REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 5382 OF 2007

MADHUKAR NIVRUTTI JAGTAP & ORS. …APPELLANT(S)

VS.

SMT. PRAMILABAI CHANDULAL PARANDEKAR & ORS. …RESPONDENT(S)

JUDGMENT

Dinesh Maheshwari, J.

1. This appeal by special leave arises out of a civil suit (No. 83 of 1968) for specific performance of agreement for sale of agricultural land in Survey No. 64 admeasuring 50 acres and 39 gunthas, situated at village Gulvanchi, Taluka - North Solapur[1]. In its judgment and decree dated 13.04.1984, the Trial Court declined the relief of specific performance but decreed the suit for the alternative relief of money recovery. On 30.11.1987, the First Appellate Court, while dismissing the contesting plaintiffs' appeal (Civil Appeal No. 546 of 1984), affirmed the decree of the Trial Court. However, the High Court of Judicature at Bombay allowed the second appeal

1 Hereinafter referred to as 'the suit property' or 'the land in question'.

preferred by the contesting plaintiffs (Second Appeal No. 176 of 1988) by its impugned judgment and decree dated 01.08.2007 and decreed the suit for the principal relief of specific performance, albeit on enhanced sale consideration with reference to the market value of the land in question.

2. In order to appreciate the relevant features of this case, essentially pertaining to the reliefs claimed under the Specific Relief Act, 1963[2], the status and capacity of parties to this litigation may be taken note of at the outset and as follows: -

In the suit for specific performance leading to this appeal, the respondent No. 1 and the respondent No. 6 had been the plaintiff Nos. 2 and 3 respectively. The suit was filed by them jointly with the plaintiff No. 1- late Shri Chandulal Balaprasad Parandekar, who was the husband of plaintiff No. 2 (respondent No. 1 herein) and who expired during the pendency of suit. After the demise of plaintiff No. 1, the daughter of plaintiff Nos. 1 and 2 was taken on record as plaintiff No. 4. She is respondent No. 2 in this appeal. Therefore, respondent Nos. 1, 2 and 6 of this appeal were standing in the capacity of plaintiffs (vendees).

On the other hand, the respondent Nos. 3 to 5 of this appeal had been the original defendant Nos. 1 to 3 in the suit in question. The defendant No. 1 (respondent No. 3) having expired, his legal representatives are joined as respondent Nos. 3a to 3d in this appeal. The agreements forming the subject-matter of this litigation were executed by

2 Hereinafter also referred to as 'the Act of 1963'.

the defendant Nos. 1 to 3 (vendors) in favour of the plaintiff Nos. 1 to 3 (vendees).

2.3 The appellants of this appeal were subsequently joined as defendant Nos. 4 to 6 in the suit in question, as being the purchasers of the suit property after filing of the suit.[3]

2.4. It may also be noticed that an application (IA No. 3 of 2010) was moved in this appeal pointing out demise of respondent No. 1 (plaintiff No. 2), respondent No. 4 (defendant No. 2), and respondent No. 6 (plaintiff No. 3) with the submissions that the legal representative of the respondent No. 1 was already on record as respondent No. 2; and the legal representatives of deceased respondent Nos. 4 and 6 may be substituted on record. However, this application was rejected on 24.02.2012. On the other hand, other applications (IA Nos. 5 & 6 of 2013) for substitution of legal representatives of deceased respondent No. 5 (defendant No. 3) and for condonation of delay were granted on 05.08.2013. Be that as it may, the estate of the original contesting plaintiffs (plaintiffs Nos. 1 & 2) is duly represented by their daughter (plaintiff No. 4 - respondent No. 2 herein); and the contest in this litigation is essentially between her and the appellants (subsequent purchasers).

3. Briefly put, the relevant background aspects of the matter and respective stands of the parties had been as follows: -

3 As far as feasible, the parties have been referred in this judgment as per their status in the suit.

The plaintiffs filed the suit aforesaid with the averments that the defendant Nos. 1 to 3 had executed an agreement dated 20.09.1965 for sale of the suit property for a consideration of Rs. 22,951/-; and that a sum of Rs. 3,500/- was paid as earnest money. It was further averred that crops were standing on the suit property and hence, possession to the extent of half portion thereof was to be handed over by the end of the year of 1965; and that in part performance of agreement, the plaintiffs made payment of a further sum of Rs. 2,000/- to the defendant Nos. 1 to 3 on 24.09.1965 and the said defendants handed over possession of 25 acres of the land in question to the plaintiffs on 14.11.1965. The plaintiffs further averred that they served a notice on the defendant Nos. 1 to 3 on 05.04.1966 for performance of the agreement in question and, on receipt of this notice, the said defendants executed a supplementary agreement for sale; they accepted an additional amount of Rs. 500/- from the plaintiffs; and they handed over possession of the remaining part of the land in question to the plaintiffs. The plaintiffs also averred that in this manner, a sum of Rs. 6,000/- was paid to the defendant Nos. 1 to 3 as part payment of the total sale consideration and the remaining sale consideration was settled at Rs. 11,951/-, after deducting Rs. 5,000/- towards encumbrances; and on payment of this amount, the defendant Nos. 1 to 3 were liable to execute the sale deed in their favour within a time span of 15 days. The plaintiffs averred that they were ready to perform their part of the contract but the defendant Nos. 1 to 3 failed to execute the sale deed for the land in

question. With these averments, the plaintiffs sought the relief of specific performance of the agreement for sale and in the alternative, also prayed for recovery of earnest money with interest and for damages. The reliefs claimed in the plaint, being relevant for present purposes, may be take note of as follows: -

> *"10) The Plaintiffs pray that,*
>
> *A) The Defendants may be ordered to execute the sale-deed in respect of the land described in plaint paragraph 1, by accepting Rs.16,951/- from the plaintiffs and to mention in the sale-deed that, in case, the Defendants can not ward off the charges on the land, being the sum of Rs. 5,000/-, before the execution of the sale-deed then the said amount may be deducted from the sale price and the plaintiffs shall obtain assurance for the same and the defendant Nos. 1 to 6 may be ordered to join the defendant No.1 to 3, in execution of the sale-deed.*
> *B) If it is proved that, perhaps the possession of the land received by the Plaintiffs by way of part performance, is taken by the Defendants and the possession is of the Defendants only, then the Defendants may be ordered to hand over the land.*
> *C) In case, if it happens that, for any reason sale-deed pertaining to the suit land can not be executed in favour of the plaintiffs, then the defendants may be ordered to pay to the plaintiffs the sum accepted by the defendants towards the earnest money Rupees 6,000/- and damages thereon at the rate of Rs. 2% p.a. And the sum of Rupees 15,000/- towards the losses on account of breach of Agreement by the Defendants and it may also be ordered that the encumbrances in respect of the said amount has been placed on the suit land.*
> *D) The Defendants may be ordered to pay to the plaintiffs the entire cost, including advocates fee, of the present suit.*
> *E) Other just and proper orders may be passed."*

In their written statement, the defendant Nos. 1 to 3 (vendors) though admitted the execution of agreement dated 20.09.1965 as also supplementary agreement dated 28.04.1966 but then, claimed that the said agreements were executed only as collateral security for a loan advanced by the plaintiff No. 1 and not for the sale of property. These defendants asserted that the plaintiff No. 3 had introduced them to the plaintiff Nos. 1 and 2, who in turn, had advanced the loan to them. They further asserted that though the agreement was originally executed only in favour of plaintiff No. 1, the names of other plaintiffs were incorporated at the behest of plaintiff No.3; and that they had never parted with possession of the land in question.

The defendant Nos. 4 and 5 were subsequently impleaded in the said suit as they had purchased 25 acres of the land in question by way of a sale deed dated 10.07.1978, which was executed by the defendant No. 1. The defendant No. 6 was also impleaded as a subsequent purchaser of the remaining portion of the land in question, by way of another sale deed dated 18.09.1968. These defendants contended that they were *bona fide* purchasers having no knowledge of the aforementioned transaction between the plaintiffs and defendant Nos. 1 to 3.

4. On completion of pleadings of parties, the Trial Court framed as many as 20 issues for determination of the questions involved in the matter. After taking the evidence and having heard the parties, the Trial Court proceeded to dismiss the suit for specific performance while recording the basic finding

to the effect that the documents in question (the alleged agreement for sale as also the supplementary agreement) were, in fact, executed as security for loan and not for sale of the suit property to the plaintiffs. The Trial Court, *inter alia*, observed that the sale consideration of Rs. 22,951/- was a peculiar one, because in the normal course, the parties do not fix the consideration amount in such an odd figure and even the rate of Rs. 450/- per acre did not match with the consideration amount stated in the agreement. The Trial Court also held that the plaintiffs had failed to prove that they were handed over possession of the suit property in pursuance of the agreements in question. In view of its finding on the nature of transaction, the Trial Court observed that the issue regarding readiness and willingness of the plaintiffs did not survive for consideration. The Trial Court, of course, held that the transactions effected in favour of defendant Nos. 4 to 6 were hit by the doctrine of *lis pendens* as per Section 52 of the Transfer of Property Act, 1882[4]; and that the defendant Nos. 4 to 6 were not *bona fide* purchasers of suit property. However, in view of its findings on material issues, the Trial Court held that the plaintiffs were not entitled for specific performance and recovery of possession but then, directed that the amount paid by the plaintiffs i.e., the sum of Rs. 6,000/-, be returned to them, together with interest at the rate of 6% per annum from the date of decree until payment.

4 Hereinafter also referred to as 'the T.P. Act'.

5. Aggrieved by the judgment and decree of the Trial Court, the plaintiff Nos. 1, 2 & 4 preferred the first appeal that was considered and dismissed by III Addl. District Judge, Solapur by way of the judgment and decree dated 30.11.1987. The First Appellate Court, on re-appreciation of evidence, affirmed the principal findings of the Trial Court on the nature of transaction, while observing that the plaintiffs had failed to prove that the amount in question was not that of a loan advanced, as contended by the defendant Nos. 1 to 3. In regard to this question relating to the nature of transaction, the First appellate Court specified the circumstances being relied upon by it in paragraph 17 of its judgment as follows:-

> *" 17. Following are the circumstances which reveal that the documents on which the Plaintiffs have relied upon that the Defendants Nos. 1 to 3 had agreed to sell the suit land, were for the purpose of collateral security to the loan advanced and the intention of the parties to them was not to sell the land as mentioned in those documents.*
>
> *(i) As compared to the total price for the land agreed to be sold, a partly sum was paid towards the advance payment of the price.*
> *(ii) The possession of the land was never delivered to the Plaintiffs in pursuance of the agreement of sale.*
> *(iii) The Plaintiff Nos. 1 and 2 must not be interested in purchasing the land.*
> *(iv) The notice dated 5.4.1966 was issued by the Plaintiffs asking the Defendants Nos. 1 to 3 to execute the sale-deed and, therefore, after this notice the Plaintiffs ought to have got the sale deed executed if at all the Defendants Nos. 1 to 3 had no objection to do so, instead of getting an agreement of sale executed."*

The First Appellate Court also held that the plaintiffs had failed to prove their continuous willingness and readiness to perform their part of the

contract, particularly for the reason that despite stating the availability of sufficient consideration with them, the plaintiffs got executed supplementary agreement rather than the sale deed. The First Appellate Court decided this question against the plaintiffs while observing as under:-

> *"(24) As discussed above, according to the terms of the agreement of sale, the sale-deed was to be executed on or about Chaitra Shubha 1, Shake 1888 means on 23rd March, 1966 according to the Gregorian Calender. The Plaintiffs issued the notice asking the Defendant Nos. 1 to 3 to execute the sale-deed on 5.4.1966 means after the date on which the sale deed was got to be executed according to the terms laid down in the agreement of sale. The Notice (Exb. 87) issued by the plaintiffs being after the period before which the sale deed was to be executed cannot be used for proving that the Plaintiffs were ready and willing to perform their part of the contract. It was necessary for the Plaintiffs to prove that before Chaitra Shudha 1, Shake 1888 means 23rd March, 1966 they were ready and willing to get the sale-deed executed in terms of the agreement of sale but there is no evidence to prove that before Chaitra Shudha 1, Shake 1888 the Plaintiffs were ready and willing to perform their part of contract. When the Plaintiffs had sufficient consideration in their hand to make payment of the entire price of the land and when there was not difficulty for the Defendants Nos. 1 to 3 to dispose of the, it is not explained why the supplementary agreement was got executed instead of getting the sale-deed executed. The postponement of the sale-deed to which the Plaintiffs gave consent clearly suggests that the parties were in fact not intending to execute the sale-deed. The Plaintiffs have, thus failed to prove that they were ready and willing to perform their part of contract of getting the sale-deed executed within the time limit proving in the earlier agreement of sale."*

The First Appellate Court affirmed the finding that the defendant Nos. 4 to 6 were not *bona fide* purchasers while observing that even if they had

alleged want of knowledge about the agreement in question, given the size of the village and the population thereof, they were aware of the pending litigation. However, the First Appellate Court observed that even though the transactions with defendant Nos. 4 to 6 were hit by the doctrine of *lis pendens*, but the same would not affect the validity of sale deeds executed in their favour, as the alleged agreements were executed only for the purpose of collateral security for the loan advanced.

In view of its findings, the First Appellate Court affirmed the decree of the Trial Court and dismissed the appeal. Aggrieved by the decree so passed by the Trial Court and affirmed by the First Appellate Court, the plaintiff Nos. 1, 2 & 4 preferred second appeal before the High Court.

6. The second appeal so filed by the contesting plaintiffs was admitted by the High Court while formulating the following substantial questions of law for consideration:-

> *"(a) Whether, in a suit for specific performance of agreement, in order to establish the readiness and willingness, the plaintiff has to give notice to the defendant before the last date, specified in the agreement or after the last date specified in the agreement but within reasonable time thereafter?*
>
> *(b) What is the true nature of suit transaction, viz. Whether it is an agreement of sale or whether it is security agreement?"*

During the course of hearing, the High Court found yet another substantial question of law arising for consideration and formulated the same as follows:-

> *"(c) If the sale transactions executed in favour of defendant nos.4 to 6 during the pendency of the suit were hit by the doctrine of lis pendente lite, could the transfer of the suit land to defendant nos.4 to 6 be held to be illegal and void ab initio?"*

7. The High Court, in its impugned judgment dated 01.08.2007, examined the contentions of the parties and upturned the findings of the subordinate Courts on the question of nature of transaction as also the finding of First Appellate Court on the question of readiness and willingness on the part of the plaintiffs to perform their part of the contract.

The High Court observed that both the agreements were silent about any loan transaction between the plaintiffs and the defendant Nos 1 to 3 and came to the conclusion that the agreements in question were not executed as security against any loan advanced to the defendants. The High Court referred to the decision of this Court in the case of ***Umabai and another v. Nilkanth Dhondiba Chavan (Dead) by LRS. and another.:*** **(2005) 6 SCC 243** and held as under:-

> *"The agreement at Exh.85 was signed on 20/9/1965 and in its preamble it is stated that the suit property had become the personal property of the vendors i.e. the present defendant nos.1 to 3 by way of the order dated 16/8/1963 passed by the Mamlatdar of North Solapur. It proceeded to state that the said property was being*

offered to the plaintiffs by way of sale at the rate of Rs.450/- per acre. By way of advance, an amount of Rs.3,500/- was received and the remaining amount of Rs.19,451/- would be paid at the time of signing the sale deed. The defendants had agreed that the sale deed will be signed by Chaitra Shudha 1 Shake 1888 or around that time. The agreement for sale would be binding on the successor of the vendors. Out of the total land of 50 acres 39 gunthas, 25 acres of land was having the crops of groundnuts and toor and those crops would be harvested and possession would be given by the end of November, 1965. The possession of the remaining land would be handed over to the plaintiffs on execution of the sale deed. In this document there is no mention of any security for any loan transaction. The document did not even whisper about the loan being given by the plaintiffs at the request of the defendant nos.1 to 3. At the end of this document there is an endorsement made on 24/11/1965 to the effect that an additional amount of Rs.2000/- was received by the defendant nos.1 to 3 on that day as the amount was required to be paid for the acquisition of house plot and purchase of buffaloes. It was further stated that the said amount of Rs.2000/- would be adjusted against the balance of Rs.19,451/- and the remaining amount of Rs.17,451/- would be given while executing the sale deed and the sale deed would be executed within the time originally specified. Coming to the supplementary agreement at Exh.86 and signed on 28/4/1966, there is no whisper about any loan transaction or a security for such a transaction. The document is clearly titled as a supplementary agreement for sale. It further states that the suit land had an encumbrances of additional Rs.5000/- which was to be discharged by the plaintiffs and balance amount of Rs.11,951/- was to be paid by the plaintiffs at the time of execution of the sale deed. By no stretch of imagination these two agreements at Exhs.85 and 86 could be termed as and by way of security for a loan transaction. This defence was taken by way of an after thought when the suit was filed and beyond the oral statement made in the depositions of defendant no.1, there is not even an iota of evidence to hold that these agreements were by way of security for a loan transaction. As observed by their Lordships in the case of Umabai (Supra) and as is the well established

position in law that the agreements have to be read as it is and if so read it is clear that the agreements at Exhs.85 and 86 were the agreements for sale and the concurrent findings recorded by both the courts below that they were by way of security against loan transaction are unsustainable. It is a perverse finding by both the courts below."

On the question of readiness and willingness of the plaintiffs, the High Court analysed the chronology of events, being that, as per the terms mentioned in the first agreement, the sale deed was to be executed by or on 23.03.1966; and on the vendors' failure to execute the sale deed, legal notice dated 05.04.1966 was issued, which led to the execution of supplementary agreement dated 28.04.1966. With reference to these facts and events, the High Court was of opinion that the plaintiffs were always ready and willing to perform their part of the contract. The High Court observed and held as under:-

"…..Admittedly, as per the agreement for sale at Exh.85, the sale deed was to be executed by 23/3/1966 and obviously if it was not so done on account of any reason attributable to any of the parties, the question of one party calling upon the other unwilling party by a legal notice would arise and there would not be any occasion to issue the legal notice by any of the parties before 23/3/1966 and in the instant case the supplementary agreement for sale at Exh.86 was signed on 28/4/1966. As the agreement was not singed by 23/3/1966 the plaintiffs have issued legal notice dated 5/4/1966 to the defendant nos.1 to 3 calling upon them to execute the sale deed which indicated that the notice was issued at the earliest after the dead-line for signing the sale deed was over. In response to the said notice the defendant nos.1 to 3 held fresh negotiations with the plaintiffs and the supplementary agreement for sale at Exh.86 was signed on 28/4/1966 and, therefore, the findings recorded by the Lower Appellate Court are

manifestly erroneous. In the instant case, the plaintiffs were required to give notice after 23/3/2006 and not before that and such a notice was given on 5/4/1966. The notice was not required to give before the last date fixed for signing the sale deed i.e. 23/3/1966. The cause of action to issue the notice will arise only when either of the parties failed to execute the sale deed by the date mentioned in the agreement for sale. The substantial question framed at (a) in para 1 above is answered accordingly. It is, therefore, held that the plaintiffs have proved that they were always ready and willing to perform their part of the contract with the defendant nos.1 to 3 for signing the sale deed consequent to the agreements for sale at Exh.85 and 86."

As regards the defendant Nos. 4 to 6 (appellants herein), the High Court upheld the findings of the subordinate Courts that they were not *bona fide* purchasers; and also observed that the sale transactions in their favour were made only in order to defeat the claim of the plaintiffs and hence, the said sale deeds were required to be held illegal. The High Court referred to a decision of this Court in the case of ***Sarvinder Singh v. Dalip Singh and Ors.:*** **(1996) 5 SCC 539** and held, *inter alia*, as under:-

"8……..It is clear that the sale transactions by defendant nos.1 to 3 in favour of defendant nos.4 to 6 were intended to defeat the claim of the plaintiffs in the suit and the suit property could not have been transferred in favour of defendant nos.4 to 6 during the pendency of the suit filed by the plaintiffs. The finding recorded by the Lower Appellate Court that the defendant nos.4 to 6 were not aware of the agreements between the plaintiffs on one hand and the defendant nos.1 to 3 on the other hand, cannot be accepted having regards to the oral evidence of DW 1 and DW 6. The Lower Appellate Court was not right in turning down the findings on this issue recorded by the trial court. Even otherwise, during the pendency of the suit the defendant nos.1 to 3 were estopped from

transferring the suit land in view of the embargo of Section 52 of the Transfer of Property Act, 1882 and, therefore, the sale deeds in favour of defendant nos.4 and 5 and defendant no.6 executed by defendant nos.1 to 3 are required to be held as illegal….."

After the findings aforementioned, the High Court examined the question of relief to be granted. In this regard, the High Court referred to: (a) the alternative relief of money recovery as claimed in the plaint; (b) the decree as passed by the Trial Court; (c) the fact that the defendant Nos. 4 to 6 were cultivating the land in question for about 40 years; (d) the location of the land in question at about 20 kilometres from Solapur Municipal Corporation area; and (e) the horticulture growth of the area in question. With reference to these factors, the High Court considered it appropriate to fix the market value of the land in question at Rs. 10,000/- per acre.

On the basis of the findings and observations aforesaid, the High Court proceeded to decree the suit for specific performance but with the stipulations that the plaintiffs would be entitled to receive possession of the land in question from defendant Nos. 4 to 6 on making payment at the rate of Rs. 10,000/- per acre, whereafter, all the defendants shall jointly and/or severally execute the sale deeds in favour of the plaintiffs. The High Court further ordered that on failure of the plaintiff to make the requisite payment within a period of two months, the defendant Nos. 4 to 6 shall pay Rs. 10,000/- per acre to the plaintiffs '*so as to confirm their title and ownership over the suit land*'. The High Court also directed that the said land shall be

used for the purpose of self-cultivation or horticulture. The operative part of the judgment impugned reads as under:-

> *"12. In the premises, the second appeal is hereby allowed and the decree of the trial court as confirmed by the Lower Appellate Court is hereby substituted as under:-*
>
> *(a) The suit is decreed. The plaintiffs are entitled to get the decree of specific performance of the contract (Sathe Khat dated 20/9/1965 and the Supplementary Sathe Khat dated 28/4/1966) executed in their favour.*
>
> *(b) By way of specific performance of contract the plaintiffs at the first instance shall be entitled to receive the possession of the suit land from defendant nos. 4 to 6 by paying them a compensation at the rate of Rs.10,000/- per acre and the said defendants in turn shall execute the sale deeds jointly and/or severally in favour of the plaintiffs immediately on receipt of the compensation amount. The plaintiffs shall pay the compensation within two months from today.*
>
> *(c) In case the plaintiffs jointly and/or severally fail to pay the compensation of Rs.10,000/- per acre to the defendant nos. 4 to 6 within the stipulated period of two months, the said defendants shall pay an amount of Rs.10,000/- per acre to the plaintiffs within a period of two months therefrom so as to confirm their ownership over the suit land.*
>
> *(d) The land shall be used for self cultivation or horticulture.*
>
> *(e) Costs in cause.*
>
> *Fresh decree be drawn in the above terms by the Registry and forward the same to the trial court for its execution."*

8. Assailing the judgment of the High Court, learned counsel for the appellants-defendant Nos. 4 to 6 has strenuously argued that the High Court could not have re-appreciated the evidence on record while

exercising jurisdiction under Section 100 of the Code of Civil Procedure and could not have upset the concurrent findings of the subordinate Courts; and as there was no substantial question of law involved, the second appeal ought to have been dismissed. Learned counsel would submit that the question as to whether the agreements in question were agreements for sale or were only executed towards security, had been of fact and there was no occasion for the High Court to upturn the concurrent findings of subordinate Courts that were returned after due appreciation of evidence. Further, according to the learned counsel, readiness and willingness of the plaintiffs has to be demonstrated during the period specified in the agreement for execution; and the High Court has erred in assuming the readiness and willingness on part of the plaintiffs even contrary to the evidence on record. Further, with reference to the fact that at the time of executing supplementary agreement, an amount of Rs. 500/- was paid by the plaintiffs whereas a sum of Rs. 5,500/- was earlier paid as earnest money as against the total sale consideration of Rs. 22,951/-, the learned counsel has contended that such payment being wholly inadequate as against the alleged sale consideration, the plaintiffs could not have been considered ready and willing to perform their part of contract.

The learned counsel has elaborated on the submission that even the notice seeking performance was sent by the plaintiffs only on 05.04.1966 i.e., thirteen days after 23.03.1966, which was the last date prescribed by the agreement for execution of the sale deed; and even at the later stage

after the notice dated 05.04.1966, the vendees settled for a supplementary agreement and did not seek specific performance, which clearly shows want for readiness and willingness on their part to perform their obligations under the agreement. The learned counsel would submit that even if time is not of the essence of agreement, the vendees ought to have claimed performance within reasonable time whereas in the present case, there is no evidence as to the steps taken by the vendees, including verbal or written demands for performance, for a period of two years after the supplementary agreement and until institution of the suit on 24.08.1968. This delay, according to learned counsel, ought to be considered fatal to the case of the plaintiffs. The learned counsel has referred to and relied upon the decisions in ***Azhar Sultana v. B. Rajamani and Ors.:*** **(2009) 17 SCC 27; *Veerayee Ammal v. Seeni Ammal:* (2002) 1 SCC 134, and *Pushparani S. Sundaram and Ors. v. Pauline Manomani James (deceased) and Ors.:* (2002) 9 SCC 582**.

Learned counsel for the appellants-defendant Nos. 4 to 6 has further submitted that the High Court has erroneously held that the sale made by the vendors to the subsequent purchasers is 'illegal' though the law remains settled that the sale to the subsequent purchaser is not illegal or void *ab initio.* The learned counsel has referred to the decision in ***A. Nawab John and Ors. v. V.N. Subramaniyam*: (2012) 7 SCC 738.** The learned counsel has contended that the appellants had been the *bona fide* purchasers having no knowledge about any previous transaction, and on the facts and

in the circumstances of this case, decree for specific performance ought not to have been granted where the plaintiffs failed to prove the execution of the document as also their possession over the suit land; and where, after a lapse of 40 years since the execution of alleged agreement, the relief of specific performance would provide undue advantage to the plaintiffs. The learned counsel would submit that now, the appellants are in possession of the suit property for the past 50 years and have made improvements thereupon; and at this late stage, it would be inequitable to sustain a decree for specific performance, especially when the Trial Court and the First Appellate Court refused this relief. The learned counsel has referred to the decision in ***V. Muthusami (Dead) by LRs. v. Angammal and Ors.*****: (2002) 3 SCC 316.** The learned counsel has also submitted that the market value of the suit land was wrongly calculated by the High Court inasmuch as the value for unirrigated land in the area in question was Rs. 70,000/- per hectare and that of irrigated one was Rs. 1,40,000/- per hectare.

9. *Per contra*, learned counsel for the contesting respondent has strenuously argued that proper construction of the agreement dated 20.09.1965 and supplementary agreement dated 28.04.1966, after reading them in entirety, would only lead to the conclusion that they were agreements for sale and not for security inasmuch as therein, neither there is any provision for payment of interest nor for re-payment; and there is no expression in the documents to show that there was any security arrangement. The learned counsel has also argued that the plaintiffs had

specifically pleaded their readiness and willingness to perform their part of the contract and such pleadings were not specifically denied by the defendants. Further, according to the learned counsel, the contesting plaintiff's specific assertion in the deposition about readiness and willingness has remained unshaken in the cross-examination. Learned counsel would submit that with the repeated payments made by the plaintiffs show their readiness and willingness to perform their part of the contract without any doubt and continuous readiness and willingness could well be deduced from the conduct of plaintiffs. Therefore, according to the learned counsel, the perverse finding of the First Appellate Court in this regard has rightly been set aside by the High Court. The learned counsel has also argued that the appellants had not been *bona fide* purchasers of the suit property and their sale transaction is clearly hit by the doctrine of *lis pendens* as per Section 52 of the T.P. Act; and, for want of *bona fide*, the appellants are not entitled for any equitable relief. The learned counsel has referred to and relied upon the decision in ***Guruswamy Nadar v. P. Lakshi Ammal (Dead) through LRs and Ors.:*** **2008 (5) SCC 796.** The learned counsel has also argued that the High Court has justifiably proceeded to balance the equities by directing the plaintiff to pay enhanced sale consideration and hence, no interference is called for in this appeal.

10. We have bestowed anxious consideration to the rival submissions and have scanned through the material placed before us for perusal.

11. On the submissions made by the learned counsel for the parties and in the given set of fact and circumstances, the principal point for determination in this appeal is as to whether the High Court was justified in entertaining the second appeal; and in upsetting the judgment and decree impugned? Three–fold basic questions need to be addressed to for determination of this point. The first question is as to whether the agreement dated 20.09.1965 and supplementary agreement dated 28.04.1966 had been for sale and had not been the documents executed towards security for a loan taken by the defendant Nos. 1 to 3? If the answer to the first question is in favour of the plaintiffs and the agreements in question are held to be those for sale of property, the second question would be as to whether the plaintiffs were always ready and willing to perform their part of the contract and no personal bar operates against them so as to enforce the specific performance of the agreement in question. For effective disposal of this matter, the third question would be as to whether the appellants had not been *bona fide* purchasers and the sale transactions in their favour relating to the property in question are hit by the doctrine of *lis pendens*? However, as shall be noticed hereafter later, even if the questions foregoing are answered in favour of the plaintiffs, another point would still arise for determination as to whether, on the facts and in the circumstances of this case, the decree passed by the High Court, for the relief of specific performance on enhanced market value of the suit property, is justified or if any other form of relief shall meet the ends of justice?

Nature of transaction between the plaintiffs and defendant Nos. 1 to 3

12. As regards the question concerning the nature of transaction under the agreements in question, as noticed, the Trial Court and the First Appellate Court held that such agreements had been towards security and not for sale. The High Court has, however, disagreed and has held that such findings by the subordinate Courts suffered from perversity and the documents in question were not towards security for any loan transaction; neither the documents say so nor there was any evidence on record to hold that these agreements were executed by way of security for a loan transaction.

We have minutely examined the translated copies of the said agreements dated 20.09.1965 and 28.04.1966, as placed before us for perusal. In the initial agreement dated 20.09.1965, after mentioning the area, survey number and boundaries of the land in question, the vendors had stated as under:-

> *" The land accordingly within the boundaries, including stones, earth , well, trees, shrubs, etc.*
>
> *This land agreed to be sold at the rate of Rs. 450/- per acres, area 50 Acres, 39 Gs. for total price of Rs. 22951/- Rs. Twenty-two thousand, Nine Hundred and fifty one. This agreement is accordingly made. Today and earnest amount of Rs. 3500/- Rs. three Thousand, five hundred. The remaining amount or Rs. 19451 is to be paid at the time of sale deed. The sale transaction would be completed on Chaitra Sud I, Shake 1, 1888 or thereabout.*
>
> *The expense to be incurred for sale-deed are to borne by you. The sale deed is to be executed by us*

and to be taken by you. This agreement is accordingly executed, for execution of sale deed. All our heirs shall sign the sale deed. The encumbrances shall be extinguished or Havala shall be given and the said amounts shall be deducted at the time of execution of sale deed and thus the land would be free from any charge. Out of the land, there is crop of groundnut and Toor. After same would be reaped, actual possession would be delivered at the time of sale deed by the end of November of 1965. The remaining whole land would be actually delivered to you by completing the sale transaction. Accordingly, subject to fulfilling the abovementioned conditions, the sale transaction would be completed within limit prescribed. If anybody would commit breach of conditions he will take action and expenditure shall be borne by him. The earnest amount of Rs. 3500 Rs. Three thousand and five hundred) is received.

This Sathekhat given in writing on 20.09.1965. Dastur Bhagwa-n Vaman Palaskar resident of Solapur. The sa-le deed of the transactions.

Note: The sale deed of the dealings (property) shall be executed in your name or in the names of other persons suggested by you.

The sale deed would be executed –in your name or in the names others suggested by. The earnest amount of earnest of Rs. 3500 received. No complaint.

This Sathekhat dt. 20.09.1965. Dastur Bhagwan Vaman Palaskar, resident of Solapur."

As noticed, another payment of Rs. 2,000/- was made by the plaintiffs to the defendant No. 1 and an endorsement for adjustment of such payment against the sale price was made on this very document on 24.11.1965 as follows:-

" I have purchased the house building and also purchased she-buffalos. For that, I have received Rs. 2000 in cash from you. That amount should be

deducted being paid. The remaining amount of Rs. 17451 would be received from you and as per the conditions of the Sathekhat, the transaction of sale would be completed. Sd/-. Date :24.11.1965"

In the supplementary agreement dated 28.04.1966, the vendors acknowledged that they had received Rs. 6,000/- from the plaintiffs under the agreement dated 20.09.1965; and also stated that they had delivered possession of a part of the land in question on 14.11.1965 and that they had delivered the possession of entire land to the vendees in part performance. The vendors also stated that there was a charge of approximately Rs. 5,000/- on the land in question and, therefore, after deducting in all a sum of Rs. 11,000/-, the vendees shall pay the remaining amount of Rs. 11,961/- and the sale deed would be executed in their favour.

There had not been even a remote suggestion in the documents in question that there was any loan or borrowing transaction between the parties and the said documents were being executing towards security. On the contrary, the recitals and stipulations in the said agreements had only been in affirmation of the agreement for sale and of the receipt of part payment from time to time against the sale consideration. Of course, defendant No. 1, while deposing as DW1 attempted to suggest that he had approached the plaintiff No. 3 seeking loan to the tune of Rs. 5000-5500/- through a broker; and, at the instance of the plaintiff No. 3, executed the document in question as security while taking loan at the interest rate of 1 per cent per month. This defendant also admitted having obtained another

sum of Rs. 2,000/- from the plaintiff No. 1 and having put an endorsement on the document in question. He, however, denied having received any other amount or having delivered possession of the suit property. The evidence on the part of the defendants in this case remains rather vague and sketchy; and it is difficult to accept the oral assertions of defendant No. 1 as against the recitals in the agreements.

It is also noticed that the subordinate Courts proceeded to doubt if the transaction was at all intended to be of sale while questioning as to why the parties fixed the consideration in odd figures i.e., Rs. 22,951/-; and while observing that when as per the documents, the land was being sold @ Rs. 450/- per acre, the total consideration for the land in question would come to Rs. 22,938.75 and not Rs. 22,951/-. The Trial Court also raised doubts on the suggestion of the plaintiffs that possession of the land in question was handed over to them. The First Appellate Court even observed that as against the sale consideration, only a paltry amount was paid in advance and questioned as to why the supplementary agreement was executed after serving of notice. On the other hand, the High Court minutely examined the evidence on record and observed that there was not even a whisper about the loan transaction; and that as per the endorsement made on 24.11.1965, another amount of Rs. 2,000/- was received by the defendant Nos. 1 to 3. As regards the supplementary agreement dated 28.04.1966, the High Court again found that there was no whisper about any loan transaction or any security for such a transaction and the document was clearly executed as

being the supplementary agreement for sale while even referring to the encumbrances of Rs. 5,000/-, which were to be discharged. The High Court observed that by no stretch of imagination these two agreements could be termed as and by way of security for a loan.

Having examined the matter in its totality, we have no hesitation in upholding the findings of the High Court that have been returned after due consideration of the material on record and with reference to the law applicable to the case. It is plain and obvious that the Trial Court and the First Appellate Court proceeded on entirely irrelevant and rather baseless considerations while failing to consider that such findings on the nature of transaction evidenced by the agreements in question could not have been rendered on surmises and conjectures.

As to whether the possession of the land in question was delivered to the plaintiffs or not, could not have been taken as a factor decisive as regards nature of transaction. Moreover, execution of the supplementary agreement after notice dated 05.04.1966 and after receiving further an amount of Rs. 500/- by the defendant Nos. 1 to 3 could only show re-affirmation of the intention of the parties towards the sale transaction. Significantly, in the supplementary agreement, the defendants not only acknowledged the receipt of part consideration to the tune of Rs. 6,000/- but further agreed for adjustment of Rs. 5,000/- towards encumbrances and, therefore, agreed to receive remaining Rs. 11,921/- at the time of execution of the sale deed. In our view, looking to the dealings of the parties, this

circumstance about execution of the supplementary agreement only strengthens the case of the plaintiffs rather than operating against them.

The other observations of the subordinate Courts as regards quantum of consideration are difficult to be appreciated. Such hair-splitting exercise by the Trial Court, that on the agreed rate, sale consideration ought to have been Rs. 22,938.75 and as to why the parties agreed for Rs. 22,951/-, had been entirely baseless, rather unwarranted. The observation of the Trial Court as to why the sale consideration was in odd figures is itself of such oddity that any finding on that basis could only meet with disapproval. Rounding up of the amount of consideration and addition of one rupee in the last is not unknown to such transactions. In fact, quite contrary to what was observed by the Trial Court, the figure of sale consideration rather fortifies the deduction that the intention of the parties had only been towards the transaction of sale. In the ultimate analysis, we are satisfied that the High Court has rightly disapproved the baseless findings of the subordinate Courts and has rightly held that the agreements in question were executed for the sale of suit property. Thus, the first question is answered in favour of the plaintiffs.

Readiness and willingness of the plaintiffs to perform their part of contract

13. When the agreements in question were for the sale of suit property, the plaintiffs were entitled to take up the action seeking specific performance. However, in order to succeed in their claim, the plaintiffs were

required to aver and prove that they were always ready and willing to perform their part of the contract. As noticed, the Trial Court chose not to answer this question in view of its finding on the nature of transaction. The First Appellate Court though adverted to this question but answered the same against the plaintiffs, essentially for the reasons that they had failed to prove if before the stipulated date of execution of sale document, they were ready and willing to get the sale deed executed and there was no explanation as to why supplementary agreement was got executed. On this question, again, the High Court examined the record with reference to the law applicable and disapproved the finding of the First Appellate Court while observing that when as per the first agreement, the sale deed was to be executed by 23.03.1966, there was no occasion for any party to call upon the other for performance before that date. The High Court also found that the plaintiffs issued notice on 05.04.1966, calling upon defendants Nos. 1 to 3 to execute the sale deed and, obviously, fresh negotiations were held thereafter and hence, the supplementary agreement was executed. The High Court found the approach of the Appellate Court erroneous and held that the plaintiffs had proved their readiness and willingness to perform their part of the contract.

It has been vehemently argued on behalf of the appellants that the plaintiffs paid only Rs. 500/- while executing the supplementary agreement dated 28.05.1966 which goes to show that the plaintiffs were not having the capacity to pay the remaining sale consideration and they were never ready

and willing to perform their part of the contract. It has also been argued that after supplementary agreement dated 28.05.1966 and until filing of the suit in the year 1968, there was complete silence on the part of the plaintiffs. It has also been pointed out that the plaintiff No. 3, while deposing as PW1, stated having relinquished his right to purchase the land in favour of the plaintiff Nos. 1 and 2 but then, the plaintiff No. 2, while deposing as PW2, only made a passing statement that she was ready and willing to perform her part of the contract but there was no indication of her source of funds and on the contrary, her statement had been that she was a widow and was having no other source of income.

The question as to whether the plaintiff seeking specific performance has been ready and willing to perform his part of the contract is required to be examined with reference to all the facts and the surrounding factors of the given case. The requirement is not that the plaintiff should continuously approach the defendant with payment or make incessant requests for performance. For the relief of specific performance, which is essentially a species of equity but has got statutory recognition in terms of the Specific Relief Act, 1963[5], the plaintiff must be found standing with the contract and the plaintiff's conduct should not be carrying any such blameworthiness so as to be considered inequitable. The requirement of readiness and willingness of the plaintiff is not theoretical in nature but is essentially a question of fact, which needs to be determined with reference to the

5 Its forerunner being the Specific Relief Act, 1877

pleadings and evidence of parties as also to all the material circumstances having bearing on the conduct of parties, the plaintiff in particular. In view of the contentions urged, we have scanned through the record to examine if the finding of the High Court in this regard calls for any interference.

It is noticed that plaintiffs pleaded in paragraphs 6 and 7 of the plaint that they were ready to get the sale deed executed as per the conditions in the agreement for sale and also stated that they served the notice, then supplementary agreement was executed; and then, on many occasions, they asked the defendant to execute the sale deed. The defendant No. 1 in his written statement merely stated a bald denial that such averments were false and were '*not agreeable to the defendants*'. In fact, the entire emphasis of the written statement had been on the assertion that the agreement in question was not for sale and was obtained by the plaintiffs towards security against the amount borrowed by the defendant No. 1.[6] The plea of the plaintiffs as regards their readiness to perform the contract as per its conditions did not meet with categorical denial from the defendants. This apart, and as noticed, even at the time of entering into the agreement, the plaintiffs made payment of a sum of Rs. 3,500/- against the sale consideration of Rs. 22,951/-. Moreover, and much before the stipulated date of execution of sale deed, they made another payment of Rs. 2,000/- against the sale consideration. When the sale deed was not executed by 23.03.1966, the plaintiffs served notice on 05.04.1966. The vendors

6 This plea of the defendants as regards nature of transaction stands rejected for what has been discussed in paragraphs 12 and its sub-paragraphs hereinbefore.

thereafter executed the supplementary agreement and the plaintiffs made payment of yet another sum of Rs. 500/- while it was also agreed by the vendors that the property carried encumbrance to the tune of Rs. 5,000/-, which was to be adjusted against the sale consideration. Therefore, the plaintiffs were left to make payment of about half of the sale consideration. The recitals in the supplementary agreement even suggested about the vendors having delivered possession of the property in question. The plaintiffs have alleged that they lost possession later on. Though the factum of delivery of possession is disputed by the defendants but such a dispute does not carry any adverse impact on the rights of the plaintiffs to seek specific performance.

The admission of plaintiff No. 3 that she was not possessed of sufficient funds cannot be read in isolation and it cannot be concluded that she was not possessed of sufficient means to pay the remaining sale consideration. Her statement is required to be visualised in the backdrop of the fact that her husband, plaintiff No. 1, had expired and she had succeeded to his estate. Her statement, with reference to her understanding of the matter, could only be interpreted to mean that at the given moment, she was not off-hand in possession of the money to make payment but such an expression in her statement cannot lead to the conclusion that making payment of the remaining sale consideration was beyond her capacity or that she was not willing to perform her part of the contract. In the ultimate analysis, we are satisfied that the question of readiness and willingness on

the part of the plaintiffs was approached by the First Appellate Court from an altogether wrong angle and was decided against the plaintiffs on irrelevant considerations.

So far the period between the year 1966 to the year 1968 is concerned, when the plaintiffs had the limitation of three years for filing the suit for specific performance, it cannot be said that during the aforesaid period, the plaintiffs were required to show overt act by them in furtherance of the agreement in question. The principles stated in the decisions in *Azhar Sultana, Veerayee Ammal* and *Pushparani S. Sundaram* (supra), as relied upon by the learned counsel for the appellants, are not of any doubt or debate but each of the said cases had proceeded on its own facts. We may also observe that in the case of *Azhar Sultana,* the Court found that as against the agreement dated 04.12.1978, the suit for specific performance was filed on 07.12.1981, after the property was sold on 31.10.1981; and that the plaintiff failed to show that she was not having notice of the subsequent sale. However, in the said case, the Court directed monetary payment to the tune of twice the amount advanced by the plaintiff. In *Veerayee Ammal*, this Court pointed out that the expression 'reasonable time' for performance on the part of plaintiff would depend on the circumstances of the case, including the terms of contract. In *Pushparani S. Sundaram,* the basic requirements of Section 16 of the Act of 1963 were reiterated. In contrast to what is suggested on behalf of the appellants, we may point out that recently, in the case of ***R Lakshmikantham v. Devaraji:***

Civil Appeal No. 2420 of 2018, decided on 10.07.2019, this Court has again explained that when the suit for specific performance is filed within the period of limitation, delay cannot be put against the plaintiff. This Court has said:-

> *"….In the aforesaid circumstances, the High Court was also incorrect in putting a short delay in filing the Suit against the plaintiff to state that he was not ready and willing. In India, it is well settled that the rule of equity that exists in England, does not apply, and so long as a Suit for specific performance is filed within the period of limitation, delay cannot be put against the plaintiff - See Mademsetty Satyanarayana v. G.Yelloji Rao and Others AIR 1965 Supreme Court 1405 (paragraph 7) which reads as under:-*
>
> > *"(7) Mr. Lakshamaihan cited a long catena of English decisions to define the scope of a Court's discretion. Before referring to them, it is necessary to know the fundamental difference between the two systems- English and Indian-qua the relief of specific performance. In England the relief of specific performance pertains to the domain of equity; in India, to that of statutory law. In England there is no period of limitation for instituting a suit for the said relief and, therefore, mere delay – the time lag depending upon circumstances – may itself be sufficient to refuse the relief; but, in India mere delay cannot be a ground for refusing the said relief, for the statute prescribes the period of limitation. If the suit is in time, delay is sanctioned by law; if it is beyond time, the suit will be dismissed as barred by time; in either case, no question of equity arises."*"

In the present case too, when the plaintiffs had the limitation of three years for filing the suit and have indeed filed the suit well within limitation;

and looking to the overall circumstances of the case, no aspect of delay operates against them.

Having examined the matter in its totality and in the light of applicable principles, we are satisfied that the given set of facts and circumstances of this case lead only to the conclusion that the plaintiffs have shown their readiness and willingness to perform their part of the contract and there does not operate any personal bar against their claim for specific performance. Therefore, the second question is also answered in favour of the plaintiffs.

Operation of the doctrine of *lis pendens: Section 52 T.P. Act*

14. The third question as regards the sale transactions in favour of the present appellants (the subsequent purchasers) need not detain us longer, except to correct an error on the part of High Court where it is observed that such sale deeds are to be treated as illegal.

The suit in question was filed on 26.08.1968. So far the sale transaction in favour of the defendant Nos. 4 & 5 (the appellant Nos. 1 & 2 herein), in relation to 25 acres of land out of the suit property, is concerned, the same was effected by way a sale deed registered only on 10.07.1978 i.e., nearly 10 years after filing of the suit. So far the sale transaction in favour of the defendant No. 6 (the appellant No. 3 herein), in relation to other 25 acres of land out of the suit property, is concerned, though it is suggested that there had been an agreement (dated 08.05.1968) in his

favour before filing of the suit but then, admittedly, the sale transaction was effected by way of a sale deed registered only on 18.09.1968, that had also been after filing of the suit. The suggestion about want of knowledge of the subsequent purchasers about the transaction of the vendors with the plaintiffs and about the pendency of the suit has been considered and rejected by the High Court and even by the subordinate Court after due appreciation of evidence on record; and we are unable to find any infirmity in these findings. Both the sale transactions in favour of the present appellants, purporting to transfer the suit property in part, having been effected after filing of the suit, are directly hit by the doctrine of *lis pendens,* as embodied in Section 52 of the Transfer of Property Act, 1882 that reads as under: -

> ***"52. Transfer of property pending suit relating thereto****. ---- During the pendency in any Court having authority within the limits of India excluding the State of Jammu and Kashmir or established beyond such limits by the Central Government of any suit or proceedings which is not collusive and in which any right to immoveable property is directly and specifically in question, the property cannot be transferred or otherwise dealt with by any party to the suit or proceedings so as to affect the rights of any other party thereto under any decree or order which may be made therein, except under the authority of the Court and on such terms as it may impose.*
>
> *Explanation.---- For the purposes of this section, the pendency of a suit or proceeding shall be deemed to commence from the date of the presentation of the plaint or the institution of the proceeding in a Court of competent jurisdiction, and to continue until the suit or proceedings has been disposed of by a final decree or order and complete satisfaction or discharge of such*

decree or order has been obtained, or has become unobtainable by reason of the expiration of any period of limitation prescribed for the execution thereof by any law for the time being in force."

In the case of *Guruswamy Nada* (supra), this Court has held as under: -

"*13. Normally, as a public policy once a suit has been filed pertaining to any subject-matter of the property, in order to put an end to such kind of litigation, the principle of lis pendens has been evolved so that the litigation may finally terminate without intervention of a third party. This is because of public policy otherwise no litigation will come to an end. Therefore, in order to discourage that same subject-matter of property being subjected to subsequent sale to a third person, this kind of transaction is to be checked. Otherwise, litigation will never come to an end."*

The aforesaid observations in no way lead to the proposition that any transaction on being hit by Section 52 *ibid.*, is illegal or void *ab initio,* as assumed by the High Court. In *Sarvinder Singh* (supra), as relied upon by the High Court, the subsequent purchasers sought to come on record as defendants and in that context, this Court referred to Section 52 of the T.P. Act and pointed out that alienation in their favour would be hit by the doctrine of *lis pendens.* The said decision is not an authority on the point that every alienation during the pendency of the suit is to be declared illegal or void. The effect of doctrine of *lis pendens* is not to annul all the transfers effected by the parties to a suit but only to render them subservient to the rights of the parties under the decree or order which may be made in that suit. In other words, its effect is only to make the decree passed in the suit

binding on the transferee, i.e., the subsequent purchaser. Nevertheless, the transfer remains valid subject, of course, to the result of the suit. In the case of *A. Nawab John* (supra), this Court has explained the law in this regard, and we may usefully reiterate the same with reference to the following:-

> *"18. It is settled legal position that the effect of Section 52 is not to render transfers effected during the pendency of a suit by a party to the suit void; but only to render such transfers subservient to the rights of the parties to such suit, as may be, eventually, determined in the suit. In other words, the transfer remains valid subject, of course, to the result of the suit. The pendent lite purchaser would be entitled to or suffer the same legal rights and obligations of his vendor as may be eventually determined by the court."*

Hence, the effect of Section 52 *ibid.,* for the purpose of the present case would only be that the said sale transactions in favour of the appellants shall have no adverse effect on the rights of the plaintiffs and shall remain subject to the final outcome of the suit in question. However, the High Court, while holding that the said transactions were hit by *lis pendens,* has proceeded to observe further that the sale deeds so made in favour of the present appellants were illegal. These further observations by the High Court cannot be approved for the reasons foregoing.

High Court not in error in entertaining second appeal

15. For what has been discussed hereinabove, the basic point for determination, i.e., as to whether the High Court was justified in entertaining the second appeal stands answered in the affirmative because, as noticed,

the findings of the subordinate Courts on the nature of transaction and as regards readiness and willingness of the plaintiffs, which are of material bearing on the final determination, suffered from perversity and were based on irrelevant considerations. The second appeal before the High Court, obviously, involved substantial questions of law and the High Court cannot be faulted in entertaining the second appeal and in deciding the questions in favour of the plaintiffs. However, the observations of the High Court as regards operation of doctrine of *lis pendens* are partly incorrect and stand modified as above.

What should be the relief?

16. The determination foregoing is not the end of the matter. Even when the agreements in question are held to be for sale and the plaintiffs are held being ready and willing to perform their part thereof; and the transactions in favour of the present appellants are hit by *lis pendens,* the point that still remains for determination is as to whether the plaintiffs are entitled to the relief of specific performance, or granting of alternative relief would be just and proper disposal of this litigation?

It is noticed that the High Court though proceeded to mould the relief in the manner that specific performance was granted on enhanced sale consideration and it was also directed that if the plaintiffs fail to make payment within two months, the present appellants (subsequent

purchasers) would make payment of same amount to the plaintiffs so as to *'confirm their ownership over the suit land'*. However, in regard to this crucial aspect of the matter, it appears that the High Court overlooked the other relevant provisions of the Act of 1963 and omitted to examine if the alternative mode of relief would meet the ends of justice.

In our view, after it was found that granting the decree for specific performance in the very terms of the agreement/s in question may not be appropriate because of myriad factors, the matter ought to have been examined with reference to the stand of the parties and the provisions of Sections 21 and 22 of the Act of 1963. For ready reference, we may extract the said provisions as were existing at the time of filing of the suit in question as under:-

> ***"21. Power to award compensation in certain cases.—***
>
> *(1) In a suit for specific performance of a contract, the plaintiff may also claim compensation for its breach, [either in addition to, or in substitution of][7], such performance.*
>
> *(2) If, in any such suit, the court decides that specific performance ought not to be granted, but that there is a contract between the parties which has been broken by the defendant, and that the plaintiff is entitled to compensation for that breach, it shall award him such compensation accordingly.*
>
> *(3) If, in any such suit, the court decides that specific performance ought to be granted, but that it is not sufficient to satisfy the justice of the case, and that some compensation for breach of the contract should*

7 The expression "either in addition to, or in substitution of" was substituted by the expression "in addition to" by Act No.18 of 2018.

also be made to the plaintiff, it shall award him such compensation accordingly.

(4) In determining the amount of any compensation awarded under this section, the court shall be guided by the principles specified in section 73 of the Indian Contract Act, 1872 (9 of 1872).

(5) No compensation shall be awarded under this section unless the plaintiff has claimed such compensation in his plaint:

Provided that where the plaintiff has not claimed any such compensation 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 compensation.

Explanation.—The circumstance that the contract has become incapable of specific performance does not preclude the court from exercising the jurisdiction conferred by this section.

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 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."

We may refer to some of the relevant factors having bearing on the question of appropriate relief in this matter. First, the agreements in question were executed way back on 20.09.1965 and 28.04.1966. Secondly, the plaintiffs had paid an amount of Rs. 6,000/- as on 28.04.1966 against the sale consideration of Rs 22,951/- when the supplementary agreement was executed. Thirdly, though the plaintiffs alleged delivery of possession of the land in question to them, the evidence on record shows that vendors and thereafter, the subsequent purchasers remained in effective possession thereof. Fourthly, the High Court has taken note of the fact that as on the date of its decision (01.08.2007), the subsequent purchasers were in possession of the land in question for about 40 years. Fifthly, the High Court has found that the land in question carried much higher valuation at the time of passing of the judgment in second appeal and hence, enhanced the sale consideration to Rs. 10,000/- per acre. Sixthly, the plaintiffs, even while seeking specific performance, consciously prayed for the alternative reliefs of recovery of amount paid by them with interest and compensation to the tune of Rs 15,000/-. Seventhly, the plaintiff No. 3 had categorically deposed before the Court as PW1 that he was not entitled to the land in question for being not an agriculturist and he had relinquished his rights in favour of the plaintiff Nos. 1 & 2. Eighthly, the

plaintiff No. 1 had expired during the pendency of suit and the plaintiff No. 2 had expired during the pendency of this appeal; though the heir and legal representative of the said plaintiff Nos. 1 & 2 is on record as plaintiff No. 4 (respondent No. 2 herein). Ninthly, the plaintiff No. 2, while deposing as PW2 had stated that in case specific performance was not granted, she '*may be granted alternative relief and compensation with interest'.*

17. In view of the above, on the point as to whether the decree passed by the High Court is justified or any other form of relief shall meet the ends of justice, we are of the view that instead of specific performance, awarding of monetary compensation to the respondent No. 2 shall meet the ends of justice. In this regard, we may observe that the appellants themselves have filed a so-called valuation report suggesting that the market value of unirrigated land was Rs. 70,000/- per hectare whereas that of the irrigated land was Rs. 1,40,000/- per hectare. The fact also remains that the appellants have been enjoying the land in question for a long length of time. Further, it gets reiterated that the predecessors of respondent No. 2 made payment of the sum of Rs. 6,000/- to the vendors in the years 1965-1966; and the plaintiffs had claimed alternative relief of recovery of the said amount together with interest as also of compensation. Taking all the relevant factors into account, we are of the view that awarding a lump sum of Rs. 15,00,000/- (Rupees fifteen lakh) to the respondent No. 2 as compensation in lieu of specific performance and in lieu of any other claim *qua* the land in question shall meet the ends of justice.

CONCLUSION

18. Accordingly, this appeal is partly allowed to the extent and in the manner that the impugned judgment and decree dated 01.08.2007 stand modified and the relief of specific performance of the agreements in question is set aside. In lieu of specific performance and in lieu of any other claim *qua* the land in question, the plaintiff-respondent No. 2 is awarded compensation in the sum of Rs.15,00,000/- (Rupees fifteen lakh), payable within two months from today by the defendants, including the present appellants, jointly and severally. Upon the expiry of the period of two months, the amount shall carry interest @ 6% per annum until payment or realization. The plaintiff-respondent No. 2 shall also be entitled to withdraw the amount of Rs. 5,10,000/- (Rupees five lakh ten thousand) deposited in terms of the decree of High Court, if not already withdrawn. In the circumstances of the case, the parties are left to bear their own costs throughout.

.....J.
(ABHAY MANOHAR SAPRE)

.....J.
(DINESH MAHESHWARI)

New Delhi,
Date: 13th August, 2019.