

(2017) 03 KAR CK 0249
In the Karnataka High Court
Case No : 1244 of 2004

Chikka Venkatamma W/o Venkatakrishnaiah Since dead by
LRS & Ors

APPELLANT

Vs

R. Nagaraja & Anr

RESPONDENT

Date of Decision : 20-03-2017

Acts Referred:

[Transfer of Property Act, 1882](#), [Section 3](#),
[Section 3](#), [Section 59](#), [Section 59](#),
[Section 100](#), [Section 100](#), [Section 100](#)

Citation : (2017) 03 KAR CK 0249

Hon'ble Judges : K. S. Mudagal

Bench : SINGLE BENCH

Advocate : K.N. Nitesh, K.V. Narasimhan, S.N. Aswathanarayana

Judgement

1. This is the defendants second appeal arising out of the judgment and decree dated 1.10.2004 in RA No.15/1999 passed by the Addl. District Judge, Chikkaballapura. By the impugned judgment, the first Appellate Court has allowed the appeal, set aside the judgment and decree of the trial Court and decreed the suit of the plaintiff for specific performance of the agreement of sale. 2. Appellants 1 and 2 are defendants 2 and 3 before the Trial Court. Their mother Chikka Venkatamma was the 1st defendant. She died during the pendency of the first appeal. Therefore, the present appellant No.3 was brought on record in the first appeal as respondent No.2. The respondent is the plaintiff before the trial Court. 3. The plaintiff filed O.S.No.452/1992 against the defendants Chikka Venkatamma, Thimmaiah- appellant No.1 and Venkatapaty-appellant No.2 for specific performance of agreement dated 1.10.1986. Plaintiff's case in brief is as follows: The defendants entered into an agreement of sale dated 1.10.1986 in respect of suit schedule property i.e., Sy.No.5/6, new No.15 measuring 2 acres 18 guntas for sale consideration of Rs.10,000/-. They received entire sale consideration and put him in possession of the suit property in part performance

of the contract. Since the suit property was granted land under the Karnataka Land Reforms Act, it was agreed that the defendants will execute the sale deed after the expiry of the period of bar against alienation. The defendants failed to perform the contract. Therefore, he got issued notice dated 29.7.1992. Even thereafter the defendants are not performing their part of contract. He is always ready and willing to perform his part of contract. Thus, he seeks decree of specific performance. 4. Defendants contested the suit denying the execution of the agreement of sale and the enforceability of the said agreement on the ground that the same is hit by Section 61 of the Karnataka Land Reforms Act and is void. They further contended that the agreement is concocted and forged one and the notice dated 29.7.1992 is irrelevant. On such pleadings, trial court framed following issues and additional issues: "1. Whether the plaintiff proves that the defendants executed an Agreement of sale in respect of suit property in his favour on 01.10.1986? 2. Does he further prove that in part performance of Agreement the Defendants delivered possession of the Suit Property to him? 3. Does he further prove that he has been always ready and willing to perform his part of the contract? 4. Is he entitled to a decree for specific performance? 5. What decree or Order? ADDITIONAL ISSUES 1. Whether Defendants prove that the Suit is not maintainable and the agreement referred in plaint dated 01/10/1986 is unenforceable in Law?" 5. On the plaintiffs side himself, the attesting witnesses and the scribe are examined as P.W. 1 to 4 and documents Exs. P1 to P4 are marked. On behalf of defendants, 2nd defendant is examined as D.W.1 and one Jayaramaiah as D.W.2 and Exs. D.1 to D.6 are marked. 6. After hearing the parties, the trial Court dismissed the suit holding that: (a) On comparison by the Court, the signatures of D.W. 1/defendant No.2 on Ex. P.1 the agreement of sale and Ex. P.2 " " the agreement of sale in favour of G. R. Narasimhaiah, do not match with each other. (b) the evidence of witnesses regarding execution of agreement of sale is uncred-it-worthy viz., the attesting witnesses are the blood relatives of the plaintiff and the scribe is from Shidlaghatta, whereas, agreement is said to be executed at Chikkaballapura. (c) the agreement is hit by provisions of Karnataka Land Reforms Act and unenforceable. 7. The plaintiff filed R.A. No. 15/1999 before the Addl. District Court, Chikkaballapura. The First Appellate Court after hearing the parties, by the impugned judgment allowed the appeal and reversed the judgment and decree of the trial Court and decreed the suit of the plaintiff for specific performance on the following grounds: (i) The comparison of the signature of D.W. 1 on Ex. P.1 and his deposition show that they are similar. (ii) There is no bar for blood relatives to be the witnesses to the document and their evidence regarding the execution of the document is not impeached. (iii) The Scribe being from a different place is not unnatural and the scribe has explained the scorings and corrections on Ex. P.1. (iv) The period of bar of alienation expired during the pendency of the appeal and thereby the agreement has become executable as per the principles laid down in the Judgment of High Court of Karnataka in Andanur Rajashekar v. Sri. Vasavi Industrial Enterprises & Anr. (RSA 327/2005 disposed of on 16.09.2006) : (2007 (1) AIR Kar R 497). (v) Appreciation of the

evidence by the trial Court on the proof of execution of the agreement of sale dated 1.10.1986 is incorrect 8. The appellants challenge the said judgment in this appeal. This Court admitted the above appeal for hearing on the following substantial question of law:] "Whether the lower appellate Court was justified in reversing the finding of the trial Court that the agreement dated 01.10.1986 was not proved since the attesting witnesses were the relatives of the agreement holder-plaintiff?" 9. Thereafter this Court heard the matter and by Judgment dated 23.09.2010 allowed the same, restored the judgment of the trial Court dismissing the suit. The plaintiff filed R.P.No.82/2013 for review of the judgment dated 23.09.2010 on the ground that, the said judgment is contrary to the law laid down in *M/s Susheela M. Das v. Mary Bolget* (ILR 1998 Kar.1413). The said Review Petition came to be allowed vide order dated 22.07.2013. 10. The defendants challenged the said order in SLP(Civil) No.1669/2015 before the Apex Court. The Apex Court, vide order dated 07.01.2015 dismissed the said Special Leave Petition with the observation that, it is open for the petitioners (Defendants) to urge all points that may be available to them in law before the High Court at the time of hearing of the Second Appeal. 11. After allowing the review petition, this Court framed the following additional substantial question of law on 22.08.2013: "Whether the lower appellate Court was justified in reversing the finding of the trial Court that the agreement dated 01.10.1986 was not proved since the attesting witnesses were the relatives of the agreement holder-plaintiff?" 12. This Court heard both side on the above substantial question of law and additional substantial question of law. When the matter was listed for final hearing, the appellants filed I.A.No.1/2016 for framing the following additional substantial questions of law: (3) Whether the First Appellate Court is justified in holding that the alleged agreement to sell at Ex.P.1 is proved, without even appreciating that the testimony of the alleged attesting witnesses examined as P.Ws. 2 and 3 does not satisfy the ingredients of "attested" as defined in Section 3 of the Transfer of Property Act, 1882? (4) Whether the First Appellate Court erred in its observation that it has compared the signature of defendant No.2 who has been examined as P.W.1, found on the deposition, with Ex.P.1 and concluding that the alleged agreement to sell at Ex.P.1 is proved without following the ratio laid down by the Hon"ble Apex Court in *Tiruvengada Pillai v. Navaneethamma and Another* (AIR 2008 SC 1541), in the light of the fact that the trial Court had also compared the signature and held that the same to be not tallying? (5) Whether the First Appellate Court erred in law in meticulously considering the facts and circumstances of the case and exercising its judicial discretion as per Section 20 of the Specific Performance Act. (6) Whether the First Appellate Court is justified in not following the ratio of the Judgment of the Apex Court in *Santosh Hazari v. Purushotham Tiwari deceased* by LR's (2001) 3 SCC,179 : (AIR 2001 SC 965) and *Madhukar and Ors. v. Sangram & Ors.* (2001) 4 SCC 756 : (AIR 2001 SC 2171) ? 13. This Court on 20.07.2016 ordered that I.A.1/2016 to be considered at the stage of final hearing. 14. Heard both counsels extensively on the above substantial questions of law framed on 16.01.2008 and 22.08.2013 and on I.A.1/2016. 15. The First Substantial

question of law framed by this Court is regarding the effect bar under Section 61 of the Karnataka Land Reforms Act, regarding the alienation of the land covered under Ex.P.1 the agreement of sale. There is no dispute that as per Clause 9 of the grant certificate/saguvalli chit/cultivator- s certificate Ex.P.3 dated 17.02.1986 there was a bar for alienation of the property for a period of 15 years from the date of the issuance of the certificate. 16. The trial court held that the agreement is hit by Section 61 of the Karnataka Land Reforms Act, therefore is void ab initio and cannot be enforced. The First Appellate Court held that this Court in the Judgment reported in ILR 1992 Karnataka 717 has held that non-alienation period, if over at the time when the appeal is pending, the grant of specific performance can be considered. Thus, the First Appellate Court held that the non-alienation period is over and reversed the judgment of the trial court and granted the specific performance. 17. The learned counsel for the appellant relying upon the following judgments argued that when there is a bar of law for an alienation, the agreement is void since inception. Therefore, it cannot be specifically enforced. (1) Smt. Parvathamma and Ors. v. Smt. Uma and Ors. (AIR 2011 Karnataka 58) (2) Satish Kumar v. Karan Singh and another (Civil Appeal No.7385/2013 dated 21.01.2016 : (AIR 2016 SC 737). (3) Mohammed alias Podia v. Assistant Commissioner (ILR 1993 Kar.2306) (4) Smt. Narasamma and others v. Sri. K. V. Ramprasad and another (ILR 2012 Kar.4261): (2012 (4) AIR Kar R 147). 18. As against that the learned counsel for the respondent supports the findings of the First Appellate Court relying upon the following judgments: (1) Yogambika v. Narsingh (ILR 1992 Kar- 717) (2) Sri. Andanur Rajashekar v. Sri. Vasavi Industial Enterprises (RFA 327/2005 D.D. 16.09.2006) : (2007 (1) AIR Kar R 497). (3) Syed Zaheer and others v. C. V. Siddaveerappa (2010 (2) KCC R 954 (DB)) (4) Parvatagouda Ningnanagouda Patil and other v. Guddappa and another, (2009(1) Kar.L.J. 547 (DB)) (5) Puravankara Projects Ltd., v. Hotel Venus International (Civil Appeals No.7560 of 2005 with No.7561 of 2005) (6) Suraj Lamps & Industriies (P) Ltd., Th.Dir. v. State of Haryana and Anr. (2011 SAR (Civil) 973.) 19. Section 61 of the Land Reforms Act reads as follows: "61. Restriction on transfer of land of which tenant has become occupant.-(1) Notwithstanding anything contained in any law, no land of which the occupancy has been granted to any person under this Chapter shall within fifteen years from the date of the final order, passed by the Tribunal under sub-section (4) or sub-section (5) or sub-section (5-A) of Section 48-A be transferred by sale, gift, exchange, mortgage, lease or assignment; but the land may be partitioned among members of the holder's joint family." 20. The reading of the above section makes it clear that, what is prohibited is the transfer of land by sale, gift, exchange, mortgage, lease or assignment. In Suraj Lamp and Industries Pvt. Ltd (supra), the Hon'ble Supreme Court relying on Section 54 of the Transfer of Property Act and the earlier Judgment of the Supreme Court in Ramba v. Narain Bapuji (2004(8) SCC 614) : (AIR 2004 SC 4342) held that transfer of immovable property by way of sale can only be made by deed of conveyance (sale deed). It was further held that in the absence of deed of conveyance duly stamped and registered as required by law, no right title or interest in an

immovable property can be transferred. The Hon'ble Supreme Court in para.11 of the judgment held as follows: 11. Section 54 of TP Act makes it clear that a contract of sale, that is, an agreement of sale does not, of itself, create any interest in or charge on such property. This Court in *Narandas Karsondas v. S.A.Kamtam and Anr.* (1977) SCC 247 : (AIR 1977 SC 774), observed: A contract of sale does not of itself create any interest in, or charge on the property. This is expressly declared in Section 54 of the Transfer of Property Act. 21. Therefore, Ex.P.1 does not amount to transfer of the property as required under Section 61 of the Karnataka Land Reforms Act. In addition to that the clause in Ex.P.1 is that the sale deed has to be executed after the expiry of the prohibited period of alienation. It may be true that when the suit was filed the said 15 years had not expired. But pending the appeal before the First Appellate Court, the said period expired. Therefore, the First Appellate Court relying on the Judgment in *Yogambika's* case referred to supra held that the grant of specific performance is not barred. 22. The Division Bench of our High Court in *Syed Zaheer and others's* case referred to supra where the same question was involved, held that on account of non-alienation clause it was specifically mentioned in the contract that, the sale deed would be registered only after coming to an end of the non- alienation period. Therefore, until non-alienation period came to an end the respondent also could not have asked for performance of the contract by the appellants. Only after the end of the non-alienation period the cause of action to seek specific performance of the contract arose for the respondent. It was held that such prohibition for transfer will not render an agreement of sale for a transfer of property after the expiry of the said period vide. 23. The same ratio is laid down in *Parvatagouda Ninganagouda Patil and others- s* case referred to supra by the Division Bench of this Court. In *Satish Kumar's* case (AIR 2016 SC 737) referred to supra the earlier Judgment of the Supreme Court in *Suraj Lamps and Industries Private Limited* is not referred to. Having regard to the same, the said judgment cannot be pressed into service. 24. In fact, in *Syed Zaheer and others* case, all the earlier Judgments under Section 61 of the Karnataka Land Reforms Act are referred to. Having regard to these facts, this Court does not find it necessary to discuss with regard to the other Judgments referred by respective counsels. In *MOHA-MMAD A PODDIYA- s* case referred to supra the Court found that in the guise of registered agreement of sale there was transfer of the property. But that is not the case here. 25. *Smt. Narasamma and Ors.* Case (2012 (4) AIR Kar R 147) referred to supra relates to the transfer of the property under Section 4 of the SC & ST (PTCL) Act, 1978. There Section 4(1) said that notwithstanding anything contained in any law, agreement, contract or instrument etc., the transfer made in contravention of Section shall be null and void. Thus, the said provision includes even an agreement which did not amount to transfer. Therefore, even the said decision is not applicable. 26. The Division bench Judgments of our High Courts referred to supra held that, if non-alienation period is over during the pendency of the proceedings, specific performance can be granted. Therefore, the Lower Appellate Court was justified in reversing the Judgment and decree of the trial

court on the ground that non-alienation clause and delivery of possession during the prohibited period would not vitiate the agreement of sale. Therefore the said substantial question of law has to be answered in affirmative. 27. In Santosh Hazari's case (2001) 3 SCC 179 : (AIR 2001 SC 965), referred to Supra, the Hon"ble Supreme Court at page 189 held as follows: "The First Appellate Court continues, as before, to be a final court of facts; pure findings of fact remain immune from challenge before the High Court in second appeal. Now the first appellate Court is also a final court of law in the sense that its decision on a question of law even if erroneous may not be vulnerable before the High Court in second appeal because the jurisdiction of the High Court has now ceased to be available to correct the errors of law or the erroneous findings of the first appellate court even on questions of law unless such question of law to be a substantial one". 28. In para 12 of the said Judgment, the Apex Court held the "Substantial question of law" as amended in Section 100 is not the substantial question of law in general importance. that the substantial question of law is the one which is fairly arguable, where there is room for difference of opinion on it or where the Court thought it necessary to the deal with that question at some length and discuss alternative views, then the question would be a substantial question of law. 29. Finally in Para 14 of Santosh Hazari's case (AIR 2001 SC 965) (Supra), the Apex Court lays the guidelines on the test of as to what is the substantial question of law: "14: A Point of law which admits of no two opinions may be a proposition of law but cannot be a substantial question of law. To be "Substantial" a question of law must be debatable, not previously settled by law of the land or a binding precedent, and must have a material bearing on the decision of the case, if answered either way, insofar as the rights of the parties before it are concerned. To be a question of law "involving in the case" there must be first a foundation for it laid in the pleadings and the question should emerge from the sustainable findings of fact arrived at by court of facts and it must be necessary to decide that question of law for a just and proper decision of the case. An entirely new point raised for the first time before the High Court is not a question involved in the case unless it goes to the root of the matter. It will, therefore, depend on the facts and circumstance of each case whether a question of law is a substantial one and involved in the case, or not; the paramount overall consideration being the need for striking a judicious balance between the indispensable obligation to do justice at all stages and impelling necessity of avoiding prolongation in the life of any lis." 30. The additional Substantial question of law is regarding the effect of the witnesses to Ex.P.1 being the relatives of the agreement holder/plaintiff, on Ex.P.1. Under law there is no bar for the relatives to become the witnesses for the agreement of sale. The Supreme Court in Dayal Singh and others v. State of Uttarachal ((2012)8 SCC 263) and Talluri Venkaiah Naidu & Ors. v. Public Prosecutor, High Court of A.P. (1996) 11 SCC 355) : (AIR 1997 SC 352) held that if testimony of the related witnesses found to be natural and truthful cannot be discarded merely because of his relationship with deceased victim and being interested witness. It is held, the testimony of the related witnesses otherwise found to be truthful

cannot be rejected. Thus, it is held that where such evidence stands the test of careful and closed scrutiny must be accepted more so, when the same is corroborated by the evidence of an independent witness. 31. As already discussed, the First Appellate Court is the last Court on the question of fact. The First Appellate Court appreciates the evidence of PWs 2 and 3 in the context of the other circumstances viz., (i) possession of Exs.P.2 and 3 by the plaintiff which the defendants failed to explain, (ii) except the 2nd defendant the other defendants not entering the witness box to deny their thumb mark or signature (iii) the non-issuance of the reply to the notice Ex.P.4 in which the agreement of sale was set-up 32. First Appellate Court appreciates the evidence of the witness to Ex.P.1 and the scribe, along with the aforesaid circumstances and accepts that. Therefore, the reversal of the finding of the trial Court regarding the execution of the agreement Ex.P.1 despite the attesting witnesses being relatives of the agreement holder is justifiable. For the aforesaid reasons, substantial question of law and the addl. Substantial question of law framed by this Court noted has to be answered in the affirmative. 33. So far as I.A.1/16, learned counsel for appellants contend that the said additional substantial questions do arise in the matter. The learned counsel for the respondent opposes the application on the ground that the application is belated one, the earlier substantial questions are raised on hearing both sides and the proposed additional substantial questions are the questions of fact and not the substantial questions of law. 34. It is to be noted that this Court framed the substantial question of law and initial substantial question of law on hearing both parties. It is also to be noted that after considerable delay, the appeal is filed in 2004 and admitted on 16.01.2008 and the substantial question of law no.I was framed on that day. After lapse of 8 years, the appellants come up with the application to 4 additional substantial questions of law. When this Court allowed the Review Petition, the appellants took the matter before the Apex Court in Special Leave Petition which came to be dismissed. 35. The records show that during the pendency of this appeal, the successful plaintiff filed E.P.3/2006 seeking execution of the judgment and decree of the First Appellate Court. The Executing Court through its officer executed the sale deed on 6.1.2007. Only thereafter, the appellants pursued this appeal which came to be allowed as aforesaid on 23.09.2010. 36. The proposed substantial question of law No.3 is with regard to the compliance of the requirements of attestation under Section 3 of the Transfer of Property Act. It is nobody's case either before the trial Court or before the First Appellate Court that Ex.P.1 the agreement of sale is a compulsorily attestable document. Sections 59 and 123 of the Transfer of Property Act make mortgage and gift deeds compulsorily attestable documents. Section 63 of the Indian Succession Act makes the will a compulsorily attestable document. Only the aforesaid documents are the compulsorily attestable documents under law. Section 54 of the Transfer of Property Act has not made the sale deed a compulsorily attestable document. Therefore, the question of considering " Whether the evidence of PWs 2 and 3 satisfies the ingredients of attestation as defined under Section 3 of the Transfer of Property Act, 1882 does not arise at

all. 37. The 4th proposed additional Substantial question of law is, regarding the First Appellate Court comparing the signatures of 2nd defendant on Ex.P.1 with his signatures on his deposition and holding that both of them are similar. 38. It is true that the Supreme Court in *Thiruvengada Pillai v. Navaneethamma & Ors* (AIR 2008 SC 1541) (supra) held that the Court's conclusions on the disputed handwriting/signature with the admitted handwriting on comparison should be on analysis of the characteristics of the admitted finger impression and after verifying whether the same characteristics are found in the disputed finger impression. 39. It is to be noted that the trial Court compared the signature of 2nd defendant/DW1 on Exhibit P.1 with his alleged signature on Ex.P.2 (both the disputed documents) and held that they do not tally with each other. Very interestingly, the defendants have no grievance against that. As against that, they want the said judgment to be restored. In fact, whenever the disputed signature has to be compared and an opinion had to be formed by the Court, such signature has to be compared with the admitted signature. But, despite defendants disputing Ex.P.2 the alleged agreement of sale in favour of one Narasimhaiah, the trial Court compared the signatures on Ex.P.1 with the signatures on Ex.P.2. 40. While stating that the signatures on Ex.P.1 and P.2 do not tally, even the trial Court did not give any logical reasons for arriving at such conclusion. The trial Court also did not say whether it examined the strokes and whether the opinion is arrived at, on the basis of the similarities or dissimilarities in the disputed signature and the compared signature. But still the defendants happily accepted the finding as it went in their favour. Now, when the appellate Court did the same exercise with the admitted signatures, they contend that the appellate Court was wrong in comparing the signature and arriving at a conclusion. 41. As a matter of fact, the appellate court for reaching its findings did not rely, only upon its opinion of comparison. The appellate Court relied upon the other evidence on record. It is the settled position of law that in a civil case, the Court has to give a finding on the preponderance of the probabilities. The First Appellate Court said that Ex.P.3 is the saguvalli chit issued in favour of the 1st defendant and plaintiff is in possession of the same and the defendants have failed to explain that. Secondly, the First Appellate Court held that the execution of the document and the signatures are proved by the evidence of the witnesses to the documents " " PWs 2 and 3. Thirdly, the First Appellate Court says that the evidence of the witnesses cannot be discarded only on the ground of they being the relatives of the plaintiff and their evidence is satisfactory. Fourthly, the First Appellate Court says that whatever the alterations or the interpolations in the document " " Ex.P.1 is satisfactorily explained by the scribe. 42. The appellants cannot be permitted to approbate and reprobate. They cannot be permitted to accept the findings of the trial Court when the trial Court dismissed the suit based on its opinion on comparing the signatures and when the appellate Court did the same exercise and came to a conclusion. For the aforesaid reason, the defendants cannot raise this point again. Therefore, the proposed fourth substantial question of law does not arise. 43. The proposed fifth substantial question of law is regarding, the first appellate Court allegedly not meticulously

considering the facts and circumstances of the case and exercising its judicial discretion as per Section 20 of the Specific Performance Act. 44. As noted above the Apex Court in Santosh Hazari's case (AIR 2001 SC 965) referred to supra held that for raising a substantial question of law there must be some foundation in the pleadings of the parties. In this case, the defendants in their written statement totally denied the agreement of sale. They did not set up any defence so as to bring their case under Section 20(2) of the Specific Relief Act. They did not plead that the agreement gives an unfair advantage to the plaintiff over them, hardship or that the enforcement of specific performance is inequitable. Therefore, that substantial question of law also does not arise. 45. The proposed sixth substantial question of law, is the alleged failure of the First Appellate Court in following the Judgment of the Apex Court in Santosh Hazari- s case (AIR 2001 SC 965) (supra) and Madhukar & Ors. v. Sangram & Ors. (2001(4) SCC 756) : (AIR 2001 SC 2171). The Apex Court in those Judgments held that the First Appellate Court continues to be a final Court of facts, pure findings of fact remain immune from the challenge before the High Court in Second appeal. The Court further held that, the First Appellate Court is also a final Court of law in the sense that its decision on a question of law even if erroneous may not be vulnerable before the High Court in Second appeal because the jurisdiction of the High Court has ceased to be available to correct the errors of law or the erroneous findings of the First Appellate Court even on questions of law unless such question of law be a substantial question of law. 46. As already pointed out while holding that the agreement of sale Ex.P.1 is proved the First Appellate Court took into consideration the fact of possession of Ex.P.3 the saguvalli chit with the plaintiff, oral evidence of the witnesses to the agreement and the scribe. The First Appellate Court on re-appreciation of the evidence reversed the finding of the trial Court. It is not that the First Appellate Court conducted itself in a perverse manner. Therefore, the proof of execution of Ex.P.1 does not arise as a substantial question of law even on application of Santosh Hazari's case (AIR 2001 SC 965) and the other case relied upon by the appellants. Therefore, I.A.No. 1/2016 deserves no merit. 47. For the aforesaid reasons the substantial question of law and the additional substantial question of law are answered in affirmative. The appeal and I.A.no.1/2016 are dismissed with costs. The impugned judgment and decree passed by the first appellate court is confirmed. In view of the disposal of the appeal, I.A.1/2004 does not survive, disposed of accordingly. Appeal dismissed.