BOMBEY HIGH COURT

Andheri Bridge View Co

Vs.

Krishnakant Anandrao Deo

Suit No. 774 of 1985

(A.A. Cazi, J.)

30.10.1990

JUDGEMENT

A.A. Cazi, J.

1.This suit is for (a) a decree for ordering the defendants to specifically perform their obligation under the contract by executing conveyance in favor of the plaintiffs in respect of the suit property more particularly described in the Schedule annexed to the plaint with clear and unencumbered title; (aa) alternatively, if it is found that the defendants are unable to convey the suit property with clear and unencumbered title, decree for specific performance plus decree for Rs. 1 crore as compensation for not conveying clear and marketable title; (ab) a decree ordering defendants Nos. 4 to 6 to construct on the suit plot a building consisting of 60 tenements with 36790 sq. ft. built up area as per plan submitted and approved by the Bombay Municipal Corporation; (ac) alternatively, if specific performance of the agreement cannot be granted, a decree against defendants Nos. 4 to 6 ordering them the refund to the plaintiffs the consideration of Rs. 14,24,440/- together with interest thereon at the rate of 20% per annum from 18-11-1983 till the date of the suit and further interest at the same rate or such rate as the court deems fit and proper, from the date of the suit till payment; and (b) in the alternative to prayer (a), if the plaintiffs are not entitled to the specific performance, a decree ordering the defendants to pay to the plaintiffs damages of Rs. 8 crores or such sum as may be determined on inquiry in that behalf with interest thereon at the rate of 18% per annum from the date of the suit till payment.

2. In the prayer clause (a) there is a reference "schedule annexed to the plaint", but undisputedly what is meant thereby is the schedule at page 42M of the plaint. The property described there is land plus structures standing thereon being Plot No.703, admeasuring 4500 sq. yds. equal to 3763 sq. meters situate at Andheri (East) in the registration and sub-district of Bombay City and Bombay Suburban now Greater Bombay.

3. The plaintiffs' case is as follows: On 23rd April, 1970 there was an agreement under which defendants Nos. 1 to 3 agreed to sell the suit property to defendants Nos. 4 to 6 for a certain price and this was subject to Court sanction being obtained in respect of the minor vendors. On 23rd April, 1970 possession of the suit property was given by defendants Nos. 1 to 3 to defendants Nos. 4 to 6 and a Power of Attorney was also given. In March, 1975 the promoters of the plaintiff-society (which was then a proposed society) were J. L. Joshi and B. S. Salvi. On 30th April, 1975 the then promoters of the plaintiff-society agreed to purchase the to be constructed residential flats on the suit land at Rs. 100/- per sq. ft. and a sum of Rupees 1,50,000/- was paid and balance of 10% was to be deposited with the attorneys of the defendants M/s. Ayer and Co. Defendants Nos. 4 to 6 made no efforts to remove the unauthorized occupants. On the contrary defendants Nos.4 to 6 issued notice dated 26th April, 1979 terminating the agreement dated 30th April, 1975. The original promoters then assigned their rights under the agreement to (1) Smt. V. V. Petkar, (2) Sri R. J. Tamhankar and (3) Sri Jumani. On 26th July, 1980 there were two agreements copies of which are at Exhibits 'D' and 'D-1' to the plaint. Exhibit 'D' to the plaint is an agreement between defendants Nos. 4 to 6 on the one hand referred to therein as "the vendors" and (1) Mrs. V. V. Pethkar, (2) P. D. Tamhankar and (3) Smt. K. K. Bhandari on the other referred to therein as "the purchasers". In that agreement it was stated that there were 30 hutments on the said land; that the vendors withdrew the notice dated 26th April, 1979 and confirmed that the agreement dated 30th April, 1975 was valid and subsisting; that the vendors would proceed to construct alternative accommodation in a portion shown in the plan annexed thereof and to shift all the hutments; that the total built up area for the purchasers would be 36790 sq. ft. and total tenements would be 60 which would be constructed by the vendors for the purchasers; that the price would be Rs. 125/- per sq. ft. of the built up area; that within four days from the date of the execution of that agreement, the vendors would produce all the documents in their possession to the purchasers' Advocate for investigation of title of the suit property "and the purchasers shall accept the said title within 2 months from the date hereto. If the purchasers do not accept the title, then this agreement as well as the agreement dated 30th April, 1975 suall stand cancelled and the vendors shall refund to the purchasers the amount received by them without interest and each party will pay its own costs"; that 20% of the total purchase price would be deemed to be treated as the cost of the plot and on payment of such amount the plaintiff-society was entitled to get the conveyance deed of the said plot in its favor and that this condition was required to be incorporated in the agreement since the members of the plaintiff-society were to get the loans from their employer viz., Bombay Municipal Corporation, only after getting conveyance deed in favor of the society. Defendants Nos. 4 to 6 took no steps to evict the unauthorized occupants. In 1981 one unauthorized occupant Smt. Ambubai Gharat filed Suit No. 557 of 1981 in the City Civil Court, Bombay, against defendants Nos. 4 to 6 for an injunction restraining defendants Nos. 4 to 6 from disturbing her possession in respect of the suit land. In January, 1983, defendant No. 4, for the first time, informed the plaintiffs regarding the interim injunction passed in Suit No. 557 of 1981. There was a further modification in the agreement and the rate of price was Rs. 175/- per sq. ft. In April, 1983, Defendants Nos. 4 to 6 started construction of the building and the plaintiffs paid Rs. 13,24,440/- to defendants Nos. 4 to 6. This

was the 20% of the total costs. This was paid in November, 1983. The plaintiffs then called upon defendants Nos. 4 to 6 to convey the suit land. There was further correspondence between the parties. Defendants Nos. 4 to 6 however did not convey the suit land to the plaintiff-society. The plaintiff-society was always ready and willing from time to time to perform their part of the contract and paid 20% of the total cost price and thereby had completed their part of the contract. By subsequent correspondence the defendants agreed to execute conveyance deed, got the rate enhanced to Rs. 180/- per sq. ft. with balance of F.S.I. being retained by them. The plaintiffs are ready and willing to perform their part of the contract even regarding the second stage.

4. The defense of the defendants is as follows: There is non-joinder of parties. There is mis-joinder of causes of action. The plaintiffs have split up the agreements into two parts and have sought specific performance of only one part and the plaintiffs cannot get relief by splitting the agreements in this manner. The suit is barred by limitation. It is denied that the plaintiff-society is registered. The rights of the plaintiffs are governed by the agreements Exhibits 'D' and 'D-1' dated 26th July, 1980 and not by the earlier agreements mentioned in the plaint. It is not admitted that the plaintiff-society acquired all rights under the said agreement. In any case the promoters are necessary parties. The suit by Smt. Ambubai Gharat is against defendant No. 4 only. Because of the injunction passed in that suit it became necessary to alter the plans of the proposed building on the suit land but the plaintiffs are not agreeable to that and, therefore, defendant No. 4 could not continue without altering the plans. Defendant No. 4 informed the plaintiffs from time to time regarding Ambubai's suit. The plaintiffs have themselves terminated the agreement. They therefore cannot claim any specific performance. At the request of the purchasers under the said agreements the 4th defendant paid Rs. 1,00,000/- which has not yet been returned. Therefore there was breach on the part of the purchasers. The plaintiffs have not yet accepted the title of the defendants and this is a breach of the term of the agreement and, therefore, the agreement stands terminated. Defendants Nos. 4 to 6 are ready and willing to refund to the plaintiffs their amounts. The suit contract cannot be specifically performed because it runs into minute and numerous details. The plaintiffs have violated the terms of the contract. The plaintiffs are not ready and willing to perform their obligation under the contract, The amended claim is barred by limitation. They deny damages. The plaintiffs have not confirmed the agreement dated 26th July, 1980 and hence the plaintiffs cannot make any claim under the said agreement. The valuation is disputed.

5. The issues are as follows:

1. Whether the suit as framed is misconceived and not maintainable as mentioned in para 1 of the Written Statement?
2. Whether the suit is bad for mis-joinder of parties and causes of action as mentioned in para 1 of the Written Statement?
3. Whether the plaint discloses any cause of action?
4. Whether the price of land was deemed to be 20 per cent of the purchase price as alleged in para 14 of the plaint?

5. Whether the plaintiffs have split the agreement for sale in two parts and sought for specific performance of only one part as stated in para 2 of the Written Statement?
6. Whether the plaintiffs are entitled to specific performance of a portion of the agreement as claimed in the plaint?
7. Whether the suit is barred by the law of limitation?
8. Whether the plaintiff society is duly registered as alleged?
9. Whether the rights of the parties are now governed by two agreements dated 26th July, 1980 mentioned in the plaint as contended in para 3 of the Written Statement?
10. Whether the promoters of the plaintiff society are necessary parties to the suit?
11. Whether the plaintiff society has acquired all rights under the two agreements as alleged in para 15 of the plaint?
12. Whether the agreements mentioned in the plaint are a nullity and cannot be enforced?
13. Whether the plaintiffs are not entitled to file this suit as stated in para 6 of the Written Statement?
14. Whether the suit is bad for non-joinder of necessary parties?
15. Whether the plaintiffs have committed breach of the agreement in suit as stated in para 11 of the Written Statement?
16. Whether the defendants 4 to 6 have become entitled to rescind the agreement as stated in para 11 of the Written Statement?
17. The agreements in suit being a package deal agreements whether the plaintiffs are entitled to separate the various terms and seek specific performance of the separate part ignoring the other part as stated in para 12 of the Written Statement?
18. Whether the plaintiffs themselves have terminated and cancelled the agreement and if so whether they are entitled to specific performance or any other relief in this suit as stated in para 13 of the Written Statement?
19. Whether the 4th defendant has paid to the three promoters of the plaintiffs Rupees 1,00,000 as mentioned in para 15 of the Written Statement? ,
20. Whether the plaintiffs have committed a breach of the agreement by reason of not returning the said amount as mentioned in para 5 of the Written Statement?
21. Whether the plaintiffs did not approve the title by reason of which the agreements stand cancelled as stated in part 6 of the Written Statement?
22. Whether the agreements aforesaid stand cancelled?
23. Whether the contract in suit is such for the non-performance of which compensation in money is adequate relief?
24. Whether the contract in suit involves performance of continuous acts and minute details which the Hon'ble Court cannot supervise and if so whether the plaintiffs are not entitled to any relief as stated in para 19 of the Written Statement?
25. Whether the plaintiffs have performed and have been ready and willing to perform their part of the contract?
26. To what reliefs, if any are the plaintiffs entitled?
27. Generally.

28. Whether the plaint discloses no cause of action in respect of the claim for damages?
29. Whether the claim for damages is barred by law of limitation?
30. Whether the claim for damages is misconceived and not maintainable?
31. Whether in the absence of particulars of alleged damages the plaintiffs are not entitled to any damages as stated in para 3 of the additional Written Statement?
32. Whether the plaintiffs have suffered any damages and if so what amount?
33. Whether the two agreements dated the 26th day of July, 1980 are a nullity as stated in para 4 of the additional Written Statement and give rise to no cause of action to the plaintiffs?
34. To what damages, if any, are the plaintiffs entitled and against which defendants?
35. Whether the plaint discloses any cause of action in respect of the reliefs claimed by virtue of second amendment to the plaint by order dated 25-7-1990?
36. Whether the suit is barred by law of limitation in respect of the reliefs as per second amendment to the plaint?
37. Whether the plaintiffs are not entitled to any damages for the reasons mentioned in para 3 of the second additional written statement?
38. Whether the plaintiffs were or they are ready and willing to perform their part of the contract regarding construction work?
39. Whether the reliefs claimed under the second amendment to the plaint are barred by reason of Order 2, Rule 2 of the Civil Procedure Code?
40. What amount the plaintiffs have paid to the defendants 4 to 6?
41. Whether the plaintiffs are entitled to take into account or claim credit for the amounts paid by the promoters of the plaintiffs?
42. Whether the plaintiffs are entitled to refund of any amount?
43. Whether the plaintiffs are entitled to interest at 20 per cent per annum or at any other rate?
44. Whether the plaintiffs are not entitled to any relief for the reason stated in para 8 of the second additional Written Statement of the defendants?
45. Whether the suit is not properly valued for the purpose of Court-fees and jurisdiction?
46. Whether proper Court-fees are paid by the plaintiffs?
47. To what reliefs, if any, are the plaintiffs entitled?
48. General.

6. My answers are

1. No.
2. No.
3. Yes.
4. No.
5. In view of the amendment of the plaint this issue does not survive.
6. In view of the amendment of the plaint this issue does not survive.

7. No.
8. Yes.
9. The rights of the parties are governed by the agreement contained in the correspondence commencing from the letter dated 29th January, 1983.
10. No.
11. Does not survive in view of my answer to Issue No. 9.
12. Does not survive in view of my answer to Issue No. 9.
13. No.
14. No.
15. No.
16. Does not survive in view of the amendment of the plaint.
17. Does not survive in view of the amendment of the plaint.
18. The plaintiffs by purporting to terminate the agreement have shown their unwillingness to perform their part of contract and therefore have rendered themselves disentitled to specific performance or damages.
19. Yes.
20. The plaintiffs have returned the said amount.
21. No.
22. No as per answer to Issue No. 21.
23. No.
24. No.
25. No.
26. The plaintiffs are entitled to refund from defendants Nos. 4, 5 and 6 of the amount of Rs. 13,24,440/- with interest at 12% per annum from the date of the filing of the suit till payment.
27. As per order below.
28. No.
29. No.
30. Yes.
31. Does not survive.
32. Does not survive.
33. Does not survive in view of my answer to Issue No. 9.
34. Nil.
35. Does not survive.
36. No.
37. Does not survive.
38. This issue is already answered by my answer to Issue No. 18.
39. No.
40. Rs. 13,24,440/- towards the purchase price being 20% of the purchase price of Rupees 66,22,200/- and Rs. 1,00,000/- as refund as discussed.
41. Yes.

42. Yes.
43. This issue is already answered by my answer to Issue No. 26.
44. No.
45. No.
46. Yes.
47. Already answered.
48. As per order below with no order as to costs.

Wednesday, the 31st October, 1990.

REASONS

7. Issues Nos. 1, 2, 10, 13 and 14 can be taken up together. The property belonged to defendants Nos. 1, 2 and 3. Under an agreement of 1970 defendants Nos. I, 2 and 3 agreed to sell the property to defendants Nos. 4, 5 and 6. They also gave Power of Attorney to Defendants Nos. 4, 5 and 6. Defendants Nos. 4, 5 and 6 virtually became the owners. According to the plaintiffs they have an agreement with defendants Nos. 4, 5 and 6 and the suit is in respect of their agreement with defendants Nos.4, 5 and 6. The privity of contract therefore is between the plaintiffs on the one hand and defendants Nos. 4, 5 and 6 on the other. It is therefore contended by the defendants that there is no privity of contract between the plaintiffs on the one hand and defendants Nos. 1, 2 arid 3 on the other and therefore there is mis-joinder so far as defendants Nos. 1, 2 and 3 are concerned. However, undisputedly defendants Nos. 1, 2 and 3 have not yet executed conveyance of the property to defendants Nos. 4, 5 and 6. In order to obviate any difficulties coming in the way of the plaintiffs in executing any decree that they may obtain in respect of the suit property against defendants Nos. 4, 5 and 6 they have made defendants Nos. 1, 2 and 3 parties to the suit. It may be that defendants Nos. 1 and 3 are not necessary parties to the suit but in the circumstances it cannot be said that they are not proper parties to the suit. There is no question therefore of any misjoinder of the parties. Further some reliefs are claimed against defendants Nos. l, 2 and 3. The plaintiffs' claim arises only under the alleged agreement with defendants Nos. 4, 5 and 6, but, in order to pursue their remedy against defendants Nos. 4, 5 and 6 should they succeed in obtaining a decree for specific performance, they would have to proceed also aginst defendants Nos. l, 2 and 3. They cannot proceed independently against defendants Nos. 1, 2 and 3, though their cause of action arises only out of the said agreement with defendants Nos. 4, 5 and 6. Under these circumstances it cannot be said that there is misjoinder of cases of action. I have therefore answered Issues Nos. 1, 2, 10, 13 and 14 accordingly.

8. Issue No. 3: The discussion on the other issues shows the cause of action in the plaint and hence I have answered this Issue in the affirmative.

9. Issue No. 4 : Sri Angal concedes this Issue and hence it has been answered accordingly.

10. Issues Nos. 5, 6, 15, 16 and 17: According to the plaintiffs the agreement between them and defendants Nos. 4, 5 and 6 was that the defendants were to put up certain constructions on the suit land and sell all these constructions, or rather the individual flats in those constructions, to the plaintiffs. The agreement provided that on payment of 20% of the total cost price so agreed there would first be a conveyance of the land made in favor of the plaintiffs. On that conveyance being made the members of the plaintiff society would be enabled to obtain loans from the Bombay Municipal Corporation who are the employers. After obtaining loans they would then be able to pay up the balance of the purchase price. According to the plaintiffs they have already paid an amount equal to 20% of the total price of all the flats agreed by defendants Nos. 4, 5 and 6 to be sold to the plaintiffs. It is now for the defendants to make the conveyance and after the conveyance is made then the performance of the remaining part of the agreement could be proceeded with. However, this sort of splitting of the agreement is not permissible under the provisions of Section 12 of the Specific Relief Act, 1963. Sub-section (1) of the said Section 12 reads "Except as otherwise hereinafter provided in this section, the court shall not direct the specific performance of a part of a contract". Sri Angal drew my attention to sub-section (4) thereof which reads as follows:

> "When a part of a contract which, taken by itself, can and ought to be specifically performed, stands on a separate and independent footing from another part of the same contract which cannot or ought not to be specifically performed the court may direct specific performance of the former part".

According to Sri Angal the part of the contract up to the stage of requiring the defendants to make the conveyance of the land in favor of the plaintiffs stands on a separate and independent footing from the rest of the contract which can come into effect for the purpose of performance and therefore the prohibition contained in sub-section (1) of Section 12 does not apply. I do not agree with Sri Angal. The question of splitting of the claim, however, no longer survives in view of the fact that the plaintiffs have carried out amendment to the plaint and now they have sought specific performance of the entire alleged contract. I have therefore answered Issues Nos. 5, 6, 15, 16 and 17 accordingly.

11. Issues Nos. 7, 29 and 36 which are all on limitation may be dealt with together. Sri Kikla, the learned Advocate for the defendants, drew my attention to the compilation Exhibit 'A', page 6, clause 13. Now this clause 13 of the agreement dated 23rd April 1970 is between defendants 1, 2 and 3 on the one hand and defendants Nos. 4, 5 and 6 on the other and, therefore, whatever may have been agreed between them cannot come in the way of the plaintiffs' suit based on the agreement which they claim to have entered with defendants Nos.4, 5 and 6. The period of limitation will be governed by the cause of action arising out of the agreement which the plaintiffs are claiming that they had with defendants Nos. 4, 5 and 6.

12. Sri Kikle then drew my attention to the agreement of 1975 (compilation Exhibit 'A' page 13). He also drew my attention to the fact that this was an agreement which defendants Nos. 4, 5 and

6 had with the then promoters of the plaintiff-society. He then drew my attention to compilation page 30, clause 20 which is from the agreement dated 26th July 1980. This clause 20 reads:

> "20. The Vendors shall execute the conveyance in favor of the said society duly registered within 6 months from the date of this agreement in the manner hereinabove mentioned".

The six months period therefore would expire in January 1981. The limitation for the suit is as per the provisions of Articles 54 and 55 of the Schedule to the Limitation Act for a period of three years and the same reads as follows:

> Description of suit Period of limitation Time from which period begins to run
> 54 For specific performance of a contract. Three years. The date fixed for the performance, or, if no such date is fixed, when the plaintiff has notice that performance is refused.
> 55. For compensation for the breach of any contract, express or implied not herein specially provided for. Three years. When the contract is broken or (where there are successive breaches) when the breach in respect of which the suit is instituted occurs or (where the breach is continuing) when it ceases.
> Sri Kikla therefore argued that the time limit for filing this suit for specific performance and for compensation for breach would be till January 1984 and, therefore, this suit having been filed in 1985 would be beyond limitation. I do not agree with Sri Kikla. The correspondence between the parties commencing from the letter dated 29th January 1983 gave rise to a new agreement between the parties. Let us see the earlier agreements. First there was an agreement on 50th April 1975 between defendants Nos. 4, 5 and 6 on the one hand and the then promoters of a proposed society on the other. Thereafter there was a second agreement on 26th July 19$0 again between defendants Nos. 4, 5 and 6 on the one hand and three other persons viz., (1) Mrs. V.V. Pathkar, (2) Mr. P.D. Tamhankar, and (3) Sint. K.K. Bhandari, the latter three in their capacity as promoters of the proposed society on the other. The plaintiff-society was registered on 14th October 1981. The earlier agreements of 1975 and 1980 therefore would be null and void in so far as the plaintiff-society is concerned. This position is conceded by Sri Angal. What is urged by Sri Angal is that the correspondence from 29th January 1983 onwards is between the plaintiff-society after its registration and coming into existence on the one hand and defendants Nos. 4, 5 and 6 on the other and, therefore, the agreement that can be deduced from the correspondence is a proper and legal agreement between existing parties viz., the plaintiff-society on the one hand and defendants Nos. 4, 5 and 6 on the other. On the other hand it was urged by Sri Kikla that whatever terms can be deduced from the correspondence commencing with the letter dated 29th January 1983 are merely modification or alterations of the earlier agreements. For this purpose Sri Kikla drew my attention to paragraphs 17, 18, 19 and 20 of the plaint where reliance is placed by the plaintiffs upon the earlier agreements and where the plaintiffs have referred to rate of

payment being "enhanced", indicating that it was an old agreement subject to a modification so far as the rate is concerned. Further in paragraph 20 of the plaint the plaintiffs were relying upon payments made from 1975 to 1983 and these payments made prior to 1981 can only be made only under the old agreements and not under the agreement arising out of the correspondence. Sri Kikla also urged that the case now argued by Sri Angal that there was agreement deducible from the correspondence of 1983 and that this was a new agreement was never set up by the plaintiffs either in the correspondence or in the pleadings or in the evidence. Sri Kikla further argued that the plaintiffs referred to the old agreements as having been ratified subsequently indicating that the plaintiffs' case always had been to rely upon the earlier agreements as being the present claim. He also drew my attention to paragraph 3 of the letter dated 25th June 1984 which paragraph appears on page 82 of the compilation which reads as follows:

"3. After Registration of the said society, the agreement entered into with the Promoters ratified by you the Confirming Parties on 26-7-1980 whereby the rate of construction of the building was modified and keeping the other terms and conditions unchanged and/or unaltered".

Thus what the plaintiffs claimed in this letter was that they had ratified the earlier agreement of 26th June 1980. Sri Kikla drew my attention to paragraph 8 of the same letter which paragraph is at page 84 of the compilation which paragraph 8 reads as follows:

"8. My clients have already paid the sizeable amount to you, the Confirming Parties. Moreover the balance of a sum of collections made by one Sri Prakash Joshi, to the tune of Rs. 2,65,617/-, who acted as the original Organizer in this matter, will also have to be accounted for which please note".

Sri Kikla pointed out that by the statement made in this paragraph the plaintiffs are claiming credit for amount paid earlier by Prakash Joshi who was the earlier promoter. On the same line Sri Kikla drew my attention to paragraph 1 at page 92, paragraphs 6 and 7 at pages 93 and 94 and paragraph 10 at page 97 of the compilation and urged that in this correspondence the plaintiffs were claiming their rights under the agreement of 1980. As regards the plaint Sri Kikla drew my attention on the same lines to the bottom line of page 8 and the continuation of that statement on page 9 where it is mentioned that the plaintiffs acquired all rights under the old agreement and to paragraph 20 at page I l and to pages 12, 13 and 16. As regards that evidence. Sri Kikla drew my attention to line 14 on page 4 where the reference is to the "enhancement" of the rate agreed to be paid. Sri Kikla also urged that the test for deciding the question as to whether there was a new agreement or a novation depended on the answer to the question whether the defendants took discharge under the old agreement and for that purpose he drew my attention to the Contract Act by Mulla, 10th Edition. page 496. He also drew my attention to paragraph 34(AA) of the plaint where the two stages of the performance of the contract are mentioned and he urged that these stages are only referred to in the agreement of 1980.

13. Now, even if the parties have referred to an agreement as being not a new one but an old one with certain modifications, that would carry no weight if the law on the point is something contrary to what is understood by the parties. For example, we know that when there is a change in the constitution of a firm then the firm is a new partnership notwithstanding the fact that the parties may refer to it as the old partnership with a changed constitution. So also I would say that where there are material or substantial changes which go to the root of the agreement then this has to be regarded in law as a new agreement. What would be the position if the parties agree to sell property A and at a later stage they agree that not property A but property B should be sold? Clearly this would be a new agreement notwithstanding the fact that all other terms regarding rate for payment etc. may also be similar. So also payment of price or the rate of payment is a material part of the agreement for sale. Both the subject-matter and the rate of payment are material parts of any agreement for sale and change in either of these terms brings about a new agreement. In our case therefore the correspondence of 1983 brought about an entirely new agreement ---- between new parties, new property (so far a F.S.I. is concerned), and new rates.

14. As, regards Sri Kikla's argument that the obligations of defendants Nos. 4, 5 and 6 under the agreement of 1980 have continued, it is enough to state that the agreement of 1980 is not an agreement between the plaintiff-society on the one hand and defendants Nos. 4, 5 and 6 on the other. The plaintiff society was not a privy to the agreement of 1980 as the plaintiff-society was not in existence then. Therefore notwithstanding the fact that the defendants might have earlier entered into any number of agreements with other parties those agreements cannot come in the way so far as the plaintiff-society on the one hand and defendants Nos. 4, 5 and 6 on the other are concerned in the matter of arriving at any agreement that they may lawfully desire to have. As regards reliance upon payments made earlier than 1983 or payments made by persons who are not parties to the contract, that can be a valid consideration for a "new" agreement.

15. Sri Kikla urged that if we restrict ourselves to the correspondence effected from 29th January 1983 onwards then the agreement would be hit by vagueness as the property is neither specified nor various other terms necessary to complete the agreement have been mentioned. As I have stated earlier, parties may come to a new agreement and at that time they may refer to the terms either of an old agreement and expressly or impliedly agree to any other draft agreement or they may refer to the terms of agreement between quite third parties and agree that those terms would be applicable to them. In my opinion a new agreement can be deduced from the correspondence commencing from the letter dated 29th January 1983 though for fuller understanding thereof the previous agreements or talks between the parties or previous events may have to be referred to.

16. Let us now proceed to consider how the correspondence from 29th January 1983 constitutes an agreement between the parties. The letter dated 29th January 1983 and written by the plaintiffs to defendants Nos. 4, 5 and 6. Four terms are specifically stated in this letter - term No. 1 states the rate at Rs. 175/- per sq. ft, built up; term No. 2 states that the liability of Rs. 2,65,617/-

previously belonging to Prakash Joshi be waived; term No. 3 states that the conveyance of the property would be executed "keeping your interest in view totally uneffected by the said conveyance"; and term No. 4 states that the rate of Rs. 175/- shall not be liable to change or variation whatsoever thereafter. A mention in this letter to "the discussion held between your goodself as Builder and the Members of the Managing Committee of the Society on Friday, the 21st January 1983 at 7 p.m. in your site office". It is nobody's case that any of these terms were vague. By letter dated 11th February 1983 defendants Nos. 4, 5 and 6 replied to the plaintiffs "I do hereby confirm all the points referred to in your letter vide paras 1, 2, 3 and 4 of the said letter". That means these terms were fully accepted by defendants Nos. 4, 5 and 6. These two letters therefore would constitute proposal and acceptance to complete the contract between the parties.

17. Again there is a letter dated 12th March 1983 written by the plaintiffs to defendants Nos. 4, 5 and 6 where six terms are mentioned. Here the period for commencement of the work is different from that of the earlier agreements. The rate is Rs. 100/- per sq. ft. whereas the earlier agreement arising from the correspondence of 29th January 1983 and 11th February 1983 the rate was Rs. 175/- per sq. ft. There is a different term regarding waiver of Prakash Joshi's liability. This therefore constitutes a proposal for an entirely new agreement. By letter dated 13th March 1983, defendants Nos. 4, 5 and 6 gave a reply to the plaintiffs stating "I do hereby confirm all the points mentioned in paragraphs 1 to 6 and accord hereby my approval of the same". These two letters dated 12th March 1983 and 13th March 1983 therefore constitute a proper proposal and acceptance of a new agreement between the parties. For the purpose of limitation, therefore, it is this new agreement deducible from the correspondence of March 1983 that has to be considered. The suit having been filed in 1985 for specific performance of this contract and for damages arising out of any breach of this contract would therefore be well within limitation. I have therefore answered Issues Nos. 7, 29 and 36 accordingly.

18. Issue No. 8 : Sri Kikla does not press his objection so far as this issue is concerned and hence I have answered it accordingly.

19. Issues Nos. 9 and 11 : The discussion which I have made while considering Issues Nos. 7, 29 and 36 on the question of limitation is sufficient to answer Issues Nos. 9 and 11 which I have answered accordingly.

20. Issue No. 10: Since I have held that there is an agreement between the plaintiffs on the one hand and defendants Nos. 4, 5 and 6 on the other arising out of the correspondence consisting of the two letters dated 12th March 1983 and 13th March 1983 and since I have held this constitutes a new agreement, there is no question of promoters of the plaintiff-society who were parties to the old agreement being made parties to the present suit. I have therefore answered Issue No. 10 accordingly.

21. Issues Nos, 2 and 33 : 1 have already discussed and held that there was a new agreement between the plaintiffs on the one hand and defendants Nos. 4, 5 and 6 on the other arising out of the letters dated 12th March 1983 and 13th March 1983 and, therefore, Issues Nos.22 and 23 do not survive. However, I may mention that it is conceded by Sri Angal that the plaintiffs could not enforce the agreements of 1980 as the plaintiffs were not in existence at the time of those agreements and so far as the plaintiffs are concerned those agreements would be null and void.

22. Issue No. 18 : The crux of the matter arising here is the question whether the plaintiffs themselves have terminated and cancelled the agreement if so they are entitled to specific performance or any other relief. From a different angle the question would be whether the plaintiffs, after the coming into existence of the agreement of March 1983 have disentitled themselves from obtaining the relief of specific performance of that agreement. The plaintiffs through their Advocate Rameshchandra P. Dikshit wrote letter dated 14th July 1984 to the defendants. In this letter a grievance is made that inspite of the plaintiffs having paid 20% of the agreed total price defendants Nos. 4, 5 and 6 have failed to execute the conveyance deed of the property in question in favour of the plaintiffs. It is then stated "since you have committed the breach of the agreement by not executing the conveyance deed in favour of my client, my client is now left with no alternative but to terminate the said contract of construction of the building by you.
Accordingly by this notice my clients have terminated the agreement with regard to the construction of the building on the plot and my clients are now free to make the future construction of the building. My clients are willing to pay off the cost of the construction made by you and for that purpose you should send to my clients the detailed bill for the said amount. You are hereby asked not to carry out any construction work of the said building hereafter since the agreement has been terminated". Clearly, categorically and unequivocally the plaintiffs purported to terminate the agreement and expressed their willingness to pay the price for the work done till then. How would it be open to the plaintiffs to seek specific performance of that same agreement'?

23. Sri Angal urged that though the plaintiffs purported to terminate the agreement, as a matter of fact, the agreement was continued and the defendants proceeded to act on the basis that the agreement had continued. For that purpose Sri Angal relied upon the letter dated 5th September 1984 written by the plaintiffs' Advocate Mr. Rameshchandra P. Dikshit to the defendants' Advocate Sri Kikla. In that letter various grievances were made by the plaintiffs about how defendants Nos. 4, 5 and 6 failed to remove the unauthorized occupants and failed to execute the conveyance deed and various altered terms were mentioned as would be acceptable to the plaintiffs. Now, these altered terms were not accepted by the defendants as can be seen from the reply given by the defendants' Advocate Sri Kikla to the plaintiffs' Advocate Sri Dikshit by the letter dated 20th September 1984 where it is specifically stated that no change of term was acceptable. It is urged by Sri Angal that by stating no change of term was acceptable the defendants thereby impliedly continued the old terms that is the terms as agreed in the

correspondence of March, 1983. Now, in the first place, these two letters of 5th September 1984 and 20th September 1984 cannot help the plaintiffs to get out of the termination as mentioned in the letter of 14th 1984 because the plaintiffs themselves have stated in the letter dated 5th September 1984: "This of course is without prejudice to the earlier letter dated 14th July 1984 whereby the contract with regard to the further construction of the building is terminated". This makes it clear that whatever terms regarding the rate is mentioned it is only for the purpose of calculating the price for the construction made till then and different rates are mentioned to prevail under different circumstances. As regards further construction work it is specific that the contract had been terminated. It is in this sense that the correspondence consisting of the two letters of September 1984 has to be read. The change of terms mentioned therein is in respect of rate to be paid for the work done till then and not for the entire work or property contemplated under the agreement contained in letter of March, 1983.

24. It was urged by Sri Angal that there cannot be a termination of a part of the contract and, therefore, though the plaintiffs wrote that the contract had been terminated by them, this in law does not amount to termination of the contract. Now, what is necessary to be seen for the purpose of a suit for specific performance is whether the plaintiffs in such a suit aver that they are ready and willing to perform their part of the contract and if this averment is traversed by the defendants whether they prove that they are ready and willing to perform their part of the contract. By purporting to terminate the agreement by their letter dated 10th July, 1984 and maintaining and confirming the termination in their letter of 5th September 1984 the plaintiffs clearly expressed their unwillingness to perform their obligation under the contract in respect of work contemplated in the agreement of March 1983 remaining incomplete.

25. What is the effect of the above state of affairs? The answer to this is in *Ardeshir H. Mama v. Flora Sassoon*[1], The facts in that case were as follows: Flora Sassoon's agent had agreed to sell immovable property to Ardeshir Mama. Since Flora Sassoon refused to sell the property Ardeshir Mama filed suit for specific performance. The suit was filed on 10th January 1920. Flora Sassoon contended that the agreement on which Ardeshir Mama was relying was without her authority. On 19th march 1924 Ardeshir Mama through his Solicitor wrote letter to Flora Sassoon that Mr. Mama would abandon his claim for specific performance and instead claim damages of Rs. 7,00,000/-. When the trial commenced Ardeshir Mama obtained an order to amend his suit and claimed damages of Rs. 7,00,000/-. The prayer for specific performance, however, was retained so also the averments stating that Mama was ready and willing to perform his obligation under the contract. The trial Court granted the decree for Rs. 7,00,000/-. In the appeal filed by Flora Sassoon the decree was set aside. Mama therefore filed appeal to the Privy Council. Two questions were considered by the Privy Council (i) whether the defendant's agent had no authority to enter into an agreement for sale and (ii) whether the plaintiff by his letter dated 19th March 1924 had disentitled him from obtaining any relief in the suit. As regards question No. 1 it was held that the defendant's agent had no right to enter into an agreement for sale on behalf of the defendant. In view of this answer the suit required to be dismissed and the

other question would not survive. However, the Privy Council discussed the second question also. While discussing the second question the Privy Council discussed the common law of England and the equity law and pointed out as follows: On refusal by a party to a contract to perform his part, the "party thereto had two remedies open to him in the event of the other party refusing or omitting to perform his

[1] AIR 1928 PC 209

part of the bargain. He might either institute a suit in equity for specific performance, or he might bring an action at law for damages for the breach. But..... his attitude towards the contract and towards the defendant differed fundamentally according to his choice". By resorting to the second kind of suit he elected to treat the contract as at an end and himself as discharged from his obligations. By resorting to the first kind of suit he treated, and was required by the Court to treat the contract as still subsisting. He has to allege, and if that fact was traversed, to prove a continuous readiness and willingness, from the date of the contract to the time of the hearing, to perform the contract on his part. The filing of a suit for damages means as election to treat the contract as at an end and thereafter no suit for specific performance could be maintained by the aggrieved plaintiff. "He had by his election precluded himself even from making the averment just referred to, proof of which was essential to the success of his suit". The Privy Council then referred to Lord Cairu's Act which was passed in 1858 and observed that the change was one in procedure only and enabled every Division of the High Court to give both legal and equitable remedies. The Privy Council then pointed out that the Indian Specific Relief Act, 1877 enacted the same law. The distinction between the two kinds of action was maintained, specific performance of a contract cannot be enforced in favor of a person who has already chosen his remedy and obtained satisfaction for the alleged breach of contract". So also a suit for specific performance of a contract "shall bar the plaintiffs rights to sue for compensation for the breach of such contract". The Privy Council then discussed Section 19 of the Specific Relief Act, 1877 and observed - ".....except as the case provided for in the explanation..... the section embodies the same principle as Lord Carie's Act and does not, any more than did the English Statute, enable the court in a specific performance suit to award 'compensation for its breach' where at the hearing the plaintiff had debarred himself by his own action from asking for a specific decree". On the footing that the amendment did not operate to convert the suit from one for specific relief to one for 'damages for breach' the Privy Council hold --- 'It follows that in their Lordships' judgment there was, after the letter of 19th March 1924, no power left in the trial judge.. ..... to award the plaintiff at the hearing any relief at all". Now, the instant suit is one for specific performance of the contract. Having shown unwillingness to perform the second "stage" of the contract by the letter of termination referred to above, the plaintiff-society has' debarred itself any relief in this suit fore specific performance.

26. It would be useful also to refer to *Prem Raj v. the D.L.F. Housing and Construction (Private) Ltd*[2]*.,* The facts there were as follows : On 11th June 1958 there was an agreement under which a vendor agreed to sell 22 plots of land to the purchaser. On 8th June 1961 the purchaser gave notice to the vendor repudiating the agreement dated 11th June 1958 as void alleging that the

deed was unlawful and void and inoperative against him as they were executed as a result of undue influence and coercion exercised upon him. He filed a suit praying for a decree for a declaration that the deed was unlawful and void and inoperative against him, and in the alternative he prayed for a decree for specific performance of the agreement and damages. The defendant raised a preliminary objection that the plaintiff, having claimed that the suit contract was void, could not, in the same suit, pray for specific performance of that contract even though that may be an alternative claim. The trial Court rejected this preliminary objection raised by the defendant. The defendant filed civil revision application to the High Court. The High Court upheld his objection. Therefore the plaintiff filed an appeal to the Supreme Court. The Supreme

[2] AIR 1968 SC 1355

Court upheld the defendant's objection and dismissed the plaintiff's appeal. As regards the plaintiff's reliance upon Order 7 Rule 7 of the Civil Procedure Code it has stated that it was true that under those provisions it was open to the plaintiff to pray for inconsistent reliefs, but it must be shown by the plaintiff that each of such plea is maintainable, that so far as the relief of specific performance is concerned the matter must be examined in the light of the provisions of the Specific Relief Act, that Section 37 says that a plaintiff instituting a suit for specific performance of a contract may pray in the alternative that. If the contract cannot be specifically performed, it may be rescinded and delivered up to be cancelled, but the converse was not provided in the Specific Relief Act. It was further pointed out that the omission in the Act was deliberate and the intention of the Act was that no such alternative prayer was open to the plaintiff. It was also pointed out that it was well settled that in a suit for specific performance the plaintiff should aver that he is ready and willing to perform his part of the contract and there was no such averment in that suit and reference was made to AIR 1928 PC 208. As regards the plaintiff's argument that in any event the High Court should have given the plaintiff an option to elect either of the two reliefs. It was pointed out that the question of giving on option did not arise because no cause had been made out for the relief of specific performance.

27. For the reasons discussed above, I must hold that the plaintiffs have disentitled themselves for the relief of the specific performance by having purported to terminate the agreement and specifically stating that the rest of the agreement was not to be performed. I have therefore answered Issue No. 18 accordingly.

28. Issues Nos. 15, 19 and 20: Had defendants Nos. 4, 5 and 6 -defendant No. 4 in particular paid to the promoters Rs. 1,00,000/ - for certain expenses of the society? When defendants Nos. 4, 5 and 6 wrote their reply dated 11th February 1983 to the plaintiff-society's letter dated 29th January 1983 accepting the four points mentioned therein they also wrote: However I may further add that an amount of Rs. 1,00,000/- (Rupees one lac only) which was paid by us some time back to the Chief Promoter's Committee on their request in order to enable them to incur certain expenditure of your society, may please be refunded to me without loss of time. This will enable me to undertake the construction work of your society immediately". This payment was specifically admitted by the plaintiff-society when they wrote letter dated 12th March 1983

making out six points for acceptance and there the first point reads:

> "1. The construction work of the society's proposed Buildings at City survey No. 703, Andheri East shall commence within a week's time after the payment of Rs. 1 lac (Rupees one lac only) as demanded is made to you, which was paid to the society's Ex-Chief Promotor by you".

In view of this clear admission issue No. 19 must be answered in the affirmative.
29. The statement of payment shown at pages 73 and 74 of the compilation shows a payment of Rs. 14,24,440/- made by the plaintiff-society to defendants 4, 5 and 6. A payment of Rs. 1,00,000/- is shown in the statement of account at pages 73 and 74 over and above 20% of the purchase price which 20% works out to Rs. 13,24,440/-. The plaintiffs have therefore not only complied with the terms for payment of 20% purchase price by paying of Rs. 13,24,440/- which they did not take into account for the purpose of arriving at the 20% figure as that was to be considered separately. I have therefore answered Issues Nos. 15, 19 and 20 accordingly.

30. Issues Nos. 21, 22 and 44: Under clause 19 of the Agreement dated 26th July 1980 it was provided that within four days of the execution of that agreement the vendors were required to produce all the documents in their possession to the purchasers' advocate for investigation of title and "the purchasers shall accept the said title within two months from the date hereof. If the purchasers do not accept the title, then this agreement as well as the agreement dated 30th April 1975 shall (sic) (be) cancelled and the vendors shall refund to the purchasers the amounts received by them without interest and each party will bear its own costs". In the letter dated 10th July 1984 in paragraphs 9, 11 and 12 thereof defendants Nos. 4, 5 and 6 through their Advocate Sri M.G. Kikla had written that the documents had been handed over and "your clients however did not accept the title to the property which they should have done within two months Right till this day your clients have not accepted the title to the property but your clients will have to accept the title as it stands and also accept the same subject to the result of the decision in the said suit". The plaintiffs had through their Advocate Sri Rameshchandra P. Dikshit given a reply dated 5th September 1984 and in paragraph 7 of the reply it is mentioned "Your clients are fully aware that the agreement was entered into between the parties after investigation of the title and there was therefore, no question of non-acceptance of the title by my clients Your clients had also given the list of occupants in the said plot and therein name of Smt. Ambubai Gharat was included. Thus your clients had under the said agreement expressly taken the liability to get the said plot vacant and for that purpose your clients had agreed to bear the expenses". Sri Kikla urged that by this reply the plaintiffs have not yet accepted the title of the defendants and, therefore, the agreement stands cancelled and all that the plaintiffs are entitled to is refund of the amount paid by them without interest. Now, the two months' period referred to was in the agreement of 1980. As already discussed above the parties have entered into a new agreement by the correspondence of March 1983. The period of two months from the date of the agreement of 1980 therefore would have no relevance. However we need not bother to consider as to what

would be understood between the parties as to the period for acceptance of title as by the letter dated 5th September 1984 the plaintiffs are not raising a dispute regarding title and in that sense, therefore, they can be said to have accepted the title. The question of clearing the unauthorised occupants is something different from acceptance of the title of the defendants. In any case the title is accepted as the plaintiffs have stated in the letter of 5th September 1984 that that question does not arise. I have therefore answered Issues Nos. 21 and 44 accordingly.

31. Issues Nos. 23 and 24 : Under Section 10 of the Specific Relief Act, the specific performance of any contract may, in the discretion of the court, be enforced when there exists no standard for ascertaining the actual damage caused by the non-performance of the act agreed to be done and under the Explanation to Section 10 it is mentioned "Unless and until the contrary is proved, the court shall presume-

> (i) that the breach of a contract to transfer immovable property cannot be adequately relieved by compensation in money"; the suit contract is a contract to transfer immovable property and, therefore, the presumption would be that it cannot be adequately relieved by way of money. This presumption has not been offset by any evidence on behalf of the defendants. I have therefore answered Issue No. 23 accordingly.

32. Section 14 of the Specific Relief Act provides that a contract the performance of which involves the performance of a continuous duty which the Court cannot supervise cannot be specifically enforced. Sri Kikla argued that there are unauthorized occupants on the suit- plot of land and they would require to be removed by providing some alternative accommodation and this would involve continuous supervision on behalf of the Court for enforcing specific performance. Sri Kikla further argued that this is a building contract which would require considerable time, expert knowledge, submission of plans, supervision of work, etc. and all these minute works would be difficult to be done through intervention of the Court. Sub-section (3) of Section 14 provides that notwithstanding anything continued in clause (d) of sub-section (1) of Section 14 the Court may enforce specific performance where the suit is for enforcement of a contract for the construction of any building or the execution of any other work on land provided "that the following conditions are fulfilled; namely:

> (i) the building or other work is described in the contract in terms sufficiently precise to enable the court to determine the exact nature of the building or work;
> (ii) the plaintiff has a substantial interest in the performance of the contract and the interest is of such a nature that compensation in money for non-performance of the contract is not an adequate relief; and,
> (iii) the defendant has, in pursuance of the contract, obtained possession of the whole or any part of the land on which the building is to be constructed or other work is to be executed". Sri Kikla's argument does not pertain to conditions (ii) and (iii) of the above proviso. He argued that the building is not described in the contract in terms sufficiently

precise to enable the Court to determine the exact nature of the work. I do not agree with Sri Kikla. The building had to be constructed according to a plan and that plan had been identified and specified by the parties. Hence, I have answered issue No. 24 accordingly.

33. Issues Nos. 30, 32, 34 and 37 : This is a suit for specific relief. In the plaint damages are also asked for as contemplated in Section 21 of the Specific Relief Act, 1963 (corresponding to Section 19 of the Old Specific Relief Act). This point has been discussed in Ardeshir Mama's case referred to above wherein it is held that where a plaintiff is disentitled to the relief of specific performance of a contract then the plaintiff is debarred even from having a decree for damages. I have therefore answered Issues Nos. 31, 32, 34 and 37 accordingly.

34. Issues Nos. 25 and 33 : These issues stand answered by my discussion on issue No. 18.

35. Issue No. 39 : The question is whether the suit by the plaintiffs so far as the claim for damages is barred by reason of Order 2 Rule 2 of the Civil Procedure Code. Sri Kikla argued that the plaintiffs had to make the entire claim at the time when they had originally filed the suit in 1985. Not having claimed damages there, the plaintiffs had debarred themselves under Order 2 Rule 2 from subsequently claiming damages. Now, whatever ordinarily may be the law on the point of Order 2 Rule 2, this would not apply when additional claim for damages is made in a suit for specific performance in view of the proviso to sub-section (5) of Section 21 of the Specific Relief Act. Sub-section (5) of Section 21 states:

> "Sub-section (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".

These provisions of the Specific Relief Act have a history. In the Specific Relief Act of 1877 which was in force until the Specific Relief Act of 1963 came into effect there was no such provision as is contained in the above sub-section (5) of Section 21. By reading subsections (1) to (4) of Section 21 of the Specific Relief Act an impression is left that it may not be necessary in a suit for the plaintiff specifically to ask for damages in the alternative. It may be pointed out that was also the view of the plaintiff in Ardeshir Mama's case. Now, however, by making a reference to the above said provision which is contained in the said sub-section (5) of Section 21 it is necessary for the plaintiffs to make a claim for damages even if it be in the alternative. In view of the fact that the Court is bound to grant this amendment it can be deduced that the law was not to bar such a claim under Order 2 Rule 2 of the Civil Procedure Code. Further the present plaint, as originally filed, did not omit to make a claim for damages in the alternative but only the amount was not specified. All that has been done by subsequent amendment is to specify the amount of damages claimed. Under these circumstances, certainly it cannot be said that the plaintiffs' suit so

far as the claim for damages are concerned is barred by Order 2 Rule 2 of the Civil Procedure Code. Hence, I have answered Issue No. 39 accordingly.

36. Issues Nos. 40 and 41 : As discussed earlier the plaintiffs paid to the defendants towards the purchase price Rs. 13,24,440/- and a further sum of Rs. 1,00,000/- being the refund of the amount which defendant No. 4 had paid for society's purpose. The plaintiffs will be entitled to refund of Rs. 13,24,440/- which is the amount paid towards the purchase price under the contract. I have therefore answered Issues Nos. 40 and 41 accordingly.

37. Issues Nos. 45 and 46: Sri Kikla urges that each of the claim of the plaintiffs has to be separately valued under Section 18 of the Court-fees Act. Sri Kikla urged that the plaintiffs had split up the performance of the agreement into two parts, one part being performance up to the stage of requiring the defendants to make the conveyance of the land in favour of the plaintiff-society and the second part being the performance of the remaining part of the contract and that therefore these being two different subjects the plaintiffs ought to value the two parts separately and pay court-fee accordingly. Now, we have already discussed above and we find that it is not open for the plaintiffs to split up the reliefs. The plaintiffs have remedied that position by amending the plaint and have asked for the full relief. In my opinion the plaint has been properly valued. I have therefore answered Issues Nos. 45 and 46 accordingly. Hence, I pass the following order:

38. Decree for plaintiffs against defendants Nos. 4, 5 and 6 for Rs. 13,24,440/- with interest from the date of filing of the suit till payment at 12% per annum.
39. No order as to costs.

40. Sri Angal prays for continuation of the first part of the interim order dated 19th November 1985 for six weeks from today. Sri Kikla opposes.

41. The first part of the interim order dated 19th November 1985 is continued for four weeks from today. That first part reads as follows :

> "The defendants are restrained from cresting any third party rights or part with possession or alienate or encumber a total built up area of 36790 sq. ft. including balconies which premises were given to the plaintiffs under an agreement dated 26-7-1980".

Order accordingly.