

(2011) 05 DEL CK 0255

In the Delhi High Court

Case No : I.A.Nos.489 of 2011 and 3228 of 2011

IG Builders and Promoters Pvt Ltd.

APPELLANT

Vs

Dr Ajit Singh and Others

RESPONDENT

Date of Decision : 27-05-2011

Acts Referred:

Contract Act, 1872 — Section 10
Evidence Act, 1872 — Section 165
Specific Relief Act, 1963 — Section 20, 20(2), 9
Transfer of Property Act, 1882 — Section 52

Citation : (2011) 183 DLT 138

Hon'ble Judges : J.R. Midha, J

Bench : Single Bench

Judgement

J.R. Midha, J.—The plaintiff has filed this suit seeking specific performance of the Agreement to Sell dated 10th November, 2010 and 18th November, 2010 in respect of the property bearing No.D-87, Defence Colony, New Delhi-110024.

2. The plaintiff has filed I.A.No.489/2011 under Order XXXIX Rules 1 and 2 of the CPC in which ex-parte interim order dated 18th January, 2011 was passed directing the defendants to maintain status quo with respect to the title and possession of the suit property till the next date of hearing. Defendants No.1 and 2 have filed I.A.No.3228/2011 under Order XXXIX Rule 4 of the CPC for vacation of the ex-parte interim order dated 18th January, 2011. Both these applications have been heard together.

3. Plaintiff's Case

3.1. Defendants No.1 and 2 are the joint owners of suit property bearing No.D-87, Defence Colony, New Delhi-110024. Defendants No.1 and 2 are real brothers. Defendant No.1 is the constituted attorney of defendant No.2 who is residing in Canada. Defendant No.3 is the mother of defendants No.1 and 2.

3.2. Defendant No.1 acting for himself and as constituted attorney of defendant

No.2, negotiated for sale of the suit property with the plaintiff and showed all relevant documents of ownership of the suit property as well as the power of attorney of defendant No.2 in his favour to the plaintiff whereupon the plaintiff agreed to purchase the suit property for a sale consideration of Rs. 20,50,00,000/-. It was agreed by defendants No.1 and 2 to have the suit property converted from leasehold to freehold and to execute the sale deed within 45 days of conversion. The ground floor of the suit property was in possession of a tenant and defendant No.1 urged the plaintiff to negotiate and obtain vacant possession from the tenant at his own cost (No dates and particulars of negotiation and agreement are given in paras 4, 5 and 6 of the plaint).

3.3. On 10th November, 2010, a meeting was fixed in the office of defendant No.1's lawyer at Delhi for payment of the earnest money. Defendant No.1 expressed his inability to attend the meeting and conveyed to the plaintiff that defendant No.3 would attend the meeting and was duly authorised by defendant No.1 to receive the payment of earnest money. The meeting was attended by the plaintiff and defendant No.3 on behalf of defendants No.1 and 2. The plaintiff made the payment of Rs. 15,00,000/- to defendant No.3, by means of cheque No.697591 dated 10th November, 2010 for Rs. 10,00,000/- and cash of Rs. 5,00,000/- whereupon defendant No.3 signed the receipt acknowledging the payment. The aforesaid cheque was drawn in favour of defendant No.1.

3.4. Defendants No.1 and 2 requested the plaintiff for additional payment of Rs. 35,00,000/- whereupon the plaintiff made further payment of Rs. 35,00,000/- by means of demand draft No.006897 dated 18th November, 2010 to defendant No.3 who executed the receipt dated 18th November, 2010 (No date and particulars of the request of defendant No. 1 and 2 for Rs. 35 Lacs are given the para 9 of the plaint).

3.5. Defendants No.1 and 2 represented and assured the plaintiff that they have taken steps to have the suit property converted from leasehold to freehold. The plaintiff negotiated with the tenant occupying the ground floor of the suit property and arrived at an agreement with the said tenant for vacation. (No date and particulars of the representation and assurance of defendants No.1 and 2 and the alleged agreement with the tenant have been given in paras 11 and 12 of the plaint.)

3.6. On 3rd January, 2011, the plaintiff's Director received an envelope addressed by defendant No.3 containing a blank sheet of paper whereupon the plaintiff sent letter dated 3rd January, 2011 to defendant No.3 which was received back undelivered on 10th January, 2011.

3.7. On 8th January, 2011, the plaintiff was informed by its bankers that a sum of Rs. 45,00,000/- have been transferred to the plaintiff's account from the account of defendant No.1 with State Bank of Patiala, Chandigarh without the consent of the plaintiff. The plaintiff further discovered that defendant No.1

closed the said account after effecting the transfer. The plaintiff, therefore, wrote letter dated 8th January, 2011 to the defendants.

3.8. The plaintiff tried to contact defendants No.1 and 3 who were not traceable. (No date and mode of contacting defendants No.1 and 3 are given in para 16 of the plaint.)

3.9. The plaintiff had always been ready and willing to perform their part of the contract. The plaintiff also published a notice in the newspaper on 10th January, 2011.

4. Defence of defendants No.1 and 2

4.1. Defendants No.1 and 2 have filed the joint written statement which is signed by defendant No.1 for himself and as attorney of defendant No.2 appointed vide General Power of Attorney dated 13th May, 1999.

4.2. The ground floor of the suit property is in possession of a tenant, V.K. Jain whereas first floor is in possession of the answering defendants. Defendant No.2 is residing in Canada whereas defendant No.1 is a resident of Chandigarh. Defendant No.1 has renounced the practical world and is involved in yoga and spiritual practices. Defendant No.3 also resides at Chandigarh but frequently visits Delhi to look after the suit property.

4.3. The defendants have filed an eviction petition against the ground floor tenant of the suit property through Mr. Arun Vohra, Advocate who gained immense trust amongst the defendants and became part and parcel of their family.

4.4. Gireesh Chaudhary, Director of the plaintiff company is a friend and client of Mr. Arun Vohra, Advocate and he hatched a conspiracy to grab the suit property with active participation of the lawyer and got the documents signed from defendant No.3 knowing well that the defendants No.1 and 2 were not interested to sell the suit property and defendant No.3 was not authorised to deal with the sale of the suit property.

4.5 The cheque for Rs.10,00,000/- was deposited in the account of defendant No.1 without the knowledge of defendants. Defendant No.3 lodged a complaint vide DDR No.19 dated 8th January, 2011 with the Police Station, Sector-8, Chandigarh and thereafter, also published a public notice dated 19th February, 2011 to the effect that the defendants never entered into any agreement to sell with the plaintiff. Defendants No.1 and 2 also issued a notice dated 24th February, 2011 to Mr. Arun Vohra, Advocate.

4.6 The Director of the plaintiff and their counsel misrepresented defendant No.3 as well as to the witness, Bhupinder Jarial to the effect that defendants No.1 and 2 had agreed to sell the suit property to the plaintiff and induced them to sign the receipt dated 10th November, 2010. Defendants No.1 and 2 neither entered into any agreement with the plaintiff nor authorised or consented defendant No.3

to enter into any agreement on their behalf.

4.7 Defendants No.1 and 2 transferred a sum of Rs.45 lakhs by RTGS transfer in the account of plaintiff on 24th December, 2010. Defendants No.1 and 2 deposited a further sum of Rs.5 lakhs in the account of the plaintiff on 12th January, 2011 by means of a demand draft bearing No.209434 dated 10th January, 2011.

4.8 There is no agreement whatsoever between the plaintiff and defendants No.1 and 2.

4.9. Defendants No.1 and 2 never authorised defendant No.3 to enter any agreement on their behalf.

4.10. The receipts executed by defendant No.3 without the consent/authorisation of defendants No.1 and 2 are not binding on the defendants No.1 and 2.

4.11 There was no privity of contract between plaintiff and defendants No.1 and 2.

4.12 The alleged receipts dated 10th November and 18th November, 2010 executed by defendant No.3 have been executed by defendant No.3 under misrepresentation, undue influence and fraud. The alleged receipts dated 10th November and 18th November, 2010 are not valid, legally enforceable and do not constitute a concluded contract.

5. Defence of Defendants No.3

5.1 Defendants No.1 and 2 are the joint owners of the suit property. Defendant No.3 did not act on the instructions of defendants No.1 and 2, much less on their explicit instructions.

5.2 Defendant No.3 attended the office of her lawyer on his request to come over and afford opportunity to the plaintiff to convey their interest in the suit property and to request defendant No.3 to use her personal good offices as mother to defendant No.1. The plaintiff unilaterally urged being permitted to demonstrate their earnestness by presenting some amounts of money to be shown to defendant No.1 who was patently disinterested.

5.3 The plaintiff paid the amount to defendant No.3 to demonstrate his eagerness to purchase the suit property and agreed to take back the money upon disagreement of defendant No.1. On the insistence of the lawyer, defendant No.3 agreed to take the money to her son to explore the possibility of her son agreeing to come to the negotiating table with the plaintiff. However, no transaction was negotiated between the parties.

5.4. Defendant No.3 signed the receipts prepared by her counsel on the trust of the counsel who told her that the receipts have no binding effect and would remain in the custody of the counsel and would only be used in case of successful negotiation between the parties.

5.5. There was no legal, valid and binding agreement whatsoever between the plaintiff and the defendants. The amount paid by the plaintiff was not a part of the sale transaction but a result of collusion between the plaintiff and the counsel.

6. Relevant Documents

6.1 Receipt dated 10th November, 2010 executed by defendant No.3 The original receipt dated 10th November, 2010 for Rs.15 lakhs has been placed on record by the plaintiff which is reproduced hereunder:

R E C E I P T

Received with thanks from M/s. I.G. Builders & Promoters Pvt. Ltd., having its office at C-581 Defence Colony, New Delhi - 110024, through its duly authorized Director Shri Gireesh Chaudhary, a sum of Rs.15,00,000/= (Rupees Fifteen Lakhs Only) as per details below:

i. Rs.10,00,000/- (Rupees Ten Lakhs Only) vide cheque No.697591 dated 10th November, 2010 drawn on HDFC Bank South Extension-II, New Delhi, in favour of Dr. Ajit Singh;

ii. Rs.5,00,000/- (Rupees Five Lakhs) in cash currency notes.

towards the sale of property bearing No.D-87, Defence Colony, New Delhi. The total sale consideration has been agreed at Rs.20,50,00,000/=(Rupees Twenty Crores Fifty Lakhs Only), which shall be paid within forty five days (45 days) of the conversion of the said property from Lease-hold to Free-hold from L&DO. The undersigned owner shall extend full co-operation to the buyer in getting the Ground Floor vacated from the tenant Shri V.K. Jain.

This receipt is executed at New Delhi on this 10th day of November 2010 in the presence of following witnesses:

Sd/-

(GAJINDER KAUR)

SELLER

Wife of Shri Brijnandan Singh

Mother and authorized representative of

Dr. Ajit Singh and Mr. Savraj Singh

Sd/

1. (Arun Vohra)

S/o Late Sh. D.L. Vohra

B-222, G.K.-I

New Delhi - 110048

2. Sd/-

(Bhupinder Jarial)

S/o Late Sh. B.S. Jarial

5513/2, MHC, Manimajra

CHD-160101.

6.2 Receipt dated 18th November, 2010 executed by defendant No.3 The original receipt dated 18th November, 2010 for Rs.35 Lakhs has been placed on record by the plaintiff which is reproduced hereunder:

R E C E I P T

Received with thanks from M/s. I.G. Builders & Promoters Pvt. Ltd., having its office at C-581 Defence Colony, New Delhi - 110024, through its duly authorized Director Shri Gireesh Chaudhary, a sum of Rs.35,00,000/= (Rupees Thirty Five Lakhs Only) as per details below:

i. Rs.35,00,000/- (Rupees Thirty Five Lakhs Only) vide Draft/Pay Order No.006897 dated 18th November, 2010 drawn on HDFC Bank South Extension-II, New Delhi, in favour of Dr.Ajit Singh;

as further part payment/consideration amount towards the sale of property bearing No.D-87, Defence Colony, New Delhi. The total sale consideration has been agreed at Rs.20,50,00,000/- (Rupees Twenty Crores Fifty Lakhs Only), which shall be paid within forty five days (45 days) of the conversion of the said property from Lease-hold to Free-hold from L&DO.

This receipt is executed at New Delhi on this 18th day of November 2010 in the presence of following witnesses:

Sd/-

18.11.2010

(GAJINDER KAUR)

SELLER

Wife of Shri Brijnandan Singh

Mother and authorized representative of

Dr. Ajit Singh and Mr. Savraj

Singh

Sd/

1. (Arun Vohra)

S/o Late Sh. D.L. Vohra

B-222, G.K.-I

New Delhi - 110048.

6.3 Draft agreement to sell.

The plaintiff has placed on record the agreement to sell drafted by Mr. Arun Vohra, Advocate. The draft agreement does not contain the names of the seller as well purchaser and the sale consideration and all relevant paragraphs contain blanks to be filled-up.

6.4 Second Draft agreement to sell sent by Mr. Arun Vohra, Advocate to Mr. Bhupinder Jarial on 11th December, 2010.

The plaintiff has placed on record the second draft agreement to sell sent by Mr. Arun Vohra, Advocate to Mr. Bhupinder Jarial. The draft agreement depicts defendants No.1 and 2 as the sellers and plaintiff as the purchaser. There is no reference of defendant No.3 in the said agreement. The draft agreement contains detailed terms and conditions.

6.5 The legal notice dated 24th February, 2011 issued by defendants No.1 and 2 to Mr. Arun Vohra, Advocate Defendants No.1 and 2 have placed on record the legal notice dated 24th February, 2011 issued by them to Mr. Arun Vohra, Advocate.

6.6 Reply dated 17th March, 2011 by Mr. Arun Vohra, Advocate to the legal notice dated 24th February, 2011 issued by defendants No.1 and 2. Mr. Arun Vohra has stated in the reply that the draft agreement to sell along with the draft of the Special Power of Attorney was sent to Mr. Bhupinder Jarial who modified and sent back by e-mail to Mr. Arun Vohra for approval of the plaintiff. The issue of possession of ground floor was not agreed to and defendant No.1 requested him to visit Chandigarh whereupon Mr. Arun Vohra visited Chandigarh on 2nd December, 2010 and a meeting was held there. Thereafter, a final draft agreement to sell was prepared and sent by Mr. Arun Vohra to Mr. Bhupinder Jarial which was received back with slight modifications. However, on 24th December, 2010, defendant No.3 told Mr. Arun Vohra that defendants were no longer interested in the deal and they had returned advance of Rs.45 lakhs to the plaintiff. The relevant portion of the said reply is reproduced hereunder:

9. That thereafter the undersigned was requested by Dr. Ajit Singh to prepare a Draft Agreement to Sell and to send the same on the e-mail address of Shri Bhupinder Jharia. Accordingly, a Draft Agreement to Sell was drafted along with the Draft of Special Power of Attorney and both were mailed to Shri Bhupinder Jharia, Chartered Accountant on his e-mail address. It was thereafter apprised that the said Draft Agreement to Sell was modified by Dr. Ajit Singh and sent back by e-mail to the undersigned for approval with Shri Gireesh Chaudhary. The only point desired to be discussed was with regard to the possession of the Ground Floor Premises on getting the said premises vacated from the tenant. To discuss and finalise the said issue, Dr. Ajit Singh requested the undersigned to

visit Chandigarh alone without Mr. Gireesh Chaudhary, so that the said issue could also be resolved to the satisfaction of both the Seller and the Buyer. Like wise the under signed traveled to Chandigarh on 02nd December, 2010 and a meeting in the office of one Shri Sethi who is a close associate of Dr. Ajit Singh was held and it was apprised to Dr. Ajit Singh that since he was selling the property together with the litigation of the tenant, hence the possession of the vacated Ground Floor after eviction of the tenant would automatically have to be handed over to Shri Gireesh Chaudhary. In the said meeting, besides the undersigned, Dr. Ajit Singh, his mother Mrs. Gajinder Kaur, Shri Bhupinder Jharial, Chartered Accountant, and also Shri Amarjit Singh Sethi were present.

10. That thereafter it was desired that a Final Agreement to Sell be prepared and the same be sent to Dr. Ajit Singh through e-mail address of Shri Bhupinder Jharial, Chartered Accountant and the same would be finalized and executed. Accordingly, the undersigned thereafter made and sent by e-mail the Final Draft Agreement to Sell for approval to Dr. Ajit Singh through Shri Bhupinder Jharial, Chartered Accountant, which was received back with slight modifications. However, on 24th December, 2010 when the undersigned called up Mrs. Gajinder Kaur, Mother of Dr. Ajit Singh to fix up the date for execution of the Agreement to Sell, she stated that they were no longer interested in the deal and they had returned the Advance Amount of Rs.45 Lakhs into the account of Shri Gireesh Chaudhary by means of RTGS...

7. Admitted Facts

7.1 Defendants No.1 and 2 are the joint owners of suit property bearing No.D-87, Defence Colony, New Delhi - 110024.

7.2 There is no written agreement between the plaintiff and defendants No.1 and 2.

7.3 There is no power of attorney or written authorisation by defendants No.1 and 2 in favour of defendant No.3.

7.4 The plaintiff paid a sum of Rs.50 lakhs to defendant No.3 out of which Rs.15 lakhs was paid on 10th November, 2010 and Rs.35 lakhs was paid on 18th November, 2010.

7.5 Defendants No.1 and 2 have refunded the aforesaid sum of Rs.50 lakhs to the plaintiff out of which Rs.45 lakhs was transferred in the account of the plaintiff on 24th December, 2010 and the balance amount of Rs.5 lakhs was deposited in the account of the plaintiff on 12th January, 2011.

7.6 The draft agreement to sell has not been signed by any of the parties.

8. Disputed Facts

8.1 The plaintiff orally negotiated for sale of the suit property with defendant No.1, as alleged in paras 4 and 5 of the plaint. However, the plaintiff is not seeking specific performance of the alleged oral agreement. The plaintiff is

seeking specific performance of the agreement to sell rendered in the receipts dated 10th November and 18th November, 2010. The plaintiff has not even disclosed the material particulars such as date, time and place of oral agreement.

8.2 Defendant No.3 was authorised and competent to enter into the agreement with the plaintiff on behalf of defendants No.1 and 2. However, the plaintiff is not seeking any declaration that defendant No.3 was authorised/competent to act on behalf of defendants No.1 and 2. Admittedly there is no power of attorney or written authorisation by defendants No.1 and 2 in favour of defendant No.3. The plaintiff also never insisted for the power of attorney or written authorisation of defendants No.1 and 2 at any point of time.

8.3 According to the plaintiff, the terms of the draft agreement to sell sent by Mr. Arun Vohra, Advocate to Mr.Bhupinder Jarial on 11th December, 2010 were agreed to by the plaintiff as well as by defendant No.1.

9. Un-explained facts:-

The plaintiff could not give any explanation to the following material aspects of the case:

9.1 Why the receipts were not signed by defendant No.1? Admittedly defendant No.3 was not holding any power of attorney of defendants No.1 and 2. If defendant No.1 had agreed to sell the suit property, the receipts should have been signed by him or receipts should have been given to defendant No.3 to get the same signed from defendant No.1 or alternatively a power of attorney should have been prepared and given to defendant No.3.

9.2 Why payment was not made directly to defendant No.1? If defendant No.1 could not come on 10th November, 2010, a fresh date could have been fixed or a representative of the plaintiff could have visited Chandigarh for payment to defendant No.1.

9.3 Why the plaintiff never insisted on the signatures of defendants No.1 and 2 on the receipts or for their power of attorney in favour of defendant No.3 or for ratification of the receipts dated 10th and 18th November, 2010 by defendants No.1 and 2?

9.4 Why sufficient time was not given to defendant No.3 before the execution of the receipts to enable her to exercise free consent and to also consult defendants No.1 and 2?

9.5 Why undue haste was exercised by the plaintiff for getting the receipts signed from defendant No.3 knowing well that she was not holding any Power of Attorney or written authorisation from defendants No.1 and 2?

10. Judgments referred to and relied by the plaintiff

The learned counsel for the plaintiff has referred to and relied upon the following judgments:

10.1. M/s Nanak Builders and Investors Pvt. Ltd v. Vinod Kumar Alag, AIR 1991 Del 315 - This Court held that a receipt containing all the essential ingredients of a contract can be specifically enforced.

10.2. Sanjeev Narang v. Prism Buildcon Pvt. Ltd., 154 (2008) DLT 508 (DB) - The Division Bench of this Court while dismissing the appeal against the order vacating interim injunction by the learned Single Judge directed the respondent to inform the purchaser about the litigation pending between the parties in case the respondent wishes to dispose of the suit property during the pendency of the suit in view of Section 52 of the Transfer of the Property Act, 1882.

10.3. K.L.Bhatia v. Gurmit Singh, 1996 (37) DRJ 542 - This Court while dismissing the injunction application directed the defendants to disclose the factum of the suit in case of any agreement or transaction to be entered into for the sale/transfer of the suit property in favour of the third party or prior to parting of the possession to any third party.

11. Judgments referred to and relied upon by the defendants

The learned counsel for the defendants refer to and rely upon the following judgments:

11.1. Arun Batra v. Bimla Devi, 2010 (117) DRJ 699 - The ex-parte interim order granted to the plaintiff was vacated by this Court on the ground that the receipts of payment was not signed by all the co-owners of the suit property, the receipts signed by some of the co-owners were undated, no time frame was fixed for concluding the sale transaction and full particulars were not mentioned on the receipts. This Court held that the receipts were uncertain and indefinite which prima facie indicate that the parties were still to negotiate to arrive at the agreed terms and conditions for sale of the suit property. This Court held that prima facie there was no consensus between the parties to formally execute the agreement and the defendant who had not signed the receipts, cannot be held to be bound by the receipts signed by the other defendants. The relevant findings of this Court are as under:

41. In the present case, admittedly the defendants No. 1, 3, 4, 6 & 7, the co-owners of the property, have not signed the documents produced by the plaintiff. The present case is not a case of written agreement. The base of the claim of the plaintiff is two receipts which according to the plaintiff were signed by the defendants No. 2, 5 & 8 and on behalf of other defendants i.e. 1,3,4,6 & 7. The basic question which requires consideration in the present matter is that whether prima facie there was a concluded agreement for sale of the respective shares of the defendants in the property is made out by the plaintiff or not. The four ingredients necessary to make an agreement to sell are: (i) particulars of consideration; (ii) certainty as to party i.e. the vendor and the vendee; (iii) certainty as to the property to be sold; and (iv) certainty as to other terms relating to probable cost of conveyance to be borne by the parties, time, etc.

42. In view of the said ingredients, as referred above, perusal of the receipts shows that the receipts are undated, no timeframe was stipulated for concluding the sale transaction, full particulars and detail of respective authority are also not mentioned in the receipts. These relevant details are missing in the receipts/oral agreement. In view of the above, it appears that receipts are uncertain and indefinite which prima facie indicate that the parties were still to negotiate to arrive at the agreed terms and conditions for sale of the suit property. Admittedly after the issuance of alleged receipts till the filing of the present suit there were no negotiations/communications between the parties. At this stage, prima facie it does not appear that there was any consensus between the parties to formally execute an agreement to sell and defendants No. 1,3,4,6 & 7 cannot be held to be bound by the said agreement alleged to have been entered into (even after assuming) by way of two receipts signed by the defendants No. 2,5 & 8. There is no doubt that the Court can grant the relief to the extent of joint owners who had become party to the contract and it can be enforced against part of the co-owner. But fact remains that is not the case of plaintiff nor has the relief been claimed in that manner. In the present case, the plaintiff wants to enforce the agreement between the plaintiff and defendants No. 1 to 8 for the entire property in dispute.

(Emphasis added)

11.2 Mayawanti Vs. Kaushalya Devi, - In this case, the agreement was signed by one of the two co-owners. The suit for specific performance was decreed by the trial Court and the first appeal was dismissed by the Additional District Judge. The second appeal was, however, allowed by the High Court against which the SLP was filed before the Apex Court. It was contended before the Apex Court that the signatures of one of the two co-owners was of no avail as there was no evidence to show that he had authority to execute the document on behalf of the other co-owner. The Hon"ble Supreme Court held as under:

8. In a case of specific performance it is settled law, and indeed it cannot be doubted, that the jurisdiction to order specific performance of a contract is based on the existence of a valid and enforceable contract. The Law of Contract is based on the ideal of freedom of contract and it provides the limiting principles within which the parties are free to make their own contracts. Where a valid and enforceable contract has not been made, the court will not make a contract for them. Specific performance will not be ordered if the contract itself suffers from some defect which makes the contract invalid or unenforceable. The discretion of the court will be there even though the contract is otherwise valid and enforceable and it can pass a decree of specific performance even before there has been any breach of the contract. It is, therefore, necessary first to see whether there has been a valid and enforceable contract and then to see the nature and obligation arising out of it. The contract being the foundation of the obligation the order of specific performance is to enforce that obligation.

11. If the above correspondence were true, it would appear that the contract was

in the alternative of either whole or half of the property and that the offer and acceptance did not correspond. It is settled law that if a contract is to be made, the intention of the offeree to accept the offer must be expressed without leaving room for doubt as to the fact of acceptance or to the coincidence of the terms of acceptance with those of the offer. The rule is that the acceptance must be absolute, and must correspond with the terms of the offer. If the two minds were not *ad idem* in respect of the property to be sold, there cannot be said to have been a contract for specific performance. If the parties themselves were not *ad idem* as to the subject matter of the contract the court cannot order specific performance...

19. The specific performance of a contract is the actual execution of the contract according to its stipulations and terms, and the courts direct the party in default to do the very thing which he contracted to do. The stipulations and terms of the contract have, therefore, to be certain and the parties must have been *consensus ad idem*. The burden of showing the stipulations and terms of the contract and that the minds were *ad idem* is, of course, on the plaintiff. If the stipulations and terms are uncertain, and the parties are not *ad idem*, there can be no specific performance, for there was no contract at all. Where there are negotiations, the court has to determine at what point, if at all, the parties have reached agreement. Negotiations thereafter would also be material if the agreement is rescinded.

20. The jurisdiction of the court in specific performance is discretionary. Fry in his *Specific Performance*, 6th Edn. P. 19, said:

There is an observation often made with regard to the jurisdiction in specific performance which remains to be noticed. It is said to be in the discretion of the Court. The meaning of this proposition is not that the Court may arbitrarily or capriciously perform one contract and refuse to perform another, but that the Court has regard to the conduct of the plaintiff and to circumstances outside the contract itself, and that the mere fact of the existence of a valid contract is not conclusive in the plaintiffs favour. "If the defendant", said Plumer V.C., "can show any circumstances *dehors*, independent of the writing, making it inequitable to interpose for the purpose of a specific performance, a Court of Equity, having satisfactory information upon that subject, will not interpose.

21. As Chitty observes the "prophecy has not been wholly fulfilled, for the scope of the remedy remains subject to many limitations." But the author observes a welcome move towards the more liberal view as to the extent of jurisdiction which was favoured by Lord Justice Fry. But where no contract has been entered into at all, there is no room for any liberal view.

22. Section 9 of the Specific Relief Act says that except as otherwise provided in that Act where any relief is claimed under Chapter II of the Act in respect of a contract, the person against whom the relief is claimed may plead by way of defence any ground which is available to him under any law relating to contracts.

It the instant case the defence of there having not been a contract for lack of consensus ad idem was available to the defendant.

(Emphasis added)

11.3 Shiv Kumar Chadha and Others Vs. Municipal Corporation of Delhi and Others,

TEMPORARY INJUNCTION

30. It need not be said that primary object of filing a suit challenging the validity of the order of demolition is to restrain such demolition with the intervention of the Court. In such a suit the plaintiff is more interested in getting an order of interim injunction. It has been pointed out repeatedly that a party is not entitled to an order of injunction as a matter of right or course. Grant of injunction is within the discretion of the Court and such discretion is to be exercised in favour of the plaintiff only if it is proved to the satisfaction of the Court that unless the defendant is restrained by an order of injunction, an irreparable loss or damage will be caused to the plaintiff during the pendency of the suit. The purpose of temporary injunction is, thus, to maintain the status quo. The Court grants such relief according to the legal principles - *ex debito justitiae*,. Before any such order is passed the Court must be satisfied that a strong *prima facie* case has been made out by the plaintiff including on the question of maintainability of the suit and the balance of convenience is in his favour and refusal of injunction would cause irreparable injury to him.

31. Under the changed circumstance with so many cases pending in Courts, once an interim order of injunction is passed, in many cases, such interim orders continue for months; if not for years. At final hearing while vacating such interim orders of injunction in many cases, it has been discovered that while protecting the plaintiffs from suffering the alleged injury, more serious injury has been caused to the defendants due to continuance of interim orders of injunction without final hearing. It is a matter of common knowledge that on many occasions even public interest also suffers in view of such interim orders of injunction, because persons in whose favour such orders are passed are interested in perpetuating the contraventions made by them by delaying the final disposal of such applications. The Court should be always willing to extend its hand to protect a citizen who is being wronged or is being deprived of a property without any authority in law or without following the procedure which are fundamental and vital in nature. But at the same time the judicial proceedings cannot be used to protect or to perpetuate a wrong committed by a person who approaches the Court.

32. Power to grant injunction is an extra -ordinary power vested in the Court to be exercised taking into consideration the facts and circumstances of a particular case. The Courts have to be more cautious when the said power is being exercised without notice or hearing the party who is to be affected by the order so passed. That is why Rule 3 of Order 39 of the Code requires that in all cases

the Court shall, before grant of an injunction, direct notice of the application to be given to the opposite party except where it appears that object of granting injunction itself would be defeated by delay. By the CPC (Amendment) Act, 1976, a proviso has been added to the said rule saying that "where it is proposed to grant an injunction without giving notice of the application to the opposite party, the Court shall record the reasons for its opinion that the object of granting the injunction would be defeated by delay...

11.4 Sanjay Puri Vs. Radhey Lal and Others, - This Court held that a document styled

as receipt can operate and be enforceable as a contract. However, the absence of the signatures of the owner on the receipt can justifiably lead to the conclusion that a contract had not emerged. This Court held that an enforceable contract had not come into being. This Court held as under:

7. In K. Narendra Vs. Riviera Apartments (P) Ltd., , the Court observed thus:

29. Section 20 of the Specific Relief Act, 1963 provides that the jurisdiction to decree specific performance is discretionary and the court is not bound to grant such relief merely because it is lawful to do so; the discretion of the court is not arbitrary but sound and reasonable, guided by judicial principles and capable of correction by a court of appeal. Performance of the contract involving some hardship on the Defendant which he did not foresee while non-performance involving no such hardship on the plaintiff, is one of the circumstances in which the court may properly exercise discretion not to decree specific performance. The doctrine of comparative hardship has been thus statutorily recognized in India. However, mere inadequacy of consideration or the mere fact that the contract is onerous to the Defendant or improvident in its nature, shall not constitute an unfair advantage to the plaintiff over the Defendant or unforeseeable hardship on the Defendant. The principle underlying Section 20 has been summed up by this Court in *Lourdu Mari David and others Vs. Louis Chinnaya Arogiaswamy and others*, by stating that the decree for specific performance is in the discretion of the Court but the discretion should not be used arbitrarily; the discretion should be exercised on sound principles of law capable of correction by an appellate court.

30. Chitty on Contracts (27th Edn., 1994 1 1296) states:

Severe hardship may be a ground for refusing specific performance even though it results from circumstances which arise after the conclusion of the contract, which affect the person of the Defendant rather than the subject-matter of the contract, and for which the plaintiff is in no way responsible.

8. In *Gobind Ram Vs. Gian Chand*, , the Court observed thus:

7. It is the settled position of law that grant of a decree for specific

performance of contract is not automatic and is one of the discretions of the

court and the court has to consider whether it will be fair, just and equitable. The court is guided by principle of justice, equity and good conscience.

9. A.C. Arulappan Vs. Smt. Ahalya Naik, The Court observed thus:

7. The jurisdiction to decree specific relief is discretionary and the court can consider various circumstances to decide whether such relief is to be granted. Merely because it is lawful to grant specific relief, the court need not grant the order for specific relief; but this discretion shall not be exercised in an arbitrary or unreasonable manner. Certain circumstances have been mentioned in Section 20(2) of the Specific Relief Act, 1963 as to under what circumstances the court shall exercise such discretion. If under the terms of the contract the plaintiff gets an unfair advantage over the Defendant, the court may not exercise its discretion in favour of the plaintiff. So also, specific relief may not be granted if the Defendant would be put to undue hardship which he did not foresee at the time of agreement. If it is inequitable to grant specific relief, then also the court would desist from granting a decree to the plaintiff.

11. Even in these circumstances, the learned Single Judge had declined to pass a decree for Specific Performance. The decisions in Sardar Singh Vs. Smt. Krishna Devi and another, as well as Nirmala Anand Vs. Advent Corporation Pvt. Ltd. and Others, were noted. These decisions emphasize the discretionary nature of the relief of Specific Performance. The learned Single Judge has kept in perspective the conduct of the Respondent/Owner in that he had endeavoured to return the "Token Advance" of Rs. 50,000/- within ten days of the event. The learned Single Judge has further noted that since the so-called repudiation or cancellation, or as best put - refutation, had taken place within ten days, no damage by way of loss of profit because of escalation in prices would have resulted to the plaintiff/Appellant. He accordingly directed the plaintiff to revalidate the draft of Rs. 50,000/- sent to the plaintiff as a return of the "Token Advance" along with Rs. 1,00,000/- as damages. Mindful of the decision in N.P. Thirugnanam (D) by L.Rs., Vs. Dr. R. Jagan Mohan Rao and others, , the learned Single Judge has also found it relevant that the plaintiff was dealing in real estate.

(Emphasis added)

11.5 A.C. Arulappan Vs. Smt. Ahalya Naik, - The Hon"ble Supreme Court held as under:

7. The jurisdiction to decree specific relief is discretionary and the court can consider various circumstances to decide whether such relief is to be granted. Merely because it is lawful to grant specific relief, the court need not grant the order for specific relief; but this discretion shall not be exercised in an arbitrary or unreasonable manner. Certain circumstances have been mentioned in Section 20(2) of the Specific Relief Act, 1963 as to under what circumstances the court shall exercise such discretion. If under the terms of the contract the plaintiff gets an unfair advantage over the defendant, the court may not exercise its discretion in favour of the plaintiff. So also specific relief may not be granted if the

defendant would be put to undue hardship which he did not foresee at the time of agreement. If it is inequitable to grant specific relief, then also the court would desist from granting a decree to the plaintiff.

8. In *Damacherla Anjaneyulu and Another Vs. Damcherla Venkata Seshiah and Another*, , the High Court declined to grant a decree for specific performance in favour of the plaintiff, even though the defendant was guilty of breach of agreement. That was a case where the defendant had constructed costly structures and if a decree for specific performance was granted, the defendant would have been put to special hardship. This Court directed the defendant to pay compensation to the plaintiff.

9. In *Parakunna Veetil Joseph's Vs. Nedumbara Kuruvila's and Ors*, , this Court cautioned and observed as under:

Section 20 of the Specific Relief Act, 1963 preserves judicial discretion to Courts as to decreeing specific performance. The Court should meticulously consider all facts and circumstances of the case. The Court is not bound to grant specific performance merely because it is lawful to do so. The motive behind the litigation should also enter in the judicial verdict. The Court should take care to see that it is not used as an instrument of oppression to have an unfair advantage to the plaintiff.

10. In *Lourdu Mari David and others Vs. Louis Chinnaya Arogiaswamy and others*, , the plaintiff, who sought for specific performance of an agreement to purchase immovable property, filed a suit with incorrect and false facts. In the plaint, it was alleged that the plaintiff was already given possession of Door No.2/53 as a lessee and he was given possession of Door No. 1/53 on the date of the agreement itself. But he did not give any evidence that he had got possession of Door No.1/53 on the date of agreement. It was found that his case as regards Door No.1/53 was false. He also alleged that he had paid Rs.400/- in addition to the sum of Rs.4,000/- paid as advance, but this was proved to be an incorrect statement. He alleged that the third defendant had inspected the house during the course of negotiations, but this also was found to be false. This Court held that it is settled law that the party who seeks to avail of the jurisdiction of a Court and specific performance being equitable relief, must come to the Court with clean hands. In other words, the party who makes false allegations does not come with clean hands and is not entitled to the equitable relief.

11. In *Gobind Ram Vs. Gian Chand*, , it was observed in paragraph 7 of the judgment that grant of a decree for specific performance of contract is not automatic and is one of the discretions of the court and the court has consider whether it would be fair, just and equitable. The court is guided by the principles of justice, equity and good conscience.

(Emphasis added)

11.6 *Bal Krishna and Another Vs. Bhagwan Das (Dead) and Others*, The Hon''ble

Supreme Court held as under:-

8.....It is also settled by various decisions of this Court that by virtue of Section 20 of the Act, the relief for specific performance lies in the discretion of the court and the court is not bound to grant such relief merely because it is lawful to do so. The exercise of the discretion to order specific performance would require the court to satisfy itself that the circumstances are such that it is equitable to grant decree for specific performance of the contract. While exercising the discretion, the court would take into consideration the circumstances of the case, the conduct of parties, and their respective interests under the contract. No specific performance of a contract, though it is not vitiated by fraud or misrepresentation, can be granted if it would give an unfair advantage to the plaintiff and where the performance of the contract would involve some hardship on the defendant, which he did not foresee. In other words, the court's discretion to grant specific performance is not exercised if the contract is not equal and fair, although the contract is not void.

(Emphasis added)

11.7 Mirahul Enterprises and Others Vs. Mrs. Vijaya Sirivastava and Mr. R.R. Sood, This Court held as under:

24. Before we proceed to analyses the evidence in this case and to appreciate the submissions made at the bar, it will be put necessary to take into consideration the provisions of Specific Relief Act and the requirements of law before a decree for specific performance be granted. Grant of decree for specific performance u/s 20 of the Specific Relief Act, 1963 rest in the discretion of the Court and cannot be claimed as of right. Parties seeking performance of contract must satisfy all the requirements necessary for seeking relief in equity. In exercising discretion, Court is obliged to take into consideration circumstances of the case, conduct of the parties and the respective interests under the contract. At the same time, it should not be lost sight of that the discretion has to be exercised by the Court not arbitrarily but based on sound judicial principles. The first fundamental, which must be proved beyond all reasonable doubts is the existence of a valid and enforceable contract. Where a valid and enforceable contract has not been made, Court will not make a contract for the parties. Specific performance will not be ordered if the contract itself suffers from some defect, makes the contract invalid or unenforceable. Reference at this stage be made to a decision of the Supreme Court in Mayawanti Vs. Kaushalya Devi, .

25. Section 10 of the Contract Act defines as to what agreements are contracts. All agreements are contracts, if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object, and are not hereby expressly declared to be void. A true contract thus requires the agreement of the parties freely made with full knowledge and without any feeling of restraint. Parties must be ad-idem on the essential terms of the contract. In case, it is an agreement to sell of immovable property, the law requires that it

must with certainty identify the property agreed to be sold and the price fixed as consideration paid or agreed to be paid. Price has not been defined in Transfer of Property Act but that expression has to be understood in the same sense as is understood in the Sales of Goods Act. Every sale implies a contract of sale and like any other contract, the contract for sale of immovable property must be based on mutuality.

(Emphasis added)

11.8 Iqbal Properties Pvt. Ltd. v. Atar Singh, 2011 I AD (Del) 269 - This Court dismissed the suit for specific performance on the ground that all the co-owners were not party to the agreement.

12. It is a settled law that in a suit for specific performance of contract, the evidence and proof of agreement must be absolutely clear and certain. (Ganesh Shet Vs. Dr. C.S.G.K. Setty and Others,). In Rickmers Verwaltung GMB H v. The Indian Oil Corporation Ltd., 1998 8 AD (SC) 481, the Hon''ble Supreme Court held that there was a vast difference between negotiating a bargain and entering into a binding contract. It was held that the Court should ascertain whether there was any meeting of minds between the parties to create a binding contract. It was further held that the Court is not empowered to create a contract for the parties by going outside the language used by the parties. The relevant findings of the Court are as under:

In this connection the cardinal principle to remember is that it is the duty of the court to construe correspondence with a view to arrive at a conclusion whether there was any meeting of mind between the parties, which could create a binding contract between them but the Court is not empowered to create a contract for the parties by going outside the clear language used in the correspondence, except insofar as there are some appropriate implications of law to be drawn. Unless from the correspondence it can unequivocally and clearly emerge that the parties were ad idem to the terms, it cannot be said that an agreement had come into existence between them through correspondence. The Court is required what the parties wrote and how they acted and from that material to infer whether the intention as expressed in the correspondence was to bring into existence a mutually binding contract. The intention of the parties is to be gathered only from the expressions used in the correspondence and the meaning it conveys and in case it shows that there had been meeting of mind between the parties and they had actually reached an agreement, upon all material terms, then and then alone can it be said that a binding contract was capable of being spelt out from the correspondence.

(Emphasis added)

13. In M/s Pelikan Estates Pvt. Ltd. v. Kamal Pal Singh and Ors. 2004 (6) AD 185: 2004 (76) DRJ 353, specific performance was sought on the basis of oral agreement and interim injunction was sought during the pendency of the suit. Vikramajit Sen, J. declined the injunction with the observation that "where

immovable property is in question I would always be reluctant if not loathe to accept the evolution of a transaction which is not evidenced in writing." Learned Judge further observed that "where emergence of an oral agreement is being set up, there must be no possibility of doubt in essential concomitants of the contract".

14. In *Vinod Seth Vs. Devinder Bajaj and Another*, , the Hon''ble Supreme Court held that:

20. Section 52 of TP Act provides that during the pendency in any court of any suit in which any right to immovable property is directly and specifically in question, the property cannot be transferred or otherwise dealt with by any party to the suit or proceedings so as to affect the rights of any other party thereto under any decree or order which may be made therein except under the authority of the court and on such terms as it may impose. The said section incorporates the well-known principle of *lis pendens* which was enunciated in *Bellamy v. Sabine* 1857 (1) De G & J566:

It is, as I think, a doctrine common to the Courts both of Law and Equity, and rests, as I apprehend, upon this foundation - that it would plainly be impossible that any action or suit could be brought to a successful termination, if alienations *pendente lite* were permitted to prevail. The plaintiff would be liable in every case to be defeated by the defendant's alienating before the judgment or decree, and would be driven to commence his proceedings *de novo*, subject again to be defeated by the same course of proceeding.

It is well-settled that the doctrine of *lis pendens* does not annul the conveyance by a party to the suit, but only renders it subservient to the rights of the other parties to the litigation. Section 52 will not therefore render a transaction relating to the suit property during the pendency of the suit void but render the transfer inoperative insofar as the other parties to the suit. Transfer of any right, title or interest in the suit property or the consequential acquisition of any right, title or interest, during the pendency of the suit will be subject to the decision in the suit.

21. The principle underlying Section 52 of TP Act is based on justice and equity. The operation of the bar u/s 52 is however subject to the power of the court to exempt the suit property from the operation of section 52 subject to such conditions it may impose. That means that the court in which the suit is pending, has the power, in appropriate cases, to permit a party to transfer the property which is the subject-matter of the suit without being subjected to the rights of any part to the suit, by imposing such terms as it deems fit. Having regard to the facts and circumstances, we are of the view that this is a fit case where the suit property should be exempted from the operation of Section 52 of the TP Act, subject to a condition relating to reasonable security, so that the defendants will have the liberty to deal with the property in any manner they may deem fit, inspite of the pendency of the suit. The appellant-plaintiff has alleged that he is a builder and real estate dealer. It is admitted by him that he has entered into the

transaction as a commercial collaboration agreement for business benefits. The appellant has further stated in the plaint, that under the collaboration agreement, he is required to invest Rs. 20 lakhs in all, made up of Rs. 16,29,000/- for construction and Rs. 3,71,000/- as cash consideration and that in lieu of it he will be entitled to ground floor of the new building to be constructed by him at his own cost. Treating it as a business venture, a reasonable profit from such a venture can be taken as 15% of the investment proposed, which works out to Rs. 3 lakhs. Therefore it would be sufficient to direct the respondents to furnish security for a sum of Rs. 3 lakhs to the satisfaction of the court (learned Single Judge) as a condition for permitting the defendants to deal with the property during the pendency of the suit, u/s 52 of the TP Act.

(Emphasis added)

15. The principles laid down by the Courts in the aforesaid judgments are summarized hereunder:

15.1 The four ingredients necessary to make an agreement to sell are: (i) particulars of consideration; (ii) certainty as to party i.e. the vendor and the vendee; (iii) certainty as to the property to be sold; and (iv) certainty as to other terms relating to probable cost of conveyance to be borne by the parties, time, etc.

15.2 The first fundamental, which must be proved beyond all reasonable doubt is the existence of a valid and enforceable contract.

15.3 It is the duty of the court to construe correspondence with a view to arrive at a conclusion whether there was any meeting of mind between the parties, which could create a binding contract between them but the Court is not empowered to create a contract for the parties by going outside the clear language used in the correspondence.

15.4 The uncertain and indefinite receipts prima facie indicate that the parties were still to negotiate to arrive at the agreed terms and conditions for sale of the suit property. If after the issuance of alleged receipts till the filing of the suit, there were no negotiations/communications between the parties, it prima facie indicates that there was no consensus between the parties to formally execute an agreement to sell.

15.5 If the two minds were not ad-idem in respect of the property to be sold, the court cannot order specific performance.

15.6 The stipulations and terms of the contract have to be certain and the parties must have been consensus ad idem. The burden of showing the stipulations and terms of the contract and that the minds were ad idem is on the plaintiff. If the stipulations and terms are uncertain, and the parties are not ad idem, there can be no specific performance, for there was no contract at all. Where there are negotiations, the court has to determine at what point, if at all, the parties have

reached agreement.

15.7 Specific performance will not be ordered if the contract itself suffers from some defect which makes the contract invalid or unenforceable.

15.8 The Court has to consider the conduct of the plaintiff and circumstances outside the contract and the Court will not order specific performance if the defendant can show any circumstances dehors, independent of the writing, making it inequitable to interpose for the purpose of a specific performance.

15.9 If the so-called repudiation or cancellation takes place within few days, no damage by way of loss of profit because of escalation in prices would result to the plaintiff.

15.10 If under the terms of the contract, the plaintiff gets an unfair advantage over the defendant, the Court may not exercise its discretion in favour of the plaintiff. So also specific relief may not be granted if the defendant would be put to undue hardship which he did not foresee at the time of agreement. If it is inequitable to grant specific relief, then also the Court would desist from granting a decree to the plaintiff.

15.11 The party who seeks specific performance being equitable relief, must come to the Court with clean hands. In other words, the party who makes false allegations does not come with clean hands and is not entitled to the equitable relief.

15.12 The Court has considered whether it would be fair, just and equitable. The Court is guided by the principles of justice, equity and good conscience.

15.13 While exercising the discretion, the Court would take into consideration the circumstances of the case, the conduct of parties, and their respective interests under the contract. No specific performance of a contract, though it is not vitiated by fraud or misrepresentation, can be granted if it would give an unfair advantage to the plaintiff and where the performance of the contract would involve some hardship on the defendant, which he did not foresee.

15.14 The specific performance is an equitable relief. Section 20 of the Specific Relief Act, 1963 preserves judicial discretion. The Court is not bound to grant specific relief merely because it is lawful to do so. The motive behind the litigation is to be examined. The Court while granting or refusing the relief has to consider whether it would be fair, just and equitable. In case, where any circumstances u/s 20(2) are established, the relief is to be declined. The relief sought u/s 20 is not automatic as the Court is required to see the totality of the circumstances which are to be assessed by the Court in the light of facts and circumstances of each case. The conduct of the parties and their interest under the contract is also to be examined.

15.15 The principle underlying Section 52 of TP Act is based on justice and equity. The operation of the bar u/s 52 is however subject to the power of the

court to exempt the suit property from the operation of section 52 subject to such conditions it may impose. That means that the court in which the suit is pending, has the power, in appropriate cases, to permit a party to transfer the property which is the subject-matter of the suit without being subjected to the rights of any part to the suit, by imposing such terms as it deems fit.

16. Applying the aforesaid principles of law to the facts of the present case, this Court is of the prima facie opinion that:

16.1 There is no written agreement whatsoever between the plaintiff and defendant Nos.1 and 2, who are the joint owners of the suit property.

16.2 There is no privity of contract between plaintiff and defendants No.1 and 2.

16.3 There is no power of attorney or written authorisation by defendants No.1 and 2 in favour of defendant No.3 authorising her to sell the suit property on their behalf. The receipts dated 10th and 18th November, 2010 executed by defendant No.3 in favour of the plaintiff are, therefore, not binding on the defendants No.1 and 2.

16.4 The Plaintiff made the payment of Rs.50,00,000/- to defendant No.3 with the knowledge that defendant No.3 had no power of attorney or written authorisation on behalf of defendants No.1 and 2 to sell the suit property.

16.5 The plaintiff never insisted for the signatures of defendants No.1 and 2 on the receipts, the ratification of receipts by defendants No.1 and 2 or power of attorney of defendants No.1 and 2 because the plaintiff knew that the defendants were not ready to sell the suit property.

16.6 It appears that there was no consensus ad idem between the plaintiff and defendants No.1 and 2 at all or between the plaintiff and defendant No.3.

16.7 There is no concluded contract as the draft agreement to sell was not signed by any of the two parties. The unsigned draft agreement to sell placed on record by the plaintiff is un-enforceable.

16.8 It appears that the plaintiff made the payment of Rs.50,00,000/- to the defendant No.3 to persuade defendants No.1 and 2 to agree to sell the suit property to the plaintiffs but there was no concluded contract even between the plaintiff and defendant No.3.

16.9 Since the defendants have refunded Rs.50,00,000/- to the plaintiff, no damage by way of loss of profit because of escalation of prices has resulted to the plaintiff as held by the Hon'ble Supreme Court in A.C. Arulappan v. Ahalya Naik (Supra).

16.10 The receipts dated 10th and 18th November, 2010 give an unfair advantage to the plaintiff over the defendants considering that the plaintiff took advantage of the trust of defendant No.3 in her lawyer to get the receipts signed from defendant No.3 to somehow bind her to sell the suit property and to

entangle the suit property in a litigation.

16.11 The conduct of the plaintiff at the time of execution of the receipts dated 10th and 18th November, 2010 show that the same have been executed in undue haste to somehow bind defendant No.3 whatever worth it was, knowing fully well that she was not holding a power of attorney or written authorisation on behalf of defendants No.1 and 2 to sell the suit property.

17. Conduct of the plaintiff

17.1 In M/s. Gujarat Bottling Co. Ltd. and others Vs. Coca Cola Company and others, , the Hon"ble Supreme Court held that the Conduct of the parties invoking the jurisdiction of the Court under Order XXXIX of the CPC must be fair and honest. The relevant finding of the Court is reproduced hereunder:

50. In this context, it would be relevant to mention that in the instant case GBC had approached the High Court for the injunction order, granted earlier, to be vacated. Under Order 39 of the Code of Civil procedure, jurisdiction of the Court to interfere with an order of interlocutory or temporary injunction is purely equitable and, therefore, the Court, on being approached, will, apart from other considerations, also look to the conduct of the party invoking the jurisdiction of the court, and may refuse to interfere unless his conduct was free from blame. Since the relief is wholly equitable in nature, the party invoking the jurisdiction of the Court has to show that he himself was not at fault and that he himself was not responsible for bringing about the state of things complained of and that he was not unfair or inequitable in his dealings with the party against whom he was seeking relief. His conduct should be fair and honest.

(Emphasis added)

17.2. In Dalip Singh Vs. State of U.P. and Others, , the Hon"ble Supreme Court noted as under:

1. For many centuries, Indian society cherished two basic values of life i.e. "Satya" (truth) and "Ahimsa" (non-violence). Mahavir, Gautam Buddha and Mahatma Gandhi guided the people to ingrain these values in their daily life. Truth constituted an integral part of the justice-delivery system which was in vogue in pre-Independence era and the people used to feel proud to tell truth in the courts irrespective of the consequences. However, post-Independence period has seen drastic changes in our value system. The materialism has overshadowed the old ethos and the quest for personal gain has become so intense that those involved in litigation do not hesitate to take shelter of falsehood, misrepresentation and suppression of facts in the court proceedings. In the last 40 years, a new creed of litigants has cropped up. Those who belong to this creed do not have any respect for truth. They shamelessly resort to falsehood and unethical means for achieving their goals. In order to meet the challenge posed by this new creed of litigants, the courts have, from time to time, evolved new rules and it is now well established that a litigant, who attempts to pollute

the stream of justice or who touches the pure fountain of justice with tainted hands, is not entitled to any relief, interim or final.

17.3. In *Padmawati and Others Vs. Harijan Sewak Sangh*, , this Court noted as under:

6. The case at hand shows that frivolous defences and frivolous litigation is a calculated venture involving no risks situation. You have only to engage professionals to prolong the litigation so as to deprive the rights of a person and enjoy the fruits of illegalities. I consider that in such cases where Court finds that using the Courts as a tool, a litigant has perpetuated illegalities or has perpetuated an illegal possession, the Court must impose costs on such litigants which should be equal to the benefits derived by the litigant and harm and deprivation suffered by the rightful person so as to check the frivolous litigation and prevent the people from reaping a rich harvest of illegal acts through the Courts. One of the aim of every judicial system has to be to discourage unjust enrichment using Courts as a tool. The costs imposed by the Courts must in all cases should be the real costs equal to deprivation suffered by the rightful person.

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9. Before parting with this case, I consider it necessary to pen down that one of the reasons for over-flowing of court dockets is the frivolous litigation in which the Courts are engaged by the litigants and which is dragged as long as possible. Even if these litigants ultimately loose the lis, they become the real victors and have the last laugh. This class of people who perpetuate illegal acts by obtaining stays and injunctions from the Courts must be made to pay the sufferer not only the entire illegal gains made by them as costs to the person deprived of his right and also must be burdened with exemplary costs. Faith of people in judiciary can only be sustained if the persons on the right side of the law do not feel that even if they keep fighting for justice in the Court and ultimately win, they would turn out to be a fool since winning a case after 20 or 30 years would make wrong doer as real gainer, who had reaped the benefits for all those years. Thus, it becomes the duty of the Courts to see that such wrong doers are discouraged at every step and even if they succeed in prolonging the litigation due to their money power, ultimately they must suffer the costs of all these years long litigation. Despite settled legal positions, the obvious wrong doers, use one after another tier of judicial review mechanism as a gamble, knowing fully well that dice is always loaded in their favour, since even if they lose, the time gained is the real gain. This situation must be redeemed by the Courts.

(Emphasis added)

This Court imposed costs of Rs.15.1 lakhs in the above case against which Special Leave to Appeal (Civil) No 29197/2008 was preferred to the Supreme Court. On 19th March, 2010, the Hon"ble Supreme Court passed the following order:

We have heard learned Counsel appearing for the parties. We find no ground to interfere with the well-considered judgment passed by the High Court. The SLP is, accordingly, dismissed.

17.4. I agree with the findings by the learned Judge in Padmawati's case (supra) and wish to add a few words. There is another feature which has been observed and it is of unscrupulous persons filing false claims or defences with a view that the other person would get tired and would then agree to compromise with him by giving up some right or paying some money. If the other party is not able to continue contesting the case or the Court by reason of falsehood falls into an error, the wrong succeeds. Many times, the other party compromises, or at other times, he may continue to fight it out. But as far as the party in the wrong is concerned, as this Court noted in Padmawati's case (supra), even if these litigants ultimately lose the lis, they become the real victors and have the last laugh.

17.5. In the present case, the conduct of the plaintiff does not appear to be honest. There is no written agreement between plaintiff and defendants No.1 and 2 who are the owners of the suit property. Instead the plaintiff somehow got the receipts signed from defendant No.3, that too in undue haste and under suspicious circumstances with a view to entangle the property of defendants No.1 and 2 in the hope that the plaintiff can, with the court delays, drag the case for years and the other side would succumb to buy peace. If the other side does not so settle in the end, they are hardly compensated and remains a loser.

17.6. The plaintiff has deliberately concealed the draft agreement to sell drafted by Mr. Arun Vohra, Advocate. This Court heard the arguments on 31st March, 2011 and reserved the order. This Court, thereafter, noticed the reference to the draft agreement to sell in the reply dated 17th March, 2011 of Mr. Arun Vohra, Advocate, whereupon the case was taken up on 18th May, 2011 and upon direction of this Court, the plaintiff placed on record the two draft agreements drafted by Mr. Arun Vohra, Advocate. Admittedly, none of the defendants have signed the said draft agreement to sell and, therefore, the plaintiff has no cause of action to file this suit.

17.7. The plaintiff has made false statements on oath in the plaint by concealing the draft agreement to sell with the dishonest intention of obtaining ex-parte injunction from this Court. In fact, the plaintiff succeeded in obtaining ex-parte injunction from this Court by misleading this Court.

18. Conclusion

In the facts and circumstances of this case, this Court is of the view that there is no prima facie case in favour of the plaintiff and against the defendants as there is no written agreement whatsoever between the plaintiff and defendants No.1 and 2, who are the joint owners of the suit property and there is no written authorisation or power of attorney in favour of defendant No.3 who has executed the receipts dated 10th and 18th November, 2010 which are not binding on

defendants No.1 and 2. There is no concluded contract between the parties as the draft agreement to sell placed on record by the plaintiff has not been signed by any of the parties. The balance of convenience is in favour of the defendants who would suffer irreparably in the event of an injunction being granted in this matter. The suit is prima facie vexatious and frivolous. The Plaintiff is, therefore, not entitled to any injunction. I.A. No.489/2011 under Order XXXIX Rules 1 and 2 of the CPC is, therefore, dismissed with cost of Rupees One Lakh. I.A. No.3228/2011 under Order XXXIX Rule 4 of the CPC is allowed. The ex-parte interim order dated 18th January, 2011 stands vacated.

19. Having regard to the facts and circumstances of this case and following the judgment of the Hon''ble Supreme Court in the case of Vinod Seth v. Devinder Bajaj (Supra), this Court is of the view that this is a fit case where suit property should be exempted from operation of Section 52 of the Transfer of Property Act subject to the defendants furnishing security of Rs. 5 lakhs. Defendants No.1 and 2 are hereby exempted from the operation of Section 52 of Transfer of Property Act subject to their informing the purchaser about this litigation and furnishing security of Rs.5 lakhs to the satisfaction of the Registrar General of this Court within 30 days. 20. The observations made hereinabove are prima facie and shall not constitute any expression of final opinion on the issues involved and shall have no bearing on the merits of the case.

CS(OS)No.83/2011

1. In T. Arivandandam Vs. T.V. Satyapal and Another, , the Hon''ble Supreme Court held that if on a meaningful reading of the plaint, the suit appears to be manifestly vexatious and meritless in the sense of not disclosing a clear right to sue, the Court should nip it in the bud by rejecting the plaint under Order VII Rule 11 of the Code of Civil Procedure.

2. List for consideration as to whether the suit is liable to be rejected under Order VII Rule 11 of the CPC on 1st June, 2011.

3. Both the parties are directed to file brief note of submissions not exceeding three pages in terms of the order dated 14th February, 2011 in the case of Mst. Kiran Chhabra and Another Vs. Mr. Pawan Kumar Jain and Others, , along with the relevant judgments before the next date of hearing.

4. Both the parties shall remain present in the Court along with all documents relating to this case within their power and possession for being examined under Order X Rule 2 of the CPC read with Section 165 of the Indian Evidence Act, if deemed necessary.