
(1999) 09 MP CK 0052
In the Madhya Pradesh High Court
Case No : F.A. No. 229 of 1996

Babulal Agrawal	Vs	APPELLANT
Smt. Jyoti Shrivastava and Others		RESPONDENT

Date of Decision : 20-09-1999

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 22, Order 41 Rule 22(1)
Court Fees Act, 1870 — Article 1A
Specific Relief Act, 1963 — Section 20

Citation : AIR 2000 MP 83 : (2001) ILR (MP) 192 : (2000) 1 MPLJ 103 : (2000) 1 MPLJ 102

Hon'ble Judges : Usha Shukla, J; D.M. Dharmadhikari, J

Bench : Division Bench

Advocate : Abhay Sapre, for the Appellant; R.D. Hundikar and S.A. Sobhani, for the Respondent

Judgement

D.M. Dharmadhikari, J.

This appeal as also First Appeal No. 330 of 1996 (Ajay Rajan and others v. Smt. Jyoti Shri vastava and others) are being decided by a common Judgment as they arise out of two civil suits between the same parties, Jointly tried and decided by a common judgment.

Civil Suit No. 5-A/89 giving rise to F-A.No. 229/96 was filed by Babulal Agrawal (hereinafter referred to as "the vendee" for short) for specific performance of agreement of sale dated 12th May, 1982 (Ex. D/5) in relation to the suit property which is a house site of the area 15,400 sq. ft. with eight quarters or houses standing thereon which are admittedly in possession of tenants in the city of Bhopal.

Civil Suit No. 14-A/89 giving rise to F.A. No. 330/96 was filed by respondent-Ajay Rajan and his four other brothers - all sons of Gourtsh Chandra Saxena seeking a declaration in their favour of they being owners of the suit property and for obtaining an injunction against the vendors and vendees who were parties to the

agreement of sale Ex. D/5.

The vendors and vendees to the agreement Ex.D/5 are parties to both the suits. Since the subject-matter of the two suits was common, the suits were tried jointly and a common judgment has been passed by the trial Court.

The trial Court dismissed the suit for declaration and injunction filed by Ajay Rajan and his brothers, all sons of Gourish Chandra Saxena, by relying on a decision of the Supreme Court in Sushil Kumar and Anr Vs. Ram Prakash and Ors, and holding that a suit for permanent injunction by coparcener or coparceners against their father or karta for restraining him from alienating the property belonging to the joint family for legal necessity is not maintainable because a co-parcener has no right to obstruct alienation by the karta and his only right is to challenge the sale after it is completed, on the ground of want of legal necessity.

The trial Court by the impugned Judgment also dismissed the suit for the vendee for specific performance on several alleged equitable factors details of which hereinafter shall be mentioned. The trial Court granted a decree only for refund of the sum of Rs. 2.91.000/- with 12% Interest thereon from the date of agreement, in favour of the plaintiff/vendee and against all the defendants.

For appreciating the nature of dispute in the suits between the parties, it is necessary to understand the relationship Inter se of the members of the family of the vendors:

Raghubar Dayal Saxena (dead - 28-10-1983)	_____				
_____				Rameshchandra Saxena	Prabhudayal Gourish
Chandra Saxena Saxena (died during pendency		of the litigation)			
_____				Ravindra Prasad Saxena	
Rajendra	Prasad			Saxena	

				Ajay Rajan Vijay Rajan Abhay Rajan Uday Rajan Sanjay Saxena Saxena Saxena Saxena Saxena	

The suit property was alleged to have been purchased in the year 1937 by Raghubar Dayal, the main ancestor of the family of vendors in 1962. Eight quarters were constructed on the land which are in occupation of the tenants. There is on record the memorandum of partition dated 20-8-1970 (Ex. D/3) exhibited on behalf of the defendants showing allotment of suit property in equal shares to two sons of Raghubardayal, namely, Prabhu Dayal Saxena and Gourish Chandra Saxena. Out of the property allotted to the two above named sons of Raghubardayal, they gifted 807 sq. ft. of land to Jankidevi, wife of their uncle Ramdayal Saxena. The gift deed executed by Prabhu Dayal and Gourish Chandra is marked as Ex. D/4. Jankidevi who was the donee has two sons Krishna Dayal and Ramesh Dayal. The sons of Raghubardayal and sons of Jankidevi jointly executed an agreement of sale dated 12-5-1984 (Ex. D/5) in favour of Babulal Agrawal, referred to above as the vendee. The terms of the agreement, inter

alia, are that the total land (area 15.418 sq. ft.) as shown in the annexed map to the agreement was agreed to be sold at the rate of Rs. 40/- per sq. ft. A sum of Rs. 60.000/- was paid as earnest. The vendors agreed to get the property vacated from the tenants and also agreed to obtain N.O.C. from Income Tax Department. Under the terms of the agreement, on various dates further sale consideration was paid as endorsed at the back of the agreement of sale and it is not in dispute that a total sum of Rs. 2.91.000/- was paid under the agreement. On 11-4-1983. by sale deed Ex. P/11, Jankidevi sold the property, which she had received under gift to the vendee Babulal Agrawal and placed him in possession. The sale deed was signed as witness by Gourish Chandra and Krishna Dayal. Prabhudaya). one of the vendors, sent a letter (Ex. D/7) dated 10-5-1983 to the vendee agreeing to execute the sale deed after obtaining no objection from Income Tax Department. Ajay Rajan who is an Advocate at Bhopal and one of the sons of Gourish Chandra filed Civil Suit No. 41-A of 1983 claiming a declaration that he is the owner of 1376 sq. ft. of land from out of the suit property, which is alleged to have been obtained by him in family partition with his father and brothers in the year 1977. Prabhudaya and Gourish Chandra as two of the vendors to the agreement of sale were also made parties to the suit filed by Ajay Rajan in that suit, they did not disclose the fact that they had already executed an agreement of sale Ex. D/5 on 12th May, 1982 in favour of the vendee Babulal Agrawal. Prabhudaya (one of the vendors to the agreement of sale), in the suit filed by Ajay Rajan i.e. 41-A/83, made a statement admitting the case of plaintiff-Ajay Rajan that there was a partition effected in the year 1977 allotting certain land in favour of the plaintiff. That suit, thus was not contested by any of the parties to the suit, as all the defendants to that suit filed by Ajay Rajan were members of his own family with Gourish Chandra Saxena and Prabhudaya Saxena being the two heads of two branches of the family. The Judgment passed in C.S.No. 4-A/83 on 27-1-1984 (Ex. P/3) clearly shows that on the basis of the statement of Prabhudaya (on record in that case), and the suit having not been contested by any of the parties who were defendants to the suit, the said suit was decreed in favour of Ajay Rajan declaring him owner of the land to the extent of 1376 sq. ft.

After obtaining such a decree, Ajay Rajan and his four brothers, all sons of Gourish Chandra, got published a notice in the newspaper on 14-6-1984 (Ex. P/10) giving a warning to all persons concerned not to enter into any transaction of sale with Prabhudaya and Gourish Chandra, The vendee Babulal was also served with a notice dated 19-6-84 (Ex. P/5) by Ajay Rajan and his four brothers advising him not to obtain any sale under the agreement (Ex. D/5). After publishing the notice in the newspaper and serving another notice on the vendee in the manner aforesaid, Ajay Rajan and his four brothers filed the present Civil Suit No. 14-A/89 giving rise to F.A. No. 330/96 seeking declaration of joint ownership of the property and for obtaining mandatory injunction against the vendors and vendee to the agreement of sale Ex. D/5 restraining them from executing the sale deed.

The vendee Babulal on the basis of sale agreement Ex. D/5 executed in his favour had earlier filed a suit, C.C. No. 5-A/ 89, (giving rise to F.A. No. 229/96) claiming specific performance of contract.

The suit filed by vendee Babulal Agrawal for specific performance was resisted by Ajay Rajan and his brothers in counter suit stating that the property in suit being Joint family property, the vendors as Kartas had no authority to execute the agreement for sale without legal necessity existing for the benefit of the family of the joint family estate.

As has been mentioned above, the suit filed by Ajay Rajan and his four brothers was dismissed on the basis of decision of the Supreme Court in the case of Sushil Kumar and Anr Vs. Ram Prakash and Ors, that co-parceners under Hindu Law have no right to restrain alienation proposed by the father as karta of the family - may be that they have a right to challenge the sale after it is effected on the ground of want of legal necessity.

In the earlier suit filed by the vendee for specific performance, the trial Court recorded amongst other findings, the finding on the question of legal necessity in favour of the vendee, but refused the decree for specific performance on other equitable considerations, particularly that one of the vendors Prabhu Dayal died during pendency of the suit and his legal representatives had been brought on record. The property in suit is in possession of number of tenants inducted by members of the family of the vendors. In Civil Suit No. 40-A/83, Ajay Rajan has obtained a decree of declaration of ownership in respect of part of the suit property. For all the above reasons, the learned trial Judge refused to grant decree of specific performance, although recording a finding on legal necessity in favour of the vendee.

In First Appeal No. 229/96, preferred by vendee BabulalAgrawal against dismissal of his suit for specific performance, Ajay Rajan and his four brothers as respondents have preferred a memorandum of cross-objection supporting the Judgment of the trial Court in dismissing the suit for specific performance. They also challenge the decree of refund of Rs. 2,91,000/- granted in favour of the vendee.

Shri Abhay Sapre, learned counsel appearing for the vendee Babulal Agrawal first raised a preliminary objection to the maintainability of memorandum of cross-objection. He contends that the memorandum of cross-objection has not been adequately stamped to challenge the decree of refund of sum of Rs. 2.91,000/- in favour of the vendee. Reliance is placed on the decision of the Supreme Court in the case of Sahadu Gangaram Bhagade Vs. Special Deputy Collector, Ahmednagar and Another, , The other contention advanced on behalf of the vendee is that the cross-objection is not entertainable due to non-payment of Court fees. The said cross-objection cannot also be considered to permit the respondents to assail the finding of legal necessity recorded by the trial Court in favour of the vendee.

In reply to the above preliminary objection to the maintainability of the cross-examination, learned counsel Shri S.A. Shobhani and Shri R.D. Hundikar, appearing for Ajay Rajan and his four brothers, rely on a single Bench decision of this Court in Ismail Khan Vs. Shankarlal Chourasia, and contend that under Schedule 1, Art. 1-A of the Court-fees Act as applicable to Madhya Pradesh, memorandum of cross-objection is not required to be affixed with ad valorem Court-fees and. therefore, the Court-fees paid on the memorandum as an "application" is sufficient. It is submitted that inadequacy of Court-fees is no ground to reject the cross-objection as untenable.

We first propose to deal with the maintainability of the cross-objection. The provisions of Order 41, Rule 22, C.P.C. with Explanation introduced thereunder, permit filing of a cross-objection to support a decree even on findings recorded adversely against the party filing the cross-objection. Rule 22 of Order 41 also permits filing a cross-objection against the decree which could have been challenged by way of appeal. Order 41, Rule 22. C.P.C. reads thus :

"22. Upon hearing, respondent may object to decree as If he has preferred separate appeal,- Any respondent, though he may not have appealed from any part of the decree, may not only support the decree but may also state that the finding against him in the Court below in respect of any issue ought to have been in his favour; and may also take any cross-objection to the decree which he could have taken by way of appeal, provided he has filed such objection in the Appellate Court within one month from the date of service on him or his pleader of notice of the day fixed for hearing the appeal, or within such further time as the Appellate Court may see fit to allow.

Explanation. - A respondent aggrieved by a finding of the Court in the judgment on which the decree appealed against is based may, under this rule file cross-objection in respect of the decree in so far as It is based on that finding, notwithstanding that by reason of the decision of the Court on any other finding which is sufficient for the decision of the suit, the decree is, wholly or In part, in favour of that respondent."

The language of Rule 22 of Order 41 read with the Explanation added thereunder, in our opinion, is clear enough to indicate that a cross-objection is maintainable by a party against an adverse finding to support the decree and a cross-objection can also be filed in lieu of cross-appeal. In the instant case, so far as the memorandum of cross-objection against the finding on legal necessity is concerned, it is maintainable without payment of Court-fees as the respondents seek to support the decree by challenging the adverse finding on legal necessity. The memorandum of cross-objection in so far as it assails the decree of refund of a sum of Rs. 2,91,000/- is concerned, the memorandum of cross-objection being in lieu of cross-appeal would require payment of Court-fee ad valorem on the sum of Rs. 2.91.000/-because the respondents seek setting aside of the decree of the value mentioned above. We are supported in our conclusion by the following observations of the Supreme Court in the case of Sahadu Gangaram

Bhagade Vs. Special Deputy Collector, Ahmednagar and Another, on which strong reliance was placed of the vendee :

"..... We have no doubt that it is a memorandum of appeal in substance though not in form. It is a right given to a respondent in an appeal to challenge the order under appeal to the extent he is aggrieved by that order. The memorandum of cross-objection is but one form of appeal. It takes the place of a cross-appeal."

It is true that the above decision arose out of the Bombay Court-fees Act, but it is an authority that a cross-objection is in substance a cross-appeal, as is the case here, and has to be stamped for purpose of Court-fees accordingly. The decision of the learned single Judge in the case of Ismail Khan Vs. Shankarlal Chourasia, is distinguishable because in that case the cross-objection was filed only to assail an adverse finding and not for assailing any part of the decree in a particular sum. In the Instant case, had the vendee not filed an appeal to obtain relief of setting aside of the decree for refund, the respondent Ajay Rajan and his four brothers would have been required to file an appeal for seeking setting aside of that part of the decree against them. Provisions of Order 41, Rule 22 only permit filing of a cross-objection in lieu of a cross-appeal when the other party against the same decree is in appeal.

We are, therefore, clearly of the opinion that the memorandum of cross-objection, in so far as it assails the decree of refund in the sum of Rs. 2,91,000/- is concerned, is not maintainable as no ad valorem Court-fee has been paid thereon under Art. 1 -A of Schedule I of the Court-fees Act as applicable to Madhya Pradesh. True it is, as is pointed out, that there is no specific mention in the Art. 1 -A of Schedule I of words "cross-objection" and there is only mention of "memorandum of appeal" but the cross-objection which in substance is a memorandum of appeal will attract Court-fee as required by Schedule I. Art. 1-A which reads as under :

Number

Proper Fee

1-A. Plaint, written statement, pleading a set-off or counter claim or memorandum of appeal (not otherwise provided for in this Act) presented to any civil or Revenue Court except those mentioned in Sec. 3.

When the amount or value of the subject matter in dispute does not exceed ten thousand rupees

Ten per cent subject to a minimum of one rupee.

When such amount or value exceeds ten thousand rupees but does not exceed ten lacs rupees.

One Thousand rupees plus twelve per cent. on the amount or value in excess of ten thousand rupees,

When such amount or value exceeds five lacs rupees but does not exceed ten lacs rupees.

Fifty-nine thousand eight hundred rupees plus six per cent, of the amount or value in excess of five lacs rupees.

When such amount or value exceeds ten lacs rupees.

Eighty-nine thousand eight hundred rupees plus three per cent. of the amount or value in excess of ten lacs rupees.

Provided that minimum fee leviable on a memorandum of appeal shall be five rupees.

Whereas cross-objection is in substance a memorandum of appeal, the Court-fee under Schedule I, Art. 1-A will clearly be attracted and the omission of the word "cross-objection" in the Article in Madhya Pradesh - but not so in other States - does not have a different effect.

20-A. Under Order 41, Rule 22, C.P.C. cross-objection in lieu of cross appeal is permissible as also cross-objection is permissible against an adverse finding. The Explanation added below Order 41, Rule 22 was Introduced by Amendment Act of 1976 with a specific purpose that cross-objection may be allowed to be filed even against adverse finding by the respondent who may have been successful on other findings of the Court below. The cross objection which is merely against an adverse finding would not attract applicability of Art. 1 -A but where the cross-objection is in lieu of cross appeal as contemplated by Order 41, Rule 22 (1), C.P.C. it would attract ad valorem Court-Fees under Art. 1-A and omission of the words "cross-objection" in Art. 1-A would have no different legal effect . The cross-objection against adverse finding and cross-objection in lieu of cross appeal have thus to be treated differently for the purpose of Court-fee.

We are, therefore, of the considered view that the memorandum of cross-objection in so far as it challenges the adverse finding on legal necessity, order to support of the decree of dismissal of suit for specific performance is, on this additional ground, clearly maintainable and would not attract any payment of ad valorem Court-fees.

The finding on legal necessity has been recorded by the trial Court in favour of the vendee. The relevant part of finding contained in paragraph 15 of the Judgment deserves reproduction :

"Ajay Rajan (PW 1) has admitted in para 45 of his cross-examination that Vijay Raj an. the plaintiff No, 2 has purchased a tractor by raising the loan from the Bank and in the month of July 1983 the aforesaid loan was repaid. However. Ajay Rajan (PW 1) has further adhered that the same was repaid from the agricultural income, but he has not denied the suggestion that a printing press was also purchased in the year 1982-83 which shows that when the agreement (Ex. D/5) dated 12-5-1982 was executed by deceased Prabhu Dayal and defendant No, 2,

G.C. Saxena in favour of the defendant Babulal (DW 1). The deceased defendant No. 1 and 2 needed the amount for discharging the liabilities, so it can very well be inferred that the defendant No. 1 and 2 did have the necessity to sell out the property."

The trial Court thus has found that the sale by the heads of branches of the family was made for repaying the loan for purchase of tractor obtained from the bank by Vijay Rajan one of the co-parceners of the members of the family. A printing press was also set up from the money obtained under the sale agreement.

In assailing the above finding, learned counsel Shri Shobhani and Shri R.D. Hundikar appearing for the members of the family of the vendors referred to Art. 243 of Mulla's Hindu Law, 17th Edition, at page 371 to 374. Relying on the commentaries on Hindu Law by learned author Mulla, it is contended that agricultural loan from bank raised by Vijay Rajan, one of the co-parceners, did not constitute legal necessity for alienation of the Joint property by father as manager or Karta of the family. It is also contended that burden of proof of legal necessity is on the purchaser.

We have given due consideration to the above argument advanced. We find that the vendee Babulal Agarwal has duly discharged the burden on him as a purchaser of joint family property by his statement in paragraph 6 as D.W. 1 that the two vendors Prabhu Dayal and Gourish Chandra had represented to him at the time of entering into negotiation and agreement of sale that the amount was required for use in the business to be set up by their sons.

Ajay Rajan as PW 1 in his cross-examination in paragraph 31 has accepted the fact that his brother Vijay Rajan had purchased a tractor by raising loan. He, however, denies that the amount paid by the vendee under the sale agreement was used for paying off the loan or for agricultural purpose or for setting up the printing press.

It may be mentioned that Gourish Chandra, father of Ajay Rajan and his four brothers, did not file a separate written statement. He only filed written statement adopting the written statement filed by contesting defendants, namely, Ajay Rajan and his brothers. The provisions of Order 6, Rule 1 read with Order 8, Rules 2 to 5 contemplate filing of a written statement with specific admissions or denials of the averments in the plaint with a separate verification to the pleadings. A written statement adopting the written statement of others without verification, is no written statement in the eye of law under Order 6, Rule 1 read with Order 8, Rules 2 to 5, C.P.C.

So far as the other vendor Prabhudayal is concerned, he died during pendency of the suit. It is said that he was a retired Judge. It is rather surprising that although he was a Judge his conduct as a witness was no different from an ordinary witness in a Court of law. He was examined on commission in the suit. In his statement he admits that it is only under pressure of his brother, his own

sons and sons of his brother Gourish Chandra (i.e. Ajaya Rajan and his four brothers) that in order to avoid and frustrate the sale agreement with Babulal, he was made a party to C.S. No. 41-A/83 filed by Ajay Rajan alone on the basis of alleged partition of the year 1977. In his statement on commission, he very clearly stated that in C.S. No. 41-A/ 83, by supporting the plea of partition of 1977, he had made a false statement. When he was asked how as a judicial officer he could give such a false statement, his only reply was that It was so done under the pressure of circumstances. The two vendors who are heads of the branches of the family of Raghubardayal have not controverted the evidence led by vendee Babulal Agrawal that he had made bona fide enquiries on the question of legal necessity of the members of the family before entering into agreement of sale.

On the evidence on record we are not prepared to accept the argument advanced on behalf of Ajay Rajan and his four brothers that the Intended sale was not for purpose of financially helping the sons in paying off the bank loan and setting up business of their own and there was no legal necessity. We find that property was agreed to be sold for the benefit of the members of the family. There is no force in the pleading advanced by Ajay Rajan and his four brothers that their share of the property was clandestinely sold by their father Gourish Chandra for his own benefit. Gourish Chandra very conveniently remained away from the contest in the suit and was satisfied only by filing a bare written statement adopting the written statement submitted by his sons in the suit filed by vendee Babulal Agrawal.

We find that there are no circumstances, particularly after having taken the above view of the evidence on record, to infer any alleged collusion between Prabhudayal, Gourish Chandra and vendee Babulal in executing the sale agreement. Gourish Chandra conveniently remained at a distance from the fray and had adopted a dubious role. It is most unlikely that his sons Ajay Rajan and others did not know of the agreement entered by him with Babulal. It is also unlikely that he, as father, would have acted against the interest of his own sons.

The finding of legal necessity reached by the learned trial Judge in favour of vendee Babulal, therefore, deserves to be maintained and it is accordingly maintained so.

The other equitable ground on which the decree of specific performance is refused now deserves consideration in this appeal. The finding of the trial Court for refusing relief of specific performance is contained in paragraph 30 of the judgment under appeal and the relevant part of It is quoted below :

"..... But, here in a case at hand no much circumstances exist as this is a simple case of specific performance of the contract in which the defendant No. 1 and 2 had entered into an agreement with the plaintiff Babulal to sell out the properly in dispute @ Rs. 40,00 per sq. ft. and the defendants No. 1 and 2 are not avoiding the specific performance of the contract in pursuance to the

agreement dated 12-5-1982, but as the defendant No. 1 deceased Prabhu Dayal has died and the L.Rs. have been brought on record and another defendant No. 2 G.C. Saxena is also not in possession over the disputed property rather than the sons of the defendant No. 2 are in possession thereof and the same has been occupied by a number of tenants inducted by the plaintiffs in another suit and the defendants, who are the defendants in the present suit. Inter alia a decree has also been passed by a competent Court in Civil Suit No. 41-A/83 in favour of the plaintiff Ajay Rajan(PW 1) the son of the defendant No. 2 G.C. Saxena in which he has been declared the owner over portion of a disputed land. So, looking to all these difficulties if a decree of specific performance is granted, then, it may cause the hardship as well as the multiplicity of the suits to the plaintiff himself. Therefore, the facts of the case of S.V.R. Mudaliar (Dead) by Lrs. and Others Vs. Rajabu F. Buhari (Mrs) (Dead) by Lrs. and Others, are not similar to the present case. Hence, the aforesaid citation is not applicable in the present case."

Considering each of the factors taken into consideration by the learned trial Judge in refusing relief of specific performance, we find that none of them is relevant u/s 20 of the Specific Reliefs Act to deny specific performance to the vendee.

So far as the decree in C.S. No. 41-A/ 83 decided on 27-1 -1984 is concerned (Exs. P/3 and P/4), that clearly was a collusive suit filed by AJay Rajan being an Advocate against his own father Gourish Chandra and his uncle Prabhu Dayal Saxena with other brothers made parties to the suit as defendants. Except for Prabhu Dayal, the uncle of AJay Rajan who gave a statement in favour of the plaintiff of a partition of 1977, no other defendants contested the suit. A decree on such a suit which was not contested by any of the defendants was passed. Prabhu Dayal who was a Judge had given a statement in Civil Suit No. 41-A/83 in favour of Ajay Rajan of a partition of 1977. In these suits, in his statement on commission Prabhu Dayal rescinded from his earlier statement and said that he had made a false statement in the earlier suit under pressure of his sons and nephews. In Civil Suit No. 41-A/83, the vendors to the agreement (Ex. D/5) were parties but they did not disclose the fact of execution of agreement to the Court in obtaining the decree. Vendee Babulal was not a party to that suit and a decree obtained by the members of the family in such a collusive suit cannot bind and affect the interest of the vendee in this suit for specific performance.

The facts that Prabhu Dayal died during pendency of the suit and his L.Rs. were brought on record and that the suit property is in possession of tenants are grounds which are totally Irrelevant for grant or refusal of a decree of specific performance. At the time of execution of the agreement in the recital of the agreement itself there is a mention of the property being in possession of tenants and it was agreed between the parties that vacant possession would be obtained after evicting the tenants. The possession under the agreement if at all was given, only on paper as actual possession could not have been delivered of

the property which was in possession of tenants. The parties entered into agreement of sale with the property in occupation of tenants and occupation of the property by tenants can be no ground to refuse specific performance .

Learned counsel on behalf of the vendors and the members of their families contend that the property is in heart of Bhopal City and the price now has increased to more than 200-300 rupees per square foot. This Court should, therefore, refuse specific performance. Escalation of price of property during pendency of litigation can constitute no ground to refuse specific performance. [See Kanshi Ram Vs. Om Prakash Jawal and others, . Rise of price of the property in suit during pendency of litigation is no ground to deny equitable relief of specific performance. Even on general equitable principles contained in Section 20 of the Specific Relief Act, we are of the opinion that decree of specific performance should not be refused in this case. Prabhu Dayal and Gourish Chandra, the signatories as vendors to the sale agreement, are found to have set up their own sons by filing several litigations in collusion with them only to frustrate the sale agreement. The vendors and the members of their families have adopted dubious attitude in the litigation. The vendee Babulal having paid substantial amount and having entered into the transaction with the heads of the families after bona fide enquiries, must be granted the equitable relief of specific performance.

In view of the aforesaid discussion, First Appeal No. 330/96 arising out of C.S. No. 14-A/89 is hereby dismissed and the dismissal of suit by the trial Court is maintained. First Appeal No. 229/96 arising out of C.S. No. 5-A/89 filed by Babulal Agrawal for specific performance of the agreement of sale (Ex. D/5) is hereby allowed. A decree of specific performance of agreement (Ex. D/5) dated 12-5-1982 is passed in favour of appellant/vendee Babulal Agrawal with direction to the respondents as the vendors and legal representatives of deceased vendors to execute a registered sale deed of the property in suit in favour of plaintiff Babulal Agrawal on payment of the balance amount of consideration under the agreement by him within a period of three months from the passing of the decree failing which the vendee Babulal Agrawal shall have right to obtain a registered conveyance on deposit of the balance amount of consideration in the civil Court.

The decree passed by the learned trial Judge in C.S. No. 5-A/89 in so far as it refused decree of specific performance and granted a decree of refund of sum of Rs. 2,91,000/- in favour of Babulal Agrawal is hereby set aside and instead a decree of specific performance as directed above is granted in his favour.

In the circumstances, appellant Babulal Agrawal shall also be entitled to full costs jointly from the respondents, as incurred by him in the trial Court and this Court. Counsel's fee as per schedule, if precertified.