

(2000) 08 AHC CK 0117
In the Allahabad High Court
Case No : Second Appeal No. 567 of 1973

Fateh Bahadur Singh	Vs	APPELLANT
Jang Bahadur Gupta and others		RESPONDENT

Date of Decision : 24-08-2000

Acts Referred:

Specific Relief Act, 1963 — Section 19
Transfer of Property Act, 1882 — Section 3, 41
Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 52
Uttar Pradesh Zamindari Abolition and Land Reforms (Amendment) Act, 1958 —
Section 50
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 122, 154,
154L, 163, 166

Citation : (2000) 4 AWC 2891 : (2000) 91 RD 645

Hon'ble Judges : Yatindra Singh, J

Bench : Single Bench

Advocate : Swaraj Prakash, H.S. Joshi, A.N. Srivastava, Rameshwar Nath and C.B. Yadav, for the Appellant; K.K. Bajpai, Faujdar Rai, A.N. Bhargava, Ashok Trivedi, Madhu Nandan and G.N. Verma, for the Respondent

Final Decision : Dismissed

Judgement

Yatindra Singh, J.—This appeal, among the other questions, involves with the interpretation of Sections 166, 167, 168. 168A and 189 clause (aa) (Sect n 189 (aa) of U.P. Zamindari Abolition and Land Reforms Act. 1950 (the Act) as they stood in 1966. The question is that in case of a transfer contrary to the Section 168A of the Act, when do the rights of transferor come to an end? Are they extinguished on the date of making the transfer contrary to Section 168A of the Act or upon ejectment in a suit filed by the Gaon Sabha?

THE FACTS

2. Sri Fateh Bahadur Singh [the plaintiff] filed a suit for the specific performance of a contract against Sri Jang Bahadur Gupta. Smt. Kalawati Devi and Mithilesh Kumari (the defendant Nos. 1, 2 and 3 respectively) with the allegations that :

* The defendant No. 1 was the owner of the plot (Chak) No. 249 (area 10 bigha 12 biswa 10 biswansi). He contracted to sell it to the plaintiff within five years by an unregistered contract to sell dated 5.4.1966 for Rs. 5,000, out of which Rs. 4,000 was given as the earnest money.

* The defendant No. 1 sold half share in plot No. 249 to the defendant No. 2 for Rs. 1,000 on 2.9.1966 (the first sale deed) and remaining half in favour of the defendant No. 3 on 21.12.1966 for Rs. 2,000 (the second sale deed). These sale deeds, apart from other reasons, are illegal as they are of a "fragment" in a "consolidated area" and are hit by Section 168A of the Act.

* The plaintiff came to know about the sale deeds in the month of May, 1970, when he received the notices for mutation in respect of the sale deeds and thus filed the suit for specific performance of his contract.

3. The case went to the Apex Court once and has come back on remand. The defendant No. 1 did not put appearance in any of the Courts. Only the defendant Nos. 2 and 3 are contesting the suit. They allege that :

* There is no agreement to sell in favour of the plaintiff.

* They are bona fide purchasers, for valuable consideration, and without knowledge of the agreement to sell.

* The sale deeds are not hit by Section 168A of the Act.

THE FINDINGS OF THE COURTS BELOW

4. The trial court after considering the evidence on record decreed the suit for recovery of the earnest money with interest but dismissed it for the specific performance of the contract on the following findings :

(i) The defendant No. 1 executed the contract to sell in favour of the plaintiff on 5.4.1966 and also received Rs. 4,000 as the earnest money.

(ii) The defendant Nos. 2 and 3 are bona fide purchasers for value in good faith of the land without any notice of the contract to sell and are protected u/s 41 of the Transfer of Property Act (the TPA).

(iii) Half share of plot No. 249 (area 5 bigha 6 biswa 5 biswansi) is a fragment in a consolidated area. The sale deeds are in favour of the defendant Nos. 2 and 3, who are mother and daughter. There is community of interest and there is no fragmentation of the plot No. 249. The sale deeds are not hit by Section 168A of the Act.

5. The plaintiff filed an appeal. It was dismissed. The appellate court agreed with the trial court on the first three findings but disagreed with the third finding, though it did not change the fate of the case. The appeal was dismissed. The appellate court so far as the third finding is concerned has held that:

* The first sale deed dated 2.9.1966 in favour of the defendant No. 2 is of a

fragment situate in a consolidated area and is hit by Section 168A of the Act : it is void.

* The rights of the defendant No. 1 in respect of the land that was subject matter of the first sale deed are extinguished u/s 189 (aa) of the Act on the date of the transfer.

* The second sale deed dated 21.12.1966 was of a fragment in a consolidated area but as it is of the entire share of the plaintiff on that date, it is not hit by Section 168A of the Act and is valid.

* The suit for specific performance of the contract cannot be decreed though the first sale deed is invalid as the defendant No. 1 lost all his rights, interest in the property on the date of the transfer u/s 189 (aa) of the Act.

THE FINDING IN THE PREVIOUS ROUND

6. A single Judge earlier allowed the plaintiffs second appeal on the grounds :

* The two sale deeds in favour of defendant Nos. 2 and 3 were of fragments in a consolidated area and are illegal.

* The benefit of Section 43 (it appears to be wrongly mentioned for Section 41) of the T.P.A. cannot be availed, of by the defendant Nos. 2 and 3 as the sale deeds, being illegal, cannot be looked into.

But the single Judge did not refer to Section 189 (aa) of the Act or its consequences on the illegal sale deeds before allowing the appeal.

7. The defendant Nos. 2 and 3 filed an appeal before the Apex Court. It was allowed on the ground that the single Judge neither referred to Section 189 (aa) of the Act, nor applied the law prevailing at the time of the sales. The case has come back to the High Court for fresh decision in accordance with law applicable to the facts of the case.

POINTS FOR DETERMINATION

8. I have heard Sri Rameshwar Nath, counsel for the plaintiff-appellant and Sri G. N. Verma, counsel for the defendant-respondent Nos. 2 and 3. The following points arise for determination.

(i) Is 5 bigha, 6 biswa, 6 biswansi a fragment within the meaning of Section 3 (8A) of the Act?

(ii) In a case of a transfer contrary to Section 168A of the Act, when do the rights of a bhumidhar come to an end? Are they extinguished on the date of a transfer contrary to Section 168A of the Act or only when the Gaon Sabha ejects him or his transferee in a suit?

(iii) Are the two sale deeds in favour of defendant Nos. 2 and 3 contrary to Section 168A of the Act and, therefore, void?

(iv) Whether the defendant Nos. 2 and 3 are bona fide purchasers, for consideration and without notice of the agreement to sell? What is its effect? Are these sale deeds protected u/s 41 of the Transfer of Property Act (the T.P.A.)? What is the effect of Section 19, Clause (b) (Section 19(b) of the Specific Relief Act (the S.R.A.)?)

(v) The grant of Specific Performance is discretionary. Should (or rather can) it be granted in the present case?

IST POINT : THE SALE DEEDS ARE OF A FRAGMENT

9. Section 168A of the Act prohibits transfer of a fragment in a consolidated area and such transfers are void. This has been done in order to avoid fragmentation of a holding. The word "consolidated area" and "fragment" are defined in Section 3 (6A) and 3 (8A) of the Act. Sri Verma admitted that the plot was in a consolidated area, but submitted that an area of 5 bigha, 6 biswa, 5 biswansi is not a fragment. The land in dispute is in Fatehpur and is governed by Section 3 (8A) (b) of the Act. An area less than 3.125 acres in Fatehpur is a fragment. According to Sri Verma 3.125 acres is equal to 5 bighas and the land subject matter of sale deeds being more than 5 bighas is not a fragment. He has also brought to my notice para 98 of the Gaon Sabha Manual applicable at the time to show that 3.125 acre is equal to 5 standard bighas.

10. Sri Nath has submitted that:

- * The Courts below have recorded a finding that 5 bigha, 6 biswa and 5 biswansi is a fragment. It is finding of fact.

- * The aforesaid fact was admitted on the earlier occasion before the High Court and before the Apex Court and the defendant Nos.-2 and 3 should not be permitted to raise this plea.

He however, admitted that 10 bigha, 12 biswa, 10 biswansi (the entire area of plot No. 249) is not a fragment and it was wrongly admitted to be a fragment by the counsel before the Apex Court.

11. It will not be proper to bind the parties to their admissions. I should decide this point on merits in view of the following reasons :

- * The areas of an acre and a standard bigha are the same throughout Uttar Pradesh but the area of a bigha is different in different parts of this State. This perhaps was not in the knowledge of the counsel for the parties on the earlier occasion.

- * The counsel agree that part of the concession before the Apex Court was in correct.

- * The books including Government publications wrongly gave the impression that area mentioned in Section 3 (8A) (b) of the Act in 1966 was 6.25 acres in place of 3.125 acres. In fact area in Section 3 (8A) (b) was always 3.125 acres. It was

no different in 1966 (detailed in Foot note No. 4).

12. The Board of Revenue. U.P., has published a book "Krishi Garna" 1995-96. It provides area in a bigha in different districts of the State. It says that one bigha in Fatehpur, where the land in dispute is situate, is equal to 1936 square yards (and the standard bigha is equal to 3025 Sq. Yards). One acre is equal to 4,840 square yards. A fragment in Fatehpur is of 3.125 acres or 3.125 into 4,840 : 15.125 square yards. This is equal to 15.125 divided by 1936 : 7.8125 bighas in Fatehpur. This shows that 5 bigha, 6 biswa and 5 biswansi is a fragment in Fatehpur though 10 bigha, 12 biswa, 10 btswansi is not a fragment.

2ND POINT : THE RIGHTS OF TRANSFEROR ARE EXTINGUISHED ON THE DATE OF TRANSFER.

Legislative History

13. The defendant No. 1 was a bhumidhar. He executed two sale deeds. These sale deeds were of a fragment in a consolidated area. The answer to the following question,

Whether both the sale deeds were contrary to Section 168A of the Act or only the first one was held by the first appellate court.

depends upon the answer to the following question,

When do the rights of a bhumidhar transferring the land contrary to Section 168A are extinguished?

14. The sale deeds were executed in 1966 and the answer to the above question depends upon the interpretation of Sections 166 ,..... 167, 168, 168A (already quoted in footnote-2), Section 189 and Section 190 as they stood In 1966. Sections 166, 167 and 168 were enacted along with the Act (Sections 166 and 167 at present have been newly substituted by Section 6 of the U. P. Act No. 20 of 1982 with effect from 3.8.1981). Sections 3 (6A), 3 (8A) and 168A were introduced by U. P. Act No. 17 of 1956 and came into force at once, namely, on 28 of May, 1956. Section 189 (aa) (relevant for this case) and clause fee) of subsection (1) of Section 190 (Section 190 (1) (cc)) were added by U. P. Act No. 39 of 1958 and came into force at once, namely, on 7.11.1958.

Section 163 of the Act has no application.

15. Sri Nath counsel for the plaintiff-appellant has submitted that the rights of a transferor, in the land transferred contrary to Section 168A of the Act, will not come to an end unless the transferee and the transferor are ejected in a suit by the Gaon Sabha. Sri Verma on the contrary has submitted that they will come to an end on the date when the transfer contrary to Section 168A of the Act is made. Sri Nath, the counsel for the appellant in support of his submission placed reliance on Section 163 (this section at present has been deleted by U.P. Act No. 20 of 1982 w.e.f. 3.6.1981. Kindly see foot note 2 of p. ...). Section 163 of the Act does not apply to the transfers made in this case.

16. Section 163 applies to a transfer of a holding or part thereof which has made in contravention of Section 154 of the Act. Section 154 of the Act prohibits a bhumidhar to transfer any land to a person (except for under certain circumstances) whose land together with the land transferred would exceed twelve and half acres of land. Sections 154 and 163 were enacted in order to put a ceiling on the land ; whereas Section 168A of the Act was enacted in order to prevent fragmentation of a holding. There is no case that sale deeds here are in violation of Section 154 and Section 163 of the Act does not apply.

17. Sections 167 and 168 of the Act in 1966 provided extinction of rights in certain circumstances. These sections at that time applied to a sirdar and an asami. Sub-section (3) of Section 168A applied the provisions of Sections 167 and 168 to a bhumidhar who transfers land contrary to sub-section (1) of Section 168A of the Act. Apart from these sections, the rights of a tenure-holder can be extinguished under Sections 189 and 190 of the Act. The relevant parts of these Sections are Sections 189 (aa) and 190 (1) (cc). These four sections have to be harmoniously interpreted to find out if the rights of a Bhumidhar are extinguished on the date of the transfer contrary to Section 168A of the Act or on a date when the transferee or any other person in possession is ejected upon 3 suit filed by the Gaon Sabha.

HARMONIOUS CONSTRUCTION

18. The principle of harmonious construction is as old as our civilisation. Justice M. Rama Jois in his classic, "Legal and Constitutional History of India Volume 1 explains that Maharishi Jamini is the first known author to propound the different principles of interpretation under title Mimamsa (rules of interpretation). The principle of Samanjasaya (Harmony) axiom is that contradiction should not be easily assumed. In such a case, the provisions should be interpreted so as to give effect to both of them ; they should be reconciled. There is no dearth of modern literature on harmonious construction. They say the same thing as was propounded by Maharishi Jamini in ancient India.

19. Sections 167. 168. 189 (aa) and 190 (1) (cc) have to be harmoniously interpreted. In Section 167. the use of the words "the transferee and other persons who may have thus obtained possession..... shall be liable for ejectment" indicates that Section 167 was meant for ejectment of a transferee or person claiming under him. The words in Section 168. "upon ejectment in a suit u/s 167 makes Section 168 applicable to a suit u/s 167 of the Act. i.e., a suit against transferee or a person claiming under him. It is true that at that time subsection (2) of Section 167 provided that "decree of ejectment may direct for ejectment of sirdar or asami and Section 168 of the Act also provided, "upon ejectment all the rights and interests of sirdar and asami in the holding.....shall be extinguished". But these provisions :

* neither made a suit under Sections 167 and 168 to be (primarily) against the transferor, it essentially remained against transferee or person claiming under

him,

* nor can they take away the width and impact of Sections 189 (aa; and 190 (1) (cc), which provide that the interest of bhumidhar and sirdar will come to an end when holding or a part is transferred contrary to the provisions of this Act.

Sections 167 and 168 do not eclipse the scope of Section 180 (aa) and 190 (1) (cc) of the Act. Sections 167 and 168 apply to transferees and persons claiming under them. Sections 189 (aa; and 190 (1) (cc) apply to the transferors. To read them otherwise or to make Sections 167 and 168 applicable to transferors despite Sections 189 (aa) and 190 fee; of the Act is to make Sections 189 (aa) and 190 (1) (cc) a dead letter. To harmonise is not to destroy or to render it otiose but to give life to both of them.

20. Once the rights and interest of a tenure-holder have come to an end, he may be ejected u/s 122 or 194 or 202 or 209 of the Act. It is true that for a short period. Section 194 did not envisage ejectment of a tenure-holder losing rights under Sections 189 (aa) and 190 (1) (cc) of the Act but this does not mean that suit for their ejectment could not be filed under general law and the only recourse open to Gaon Sabha was a suit under Sections 167 and 168 of the Act. The rights and interest of a tenure-holder are extinguished on the date of making a transfer contrary to the Act under Sections 189 (aa) and 190 (1) (cc) of the Act. I am not alone in taking this view but in company of two other single Judges of this Court. Of course this question will not arise after substitution of the new Section 167 by the U. P. Act No. 20 of 1982 (kindly see foot note 11) as the land subject matter of transfer now stands vested in the State Government.

Cases cited by the counsel of the plaintiff :

21. Sri Nath counsel for the plaintiff has cited three decisions of the High Court, in Tikam Singh v. Chatrapal Singh (the Tikam Singh case), Parmanand u. Board of Revenue (the Parmanand case), and Anant Ram v. Sheikh Mohammad Ishaq (the Anant Ram case). In these cases, certain observations have been made which support his contention that rights of a tenure-holder transferring his land contrary to Section 168A of the Act are extinguished only upon ejectment of the transferee or a person in possession upon a suit filed by a Gaon Sabha. These cases are distinguishable.

22. In the three cases mentioned in the previous paragraph, the transfers were made prior to 7.11.1958 the date when Sections 189 (aa) and 190 (1) (cc) were enforced. In the Tikam Singh case the gift-deed was made of a sirdari land 27.6.1955. In the Parmanand case the licence or the lease (as alleged by the plaintiff or the defendant in that case) was made in 1954 and in the Anant Ram case lease-deed was executed on 25.8.1952. These transfer deeds were not affected by the insertion of Sections 189 (aa) and 190 (1) (cc) of the Act. These sub-sections are not retrospective-it was so held in the Parmanand case. The point in consideration in this case about the interpretation of sub-sections 189 (aa) and 190 (1) (cc) of the Act never arose In these cases. The observations in

these cases are merely obiter and not binding. Apart from this, in the Parmanand case and the Anant Ram, transferor did not transfer all his rights. He had merely transferred some of his rights whereas in the present case the transferor has transferred all of his rights. These cases are distinguishable,

3RD POINT : THE FIRST SALE DEED IS ILLEGAL THE SECOND SALE DEED IS VALID.

23. The defendant No. 1 transferred half share in the plot No. 249 by the first sale deed dated 2.9.1966. It is a fragment in a consolidated area (first point paragraph Nos. 9 to 12). The first sale deed was of a fragment of a part of holding in favour of the defendant No. 2 who did not have a plot contiguous to it. The defendant No. 1 did not sell his entire holding by the first sale deed. It was contrary to Section 168A of the Act and the rights of the defendant No. 1 were extinguished on 2.9.1966 in respect of this area. But the defendant No. 1 remained bhumidhar of the remaining half share in plot No. 249, namely 5 bigha, 5 biswa and 5 Biswansi.

24. The defendant No. 1 executed the second sale deed of the remaining half share in plot No. 249, namely 5 bigha, 6 biswa. 5 biswansi on 2.12.1966. This was the entire area held by him on 2.12.1966. His rights were already extinguished in respect of other half share on 2.9.1966. This sale deed was of the entire area held by him in plot No. 249. Section 168A, does not prohibit the sale of a fragment if entire area is transferred. It has also been so interpreted by a Division Bench of this Court in Vibhuti v. Kashi Ram. The second sale deed in favour of the defendant No. 3 is valid.

25. Sri Verma, counsel for the defendant Nos. 2 and 3 submitted that the first sale deed is also valid in view of the reasons that :

- * The intention of Section 168A is to avoid fragmentation.
- * The defendant No. 2 is the mother of the dependent No. 3. They live together. There is community of interest and these two sale deeds have been executed in favour of persons living together.
- * There is no fragmentation in the present case.

26. The aforesaid submission cannot be accepted. The sale deed dated 2,9.1966 was contrary to Section 158A of the Act and void on the date it was executed. It is not possible that by execution of the second sale deed, the first one is validated. If the contention of Sri Verma is accepted then the sale deed would be contrary to Section 168A of the Act and void from 2.9.1996 to 21.12.1996, but would become valid after 21.12.1996. There is nothing in the Act or any provision of law to validate a void sale deed on such a ground. I am afraid. I cannot accept it though this aspect will have some bearing while deciding the last point namely should discretion be exercised in favour of the plaintiff to grant him relief of specific performance of the contract or not.

IVTH POINT : THE DEFENDANT NOS. 2 AND 3 ARE BONA FIDE PURCHASER FOR CONSIDERATION WITHOUT NOTICE OF AGREEMENT TO SELL

27. The contract to sell in favour of the plaintiff is dated 5.4.1966. It is an unregistered document. The Courts below have held that the defendant Nos. 1 and 2 :

- * had no notice of the agreement to sell.

- " arc bona fide purchasers for value.

- * had taken reasonable care and

- * had acted in good faith.

Sri Nath counsel for the plaintiff has brought to my notice Explanation II of Section 3 of the Transfer of Property Act and has submitted that :

- * In view of the Explanation II and

- * the fact that the plaintiff was in possession of the property,

the defendant Nos. 2 and 3 will be deemed to have notice of the contract to sell.

28. The contract to sell does not contain any assertion that possession has been given to the plaintiff. It is true that the trial court has held that the plaintiff was in possession of the property, but has not held on what date he acquired possession or if he was in possession on the date when sale deeds were executed. The appellate court has also dealt, with the question of the possession and has held that :

- * the plaintiff was not in possession when the sale deeds were executed ;

- * the contract to sell was kept well guarded secret and

- * the defendant Nos. 2 and 3 were misled by the revenue entries in favour of the defendant No. 1.

These findings are findings of fact and are binding in the second appeal.

29. Sri Nath. counsel for the plaintiff submitted that :

- * The finding of possession by the trial court was in favour of the plaintiff. The appellate court could not reverse it in the plaintiffs appeal ; and

- * The finding of possession is otherwise illegal.

30. The trial court has not recorded any finding if the plaintiff was in possession on the date of the sale deeds. The appellate court recorded it for the first time. In any case, the decree of the trial court was in favour of the defendant Nos. 2 and 3 ; they could challenge the finding of the trial court without filing any appeal or cross-objection. There is nothing to show that the finding recorded by the appellate court that the plaintiff was not in possession of the land on the date

of the sale deed is illegal. The Explanation II of Section 3 of the T.P.A. does not assist the plaintiff in holding that the defendant Nos. 2 and 3 should be deemed to have notice about the agreement to sell.

The Second sale deed is protected by Section 41 of the T.P.A. and Section 19(b) of the S.R.A.

31. Sri Verma counsel for the defendant Nos. 2 and 3 has cited :

- * Chandni v. Anant Bali, and Nainsukhdas v. Gowardhan-das, for the proposition that reasonable care is a question of fact depending on the circumstances of the case.

- * Mathura Prasad v. Mst. Anandi Kunwar, for the proposition that in case the name of the transferor is recorded in the revenue records (as in the present case) then no further inquiry was required to be made.

He has submitted that :

- * The findings regarding bona fide purchaser for value, and reasonable care after due inquiry are findings of fact.

- * The above findings are binding in the second appeal.

- * The suit is not only barred by Section 41 of T.P.A. but relief of specific performance can be granted in view of Section 19(b) of the S.R.A.

32. The findings of the Courts below are :

- * The defendant Nos. 2 and 3 had no knowledge of the agreement to sell.

- * They are purchasers for value.

- * They purchased the property in good faith.

- * They took reasonable care.

These are the findings of fact. There is no illegality in recording them. They cannot be interfered With in the second appeal. The second sale deed in favour of defendant No. 3 cannot be set aside ; it is protected. The specific performance of the contract in respect of land of the second sale deed can be granted. However, I would like to rest my decisions on Section 19(b) of the S.R.A. rather than Section 41 of the T.P.A. The conditions for the applicability of both sections are more or less same. Necessary findings have already been recorded by the Courts below and have been affirmed by me. But there is still a question whether the benefit of Section 19(b) of the S.R.A. or Section 41 of the T.P.A. can be availed of by the defendant No. 2 or not.

THE QUESTION OF PROTECTION OF THE FIRST SALE DEED--LEFT OPEN:

33. Section 19(b) of the S.R.A. and Section 41 of the T.P.A. apply to legal transfers (as in favour of the defendant No. 3) if they satisfy the conditions

mentioned therein. But do these sections apply to an illegal transfer so as to cover the case of the defendant No. 2 (the sale deed in whose favour is void)? I leave this question to be decided in an appropriate case. The reason being that even if this point is decided against defendant No. 2, the plaintiff's suit for specific performance of the contract in respect of land subject-matter of the first sale deed cannot be decreed.

VTH POINT : THE RELIEF FOR SPECIFIC PERFORMANCE CANNOT BE GRANTED :

34. The relief for specific performance of a contract is discretionary. It cannot be exercised in favour of the plaintiff for the following reasons :

* Firstly, the sale deed dated 2.9.1966 in favour of defendant No. 2 was illegal. The consequence of the illegal transfer is that the transferor (defendant No. 1) has lost all rights in half share of plot No. 249 on 2.9.1966. The plaintiff at the most can get rights of the defendant No. 1. The defendant No. 1 had no right over the half share sold on 2.9.1966. He cannot convey anything to the plaintiff.

* Secondly, the plaintiff had no case for specific performance of the contract on the finding that the defendant Nos. 2 and 3 are bona fide purchasers in good faith for value, and Without notice of agreement to sell. But the plaintiff is raising a claim that as the first sale deed dated 2.9.1966 is contrary to Section 168A of the Act, the defendant No. 1 (transferor) is still owner of the land. Section 168A of the Act is for preventing fragmentation of a holding. Here at present there is no fragmentation as the entire property is with mother and the daughter who are living together.

CONCLUSION

35. The rights of a tenure-holder who transfers his holding contrary to the Act are extinguished on the date of the transfer. His rights do not survive till ejectment of a transferee or any other person in possession,

36. The first sale deed in favour of defendant No. 2 is void as it is hit by Section 168A of the Art. However, the second sale deed dated 21.12.1996 in favour of the defendant No. 3 valid. The defendant Nos. 2 and 3 had no knowledge of the contract to sell dated 5.4.1996. They are bona fide purchasers in good faith of the property for value, after due enquiry. The discretionary relief of specific performance of the contract cannot be granted in favour of the plaintiff. The appeal is devoid of merits. It is dismissed with costs. It is clarified that the decree of the trial court regarding return of the earnest money with interest against the defendant No. 1 still stands and may be executed by the plaintiff in accordance with law.