

(2008) 11 DEL CK 0070
In the Delhi High Court
Case No : CS (OS) No. 1515 of 1995

Brig. J.K. Chadda (Retd.) and Others APPELLANT
Vs
Mrs. Mona Oberoi and Others RESPONDENT

Date of Decision : 14-11-2008

Acts Referred:

Contract Act, 1872 — Section 65
Income Tax Act, 1961 — Section 230A
Transfer of Property Act, 1882 — Section 52

Citation : (2008) 11 DEL CK 0070

Hon'ble Judges : S.N. Dhingra, J

Bench : Single Bench

Advocate : N.N. Aggarwal and Kapil Gupta, for the Appellant; Ankit Jain, for Defendants 1-3, for the Respondent

Judgement

Shiv Narayan Dhingra, J.—The plaintiffs filed this suit for specific performance alternatively for damages and declaration stating that the plaintiffs had entered into a contract for sale and purchase of basement and ground floor of property bearing No. N-241, Greater Kailash-I, New Delhi measuring 300 sq. yds. along with a servant quarter at mezzanine floor and 1/3rd terrace rights on the second floor of the property in December 1992 with defendants No. 1 to 3, the owners of the property. The negotiations of sale and purchase had started in October 1992. In pursuance of these negotiations the plaintiffs paid a sum of Rs. 5 lakh as advance to defendants No. 1 to 3. Later on, three agreements to sell were executed between the plaintiffs and defendants on 27.12.1992 containing terms and conditions of the sale. One agreement was in respect of basement executed between Dr. Amulya Chadda, plaintiff No. 3, Mrs. Shefali Chadda, plaintiff No. 4 AND Mrs. Anvita Oberoi, defendant No. 3 for a consideration of Rs. 7 lakh. A sum of Rs. 4 lakh was paid as advance vide cheque No. 738507 dated 27.12.1992. The second and third agreements were executed in respect of the front and rear portion of the ground floor of the property between Brig. J.K. Chadda, plaintiff No. 1 AND Smt. Mona Oberoi and Amit Oberoi, defendants No. 1 and 2 for a

consideration of Rs. 7.50 lakh for each portion out of which a sum of Rs. 3 lakh each was paid as advance/earnest money as per details given in the plaint.

2. plaintiffs submitted that the defendants No. 1 to 3 were to obtain Income Tax clearance u/s 230A of the Income Tax Act, 1961 as well as other necessary permissions for executing sale deeds in favour of the plaintiffs. However, defendants No. 1 to 3 did not obtain said permissions for a long time. The plaintiffs approached defendants Nos. 1 to 3 to know the reasons for not obtaining necessary permissions. The defendants informed them that they required some more money to sort out their Income Tax problem and only after the problem got sorted out, they will be able to take permission u/s 230A of the I.T. Act. The plaintiffs agreed to advance another sum of Rs. 10 lakh to defendants No. 1 to 3 provided they hand over vacant and peaceful possession of the basement and one room on the ground floor. Thus another amount of Rs. 10 lakh was received by the defendants from the plaintiffs under the aforesaid agreements. At the time of receiving this further amount of Rs. 10 lakh, defendants executed a receipt dated 20.2.1993. Out of Rs. 10 lakh, Rs. 3 lakh was paid by way of cheque and Rs. 7 lakh was paid in cash. Thus defendants No. 1 to 3 received a total amount of Rs. 20 lakh from the plaintiffs against a total consideration of Rs. 22 lakh and handed over peaceful possession of the basement and one rear bed room on the ground floor to the plaintiff No. 1.

3. It is submitted that the above transaction had taken place through property broker Mr. Prem Bhardwaj and he had witnessed and signed all the documents executed between the parties.

4. Despite obtaining Rs. 20 lakh from plaintiffs, defendants No. 1 to 3 did not obtain clearance from the Income Tax authority and expressed inability to complete the transaction. On this, the plaintiffs told the defendants No. 1 to 3 that in case they were not able to complete the transaction, parties may revoke the agreement and the defendants may refund the amount received by them to the plaintiffs. plaintiffs made this proposal since a huge amount of Rs. 20 lakh was stuck up with defendants No. 1 to 3. Thus an agreement was reached between plaintiff No. 1 and defendant No. 1 on 7.5.1993 that the agreements to sell will stand terminated in case the defendants returned the sum of Rs. 20 lakh received by them within 3 days. However, defendants failed to honour this commitment also and did not pay the money back to plaintiffs. The plaintiffs later on learnt that the defendants were trying to negotiate the sale of the property with a third person. To ensure that defendants are not able to do so, plaintiffs issued a public notice in newspaper "The Statesman" informing the general public about their lien over the property. After publication of this notice, the defendants No. 1 to 3 approached the plaintiffs through property broker and promised to complete the sale transaction stating that they have received Income Tax clearance certificate. Since the plaintiffs were not residing in Delhi, the defendants No. 1 to 3 were able to delay and postpone the sale transaction on one or other pretext. The plaintiffs visited Delhi a few days before filing of the

suit and were shocked to know that defendants No. 1 to 3 had broken open the locks of the property. They also did not allow plaintiffs to visit rear bed room on the ground floor. The plaintiffs were restrained from entering into the portion in their possession by the guards and servants of the defendants No. 1 to 3. The plaintiffs lodged a complaint with the police on 4.7.1995 and thereafter the plaintiffs filed this suit against the defendants for specific performance. Suit was initially filed against defendants No. 1 to 3 on 5.7.1995 for specific performance, however it was later on amended after addition of defendants No. 4 and 5 as parties to the suit, who purchased the property in question from defendants No. 1 to 3. The plaintiffs learnt about this purchase during the pendency of the suit and hence made them a party. The plaintiffs sought a declaration that the sale deeds executed in favour of defendants No. 4 and 5 be declared null and void.

5. The defendants No. 1 to 3 in the written statement took objection that suit as against defendant No. 3 was not maintainable since defendant No. 3 was a minor and was aged only 13 years at the time of execution of alleged agreement. She being minor was not competent to enter into a contract and the agreement between her and the plaintiffs No. 3 and 4 was void ab initio and could not be specifically enforced.

6. It was also stated that no decree for specific performance could be passed against defendants No. 1 and 2 as well since they had already sold the ground floor of the property in question in November 1994 itself i.e. much before the filing of the suit and they were left with no right, title or interest in the property.

7. It was further submitted that the contract, if any, between the plaintiff No. 1 and defendant No. 1 came to an end due to breach committed by plaintiff No. 1 who failed to make the balance payment within the agreed time to get the sale deeds executed in his favour and in favour of his nominees. The defendant No. 1 had been ready and willing to perform her part of the contract, so plaintiffs were not entitled to specific performance of the contract. It was not denied that defendant No. 3 was the absolute owner of the basement and defendants No. 1 and 2 were the owners of ground floor at the time of entering into agreements to sell between the parties. It was stated that plaintiffs No. 2 to 4 and defendants No. 2 and 3 did not participate in the negotiations and the negotiations had taken place only between the plaintiff No. 1 and defendant No. 1. Defendant No. 1 submitted that two cheques, one dated 16.10.92 drawn on State Bank of Bikaner and Jaipur, Safdarjung Branch for Rs. 40,000/- and another cheque dated 30.10.92 drawn on Syndicate Bank, Rajaji Marg for Rs. 2 lakh were given by plaintiff No. 1 to defendant No. 1 on 30.10.92 as earnest money. Balance amount was to be paid in first week of January, 1993. Defendant No. 1 had impressed upon plaintiff that she was in urgent need of money and she was very keen to conclude the sale transaction in January 1993 itself.

8. While on one hand defendant No. 1 has stated that she agreed to sell the property on behalf of other defendants and was keen to conclude the transaction in January 1993 itself; in the second breath in para 3 of the WS she stated that

three agreements propounded by the plaintiffs containing terms and conditions of sale were not executed and these agreements were forged documents. She simultaneously stated that she had signed blank papers in good faith at the request of plaintiff No. 1 to enable him to take loan from HDFC Bank. So the defendants denied execution of all the three agreements to sell. Defendants also denied receipt of Rs. 4 lakh as earnest money by defendant No. 3 vide cheque dated 27.12.92. Defendants No. 1 and 2 admitted receiving cheques as stated in the plaint but denied having received cash and stated that the agreements to sell relied upon by the plaintiffs showing payment of amount by cash and cheques to the defendants were fabricated and it was stated that defendants had not executed the agreements to sell or other documents. It is contended that defendants No. 1 and 2 that Income Tax clearance certificate was obtained on 29.1.93 and plaintiff No. 1 was duly informed of this. Since plaintiff No. 1 was not having money to make balance payment, he wanted more time to make balance payment. The defendants denied all other averments made by the plaintiffs and stated that the defendants had taken prompt steps in obtaining Income Tax clearance and repeatedly requested plaintiff No. 1 to complete the sale transaction and pay the balance sale consideration but the plaintiffs were not ready and willing to perform their part of the agreement.

9. It was denied that the plaintiffs had given another sum of Rs. 10 lakh to the defendants or the possession of basement and one room was handed over to the plaintiffs. It was stated that on 20.2.1993 plaintiff No. 1 gave three cheques; a cheque for Rs. 3.10 lakh in favour of defendant No. 2, another cheque for Rs. 3 lakh in favour of defendant No. 1 and a cheque for Rs. 3 lakh in favour of defendant No. 3. plaintiff No. 1 however, told defendant No. 1 that she should not put the said cheques to her bank for encashment until plaintiff No. 1 confirms to her. plaintiff No. 1 later on took back the cheques, no cash was given in lieu of the said cheques to the defendants. Receipt of Rs. 7 lakh in cash was denied. It was also denied that defendant handed over possession of basement and one room to the plaintiffs on receipt of amount of Rs. 10 lakh. It was submitted that the construction of ground floor and basement was in such a manner that the exclusive possession of a portion of one floor could not be given. There was a stair case connecting ground floor and basement from inside making basement indivisible part of the ground floor. It was denied that the transaction had taken place with the help of broker Mr. Prem Bhardwaj. However, it was admitted that Mr. Prem Bhardwaj initiated talks between the parties and later on his associate Mr. Prabhakar participated in the negotiations. It was submitted that since plaintiff No. 1 failed to pay the balance sale consideration, he had been making efforts to wriggle out of the agreement and due to breach committed by the plaintiffs, defendants suffered huge loss. It were plaintiffs who showed unwillingness to perform their part of contract. They also submitted that the plaintiffs sent one Mr. S.K. Kashyap on 11.4.94 to defendant No. 1. Mr. Kashyap proposed to find a buyer for the suit property willing to pay the balance sale consideration since the plaintiffs had failed to pay. The defendant No. 1 however,

did not accept the fresh proposal as she had given more than enough opportunities to plaintiff No. 1. She therefore, did not revive the agreement. She submitted that the balance consideration payable by the plaintiff was not Rs. 2 lakh as alleged by the plaintiffs, but it was Rs. 12.60 lakh. She prayed for dismissal of the suit.

10. Defendants No. 4 and 5 added as parties later on, claimed to be bona fide purchasers of the property and submitted that they had purchased the ground floor of the property before filing of the suit and no cause of action arose against them. It was submitted by defendants No. 4 and 5 that they had further sold the property and handed over possession to one Mr. Jain.

11. In replication, plaintiffs reiterated the stand taken by them in the plaint and denied the submissions made by the defendants.

12. Following issues were framed out of the pleadings of the parties:

1. Whether the defendants did not execute the Agreement to Sell dated 27.12.1992" OPD

2. Whether the Agreement to Sell dated 27.12.1992 alleged to have been signed by the defendants was blank and later on forged by the plaintiff" OPD

3. Whether the defendants were ready and willing to perform their obligations under the contract and which party committed default in respect thereof" Onus on the Parties.

4. Whether the sale deed dated 20th January, 1995 is null and void in view of the agreement entered into between the parties "OPP

5. Relief.

FINDINGS:

ISSUES No. 1 and 2:

13. In view of the fact that defendants No. 1 to 3 had not denied entering into transaction, receiving advance money etc. but only denied execution of the agreements to sell dated 27.12.92 and took the stand that the agreements were signed blank, the onus of issues No. 1 and 2 was put on defendants. In order to prove these issues, defendant No. 1 Mona Oberoi examined herself as DW1. In her examination-in-chief she stated that she knew the plaintiffs since she had been dealing with them in respect of the property in question. plaintiffs wanted to purchase the basement, ground floor and 1/3rd share of the terrace of the property bearing No. N-241, Greater Kailash-I, New Delhi. She stated that she only signed blank papers. She admitted that the agreements to sell and purchase relied upon by the plaintiffs were bearing her signatures at point "A" on page 1 and at point "B" on page 2. The second agreement to sell mark X bore her signatures at point "C" on page 1 and at point "D" on page 2, and writing mark "Z" bore her signatures at point "E". In cross- examination, she admitted that

the property was to be sold in three parts, front ground floor portion; rear ground floor and mezzanine along with terrace rights. Only basement was a separate entity. She admitted that excepting basement, the remaining portion were to be sold for Rs. 7.5 lakh each and three sale deeds were to be executed in respect of these three parts of the property, namely; basement, front ground floor portion and rear ground floor portion. She also admitted that she had applied for Income Tax clearance and while applying for Income Tax clearance, a copy of the agreement was required to be annexed and she has enclosed a copy of the same agreement to sell with the application seeking income tax clearance which was relied upon by the plaintiffs. She had given copies of the same agreements to sell to her lawyer at the time of filing WS. She admitted that after signing agreements to sell, she had given the same to plaintiff No. 1 who filled certain blanks and after signing, he gave the copies of agreements to sell to her which she sent to income tax department for income tax clearance. She admitted that mark X, mark Y and mark XX were the agreements to sell, copies of which were supplied to her by plaintiff No. 1. She admitted that mark XX also bears her signatures. On her these admissions, the agreements to sell were exhibited as Ex.PW1/D1, Ex.PW1/D2 and Ex.PW1/D3. She admitted signatures of her son also on these documents exhibited as PW1/D2 and PW1/D3. Mark Z was also admitted by her and was exhibited as Ex.PW1/D4. Thus the stand taken by her in WS that the agreements were forged was proved to be false by her own testimony and it is apparent that she had taken a false stand in the written statement.

14. The plaintiff No. 1 in his evidence has also testified about the execution of these agreements and proved the same. I, therefore, decide both the issues against the defendants and in favour of the plaintiffs and hold that the plaintiffs and defendants executed three agreements to sell dated 27.12.1992. The agreements to sell were not signed blank by the defendants and they were not forged. They were duly signed by the defendants with open eyes thoroughly understanding the contents and on receiving the money as stated in the agreements.

ISSUE No. 3

15. A perusal of the agreements between the parties would show that the agreements were silent about the future course of action between the parties. The agreements only record that parties had agreed to sell and purchase, the total consideration and the advance amount received but it is not mentioned as to by what date the defendants shall be liable to obtain clearance from the Income Tax authorities and by what time the plaintiffs shall be liable to pay the balance sale consideration. There is no clause providing forfeiture of advance money in case of failure on part of purchaser or payment of double the money in case of failure on the part of seller. The agreements are open ended agreements. DW-1 in her testimony stated that the total consideration was to be paid by January 1993 and the plaintiffs did not tender money by January, 1993. She had

obtained necessary permission from Income Tax department for sale of a portion of the property by that time. In May 1993 plaintiff No. 1 came to her and told that he wanted to terminate the deal and asked for return of Rs. 20 lakh paid to her. plaintiff No. 1 never asked for extension of time after January 1993. In September 1993, plaintiff No. 1 had asked for extension of time, so she obtained clearance from Income Tax department in December 1993. Thereafter plaintiff No. 1 did not turn up to complete the transaction and Mr. S.K. Kashyap contacted her on behalf of the plaintiffs with a note signed by the plaintiff No. 1 in April 1994. Mr. Aggarwal, counsel for the plaintiffs also contacted her and assured her that if the plaintiffs were not willing to purchase the property, he would be buying it. She stated that plaintiffs were actually not willing to purchase the property. In next breath she stated that they were willing to buy the property but not with their own money. She, during her cross-examination submitted that she did not recollect if she was given a cheque dated 20.2.1993, which she deposited in the account of her daughter. She stated that in February 1993 she started pushing the plaintiffs to complete the agreement. She did not pay back the amount after 7.5.1993 when she received a proposal from plaintiff No. 1 for return of money and cancelling the deal. She stated that she was holding an amount of Rs. 9.4 lakh of the plaintiffs till date. She did not receive Rs. 7 lakh in cash on 20.2.93. She testified that the plaintiffs had not been handed over possession of basement and rear room but admitted that an FIR No. 250/95 was registered against her for trespassing into the basement and rear room, and she was facing trial. She later on sold the ground floor of the property to Mr. Girish Oberoi and Mrs. Sonia Oberoi i.e. her brother and sister-in-law in November 1994 and the sale deeds for that were executed in February 1995. She had not cancelled the agreement to sell with the plaintiffs. Her brother (Mr. Girish Oberoi) and Bhabhi (Mrs. Sonia Oberoi) knew the dispute going on with the plaintiffs. She admitted having filed a suit against her brother regarding the property. Her son also filed a similar suit about his portion of the property sold to defendants No. 4 and 5. Her counsel who filed suits against her brother and Bhabhi on her behalf, was the same who was contesting this case for her. She had filed suits against her brother and Bhabhi since they had not paid full sale consideration to her. In her suit she had stated that possession of property was taken from her forcibly by defendants No. 4 and 5.

16. She admitted that during same period she had also received an advance of Rs. 1 lakh for sale of this property from one Mr. Sanjeev Sethi but stated that this was within the knowledge of the plaintiffs. Mr. Sanjeev Sethi did not pay the balance amount as he was too scared and the deal with him was cancelled. She also admitted that she had purchased property No. B-231, Greater Kailash-I, New Delhi in the year 1992 for a sum of Rs. 27 lakh. She did not remember when the sale deed was executed. She deposed that it might have been executed in the end of 1993 or beginning of 1994. She admitted that she had used the money given by the plaintiffs for purchase of this property and stated that this money was her money and she had a right to use it. She did not remember if she

had made cash payments to Mr. Sehgal, the owner of B-231, Greater Kailash-I. She also did not remember what part of payment was made by cheque and what part in cash. She could not confirm or deny if payment of Rs. 10 lakh was made by her to Mr. Sehgal in cash.

17. From her testimony it is apparent that at the time defendants entered into agreements to sell with the plaintiffs, she was in the process of purchasing another property for herself and that seems to be the reason of her urgency. She received a sum of Rs. 10 lakh from the plaintiff in December 1992. She received another sum of Rs. 10 lakh in February 1993. Although she had denied the receipt of cash part of Rs. 7 lakh in February 1993 but she admitted that in May 1993 the plaintiffs had approached her and asked her that if she was not willing to complete the transaction, she could get out of it by paying back Rs. 20 lakh. It is obvious that the plaintiff would not have given this proposal of rescinding the transaction on receiving back his amount of Rs. 20 lakh, if he had not paid Rs. 20 lakh. Her plea in the WS is that she had obtained Income Tax clearance in January 1993 and she again obtained Income Tax clearance in December 1993 and informed the same to the plaintiffs. However, there is no communication sent by her to the plaintiffs either after January 1993 or December 1993 informing that she had obtained income tax clearance and the matter was ripe for executing sale deeds. Her testimony also shows that simultaneously she was negotiating the sale of property with others. She negotiated the sale with Mr. Sanjeev Sethi which failed and then with her brother and sister-in-law. This only shows that the defendant No. 1 was not giving any importance to the agreements to sell between defendants No. 1 to 3 and the plaintiffs. While on the other side it is testified by plaintiff No. 1 that the plaintiffs were serious and willing to perform their part of contract. They initially paid Rs. 10 lakh to the defendants at the time of entering into the agreements to sell and paid another amount of Rs. 10 lakh in February 1993 making their intention clear. The details of payments made are specified in the agreements to sell and admitted by the defendants. She sent copies of these very agreements to sell to Income Tax department. The plaintiffs also proved from bank records that cheques issued by them were got encashed and money had gone to the accounts of defendants. The plaintiffs had also successfully shown that apart from cheque, cash money was paid to defendants No. 1 to 3 which was utilized by the defendants for the purchase of another property. Had this money totaling to Rs. 20 lakh not been paid by the plaintiffs to the defendants, there was no reason for the plaintiff to send message to the defendant No. 1 that if she was not willing to proceed further with the deal, she was free to cancel the deal and return Rs. 20 lakh. The plaintiff No. 1 was to pay, balance amount of only Rs. 2 lakh. The plaintiffs have placed on record a copy of the draft got prepared for balance of Rs. 2 lakh and stamp duty charges. The payment of Rs. 20 lakh by the plaintiffs and preparation of a bank draft for balance amount shows that the plaintiffs were more than willing and ready to perform their part of the contract. However, the only flaw in the contract was that no time limit was mentioned in the agreements to sell

within which the things were to be completed. That seems to be the reason that the defendant No. 1, while purchasing another property for herself, utilized the money given by the plaintiffs and did not bother about the deal with the plaintiffs. The plaintiff No. 1 being an Army Officer, was living with his family at the place of his posting. The plaintiffs were not living in Delhi and were not able to pursue purchase of the property more vigorously. No legal notice was got issued to the defendants soon after making payment of substantial sum of Rs. 20 lakh to the defendants when defendants did not come forward with income tax clearance certificate. They seem to have over trusted plaintiff No. 1 and taken for a ride.

18. I consider that the fault for breach of contract lies on the part of defendants. The defendants had received Rs. 20 lakh as consideration from the plaintiffs and only Rs. 2 lakh was left. It is also evident that defendant No. 1 did not communicate to the plaintiffs about the receipt of Income Tax clearance and did not ask the plaintiffs in writing to pay the balance of Rs. 2 lakh and get the sale deed executed. She on the other hand simultaneously negotiated with others for sale of the property in question. The issue is decided accordingly.

ISSUE No. 4

19. It is not disputed that the sale deed executed by the defendants No. 1 and 2 in favour of the defendants No. 4 and 5 was executed before filing of this suit. While the suit was filed by the plaintiffs in July 1995, the property had already been sold by defendants No. 1 and 2 to defendants No. 4 and 5 on 20.1.1995. In order to apply Section 52 of the Transfer of Property Act, it is essential that at the time of sale of property by the defendants to some third person, there must be a suit or proceeding pending in a Court of competent jurisdiction, involving the right to immovable property and the transfer of the property or dealing with the third party should have taken place during the pendency of the proceeding by a party to the litigation. If the property had been sold before filing of the suit, the doctrine of lis pendens would not apply. In a recent case Amit Kumar Shaw and Another Vs. Farida Khatoon and Another, the Supreme Court considered the applicability of this doctrine in detail and laid down as under:

Section 52 of the Transfer of Property Act is an expression of the principle "pending a litigation nothing new should be introduced". It provides that pendente lite, neither party to the litigation, in which any right to immovable property is in question, can alienate or otherwise deal with such property so as to affect his appointment. This section is based on equity and good conscience and is intended to protect the parties to litigation against alienations by their opponent during the pendency of the suit. In order to constitute a lis pendens, the following elements must be present:

1. There must be a suit or proceeding pending in a court of competent jurisdiction.
2. The suit or proceeding must not be collusive.

3.The litigation must be one in which right to immovable property is directly and specifically in question.

4.There must be a transfer of or otherwise dealing with the property in dispute by any party to the litigation.

5.Such transfer must affect the rights of the other party that may ultimately accrue under the terms of the decree or order.

The doctrine of lis pendens applies only where the lis is pending before a court. Further pending the suit, the transferee is not entitled as of right to be made a party to the suit, though the court has a discretion to make him a party. But the transferee pendente lite can be added as a proper party if his interest in the subject-matter of the suit is substantial and not just peripheral. A transferee pendente lite to the extent he has acquired interest from the defendant is vitally interested in the litigation, where the transfer is of the entire interest of the defendant; the latter having no more interest in the property may not properly defend the suit. He may collude with the plaintiff. Hence, though the plaintiff is under no obligation to make a lis pendens transferee a party, under Order 22 Rule 10 an alienee pendente lite may be joined as party. As already noticed, the court has discretion in the matter which must be judicially exercised and an alienee would ordinarily be joined as a party to enable him to protect his interests. The court has held that a transferee pendente lite of an interest in immovable property is a representative-in-interest of the party from whom he has acquired that interest. He is entitled to be impleaded in the suit or other proceeding where his predecessor-in-interest is made a party to the litigation; he is entitled to be heard in the matter on the merits of the case.

20. In the present case the property was sold to defendants No. 4 and 5 before filing of the suit. I, therefore, consider that the sale deed in favour of defendants No. 4 and 5 cannot be held null and void.

ISSUE No. 5 (RELIEF):

21. The plaintiff No. 1 in this case had admitted that during continuation of agreement itself, he had offered to the defendants to pay his money back and get out of the deal. Even during the pendency of the suit, the plaintiffs made an offer to the defendants in the Court that they should pay the amount back along with interest @ 18% per annum and the claim of the plaintiffs would be satisfied. The plaintiffs case had been that the plaintiffs' huge money was lying blocked and the plaintiffs were more interested in getting the money back. Even otherwise I consider that the relief of specific performance in this case cannot be given. The plaintiffs had shown laxity in approaching the Court. The agreement to sell was entered into in December 1992 and the suit was filed in July 1995, almost after more than two and a half years of the agreement to sell, despite the fact that the plaintiffs had paid substantial amount to the defendants in February 1993 itself. This period was utilized by the defendants in disposing of the property and she sold away the property to her brother and Bhabhi some time

before the plaintiffs approached the Court. I therefore, consider that granting compensatory relief would be appropriate in this case. The plaintiffs are entitled to receive the amount paid to the defendants back with suitable interest. While deciding issue No. 3, I have already observed that plaintiffs had paid Rs. 20 lakh in total to the defendants. The details of the amount paid by the plaintiffs at the time of execution of three agreements Ex.PW/D1, Ex.PW/D2 and Ex.PW/D3 of Rs. 10 lakh is stated in the agreements. These agreements to sell have been admitted by the defendants. The defendants cannot raise a dispute about receipt of this amount of Rs. 10 lakh. The only issue is whether the amount of Rs. 10 lakh was paid by the plaintiffs or not in February 1993. Out of the amount of Rs. 10 lakh, Rs. 3 lakh was paid by cheque and Rs. 7 lakh by cash. It is admitted by defendant No. 1 that this cheque of Rs. 3 lakh was got encashed by depositing it in the account. A composite receipt was executed by her in respect of receiving cash and cheque. She cannot say that she received the cheque and did not receive the cash, when cheque and cash both were received under the same acknowledgment. Her signature appearing on the receipt of Rs. 10 lakh executed by her (though denied) are same as on the other documents. Therefore, her version that she had not received cash and received only cheque is not believable. She had even denied the execution of agreements to sell which she admitted during cross-examination. On the other hand, plaintiff No. 1 testified categorically about payment of Rs. 20 lakh by cheques and cash, and had also proved the payments by documentary evidence, namely, execution of agreement by the defendants, execution of receipt of payment by the defendants and certificates of the bank showing that the cheques were encashed. He also proved payment of cash. Defendant No. 1 indirectly admitted receipt of cash payment from the plaintiffs as she admitted having made cash payment of Rs. 10 lakh to Mr. Sehgal from whom she purchased another property. It is admitted by the defendant No. 1 that in May 1993 plaintiff had approached her for return of his amount of Rs. 20 lakh. If plaintiff had not paid this amount of Rs. 20 lakh, there was no reason for the plaintiff to approach the defendant to receive back this amount of Rs. 20 lakh with interest. Even if defendant No. 3 was minor on the date of agreement, in view of Section 65 of the Contract Act, she is liable to refund the amount and compensate the plaintiffs.

22. I, therefore, come to conclusion that the plaintiffs are entitled to receive this Rs. 20 lakh from the defendants with interest. I consider that 15% per annum interest would be a reasonable interest in this case. I also consider that the defendants are liable to pay to the plaintiffs realistic costs of the suit. The suit continued 13 years only because defendants took false defences and denied duly executed documents. During this period case was fixed before Court/Joint Registrar for proceedings/evidence 86 (eighty six) times. If each date's cost to the plaintiffs is taken as Rs. 3000/- which includes traveling, loss of earnings of the day, clerkage etc., the cost would be Rs. 2,58,000/-. The plaintiff is entitled to this cost plus court fee and counsel fee. Counsel fee certificate be filed within two weeks.

23. The suit of the plaintiffs is decreed in favour of the plaintiffs and against the defendants No. 1 to 3 with the following reliefs:

1.The plaintiffs are entitled to recover Rs. 20 lakh with simple interest @ 15% p.a. w.e.f. 1.3.1993 till realisation of the amount from defendants No. 1 to 3 jointly and severally.

2.The plaintiffs are entitled to costs of Rs. 2,58,000/- + court fee + counsel fee;

24. The defendants No. 1 to 3 are jointly and severally liable for the decretal amount. Suit stands disposed of. Let a decree sheet be prepared accordingly.