

(1983) 10 MAD CK 0036
In the Madras High Court
Case No : Appeal No. 56 of 1978

Bole Naidu

APPELLANT

Vs

N. Kothandarama Pillai and others

RESPONDENT

Date of Decision : 07-10-1983

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 27
Evidence Act, 1872 — Section 114, 115
General Clauses Act, 1897 — Section 3(2)
Penal Code, 1860 (IPC) — Section 52
Registration Act, 1908 — Section 57, 59, 60, 60(2)
Specific Relief Act, 1963 — Section 19(b), 27
Succession Act, 1925 — Section 88
Transfer of Property Act, 1882 — Section 11, 3, 43, 59

Citation : (1983) 10 MAD CK 0036

Hon'ble Judges : Sengottuvelan, J

Bench : Single Bench

Advocate : R. Kesava Iyengar for M/s. T. Vadivelu and T. Seshadri for applt, for the Appellant; M.R. Narayanasamy for M/s. M. Venkatachalapathy and M. Ramakrishnan, for the Respondent

Judgement

Sengottuvelan, J.—The facts of the case are briefly as follows:- The 2nd respondent, second defendant in the suit Neelaveni Ammal, is the daughter of one Chelvanayaki Ammal. The first respondent/the first defendant, M. Kothandarama Pillai, is the husband of Neelaveni Ammal. The case of the appellant/ plaintiff is that defendants 1 and 2 agreed to sell the properties comprised in the plaint schedule to the plaintiff for Rs. 12,500 and executed a registered sale agreement on 28.4.1972, marked as Ex.A-1, and received an advance of Rs. 1,300 agreeing to receive the balance at the time of execution of the sale. Defendants 1 and 2 undertook to execute a sale deed in favour of the plaintiff in pursuance of the agreement within three months from 28.4.1972. The plaintiff had always been ready and willing to do his part of the contract. Defendants 3 and 4 who claimed to be the subsequent purchasers in collusion

with the defendants 1 and 2 brought about two sale deeds in their favour, marked as Exs.B-1 and B-2, respectively. The plaintiff on coming to know about the unlawful conduct of the defendants 1 to 4 issued a notice on 19.5.1972 to the defendants 1 to 3 and one Sreenivasalu Naidu, the paternal uncle of the 4th defendant. The said notice is marked as Ex.A-3. Ex.A-4 is the postal acknowledgement showing the receipt of notice by the second defendant on 29.5.1972. Similarly Ex.A-5 is the postal acknowledgement from the first defendant for having received the notice Ex.A-3 on 29.5.1972. Exs.A-6 and A-7 are the unserved covers containing the notice issued to the third defendant and Sreenivasalu Naidu. The plaintiff also alleges that the defendants 3 and 4 purchased the suit property with full knowledge of the agreement Ex.A-1 and the rights of the plaintiff under the same. Hence the plaintiff prayed for a decree for specific performance directing the defendants 1 to 4 to execute the sale deed in favour of the plaintiff as stipulated in Ex.A-1 after receiving the balance of consideration. Defendants 1 and 2 have not filed any written statement though they have appeared through advocates.

2. The third defendant filed a written statement raising the following contentions:-The suit property originally belonged to one Chelvanayaki Ammal, the mother of the second defendant and mother-in-law of the first defendant. The said Chelvanayaki Ammal's husband had left a son by his first wife. It was represented to her that in order to enable the second defendant and her husband to get the suit property she might make a testamentary disposition in favour of them. The first defendant who was in a position to dominate her will secured a document, the registration copy of which is marked as Ex.A-8, on the representation that it was will. The said Chelvanayaki Ammal executed it without knowing the contents and believing that it was only a will. There is no valid attestation of the document and the document was not given effect to and acted upon. The said Chelvanayaki Animal continued to be in possession of the property. Even if the document Ex.A-8 is true and valid defendants 1 and 2 have no power to alienate the suit property conveyed to them since there is a prohibition against any alienation till the death of the said Chelvanayaki Ammal

3. Defendants 3 and 4 are the bona fide purchasers of the suit property for value without notice of any defective title. They were not aware of the alleged agreement Ex.A-1 in favour of the plaintiff. The agreement Ex.A-1, even if it is true, is not enforceable against the defendants 1 and 2 in view of the prohibition incorporated in Ex.A8.

4. The fourth defendant in his written statement adopted the written statement of the third defendant and contended that he is a bona fide purchaser for value under the registered sale deed, marked as Ex.B-2. Only after ascertaining the encumbrances in the Sub-Registrar's Office and after having been satisfied that there was no agreement as alleged by the plaintiff the defendants purchased the suit property. In any event the defendants 1 and 2 have no right to convey the suit property in favour of the plaintiff under the agreement of sale Ex.A-1. The

fourth defendant, therefore, prayed for the dismissal of the suit.

5. On these pleadings the learned Subordinate Judge of Vellore framed the following issues for trial:--

1. Whether the suit agreement to sell dated 28.4.1972 is true, valid and binding on defendants 3 and 4?
2. Whether the plaintiff had been ready and willing to perform his part of the conduct under the suit agreement?
3. Whether the defendants 1 and 2 had no right to the suit property and to enter into the suit agreement to sell the same?
4. Whether the defendants 3 and 4 are bona fide purchasers of the suit property for value without notice of the suit agreement?
5. Whether the plaintiff is entitled to the relief of specific performance as prayed for?
6. To what relief, the parties are entitled?

6. The trial court took up for consideration issue Nos. 1 to 4 together and after discussing the oral and documentary evidence let in the case came to the conclusion that the respondents 1 and 2 are not entitled to execute the sale agreement Ex.A-1 in favour of the appellant in view of the restrictions contained in the settlement deed Ex.A-8. The trial court also found that Chelvanayagi Ammal the mother of the second respondent, continued to be in possession of the suit property inspite of the settlement deed Ex.A-8. The learned Subordinate Judge also found that the subsequent sale deed in favour of the respondents 3 and 4 executed by the respondents 1 and 2 and Chelvanayagi Ammal is true and valid. The trial court also came to the conclusion that the respondents 3 and 4 are the bona fide transferees for value without notice of the agreement Ex.A-1. In view of the abovesaid findings the trial court came to the conclusion that the appellant is not entitled to the relief of specific performance and dismissed the suit with costs of the defendants 3 and 4, As against the said judgment and decree of the learned Subordinate Judge of Vellore this first appeal is filed.

7. Mr. Kesava Iyengar, learned counsel appearing for the appellant, raised the following contentions in support of his argument that the judgment and decree of the trial court are not sustainable:--

1. The conclusion arrived at by the trial court that the respondents 1 and 2 have no rights in praesenti in respect of the suit property is not warranted by the recitals in the settlement deed Ex.A-8 and the interpretation of similar recitals by the Privy Council and the Supreme Court;
2. The finding of the trial court that the respondents 3 and 4 are the transferees of the suit property under the sale deeds Exs.B-1 and B-2 for value without notice of the agreement in favour of the appellant Ex.A.1 cannot be sustained on

the facts and circumstances of the case;

3. The appellant is entitled to the relief of specific performance on the basis of Ex.A-1 and the contrary conclusion of the trial court cannot be sustained on facts and in law.

Before taking up for consideration the first point raised by the learned Advocate for the appellant it is necessary to refer certain facts for a better understanding of the case.

8. In so far as the settlement deed Ex.B-4 is concerned the plea of the respondents 3 and 4 in the written statement is that the first respondent was in a position to dominate the will of the settlor Chelvanayagi Ammal and he was able to secure the document, on the representation that it is a will coming into operation after her life time and the same was not read out to her and that the settlement was not given effect to during the life time of Chelvanayagi Ammal. It is also their contention that there was no valid attestation. Their further contention is even if the settlement is valid because of the prohibition of alienation during the life time of the settlor the respondents 1 and 2 cannot alienate and hence the agreement Ex.A-1 is not valid. The trial court came to the conclusion that the condition in Ex.B.4 that the respondents 1 and 2 should not alienate the suit property but are entitled only to enjoy the same till the life time of Chelvanayagi Ammal is equally the operative portion of the document and hence the respondents 1 and 2 must fulfil the condition restraining them from alienation and to maintain Chelvanayagi Ammal till her life time and also to perform her obsequious on her death before getting fullrights in the property. The trial court also found that Chelvanayagi Ammal continued to enjoy the property till she and the respondents 1 and 2 executed the sale deed Ex.B-1 in favour of respondents 3 and 4. The contention that in any event on the death of Chelvanayagi Ammal the properties were succeeded by the respondents 1 and 2 and they will not be in a position to deny the appellant's title as per S. 43 of the Transfer of Property Act was also negatived by the trial court. The trial court held that the doctrine laid down in S. 43 of the Transfer of Property Act cannot be applied in this case since Chelvanayagi Ammal had parted her interest during the life time by executing Exs.B-1 and B-2.

9. In so far as the first point raised by the appellant regarding the extent of interest conveyed by the settlement deed Ex.B-4 in favour of the respondents 1 and 2 is concerned the following aspects will have to be considered and a conclusion arrived at:--

1. Whether the respondents 1 and 2 are entitled to rights in praesenti and whether they can convey the suit property during the life time of Chelvanayagi Ammal in view of the recitals in Ex.B-4 prohibiting such alienation;

2. Whether Ex.B-4 is a testamentary disposition as contended by the respondents 3 and 4 and whether the same is properly attested.

10. The trial court in its finding on issue No. 3 came to the conclusion that as per the recitals in Ex.B-4 the respondents 1 and 2 had no right to enter into the suit agreement Ex.A-1 in favour of the appellant. The relevant recitals in Ex.B-4 are extracted in paragraph 11 of the judgment of the trial court. Ex.B-4 recites that the property comprised therein is the self-acquired property of Chelvanayagi Ammal which she purchased by the sale of her jewels. It is also recited in Ex.B-4 that it was given as a gift to the respondents 1 and 2 and they were also put in possession. The relevant recital is as follows:--

This recital indicates an absolute gift. The subsequent recitals in Ex.B-4 relied on by the respondents 3 and 4 in support of their contention that the respondents 1 and 2 have no right in praesenti in the suit property are as follows:-

After an absolute disposition there is an interdiction prohibiting alienation by the donees. It is contended on behalf of the appellant that after making an absolute disposition, possessory and proprietary, it is incompetent for the settlor to deviate from it and impose a clause repugnant to it restricting the absolute right of the settlee conveyed by the disposition clause. In other words the words:

Indicates the absolute disposition and delivery of possession in pursuance of such disposition. The subsequent recital is an interdiction against alienation. This is not a case where the life estate is retained and the remainder given to the respondents 1 and 2. In the case reported in AIR 1931 179 (Privy Council) the Privy Council held that the condition that the properties granted should not in any case pass to the heirs of the daughters of the grantee can hardly be read as implying an estate to be determined on the death of the grantee. It is an attempt to alter the legal course of succession to an absolute estate, and is therefore void. It was also held that the condition that neither the grantee nor her heirs should transfer the properties or any part thereof by way of gift except a gift for religious purpose which also should not exceed five phakis is a restriction repugnant to the absolute estate and is void on the ground.

11. The interdiction with regard to alienation can only be regarded as a condition subsequent repugnant to the absolute estate and the same will have to be rejected as a condition repugnant to the grant. Having granted an absolute interest one cannot limit the powers of alienation. In the case reported in AIR 1929 283 (Privy Council) it has been held that the words in the will "that the estate shall vest in P" and that he shall be the testator's "heir and successor", were clear dispositive words creating an absolute estate of inheritance in P and the various clauses that followed the main provisions imposing restriction were to come into operation after P had so inherited; they must, therefore, be regarded as an attempt to impose repugnant conditions upon the estate so created and were, therefore, void.

12. Mr. Kesava Iyengar, learned counsel for the appellant, also contended that in ascertaining the intention of the parties to a document the nature of the disposition intended should be gathered from the words used and they must be

presumed to have used the words in the strict grammatical sense. If the several statements made in a document are irreconcilable the earlier part of the document are entitled to preference over the latter part. In support of this contention reliance is placed upon the case reported in Sahebzada Mohammad Kamgar Shah Vs. Jagdish Chandra Deo Dhabal Deo and Others, where it has been held as follows:--

The intention of the parties to a dispositive document must be gathered from the words used by the parties themselves and they must be presumed to have used the words in their strict grammatical sense. If the statements made in the earlier part of the document were irreconcilable with those made in the latter part, the earlier part must prevail. In cases of ambiguity the court should look at all the parts of the document to ascertain the intention of the parties. If ambiguity still remains, the court should interpret the document strictly against the grantor and in favour of the grantee.

13. In the case reported in Ramkishore Lal Vs. Kamal Narain, the Supreme Court observed as follows:-

The golden rule of construction, it has been said, is to ascertain the intention of the parties to the instrument after considering all the words, in their ordinary, natural sense. To ascertain this intention the Court has to consider the relevant portion of the document as a whole and also to take into account the circumstances under which the particular words were used. Very often the status and the training of the parties using the words have to be taken into consideration. It has to be borne in mind that very many words are used in more than one sense and that sense differs in different circumstances. Again, even where a particular word has, to a trained conveyancer, a clear and definite significance and one can be sure about the sense in which such conveyancer would use it, it may not be reasonable and proper to give the same strict interpretation of the word when used by one who is not so equally skilled in the art of conveyancing. Sometimes it happens in the case of documents as regards disposition of properties, whether they are testamentary or non-testamentary instruments, that there is a clear conflict between what is said in one part of the document and in another. A familiar instance of this is where in an earlier part of the document some property is given absolutely to one person but later on, other directions about the same property are given which conflict with and take away from the absolute title given in the earlier portion. What is to be done where this happens? It is well settled that in case of such a conflict the earlier disposition of absolute title should prevail and the later directions of disposition should be disregarded as unsuccessful attempts to restrict the title already given (See Sahebzada Mohd. Kamgar Shah v. Jagdish Chandra Deo Dhabal Deo², it is clear, however, that an attempt should always be made to read the two parts of the document harmoniously, if possible. It is only when this is not possible, e.g. where an absolute title is given in clear and unambiguous terms and the later provisions trench on the same, that the later provisions have to be held to be

void.

14. In the case reported in AIR 1933 201 (Lahore) , it has been held that in a deed of gift or will an absolute estate of inheritance is created in favour of person, any subsequent clause which purports to restrict that interest is invalid, and the donee or legatee takes an absolute estate as if the deed contained an such restrictive condition. The rule is the same even if the restriction is for a limited period only. In the case reported in Syed Abdul Khader Vs. Rami Reddy and Others, the Supreme Court held that an ordinary authority given in one part of the instrument will not be cut down because there are ambiguous and uncertain expressions elsewhere. A power of wide amplitude conferring wide authority cannot by construction be narrowed down to deny an authority which the donor expressly wanted to confer. In case of documents relating to disposition in present the earlier recital will have to prevail. But in a testamentary disposition the later clause will have to prevail. According to S. 88 of the Indian Succession Act where two clauses or gifts in a will are irreconcilable and cannot possibly stand together the last shall prevail. Mr. Kesava Iyengar, learned counsel for the appellant, further contended that certain recitals in a document can only be taken as a pious wish which cannot affect the absolute nature of the disposition. In the case reported in Ayesha Beevi Vs. K.S.A. Shaik Mohamed Alim Sahib and Others, Veeraswami, J., as he then was, observed that a recital in a gift deed that the gift is given out of love and affection to the donee and in the expectation that the donee will maintain the donor, is only an expression by the donor of a confidence of that nature in the donee or a desire or wish and cannot be construed as a limitation upon the donee's right to deal with the property. In this connection reference is also made to S. 11 of the Transfer of Property Act, which is as follows:-

Where, on a transfer of property, an interest therein is created absolutely in favour of any person, but the terms of the transfer direct that such interest shall be applied or enjoyed by him in a particular manner, he shall be entitled to receive and dispose of such interest as if there were no such direction.

15. S. 11 of the Transfer of Property Act is a statutory embodiment of the principles laid down in several decisions mentioned above. In short, in case of an absolute disposition the subsequent restriction can only be said to be a pro non scriptio meaning as if it is not there. On a reading of the judgment of the trial Court it is seen that the trial court had taken the subsequent condition regarding the enjoyment without alienation for the life time of Chelvanayagi Ammal as a condition precedent. The approach of the trial court in construing a void condition as a condition precedent is clearly wrong. The trial court derived support for its construction that the interest conveyed under Ex.A.8 is not an interest in prasenti from the recitals in Exs.B-1 and Ex B-2, the safe deeds in favour of the respondents 3 and 4. The intention of the parties will have to be gathered from the recitals in Ex. A-8 and not from the sale deeds Exs.B-1 and B-2 which came into existence 7 years later. The trial court clearly erred in

having been influenced with the recitals in Exs.B-1 and B.2 in considering the nature of disposition under Ex.A-8. The trial court also on the strength of the recitals in Exs.B-1 and B-2 reciting that Chelvanayagi Ammal was in possession and that possession was handed over to the respondents 3 and 4 in pursuance of the sale deeds Exs.B-1 and B-2 seems to have inferred that possession was all along with Chelvanayagi Ammal and not with the defendants 1 and 2. In this connection Mr. Kesava Iyengar, learned counsel for the appellant, contended that the trial court is not right in referring to the conduct of the parties referred to in the subsequent documents since the conduct of the parties is not admissible for the purpose of construing a document. If that is the case it will enable the party to defraud the beneficiaries under the earlier document by making recitals in a subsequent document. The observation of the Supreme Court in Ramkishore Lal Vs. Kamal Narain, is cited. The observation is as follows:-

Once an absolute dedication had been made by the partition award the former owners had no legal authority to go behind the dedication.

16. The trial court's inference that Chelvanayagi Ammal was continued in possession on the strength of the recitals in Exs.B-1 and B.2 also does not appear to be correct. The name of the second respondent Neelaveni Ammal, find a place in the Chitta Extract Exs. A-11 and A-12. This itself shows that the settlement deed Ex. A-8 had come into operation in praesenti. Even if the name of Chelvanayagi Ammal is not mentioned in the patta and the document relating to possession, the law is, title cannot be denied on the ground that there are documents relating to possession contrary to the title. In such cases title had to prevail. In any event on account of the death of Chelvanayagi Ammal on 3.12.1976 the prohibition had gone. Under S.43 of the Transfer of Property Act where a person fraudulently or erroneously represents that he is authorised to transfer certain immovable property, and professes to transfer such property for consideration, such transfer shall, at the option of the transferee, operate on any interest which the transferor may acquire in such property, at any time during which the contract of transfer subsists. In any event, in view of the above provision, the recitals relating to the prohibition on alienation during the life time of Chelvanayagi Ammal does not come in the way of the appellant to get the relief prayed for in the suit. In the case reported in Arnlayi Nadachi and Another Vs. Jagadeesiah Nadar and Others, , it has been held as follows:--

Under S. 43 of the Transfer of Property Act, estoppel which existed by reason of the representation had the effect of transferring the property to the purchaser the moment the transferor obtained the same during the subsistence of the contract. But under S. 115 Evidence Act there was no question of any transfer of property or of feeding the original grant. The person who made the representation and his successors were merely precluded from denying that they did not have the interest which by reason of their representation that made the transferee to believe and act upon such belief to their detriment .

17. Ex. B-4 is a settlement deed in pursuance of which possession had been

delivered and there is nothing further the settlor can do. In the case reported in *Radha Sundar Dutta Vs. Mohd. Jahadur Rahim and Others*, the Supreme Court observed as follows:--

It is a settled rule of interpretation that if there be admissible two constructions of a document, one of which will give effect to all the clauses therein while the other will render one or more of them nugatory, it is the former that should be adopted on the principle expressed in the maxim "*resmagis valet quam pereat*."

18. Applying this maxim to the facts of this case Ex.B-4 can only be construed as a transfer of absolute title. Further the question has become academic since Chelvanayagi Ammal died pending suit. The court considering the case must take into account the subsequent event of the death of Chelvanayagi Ammal also. In the case reported in *Pasupuleti Venkateswarlu Vs. The Motor and General Traders*, it has been held that when subsequent event occurred which has a material bearing on the rights of the parties the same will have to be taken into consideration even in revision. To the same effect is the decision reported in *Surinder Kumar and Others Vs. Gian Chand and Others*, where the Supreme Court held that the Hindu Succession Act which came into effect when the case was pending before the Supreme Court will have to be applied to the facts of that case. In the case reported in *Sri Mahalinga Thambiran Swamikal Vs. His Holiness Sri La Sri Kasivasi Arulnandi Thambiran Swamikal*, it has been observed that the subsequent event arising on the death of the defendant will have to be taken into consideration and the relief granted in relation to subsequent events. Hence in this case in view of the death of Chelvanayagi Ammal the respondents 1 and 2 had become absolute owners and they are disabled from contending to the contrary. In any event consequent on the death of Chelvanayagi Ammal the provisions of S. 43 of the Transfer of Property Act comes into operation and the agreement Ex.A-1 in favour of the appellant becomes enforceable. The trial court held that S. 43 of the Transfer of Property Act does not apply to the facts of this case, since Chelvanayagi Ammal transferred her interest in the suit property as per the documents Exs.B-1 and B-2. Whether S. 43 of the Transfer of Property Act applies or not, S. 115 of the Evidence Act applies. In the case reported in AIR 1947 99 (Privy Council) the Privy Council held in a case where a widow of a deceased Mahomedan was entitled only to a share in the property of the deceased but she sold the entire property on the representation that she was the sole owner thereof and subsequently she inherited the share of her daughter in the property, that under the sale besides the share of the widow, the vendee could also claim by virtue of S. 115 of the Evidence Act the share inherited by the widow from her daughter. On a consideration of the recitals in Ex.B-4 and the circumstances in the case there is no difficulty in coming to the conclusion (1) that what was conveyed under Ex.B 4 is an absolute estate; and (2) in any event on account of the subsequent death of Chelvanayagi Ammal the respondents 1 and 2 are debarred from contesting the claim of the appellant for specific performance. The conclusion arrived at by the trial court in this regard cannot be sustained.

19. With regard to the question whether Ex.A-8 is a testamentary disposition as set out in the written statement of the respondents 3 and 4 and whether the same is properly attested. Mr. M.R. Narayanaswami, learned counsel for the respondents 3 and 4, fairly conceded that Ex.A-8 cannot be said to be a testamentary disposition.

20. The second contention urged on behalf of the appellant is that the finding of the trial court that the respondents 3 and 4 are the transferees of the suit property under the sale deeds Exs B-1 and B-2 for value without notice of the agreement Ex.A-1 in favour of the appellant cannot be sustained on the facts and circumstances of the case. S. 19 (b) of the Specific Relief Act protects the bonafide purchasers under good faith for value and without notice of the original contract. S. 19(b) of the Specific Relief Act reads as follows:--

"19. Except as otherwise provided by this Chapter, Specific Performance of a contract may be enforced against--

(a).....

(b) any other person claiming under by a title arising subsequently to the contract, except a transferee for value who has paid his money in good faith and without notice of the original contract".

21. Hence in this case if the respondents 3 and 4 are the bona fide purchasers for value who has paid the money in good faith and without notice of the agreement Ex.A-1 in favour of the appellant then the sale deeds Exs.B-1 and B-2 cannot be impeached by the appellant. Hence we will have to consider whether the respondents 3 and 4 can be considered to be transferees (1) for value; (2) in good faith; and (3) without notice of the original contract. With regard to the consideration passed under Exs.B-1 and B-2 the trial court seems to have assumed, relying upon the recitals in Exs.B-1 and B-2, that consideration duly passed as recited in the said two documents. As far as the evidence in the case goes D.W. 3, the purchaser under Ex.B-1 has deposed that he had paid consideration as recited in Ex.B-1. But in the course of his evidence he has stated that he has no money or property of his own. Relying on this admission it is contended on behalf of the appellant that the third respondent had no money at his command and his version that he had paid consideration cannot be readily accepted unless the means to pay the said consideration under Ex.B-1 is established. So far as the fourth respondent is concerned he had not been examined to prove the passing of consideration under the sale deed Ex.B-2. The fourth respondent's father has two sons and a daughter. It is also the admission of D.W. 3 that the father and brothers of the fourth respondent are living separately. There is no evidence that the fourth respondent had any money with which he could have paid the consideration recited in Ex.B-2. In this connection the contention on behalf of the appellant is that it was Srinivasalu Naidu, who was originally on the scene, and after the telegram and the notice issued to him the fourth respondent was brought into the picture to take advantage of the

exemptions in favour of bona fide purchasers without notice. It is also pointed out that the fourth respondent was never in the picture. He never comes to the scene never purchased the stamp paper and never took part in the transaction. From these circumstances it is alleged that the fourth respondent is only a name-lender and in so far as the fourth respondent is concerned the onus of proving that he had paid the value under Ex.B-2 had not been discharged. Reliance is placed upon the case reported in K.C. Kapoor Vs. Smt. Radhika Devi (Dead) by Lrs. and Others,), where it has been observed as follows:-

Although each of the facts just above taken note of, when considered in isolation, may not enable the Court to raise a presumption of the sufficiency of the requisite nucleus, collectively that constitutes a formidable array and practically a clincher in favour of such a presumption, especially in the absence of any attempt on the part of the plaintiffs to produce evidence showing that defendant No. 2 had any source of income of his own other than his salary. And then the failure (referred to above) of plaintiffs No. 1 to step into the witness box is enough for the Court to raise another presumption, namely, that her deposition would not have supported the plaintiff's case.

Relying on this observation it is contended that the conduct of the fourth respondent in not going into the witness box to prove the passing of the consideration will disprove the contention that he is a transferee for value.

22. On behalf of the respondents reliance is placed upon the recitals in Exs.B-1 and B-2, relating to the payment of advance and the endorsement of the Sub-Registrar certifying that consideration had been paid. Reliance is also placed on section 58-C of the Registration Act which states that payment of money or delivery of goods made in the presence of the registering officer with reference to the execution of the document and any admission of receipt of consideration, in whole or in part, made in his presence shall be endorsed in the document admitted for registration. After making such endorsement the registering officer shall affix the date and his signature as per S. 59 of the Registration Act. S. 60 of the Registration Act deals with the certificate of registration by the registering authority in respect of the document and as S. 60 (2) the said certificate is admissible for the purpose of proving that the document had been duly registered in the manner provided under the Act, and that the facts mentioned in the endorsement referred to in S. 59 have occurred as therein mentioned. The endorsements made in pursuance of the statutory duty cast upon the Sub-Registrar cannot be belittled. Reliance is also placed upon the decision reported in Gangamoyi Debi v. Teoiluckhya Nath Chowdhry ILR 33 Calcutta 537 where it has been held that the registration is a solemn act entitled to great weight. Relying on the above said principle it was contended on behalf of the respondents 3 and 4 that when the actual payment of consideration as recited in Exs.B-2 and B-3 had been established the means of the respondents 3 and 4 is not the criterion in coming to a conclusion that the transactions are for value.

23. On behalf of the appellant reliance is placed upon the case reported in M. L.

Abdul Jabbar Sahib Vs. M. V. Venkata Sastri and Sons and Others, where the Supreme Court held that the attestation of the Sub-Registrar has no probative value and the Sub Registrar puts his signature on the document in discharge of his statutory duty u/s 59 of the Registration Act and not for the purpose of attesting it or certifying that he has received from the executant a personal acknowledgement of signature. The Supreme Court held that the endorsement is germane only for the purpose of registration and the same cannot be taken into consideration for other things. In the case reported in *Veerappa Chettiar v. Subramania Ayyar* 28 L.W.955 = I.L.R.(52) Mad. 123 it has been held that the signatures of the Registering Officer and of the identifying witnesses, affixed to the registration endorsement are sufficient attestation within the meaning of S. 59 of the Transfer of Property Act and its subsequent amending Acts. The argument against the conclusion was that the signatures of the Registering Officer and of the identifying witnesses were made *alio intuitu*, to satisfy the requirements of the Registration Act, and cannot therefore be invoked in aid for another purpose, viz., attestation under the Transfer of Property Act, at though in fact all the conditions laid down by the latter Act are fulfilled. The Registering Officer and the identifying witnesses had exactly the same duty imposed upon them by the Registration Act as would have rested upon them as attesting witnesses under the Transfer of Property Act, and that duty they discharged. The Full Bench observed that this argument is, at its best, too artificial to prevail and agreed with *Sarada Prasad Tej v. Triguna Charan Ray* (1922) ILR 1 Pat 300 and *Radha Mohan Dutta v. Nripendre Nath Nandy* 1927 (47) C.L.J. 118 in rejecting it.

24. The Supreme Court decision cited above only states that the Sub Registrar cannot figure as an attesting witness and the observation of the Supreme Court in the abovesaid decision cannot be extended to a registration endorsement made by the Sub Registrar as per the provisions of the Registration Act. Such an endorsement will be deemed to have been properly made in the course of his official duty unless the contrary is established. Hence in view of the endorsements in Exs.B-1 and B 2 it will have to be taken that the consideration as recited in the endorsement had passed since there is no evidence to disprove the said endorsement. Considering the entire circumstances the conclusion arrived at by the trial Court with reference to the consideration recited in Exs.B-2 and B-3 is correct.

25. The next aspect to be considered is whether the conclusion arrived at by the trial court that the respondents 3 and 4 are transferees in good faith is correct. Mere payment of consideration alone will not save the transaction unless it is done in good faith and without notice of the prior agreement Ex.A-1. The burden of proof that one is a bona fide purchaser in good faith is on the purchaser. In the case reported in AIR 1934 68 (Privy Council) Indian Appeals 115), it has been held that the onus is very heavy on the subsequent purchaser to show that he is an innocent purchaser. Since the bona fide purchaser is an exception to S. 19 (b) of the Specific Relief Act a person claiming the exception must establish

the requirements specified in the exception. S.3(2) of the General Clauses Act defines Good faith as follows:--

"3 (22). A thing shall be deemed to be done in good faith where it is in fact done honestly whether it is done negligently or not."

26. S. 52 of the Indian Penal Code defines "good faith", as follows:--

"52. "Good faith?--Nothing is said to be done or believed in "good faith" which is done or believed without due care and attention."

The abovesaid definitions and the meaning of the term "good faith" indicate that in order to come to a conclusion that an act was done in good faith it must have been done with due care and attention and there should not be any negligence or dishonesty. Each aspect is a complement to the other and not an exclusion of the other. The definition of the Indian Penal Code emphasises due care and attention whereas General Clauses Act emphasises honesty. In the case reported in *Kailas Etc., Works v. Munlity, B. & N.*, AIR 1969 S.C. 127 = 1968 Bombay Law Reporter 554 the Supreme Court observed as follows:--

A person cannot be said to act honestly unless he acts with fairness and uprightness. A person who acts in a particular manner in the discharge of his duties in spite of the knowledge and consciousness that injury to some one or group of persons is likely to result from his act or omission or acts with wanton or wilful negligence in spite of such knowledge or consciousness cannot be said to act with fairness or uprightness and, therefore, he cannot be said to act with honesty or in good faith. Whether in a particular case a person acted with honesty or not will depend on the facts of each case.

Good faith implies upright mental attitude and clear conscience. It contemplates an honest effort to ascertain the facts upon which the exercise of the power must rest. It is an honest determination from ascertained facts. Good faith precludes pretence, deceit or lack of fairness and uprightness and also precludes wanton or wilful negligence."

27. Bearing these principles in mind we will have to analyse the facts of this case to see whether the respondents 3 and 4 acted in good faith. Good faith will have to be ascertained from the existing circumstances and the conduct of the parties relating to the transaction. In this case the appellant and the respondents 3 and 4 are residing in the same village viz., Anathapuram, which is six miles away from Thakkolam, the village where Chelvanayagi Ammal was residing. Respondents 1 and 2 are the residents of Vellore. The third respondent's house is situated at a distance of 900 feet from the house of the appellant. Diagonally it is only 300 feet from the house of the appellant. Similarly the fourth respondent's house is also situated at a distance of 300 feet from the house of the appellant. The argument of Mr. Kesava Iyengar, learned counsel for the appellant, is that in such a small village the fact that a registered agreement was executed in respect of the suit land in favour of the appellant is an information

which will go round normally and will be available to an intending purchaser who makes bona fide enquiries. The sale deeds Exs B-1 and B-2 are not preceded by any agreement of sale. The sale transaction seems to have been entered into straight away and there is no evidence to show that the respondents 3 and 4 had taken steps which a normal man placed in a similar circumstances will take before entering into the transaction. An honest purchaser will at least make enquiries with the persons having knowledge of the property and also with the neighbouring owners. The standard of proof required to show that the respondents 3 and 4 are the bona fide purchasers and entitled to the exception provided in S. 19(b) of the Specific Relief Act is very high. The burden of proof is on the purchaser. If the purchaser had not taken the ordinary precaution which a normal purchaser will take then his conduct cannot be said to be bona fide. In this case D.W. 1 had stated that he had not taken any steps to obtain an encumbrance certificate. He had also not consulted any lawyer relating to the title of the property. Generally the sale is preceded by an agreement which will give a breathing time for the purchaser to make necessary investigation. In this case there is no such agreement and the sale deeds Exs B-1 and B-2 were entered into straight away. Respondents 3 and 4 had also not filed an application for encumbrance certificate in respect of the property in order to ascertain whether the property is free from encumbrance. Making of necessary enquiries and obtaining of the encumbrance certificate will indicate the bona fide of the purchaser and a purchaser who has ventured into the transaction without observing the abovesaid formalities cannot be said to be a bona fide purchaser coming within the exception to S. 19(b) of the Specific Relief Act. Judged from the conduct as borne out from the evidence of D.W. 3 respondents 3 and 4 cannot be said to be bona fide purchasers. The conclusion arrived at by the trial court that the respondents 3 and 4 are the bona fide purchasers cannot be supported in this regard.

28. The next question to be considered is whether the respondents 3 and 4 can be considered as the purchasers without notice of the agreement Ex.A-1. In this connection we have to bear in mind that the sale deeds Exs.B-1 and B-2 came into existence on 19.5.1972 and registered on 20.5.1972, 21 days after the agreement Ex.A-1. As already stated it has been laid down in the case reported in *Bhup Narain Singh v. Gokhu* 39 L.W. 363 = A I.R. 1934 P.C. 68 61 Indian Appeals 115 Chand Mahton¹ the onus is very heavy on the subsequent purchaser to show that he is a purchaser without notice of the defect in title. In the case reported in *S.N. Munndade v. New Mofussil Co., Ltd* 59 L W. 370 = AIR 1946 Privy Council 97, the Privy Council laid down that where after entering a contract for the sale of certain property with the plaintiff the vendor subsequently contracts to sell the same property to the defendant, then in a suit by the plaintiff under S. 27 of the Specific Relief Act for the specific performance of the contract in his favour, the burden of proving good faith and lack of notice of the contract lies upon the defendant. In the present case the burden is heavy on the respondents 3 and 4. According to S. 3 of the Transfer of Property Act a person is

said to have notice if he actually knows the facts or but for a wilful abstention or enquiry he could have known it. The village where the property is situate is a small village and there is every possibility of all the residents knowing the agreements. Ex.A-1 executed by the respondents 1 and 2 in favour of the appellant. But this assertion on the part of the appellant cannot be taken as a proof of notice unless circumstances are shown impugning definite knowledge of the respondents 3 and 4. In this case the appellant seems to have sent a telegram on 19.5.1972 and also a registered notice to the respondents 1 and 2 and two others. Ex.A-2 is the true copy of the telegram sent by the plaintiff's counsel to the third respondent and two others. Ex.A-2 reads as follows:--

28.4.1972 agreement by M. Kothandarama Pillai and his wife Neelaveni Ammal to my client Bolu Naidu S/o. Subbunaidu Ananthapuram to sell their lands at Ananthapuram. You don't purchase.

The telegram was originated from Vellore, North Arcot District and the class is ordinary. The time at which the telegram was sent is mentioned as 19.10. It is addressed to (1) D. Srinivasalu Naidu. (2) Ethirajulu Naidu and (3) Gali Srinivasalu Naidu. D.W. 1 admits that the addresses given in the telegram are the correct addresses. The evidence of P.W. 1 is that the postman who was carrying the telegram reached the village at 8.00 A.M. on 20.5.1972 and that the postman informed him that he delivered the telegram. On behalf of the appellant it is contended that the telegram which originated from Vellore at 7.10 P.M. on 19.5.1972 can be presumed to have reached the addresses viz., Ethirajulu (the third respondent), D. Srinivasalu Naidu and Gali Srinivasalu Naidu, all residents of Ananthapuram. by at least 8.00 A.M. on the next day. Similarly the registered notice dated 19.5.1972 addressed to D. Srinivasalu Naidu, Ethirajulu Naidu (the third respondent), Gali Srinivasalu Naidu and the respondents 1 and 2 was despatched by post on 19.5.1972. Respondents 1 and 2 received the notice and Exs.A-4 and A-5 are the Acknowledgements for having received the notice. Respondents 1 and 2 did not file any written statement in the suit. Mr. Kesava Iyengar, learned counsel appearing for the appellant, contended that in this case it is the respondents 1 and 2 who will be in a position to give the relevant information to the Court and that they want only kept away from the witness box. Though they filed the vakalat they did not file any written statement. Even if the respondents 1 and 2 kept away it is the duty of the respondents 3 and 4 to call them and if they failed to do so an adverse inference will have to be drawn against the respondents 3 and 4 in this case. As far as the notice sent to the third respondent and two others are concerned, they were returned unserved. There is an endorsement on the returned unserved covers that the addressee evaded. The third respondent who was examined as D.W. 1 also admitted the addresses in the returned unserved covers are correct. It is contended on behalf of the appellant that when the addresses are correct presumption of due service will have to be drawn and the respondents will have to be imputed with the knowledge about the contents of the notice. In the case reported in Harcharan Singh Vs. Smt. Shivrani and Others, the Supreme Court observed that when a

correctly addressed communication is presented to the post office there is a presumption that it is duly served and the person concerned is put on notice of the contents of the notice. It is also urged that the same principle will have to be applied to the notice also. In this case the relevant records maintained by the post office showing the service of the telegram Ex.A-2 had not been summoned and the postmen who actually served the telegram and the registered notice had not been examined to prove the due delivery. It is contended on behalf of the respondents that in the absence of such evidence no presumption that due service had been effected can be drawn. D.W. 1 the third defendant and D.W. 2 Gali Srinivasalu Naidu, deposed that they did not receive the telegram. The appellant ought to have summoned the Postal and Telegraph Department to produce the records showing the service of the telegram which will be maintained by the said department. Such records are available and the appellant failed to summon the same for the purpose of ascertaining the date and time of the service of the telegram. In view of his default to produce the necessary document presumption regarding due service of the telegram cannot be drawn.

29. In the case reported in Gopal Krishnaji Ketkar Vs. Mahomed Haji Latif and Others, the Supreme Court observed as follows:--

Even if the burden of proof does not lie on a party the court may draw an adverse inference if he withholds important documents in his possession which can throw light on the facts in issue. It is not a sound practice for those desiring to rely upon a certain state of affairs to withhold from the court the best evidence which is in their possession which could throw light upon the issues in controversy and to rely upon the abstract doctrine of onus of proof.

In the absence of the document relating to the service of telegram it is not possible to conclude that the telegram Ex.A-2 was served on the respondents 3 and 4 even prior to the registration of Exs.B-1 and B-2. Soon after the appellant had sent a registered notice Ex.A-1 on 19.5.1972, a copy of which is marked as Ex. A-3, to the respondents 1 to 3, D. Srinivasalu Naidu and Gali Srinivasalu Naidu. It is admitted by D.W. 1 that the addresses given in the notice are the correct addresses and the said notice had been registered with the postal authorities. Ex.A-4 is the postal acknowledgement for service of the notice to the second respondent, Neelaveni Animal, on 29.5.1972 Similarly the first respondent was served with a notice, on 29.5.1972 as per the postal acknowledgement Ex.A-5. The notice sent to the respondents 3 and 4 were returned unserved. Ex.A-6 and A-7 are the returned covers. When the addresses are correct, it is contended, that under S.114 of the Evidence Act a presumption that notice had been duly served can be drawn. S. 114 of the Evidence Act presumes if official acts had been done it is presumed to have been done in the proper manner. But when the act itself has not been done there is no presumption. As far as the registered notice is concerned it could have reached the respondents 1 and 2 only after the registration of Exs.B-1 and B-2.

30. In the case reported in Murugappa Chettiar Vs. Thirumalai Nadar and Others,

Rajamannar, J., as he then was, held as follows:--

Illustration (e) to S.114 of the Indian Evidence Act no doubt declares that judicial and administrative acts may be presumed to have been regularly performed. But it does not say that it may be presumed that any particular judicial or official act has been performed. No doubt when the only evidence is that a particular judicial or official act has been performed and there is no other evidence on record, it may be presumed that the particular judicial or official act was regularly performed. But when the dispute is whether a particular judicial or official act was performed or not, there is nothing in law which enables a court to presume that that act was as a matter of fact performed. Where the question is whether there was any affixture at all of the attachment order on the properties sought to be attached and there is no reliable evidence as to the fact of affixture the party cannot prove the affixture by relying on the presumption under the Evidence Act. Also, in such a case it is discretionary for the Court to rely on the presumption and it may refuse to do so where the party seeks it long after all the material evidence on the point has ceased to be available.

31. Therefore in the absence of conclusive proof relating to the factum of service the appellant cannot rely on the presumption laid down in illustration (e) to S. 114 of the Indian Evidence Act. Hence the case of the appellant that presumption of due service will have to be drawn cannot be accepted. However, in this case no notice had been issued to the fourth respondent. The case of the appellant is that notice had been issued to Srinivasalu Naidu, the latter's brother of the fourth respondent who happens to be the family manager. The appellant had not succeeded in showing that the affairs of the fourth respondent had been conducted by Srinivasalu Naidu. Even taking the endorsements on Exs.A-6 and A-7, unserved covers containing the notice addressed to the third respondent and Srinivasalu Naidu, the endorsement can only be after 25.5.1972. Neither in the telegram Ex.A-2 nor in the registered notice Ex. A.3, the fourth respondent's name is mentioned. Hence there is no question of any notice to the fourth respondent. So far as the third respondent is concerned the presumption of due service of notice cannot be drawn in view of the absence of postal records to prove the delivery of the telegram and the evidence of the person who actually effected the delivery. Under the circumstances the contention of the appellant that presumption of due service of notice will have to be drawn cannot be accepted.

32. The next contention urged on behalf of the appellant is that the agreement Ex.A-1 is a registered document and such registration amounts to constructive notice. Mr. M.R. Narayanaswami, learned counsel for the respondents, contends that where a document is not compulsorily registerable its registration does not amount to constructive notice and an agreement to sell is not registerable and in case of such document the registration of the same will not clothe with constructive notice of such a document in so far as the respondents 3 and 4 are concerned. In the case reported in *Hirachand Himatlal Marwadi Vs. Kashinath*

Thakurji Jadhav, , a Division Bench of the Bombay High Court held that in cases of document which are not compulsorily registerable and which in fact were registered they cannot be used as a constructive notice of the transaction. Hence the registration of Ex.A-1 cannot operate as a constructive notice.

33. The next contention of the appellant is that he was present in the Vellore Sub Registrar's office and that on seeing him the respondents 1 to 4 ran to Arakkonam Sub Registrar's office and registered Exs.B-I and B-2 and as such the respondents 3 and 4 knew about the agreement Ex.A-1 in favour of the appellant. D.W. 1 denied the suggestion that the respondents 3 and 4 came to Vellore Sub Registrar's office and on seeing the appellant took a taxi and proceeded to Arakkonam with a view to register the documents Exs.B-I and B-2 in secrecy. It is seen from the document that for Exs B-I and B-2 the stamp papers were purchased at Vellore and not at Arakkonam. From this it is sought to be inferred by the appellant that an attempt was made to register the document at Vellore and on seeing the appellant they have taken the documents to Arakkonam for registering the same without the appellant's knowledge. The explanation for obtaining the stamp papers at Vellore is that the stamp papers of higher denomination were not available at Arakkonam. Mr. M.R. Narayanaswami, learned counsel for the respondents, also contends that registering the document at Arakkonam Sub Registrar's office, which is having the jurisdiction, is a normal activity and going to Vellore for registering the document is extraordinary and such a conduct of the respondents 3 and 4 are absolutely normal and does not constitute any attempt on their part to do anything behind the back of anybody. We will have to ascertain whether the respondents 3 and 4 could have had knowledge of the earlier agreement Ex.A-1 in favour of the appellant before they registered the sale deeds Exs.B-I and B-2. We will have to scan the evidence and the circumstances in this case to ascertain whether such a knowledge can be attributed to the respondents 3 and 4 in this case.

34. The agreement in favour of the appellant viz., Ex.A-1, was registered at Arakkonam on 28-4-1972. In the normal course the said document which was registered in the headquarters ought to have been communicated to the Arakkonam Sub Registrar's office having jurisdiction over the area. Additional evidence had been let in by the appellant by summoning the Index register maintained in the Sub-Registrar's office at Arakkonam which is marked as Ex.A-18 and P.W.4, the Sub Registrar of Arakkonam at the relevant point of time, is also examined. P.W. 4 deposed that when the documents are registered at Vellore Sub Registrar's office, which is the headquarters, they will index the particulars of the documents concerning the property and description of the parties and then send a memo to the Sub-Registrar's office having jurisdiction for the purpose of making entries in index register. The particulars about the registration of Ex.A-1 are entered in the index register of the Arakkonam Sub Registrar's office viz., Ex.A-18. The said entries are marked as Ex.A-18(a) and the same is made on 10th May, 1972. The deposition of P.W.4 is that as and when the memo relating to the registration of the document was received it will

be entered then and there in the index register. A suggestion made in cross-examination that all the memos will be collected for the month and entered in seriatim by the end of the month was denied by P.W. 4. Taking into consideration the entries in Ex.A-18 and the dates on which the entry with reference to Ex.A-1 was entered coupled with the evidence of P.W. 4 there is no difficulty in coming to the conclusion that the entry in index Register of Arakkonam Sub Registrar's office with reference to Ex.A-1 must have been made on 10.5.1972. If such an entry had been made when D.W. 1 made an enquiry at the Sub Registrar's office at Arakkonam whether there are any encumbrances at the time of the registration of Exs.B-1 and E-2 viz., on 19.5.1972. D.W. 1 must have definitely got the information about the existence of Ex.A-1 D.W. 1 asserts that he did not make an enquiry before the Sub Registrar and the Sub Registrar told him that in respect of the suit property there is no other document except the settlement deed Ex.B-4. The said Sub Registrar had not been examined. D.W. 1 had not paid any money under S.57 of the Registration Act for ascertaining the encumbrances. From the entries in the index register coupled with the evidence of P.W. 4 there is no difficulty in coming to the conclusion that if really D.W. 1 had made an enquiry with the Sub Registrar, Arakkonam, on 19.9.1972, at the time of registration of Exs.B-1 and B-2 he would have definitely had an information on about the existence of the earlier agreement Ex.A-1. The respondents 3 and 4 did not even ask for the perusal of the title deeds. Hence the conclusion arrived at by the trial court that the respondents 3 and 4 could not have ascertained the existence of the agreement Ex.A1 is not sustainable on a proper appreciation of the facts and the evidence in this case. The circumstances indicate that the respondents 3 and 4 would certainly have known the existence of Ex.A-1 if they had made enquiries with the Sub Registrar as spoken to by them. In any event if the respondents 3 and 4 are diligent enough they could have easily known about the existence of Ex.A-1 by making enquiries in the Sub Registrar's office at Arakkonam.

35. Mr. M.R. Narayanaswami, learned Advocate for the respondents contends that in order to receive the Index Register and the oral testimony of P.W. 4 as additional evidence in this case at the appellate stage, the court must feel the necessity of such evidence for coming to the conclusion and unless such necessity is felt the additional evidence cannot be let in as per Order 41, Rule 27, C.P.C. In this case in order to come to a conclusion whether the respondents 3 and 4 can be brought under the exception set out in S. 19(b) of the Specific Relief Act we will have to ascertain whether the respondents 3 and 4 had the knowledge or the notice of agreement Ex.A-1 prior to the execution of Exs.B-1 and B-2. The trial court judging mainly from the dates and the oral evidence had come to the conclusion that the respondents 3 and 4 could not have had the knowledge of the agreement Ex.A-1. But when definite documentary evidence is available in this regard the said evidence is necessary to ascertain whether the respondents 3 and 4 had knowledge of the existence of the earlier agreement Ex.A-1. In the case reported in K. Venkataramiah Vs. A. Seetharama Reddy and

Others, the Supreme Court observed that the appellate court has power under Order 41, Rule 27, C.P.C. to allow additional evidence not only if it requires such evidence "to enable it to pronounce judgment" but also for "any other substantial cause". There may be cases where even though the court finds that it is able to pronounce judgment on the state of the record as it is and so it cannot strictly say that it requires additional evidence "to enable it to pronounce judgment", it still considers that in the interest of justice something which remains obscure should be filed up so that it can pronounce its judgment in a more satisfactory manner. Such a case will be one for allowing additional evidence "for any other substantial cause," Hence the index register and the evidence of P.W. 4 are necessary for coming to a just conclusion in this case and this is a fit case where the said evidence had to be received under Order 41, Rule 27, C.P.C.

36. The last point to be considered in this appeal is whether the conclusion of the trial court negating the specific performance of the appellant is sustainable. It is evident that the sale deeds Exs.B-1 and B-2 in favour of the respondents 3 and 4 came into existence 21 days after the agreement Ex.A.1. Hence the appellant is entitled to enforce the specific performance of agreement Ex.A-1 in his favour unless it is shown by the respondents 3 and 4 that they are the transferees for value and have paid the money in good faith and without notice of the original contract. All the abovesaid three ingredients must be present in order to bring the present case under the Exception to S. 19 (b). The evidence in this case shows that in any event the respondents 3 and 4 ought to have had notice of the agreement Ex.A-1 or would have known of the existence of Ex.A-1 by exercising due diligence. Hence the respondents 3 and 4 are not transferees without notice of Ex.A-1 and they cannot be brought under the Exception to S.19 (b) of the Specific Relief Act. When such is the case the appellant will be entitled to the relief of specific performance not only against respondents 1 and 2 but also against respondents 3 and 4, the subsequent transferees who are not transferees in good faith without notice of Ex.A-1. In the case reported in Dr. Govinddas and Another Vs. Shrimati Shantibai and Others, , the Supreme Court in a similar case held that where one "G" purchasing the property of "D" and the evidence showing that "G", had express notice of prior agreement between S and D to sell that property "S" was entitled to a decree for specific performance. Applying the same principle to the facts of this case there is no difficulty in coming to the conclusion that the appellant will be entitled to the equitable relief of specific performance and the conclusion arrived at by the trial court that the appellant will not be entitled to the relief cannot be sustained.

37. In the result the judgment and decree of the trial court are set aside and the appeal is allowed and consequently there will be a decree for specific performance in favour of the appellant/plaintiff, as prayed for. Since there are laches on the part of the appellant/plaintiff also in not letting in the relevant evidence to enable the trial court to come to a proper conclusion it is a fit case where the costs of the suit as well as the appeal will have to be negatived. Hence there will be no order as to costs in the suit as well as in the appeal.