction. Therefore, the High Court should not have considered the said payments to hold that the Agreement of Sale (Ex. B4) executed in favour of defendant No. 6 by the defendant Nos. 1 and 2 was held to be valid. Further, it is contended that once the defendant Nos. 1 and 2 and defendant No. 6 executed Ex. B5, the fresh Agreement of Sale by way of renewal on 19.01.1990 after an order of temporary injunction passed by the trial court on 5.12.1988, the Agreement of Sale was hit by the doctrine of 'lis pendens' and is contrary to the interim order of temporary injunction and therefore, the same could not have been given effect to and relied upon by the appellate court to reverse the findings of fact recorded on the contentious issue Nos. 2 and 3 in favour of the plaintiff. Therefore, it is urged that the High court is not justified in allowing the appeal of the defendant No. 6 by merely placing reliance on a sentence in the cross-examination of P.W. 1, by taking it out of context. Further, it is contended by the learned counsel that the High Court ought to have taken the conduct of defendant Nos. 1 and 2 on one side and defendant No. 6 on the other, and dismissed the appeal filed by him, by affirming the judgment and decree of the trial court.

17. The learned counsel on behalf of the plaintiff has placed reliance upon the following decisions of this Court in support of his legal submissions:-

Bharat Singh & Ors. v. Bhagirathi [1966) 1 SCR 606], Nagindas Ramdas v. Dalpatram Ichharam & Ors.[(1974) 1 SCC 242)], Chikkam Koreswara Rao v. Chikkam Subba Rao & Ors.[((1970) 1 SCC 558)], Nagubai Ammal & Ors. v. B. Shama Rao & Ors.[(1956 SCR 451)], Surjit Singh & Ors. v. Harbans Singh & Ors.[(1995) 6 SCC 50)], Man Kaur v. Hartar Singh Sangha[(2010) 10 SCC 512)] and Saradamani Kandappan v. S. Rajalakshmi & Ors.[((2011) 12 SCC 18)].

18. The learned Senior Counsel Mr. Pallav Shishodia on behalf of defendant No. 6 has placed reliance on the findings and reasons recorded by the appellate court on the contentious point contending that the Division Bench of the High Court on proper re-appreciation of the pleadings and evidence on record has rightly set aside the erroneous findings recorded by the trial court on the contentious issue Nos. 2 & 3 by recording cogent and valid reasons while

answering the contentious points framed by it. Further, it has rightly held that the trial court has committed a serious error both on facts and law in passing the judgment and decree for specific performance in favour of the plaintiff in respect of the suit schedule property. Further, direction issued by the trial court to the defendant Nos.1, 2 & 6 to execute the Sale Deed in respect of the suit schedule property is contrary to pleadings and evidence on record as well as the law laid down by this Court in a catena of cases. Therefore, he has requested this Court not to interfere with the impugned judgment and order passed by the appellate court.

19. Further the learned senior counsel appearing on behalf of defendant No. 6 vehemently placed reliance upon the admission made by the plaintiff, P.W. 1 in his cross examination on 14.6.1995 as he had categorically admitted in his evidence that there is no Agreement of Sale dated 08.09.1988 executed by the defendant Nos. 1 & 2 in his favour in respect of the suit schedule property. This important aspect of the matter has been omitted by the trial court while recording the finding on the relevant contentious issue Nos.2 and 3 whereas the appellate court has rightly adverted to the same and found fault with the findings of fact recorded by the trial court on the contentious issue No. 2 with reference to the Agreement of Sale (Ex. A3) dated 08.09.1988 and held that it has not been proved by the plaintiff holding that the finding recorded by the trial court that the Agreement of Sale (Ex. A3)is valid, true and binding on defendant Nos. 1 & 2, is erroneous as the same is contrary to the legal evidence on record. Apart from the said findings of fact recorded by the trial court in the impugned judgment on the correctness of the finding on issue Nos.2 and 3, the appellate court has further observed and it has recorded the finding stating that by perusal of the judgment of the trial court, it has referred to the evidence but did not consider the same in arriving at a conclusion that Ex. A3 Agreement of Sale is not true, valid and binding on the defendant Nos. 1 & 2. It was further contended by him that the appellate court on re- appreciation of evidence and pleadings on record has held that the plaintiff failed to prove that Ex. B4, the Agreement of Sale was executed in favour of the defendant No. 6 by defendant Nos.1 & 2 with a view to deny rights of the plaintiff and that it is forged and concocted as pleaded by him is not proved by producing the cogent evidence as it was required for him to prove the fact as per the provisions of Sections 101, 103 and 104 of the Evidence Act, 1872, which provisions provide that the party who asserts the plea must prove the fact. This has not been done by the plaintiff in the instant case. Therefore, the appellate court has rightly set aside the erroneous finding of fact recorded by the trial court on issue No. 2 and rightly

set aside the judgment and decree of the trial court and awarded the compensation in favour of the plaintiff which is in conformity with the provisions of Section 22(1) of the Specific Relief Act, 1963. Therefore, the learned senior counsel has prayed to this Court for dismissal of the appeal and not to interfere with the impugned judgment and decree of the appellate court.

20. The substantial questions of law that would arise in this case are:-

1) Whether the findings of fact recorded by the High Court holding that plaintiff is not entitled to a decree for specific performance in respect of the suit schedule property on the basis of the Agreement of Sale (Ex. A3), is legal and valid?

2) Whether the appellate court is justified in reversing the findings of fact recorded on the contentious issue Nos. 2 & 3 by the trial court in its judgment?

3) What decree?

21. Both the point Nos. 1 and 2 are inter-related with each other, therefore, the same are answered together by assigning the following reasons :-

We have carefully examined the above rival legal contentions urged on behalf of the parties with a view to find out the correctness of the findings recorded by the High Court in its impugned judgment. The fact is that the plaintiff-P.W.1 was cross examined on 14.6.1995 by the counsel for defendant No. 6 in the open court and the same has been recorded by the trial court in its order passed in I.A. 643 of 1995, wherein it is held that the evidence of P.W.1 was recorded by the trial judge in open court by reading it out loudly and there was no mistake on the part of the typist who recorded his deposition. The said finding and observation made by the trial Judge in its order on the above application could not have been discarded by it, for the reason that the deposition of P.W.1 was recorded in the open court in the presence of the plaintiff's counsel and therefore the same cannot be termed as incorrectly recorded as contended by him unless it is proved by him by producing cogent evidence to show that his deposition was not correctly recorded by the court. Therefore, we have to hold

that the contentions urged on behalf of the plaintiff that the evidence of P.W.1 in so far that admission portion of the plaintiff was incorrectly recorded by the trial court cannot be accepted, but on the other hand we have to hold that it was correctly recorded and the same must be accepted as true and correct as the same was recorded in the open court. The aforesaid admission of P.W. 1 the plaintiff, which is a very relevant and important piece of evidence has been conveniently omitted by the trial court while recording its finding on the contentious issue No.2 in its judgment. The trial court after referring to the pleadings and documentary evidence on record has made certain observations stating that the defendant No. 6 did not produce the original Sale Deeds Exs. A32 to A35, and only certified copies were made available. Further, the trial court after adverting to the other documentary evidence, Exs. A36 to A45, the certified copies of the proceedings in other cases in which the signatures of defendant Nos. 1 & 2 were there, considered them for the purpose of comparing the signatures found on Exs. A2 to A4 and recorded the finding of fact and held that the plaintiff has proved the execution of Agreement of Sale, Ex. A3 in his favour by the defendant Nos. 1 & 2 and further it has erroneously held that the same is true, valid and binding on defendant Nos. 1 & 2. The said finding of fact is erroneous in law for the reason that the trial court has conveniently omitted to consider the admission made by the plaintiff, P.W. 1 in his cross examination on 14.6.1995, which portion of admission extracted below that:

"...defendants 1 and 2 never entered into any agreement with me to sell the suit property for Rs.6,65,000/-."

wherein the plaintiff has categorically admitted that the defendant Nos. 1 & 2 never entered into any Agreement of Sale with him in relation to the suit schedule property for Rs.6,65,000/-. In view of the aforesaid categorical admission of P.W.1, with regard to non execution of the agreement of sale by the defendant Nos. 1 and 2, the trial court has committed grave error in comparing the signatures of defendant Nos. 1 & 2 with reference to Exs. A36 to A45, certified copies of the proceedings produced in other cases and also the signatures found in the counter affidavit filed by them to the interlocutory application for grant of ad- interim order of temporary injunction as well as the signatures found in the written statement filed by them and recorded the erroneous finding on the contentious issue No. 2 in favour of the plaintiff. There was no need for the trial court to compare the signatures of defendant Nos. 1 & 2 found in certified copies Exs. A36 to A45 and also other admitted signatures

in the pleadings referred to supra to record the findings on the documentary evidence Exs.A2-A4 as correct. Further the observation made by the trial court in its judgment while answering the contentious issue Nos. 2 & 3 by appreciating the evidence of P.W.1 and P.W.2 to record the finding of fact that Ex. A3 Agreement of Sale dated 8.9.1988 is true and valid and binding on defendant Nos. 1 & 2 stating that defendants Nos. 1 & 2 have filed written statement and they did not participate in the proceedings and they were not examined in the case to prove the case pleaded by them. Further it is erroneously stated that if they were examined in the case, the signatures found in Exs. A2, A3 and A4 could have been confronted to them to prove execution of the said documents in favour of the plaintiff.

22. The aforesaid findings and reasons recorded by the trial court are correctly re-examined by the High Court on proper re-appreciation of pleadings and evidence on record and the High Court correctly reversed the findings of the trial court on the above contentious issues by recording valid and cogent reasons. The appellate court has rightly held that perusal of the judgment of the trial court shows that the trial court though it referred to the aforesaid evidence did not consider the same in arriving at the right conclusion to hold that Ex. A3 Agreement is not true, valid and binding on defendant Nos. 1 & 2. The said conclusion and the finding recorded in the impugned judgment by answering the point formulated by the High Court can neither be termed as erroneous in law nor in fact, particularly, in view of the admission made by P.W.1 with regard to non execution of the Agreement of Sale in his favour by the defendant Nos. 1 and 2. The other documents referred to supra upon which the plaintiff has placed strong reliance, were examined by the High Court and it recorded its finding at paragraphs 23, 24, 27 and 28 in the impugned judgment and rightly held that the finding of fact recorded on the contentious issue Nos. 2 and 3 are erroneous and set aside the same.

23. The appellate court at para 29 of the impugned judgment has examined the validity of Ex. B4, Agreement of Sale dated 5.6.1988 executed by defendant Nos. 1 and 2 in favour of defendant No. 6 with reference to the evidence adduced by him and held that he is a bona fide purchaser under the above agreement. The appellate court has held that the advance amount paid by the defendant No.6 to the defendant Nos. 1 & 2 on 05.06.1988 under Ex. B1 receipt and other payments made by him towards the sale consideration by way of demand draft and cheque are correct and further observed that the same cannot

be doubted for the reason that the Attester of Ex. B1 was examined as D.W. 2 in the case, who is an independent witness to prove the contents of Ex. B1 (receipt dated 5.6.1988). Further, the allegation of the plaintiff that the signatures of the defendant Nos. 1 & 2 on Ex. B4, Agreement of Sale dated 05.06.1988 is ante-dated is examined by the appellate court and it has held that except a suggestion put to D.W. 1 in his cross-examination by the plaintiff's counsel that Ex. B4, the Agreement of Sale is ante-dated, no evidence was adduced by the plaintiff to prove the plea that Ex. B4 is created to defeat the rights of the plaintiff under Ex.A3 the Agreement of Sale executed by defendant Nos. 1 & 2 in favour of the plaintiff. The plaintiff had the knowledge of execution of Sale Deeds Exs. A32 to A35 in favour of the defendant No.6 in respect of the suit schedule property but he had not originally impleaded him in the suit and only the defendant Nos. 1 to 5 were made parties to the original suit proceeding. The plaintiff filed an interlocutory application in I.A. No. 689 of 1993, whereby the plaint was amended by impleading defendant No. 6 with a direction to him to join defendant Nos. 1 & 2 for execution of the Sale Deed in favour of the plaintiff in respect of the suit schedule property and also prayed for delivery of vacant possession of the same to him. The trial court has not framed the issue with regard to the genuineness of the receipts Exs. B1, B2 and B3 and the Agreement of Sale (Ex.B4) as pleaded by the plaintiff and without framing such an issue and examining evidence in this regard it has recorded the finding of fact holding that Ex. B2 (receipt dated 30.12.1988), Ex.B3 (receipt dated 10.01.1989) and Ex.B4 (Agreement of Sale dated 5.6.1988) in favour of defendant No. 6 are held to be ante-dated and fabricated documents without considering and appreciating the oral evidence of D.W.1 and D.W. 2. It has also not recorded reasons for not accepting their evidence with regard to the part payment of sale consideration paid by the defendant No. 6 to defendant Nos. 1 and 2. The plaintiff had asserted Ex. A3, the Agreement of Sale dated 8.9.1988 was executed in his favour by defendant Nos. 1 & 2 in respect of the suit schedule property which fact was required to be proved to substantiate his claim, as the burden of proof of existence of that fact is on the plaintiff as per Section 101 of the Evidence Act, 1872, which provision states that a person who asserts the fact must prove that fact and therefore, he was required to prove that the documents Exs.B1, B2, B3 and B4 are ante-dated and fabricated by them to defeat the right of the plaintiff as alleged by him and the plaintiff was required to prove the above fact existed on the date of assertion made by him. Section 103 of the Evidence Act states that the burden of proof as to any particular fact lies with a person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person. Further, Section 104 of the Evidence Act states the burden of proving a fact to make evidence

admissible lies on the plaintiff and that burden has not been initially discharged by the plaintiff in this case by producing evidence on record. The trial court simply accepted the oral evidence of P.W. 1 and P.W. 2 and compared the admitted signatures of defendant Nos. 1 & 2 found in the certified copies of the documents in relation to other cases between defendant Nos. 1 & 2 and others and their signatures found in the pleadings filed in the original suit namely the written statement and statement of objections to the interlocutory application for grant of temporary injunction. It has been erroneously held by the trial court that the document receipt dated 14.8.1988 (Ex. A2) the Agreement of Sale dated 8.9.1988 (Ex.A3) and receipt dated 8.9.1988 (Ex.A4) are proved by the plaintiff. The said finding and reasons are held to be erroneous is the conclusion arrived at by the appellate court by recording its reason at para 23 of the impugned judgment, wherein it has held that the trial court has arrived at the finding that the Agreement of Sale (Ex. A3) is a true document by comparing the signatures of defendant Nos. 1 & 2 found in the certified copies in other cases. The High Court has examined the correctness of that finding with reference to the evidence on record and has come to the right conclusion and held that the trial court did not consider the same properly in arriving at such finding. Further the High Court has rightly held that the finding of the trial court that Exs. B2, B3 and B4 executed in favour of defendant No. 6 by defendant Nos. 1 & 2 are ante-dated and fabricated with a view to deprive the right of the plaintiff acquired on the basis of Ex.A3, is erroneous. The finding of fact recorded by the trial court on the issue No. 2 is rightly set aside by the High Court by recording its reasons in the impugned judgment. Further it has held that the conclusion and the finding recorded by the trial court in this regard is not based on legal evidence on record and therefore the appellate court has held that they are not only erroneous on fact but also suffers from error in law. The appellate court in exercise of its appellate jurisdiction has re-appreciated the pleadings and evidence on record on this important aspect of the matter and held that the findings of the trial court on the contentious issue Nos. 2 and 3 are vitiated in law.

24. For the foregoing reasons, we have to answer the point Nos. 1 & 2 in favour of defendant No. 6 as he has proved the execution of the Agreement of Sale dated 5.6.1988 (Ex.B4) and the receipts dated 5.6.1988,30.12.1988 and 10.1.1989 (Exs. B1 to B3) for having paid part consideration to the defendant Nos. 1 & 2. The plaintiff should have taken necessary steps before the trial court to call them in the proceedings to cross examine them for the limited purpose of confronting their signatures found in Exs. A2, A3 and A4 as they have denied

the execution of the same in their written statement. The plaintiff did not take steps in this regard therefore the appellate court is right in coming to the conclusion that the above documents upon which reliance was placed in support of his claim are not proved. Therefore, the appellate court has considered the relevant facts and documentary evidence on record and come to the correct conclusion and held that the admission of P.W. 1 in his cross examination on 14.6.1995, wherein he has categorically stated that defendant Nos. 1 & 2 have not executed Agreement of Sale of suit schedule property, forms part of the record. In this regard, the appellate court has re-appreciated the entire evidence on record and rightly set aside the finding of fact recorded by the trial court on the contentious issue No. 2 in holding that Ex.A3 the Agreement of Sale was executed by defendant Nos. 1 & 2 in favour of the plaintiff in respect of suit schedule property, is the erroneous finding. Therefore, the finding and reason recorded by the High Court cannot be termed as erroneous in law.

25. Further, the appellate court is justified in setting aside the findings of fact recorded on contentious issue Nos. 2 & 3 by the trial court and rightly held that defendant No. 6 proved the execution of the Agreement of Sale dated 5.6.1988 (Ex. B4) and also proved Exs. B1, B2 and B3 regarding the payment of part consideration to defendant Nos. 1 and 2. Therefore, it has held that sale of the suit schedule property in his favour is legal and valid. The High Court has rightly set aside the judgment and decree of the trial court by recording its reasons and the same are in our view are correct. The High Court is justified in reversing the findings recorded on the contentious issues and dismissing the original suit of the plaintiff.

26. Further, the dismissal of the original suit of the plaintiff is justified for one more reason, namely, that it was held that the defendant No. 6 is a bona fide purchaser after verifying the title of the defendant Nos. 1 & 2 in relation to the suit schedule property and he paid consideration and has got the sale deeds executed in his favour from them as per Exs. A32 to A35. The plaintiff, in the original suit has not prayed for the declaratory relief to declare the Sale Deeds referred to above as null and void when the defendant No. 6 was impleaded to the original suit proceedings, as the High Court has rightly held that Ex. B4, the Agreement of Sale dated 5.6.1988 is genuine and on that basis the sale deeds were executed in his favour by defendant nos.1 & 2.

27. Accordingly, we dismiss the appeal, upholding the judgment and decree of the appellate court, however, there shall not be an order for awarding the costs of the proceedings.