

(2025) 04 BOM CK 0289

In the Bombay High Court

Case No : Civil Revision Application No. 170 Of 2024

Messrs Kaycee Corporation

APPELLANT

Vs

Suresh Ramchand Mehta

RESPONDENT

Date of Decision : 17-04-2025

Acts Referred:

Code of Civil Procedure 1908 — Section 96(3), Order 7 Rule 11(a), Order 23 Rule 3,
Order 23 Rule 3A
Transfer of Property Act, 1882 — Section 40
Specific Relief Act, 1963 — Section 19

Citation : (2025) 04 BOM CK 0289

Hon'ble Judges : N. J. Jamadar, J

Bench : Single Bench

Advocate : Rohit Gupta, Jimish Shah, Abhishek Bhosle, Divya Shah Associates,
Rahul Soman, Shivraj Patne, Suyash More, Nilesh Parte

Final Decision : Dismissed

Judgement

N. J. Jamadar, J

1. This revision is directed against an order dated 17th January, 2024 passed by the learned Judge, City Civil Court, in Notice of Motion No.24 of 2024 in Suit No.9794 of 1999, whereby the prayer of the applicant – defendant No.5 for rejection and, in the alternative, return of the plaint came to be rejected.

2. For the sake of convenience and clarity, the parties are hereinafter are referred to in the capacity in which they are arrayed before the City Civil Court.

3. The background facts leading to this application can be summarised as under:

3.1 Galaxy Corporation – defendant No.1 is a private trust. Defendant Nos.2 to 4 are the trustees of defendant No.1. Defendant Nos.1 to 4 are engaged in the business of developers and builders.

3.2 Defendant Nos.1 to 4 had entered into an agreement to sell an office

premises, being Unit No.204, Second floor, in the building 'Comet' (the suit premises) to the plaintiff for a consideration of Rs.5,28,520/- under an agreement which was executed on 23rd June, 1994. Defendant Nos.1 to 4 had accepted a sum of Rs.4,00,000/- towards part consideration under the said agreement. It was, inter alia, agreed that the balance consideration of Rs.1,28,520/- was to be paid at the time of delivery of the possession of the suit premises by defendant Nos.1 to 4 to the plaintiff, after obtaining occupation certificate from the Municipal Corporation. The said agreement was registered before the Registrar of Assurances on 5th December, 1994.

3.3 The plaintiff asserted that despite repeated persuasion defendant Nos.1 to 4 committed default in the performance of their part of the contract. Defendant Nos.1 to 4 put defendant No.5 in possession of the suit premises. Upon further enquiries and the exchange of notices, it transpired that defendant No.5 had instituted a suit against defendant Nos.1 to 4 being Suit No.1701 of 1994 for specific performance of the Memorandum of Understanding purportedly executed by and between defendant Nos.1 to 4 and defendant No.5 to sell Unit Nos.405, 406, 407 and 408 on the fourth floor and Unit Nos.107 and 108 on the first floor of "Comet". In the said suit, defendant Nos.1 to 5 entered into Consent Terms and thereupon on 26th February, 1996 a consent decree came to be passed by the High Court in accordance with the said consent terms, under which the defendant Nos.1 to 4 agreed to sell the suit premises alongwith five other office units for an aggregate consideration of Rs.1,07,50,000/-.

3.4 The plaintiff was thus constrained to institute the suit for declaration that the agreement for sale dated 23rd June, 1994 and registered on 5th December, 1994 was valid, subsisting and defendant Nos.1 to 4 were bound to specifically perform the said contract; that the defendant Nos.1 to 4 be ordered and decreed to specifically perform the said agreement for sale, the defendants be ordered and directed to quit, vacate and hand over the possession of the suit premises to the plaintiff. In addition, the plaintiff sought a declaration that the consent decree passed in Suit No.1701 of 1994 qua the suit premises is null, illegal and inoperative and is not binding on the plaintiff.

3.5 Subsequently, the plaintiff amended the plaint so as to incorporate the relief of refund of the consideration of Rs.4,00,000/-, the amount of the stamp-duty paid and registration charges incurred by the plaintiff and damages to the tune of Rs.90,00,000/- for breach of the agreement for sale alongwith damages for mental pain and agony.

3.6 Defendant No.5 took out the Notice of Motion for rejection of the plaint inter alia on the ground that there was no cause of action qua defendant No.5, the registered instrument executed by defendant Nos.1 to 4 in favour of defendant No.5 was not challenged by the plaintiff; the suit claim was undervalued and proper court-fee stamp had not been paid and more, importantly, the suit seeking a declaration that the consent decree passed by this Court in Suit No.1597 of 1994 on 26th February, 1996 was null, illegal and inoperative was

barred by the provisions contained in Order XXIII Rule 3-A of the Code of Civil Procedure, 1908 ("the Code").

3.7 By the impugned order, the learned Civil Judge, City Civil Court, was persuaded to reject the Notice of Motion observing inter alia that the plaintiff had shown willingness to pay the court-fee on the value of the suit claim as amended and thus directed the Registry to determine the court-fee on the amended suit claim. As regards the prayer for rejection of the plaint on the ground of bar to the institution of the suit under Order XXIII Rule 3-A, the learned Judge was of the view that since the plaintiff had pleaded fraud in the matter of passing of the said consent decree, the plaint cannot be rejected on the said count.

4. Being aggrieved, defendant No.5 has invoked the revisional jurisdiction.

5. I have heard Mr. Rohit Gupta, the learned Counsel for the applicant, Mr. Nilesh Parte, the learned Counsel for respondent Nos.2, 3 and 5 and Mr. Rahul Soman, the learned Counsel for respondent No.1 – plaintiff, at some length. With the assistance of the learned Counsel for the parties, I have perused the pleadings and material on record.

6. Mr. Gupta submitted that the learned Judge, City Civil Court, committed a manifest error in law in rejecting the application for rejection of the plaint without examining the bar to the institution of fresh suit under Order XXIII Rule 3-A of the Code. Though the binding decision of the Supreme Court in the case of Triloki Nath Singh vs. Anirudh Singh (dead) through Legal Representatives and ors. (2020) 6 Supreme Court Cases 629 was referred to by the learned Judge, in the impugned order, yet, the learned Judge unjustifiably declined to follow the ratio enunciated in the said case. Emphasizing that the decision in the case of Triloki Nath Singh (supra) governs the facts of the case at hand, Mr. Gupta would urge that the determination of the issue by the trial court brushing aside the said decision in Triloki Nath Singh (supra) constitutes a material irregularity in the exercise of jurisdiction by the trial court. Mr. Gupta laid emphasis on the prayers in the plaint especially prayer clause (c). It was submitted that such a prayer seeking declaration of nullity or invalidity of a consent decree is explicitly barred by the provisions contained in Order XXIII Rule 3-A.

7. As a second limb of his submission, Mr. Gupta would urge there is no prayer of specific performance of the contract qua defendant No.5. Nor is it asserted that there was privity of contract between the plaintiff and defendant No.5. Yet, by way of amendment in the plaint, damages have been claimed against all the defendants including defendant No.5. Thus, such a suit is not tenable qua defendant No.5. Mr. Gupta further submitted that the relief of damages for mental agony and pain in a suit for specific performance is also untenable.

8. To buttress these submissions, in addition to the decision in the case of Triloki Nath Singh (supra), Mr. Gupta placed reliance on an order passed by a learned Single Judge of this Court in the case of Siddhesh Suresh Chawan vs. Suresh

Chawan and ors. IA(L)/23040/2023 in Administration Suit No.55 of 2022, dt.27/2/2022, wherein following the pronouncement in the case of Triloki Nath Singh (supra), the learned Single Judge enunciated that a stranger to the consent decree was also not entitled to institute an independent suit to seek a declaration that the consent decree is null and void. Reliance was also placed on the judgment of the Supreme Court in the case of Ghaziabad Development Authority vs. Union of India and another (2006) 6 SCC 113, wherein the Supreme Court observed that compensation for mental agony could not have been granted in a case of breach of contract to sell an immovable property.

9. In opposition to this, Mr. Soman, the learned Counsel for respondent No.1, would urge that since the plaintiff is not claiming through the parties to the consent decree, the bar under the provisions of Order XXIII Rule 3-A was not attracted. Secondly, the prayers for damages were in the alternative to the principal prayer of specific performance of the contract. Thirdly, main prayers in the suit were inseparable. Therefore, the plaint cannot be rejected in part qua a particular prayer or the defendant. To this end, Mr. Soman placed reliance on the judgments of the Supreme Court in the cases of Sejal Glass Ltd. vs. Navilan Merchants Private Ltd. (2018) 11 SCC 780, and Madhav Prasad Aggarwal vs. Axis Bank Ltd. and another (2019) 7 Supreme Court Cases 158.

10. Mr. Soman would further urge that though the Division Bench of this Court in the case of Sheela Ram Vidhani and another vs. S. K. Trading Company and others 2021 SCC OnLine Bom 864 has enunciated that a plaint as a whole can be rejected against some of the defendants in view of the earlier pronouncement in the case of Church of Christ Charitable Trust and Education Charitable Society vs. Ponniannan Educational Trust (2012) 8 SCC 706, yet the said decision cannot be said to have disturbed the position that a plaint cannot be rejected qua a part of the relief. To bolster up this proposition Mr. Soman placed reliance on a judgment passed by a learned Single Judge of this Court in the case of Smt. Sushama Tulsidas Adhav vs. Mr. Pradeep D. Shah and ors. FA/1278/2012 dated 20/9/2024.

11. Mr. Gupta joined the issue by canvassing a submission that there is no warrant to draw any distinction in the matter of rejection of the plaint in part qua a particular defendant and qua a particular prayer. The Division Bench judgment of this Court in the case of Sheela Ram Vidhani (supra) does not support such distinction. In view of the decision of the Supreme Court in the case of Church of Christ (supra) a plaint can be rejected as a whole against a particular defendant and that is what the defendant No.5 has prayed for, submitted Mr. Gupta.

12. I have given anxious consideration to the rival submissions. At the outset, it is necessary to note that the grounds of undervaluation of the suit claim and/or deficit payment of court-fee need not detain the Court. The learned Judge, City Civil Court, had directed that the court-fee be determined on the basis of the amended value of the suit claim and thereupon the plaintiff should pay the court-fee as may be determined. At any rate, a plaint cannot be straightaway rejected

on the ground of undervaluation of the suit claim and deficit court-fees. The plaintiff deserves an opportunity to correct the valuation and also pay the court-fee, within the stipulated period. Thus, I deem it appropriate to appreciate the core issue of the tenability of the suit primarily on the ground of the alleged bar in the context of the prayer seeking declarations in respect of the consent decree passed in Suit No.1701 of 1994.

13. Before advertng to appreciate the rival submissions, it may be apposite to note few facts which bear upon the determination of the said question. The plaintiff's case is based on the agreement executed by defendant Nos.1 to 4 on 23rd June, 1994 to sell the suit premises i.e. Unit No.204. The said agreement was registered on 5th December, 1994. Conversely, defendant Nos.1 to 4 and defendant No.5 had entered into a MoU in respect of Unit Nos.405, 406, 407 and 408 on the fourth floor and 107 and 108 on the first floor of the "Comet" on 30th September, 1993. Evidently, Unit No.204 was not part of the property which was agreed to be sold under the MoU dated 30th September, 1993. Defendant No.5 instituted Suit No.1701 of 1994 for specific performance of the contract contained in the MoU dated 30th September, 1993. In the said suit, the parties entered into the consent terms and under the said consent terms, Unit No.204 was professed to be sold to defendant No.5 in addition to other five units. Those consent terms were executed on 26th February, 1996 and on the strength thereof, the consent decree came to be passed on 26th February, 1996. As is evident, the agreement for sale of Unit No.204 was executed and registered before the consent terms were executed in Suit No.1701 of 1994.

14. With the aforesaid clarity on facts, the challenge to the tenability of the suit in view of the declarations sought in respect of the aforesaid consent decree, deserves to be appreciated. Rule 3 and 3-A of Order XXIII read as under:

"Order XXIII Rule 3 Compromise of suit.-

Where it is proved to the satisfaction of the Court that a suit has been adjusted wholly or in part by any lawful agreement or compromise [in writing and signed by the parties], or where the defendant satisfies the plaintiff in respect of the whole or any part of the subject-matter of the suit, the Court shall order such agreement, compromise or satisfaction to be recorded, and shall pass a decree in accordance therewith [so far as it relates to the parties to the suit, whether or not the subject-matter of the agreement, compromise or satisfaction is the same as the subject-matter of the suit]:

[Provided that where it is alleged by one party and denied by the other that an adjustment or satisfaction has been arrived at, the Court shall decide the question; but no adjournment shall be granted for the purpose of deciding the question, unless the Court, for reasons to be recorded, thinks fit to grant such adjournment.]

[Explanation.- An agreement or compromise which is void or voidable under the Indian Contract Act, 1872 (9 of 1872), shall not be deemed to be lawful within

the meaning of this rule.]

3-A. Bar to suit.- No suit shall lie to set aside a decree on the ground that the compromise on which the decree is based was not lawful.

15. It would be imperative to note that by CPC Amendment Act, 104 of 1976, the words, "so far as it relates to the parties to the suit, whether or not the subject matter of the agreement, compromise or satisfaction is the same as the subject matter of the suit", came to be substituted for the words, "so far as it relates to the suit". Before Rule 3 of Order XXIII suffered the said amendment, the Court was enjoined to pass a decree in accordance with the agreement, compromise or satisfaction so far as it related to the suit. That gave rise to the questions as to whether a decree which referred to the terms of compromise in respect of the matters beyond the scope of the suit was executable or whether the terms of the decree relating to the matters outside the suit could be enforced only by a separate suit. To obviate such controversy, by way of amendment, the Parliament provided that the compromise or settlement can also be in respect of the matters which are not the same as the subject matter of the suit.

16. Thus, the inclusion of the suit premises i.e. Unit No.204, in the consent terms, though the MoU was not in respect of the suit premises and the suit was not filed for the performance of the contract to sell the suit premises, can not be said to be legally impermissible. Though the legality of the compromise in respect of the suit premises, on the ground that it was not the subject matter of Suit No.1701 of 1994, cannot be legitimately questioned, yet, the Court cannot be oblivious of the consequences that emanate therefrom especially on the rights of the plaintiff. The prayers in the plaint in the instant suit are required to be considered keeping in view the aforesaid backdrop.

17. Rule 3-A of Order XXIII introduced by Act, 104 of 1976 is, in a sense, absolute. It provides that no suit shall lie to set aside a decree on the ground that the compromise on which the decree is based was not lawful. The said Rule is required to be read alongwith the Explanation to Rule 3 which clarifies that an agreement or compromise which is void or voidable under the Indian Contract Act, 1872, shall not be deemed to be lawful within the meaning of Rule 3. The remedy for a party who alleges that the compromise is not lawful and the compromise decree is not valid, legal and binding, is to approach the Court which has passed the decree in accordance with the agreement, compromise or satisfaction recorded by the Court.

18. An endeavour was made by Mr. Soman to urge that the compromise decree in the instant case has been fraudulently obtained. The plaintiff not being a party to the said consent decree, was not required to approach the Court which passed such consent decree and was entitled to seek a declaration that the consent decree does not bind him by filing independent suit. The decision of the Supreme Court in the case of Triloki Nath Singh (*supra*) on which reliance was placed by Mr. Gupta addresses the submission sought to be canvassed by Mr.

Soman.

19. In the case of Triloki Nath Singh (supra), the Supreme Court after adverting to the previous pronouncement, including the decisions in the cases of Pushpa Devi Bhagat (dead) through LR vs. Rajinder Singh and others (2006) 5 SCC 566 and R. Ranjana Vs. S. r. Venkataswamy (2014) 15 SCC 471 enunciated the law as under:

"17. By introducing the amendment to the Civil Procedure Code(Amendment) 1976 w.e.f. 1st February, 1977, the legislature has brought into force Rule 3A to Order 23, which create bar to institute the suit to set aside a decree on the ground that the compromise on which decree is based was not lawful. The purpose of effecting a compromise between the parties is to put an end to the various disputes pending before the Court of competent jurisdiction once and for all.

18. Finality of decisions is an underlying principle of all adjudicating forums. Thus, creation of further litigation should never be the basis of a compromise between the parties. Rule 3-A of Order 23 CPC put a specific bar that no suit shall lie to set aside a decree on the ground that the compromise on which the decree is based was not lawful. The scheme of Order 23 Rule 3 CPC is to avoid multiplicity of litigation and permit parties to amicably come to a settlement which is lawful, is in writing and a voluntary act on the part of the parties. The Court can be instrumental in having an agreed compromise effected and finality attached to the same. The Court should never be party to imposition of a compromise upon an unwilling party, still open to be questioned on an application under the proviso to Rule 3 of Order 23 CPC before the Court.

.....

20. Thus, after the amendment which has been introduced, neither any appeal against the order recording the compromise nor remedy by way of filing a suit is available in cases covered by Rule 3-A of Order 23 CPC. As such, a right has been given under Rule 1A(2) of Order 43 to a party, who denies the compromise and invites order of the Court in that regard in terms of proviso to Rule 3 of Order 23 CPC while preferring an appeal against the decree. Section 96(3) CPC shall not be a bar to such an appeal, because it is applicable where the factum of compromise or agreement is not in dispute."

20. In the said case also, the appellant therein was not a party to the compromise decree. Repelling the contention that since the appellant was not a party to the compromise decree, he could institute a suit assailing the legality and validity of the same, the Supreme Court observed that the fact that the appellant was not a party to the compromise decree would not give him a cause of action to question the validity of the compromise decree passed by the High Court by way of a substantive suit before the Civil Court to declare it as fraudulent, illegal and not binding on him. The observations in paragraph 22 and 23 read as under:

"22. Indeed, the appellant was not a party to the stated compromise decree. He was, however, claiming right, title and interest over the land referred to in the stated sale deed dated 6-1-1984, which was purchased by him from Sampatiya judgment-debtor and party to the suit. It is well settled that the compromise decree passed by the High Court in the second appeal would relate back to the date of institution of the suit between the parties thereto. In the suit now instituted by the appellant, at the best, he could seek relief against Sampatiya, but cannot be allowed to question the compromise decree passed by the High Court in the partition suit. In other words, the appellant could file a suit for protection of his right, title or interest devolved on the basis of the stated sale deed dated 6-1-1984, allegedly executed by one of the party (Sampatiya) to the proceedings in the partition suit, which could be examined independently by the Court on its own merits in accordance with law. The trial Court in any case would not be competent to adjudicate the grievance of the appellant herein in respect of the validity of compromise decree dated 15-9-1994 passed by the High Court in the partition suit.

22. In other words, the appellant can only claim through his predecessor - Sampatiya, to the extent of rights and remedies available to Sampatiya in reference to the compromise decree. Merely because the appellant was not party to the compromise decree in the facts of the present case, will be of no avail to the appellant, much less give him a cause of action to question the validity of the compromise decree passed by the High Court by way of a substantive suit before the civil Court to declare it as fraudulent, illegal and not binding on him. Assuming, he could agitate about the validity of the compromise entered into by the parties to the partition suit, it is only the High Court, who had accepted the compromise and passed decree on that basis, could examine the same and no other Court under proviso to Rule 3 of Order 23 CPC. It must, therefore, follow that the suit instituted before the civil Court by the appellant was not maintainable in view of specific bar under Rule 3-A of Order 23 CPC as held in the impugned judgment. "

(emphasis supplied)

21. In view of the aforesaid pronouncement of the Supreme Court in the case of Triloki Nath Singh (supra) the submission of Mr. Soman premised on the fact that the plaintiff was not a party to the said suit or for that matter the said decree was obtained fraudulently, does not merit countenance.

22. In the facts of the case at hand, however, the aforesaid exposition of law cannot be pressed into service to non-suit the plaintiff qua defendant No.5. The reasons are not far to seek.

23. Firstly, the proposition that a plaint can be rejected, as a whole against defendant No.5, or for that matter, on account of the declarations sought in respect of the consent decree, cannot be accepted unreservedly. It is pertinent to note that in the case of Sheela Ram Vidhani (supra), attention of the Division

Bench of this Court does not seem to have been drawn to a Three-Judge Bench judgment of the Supreme Court in the case of D. Ramchandran vs. R. V. Jankiraman and others (1999) 3 Supreme Court Cases 267, which preceded the decision in the case of Church of Christ (supra). In the case of D. Ramchandran (supra), the Three-Judge Bench has explicitly enunciated that under Order VII Rule 11(a) of the Code, there cannot be a partial rejection of the plaint or the petition. In the said decision, a reference was made by the Supreme Court to an earlier judgment in the case of Roop Lal Sathi vs. Nachhattar Singh Gill (1982) 3 Supreme Court Cases 487, wherein the Supreme Court enunciated that where the plaint discloses no cause of action, it is obligatory upon the Court to reject the plaint as a whole under Order VII Rule 11(a) of the Code, but the rule does not justify the rejection of any particular portion of a plaint.

24. Secondly, as noted above, the suit premises was agreed to be sold to the plaintiff by defendant Nos.1 to 4 under the agreement for sale dated 23rd June, 1994, which came to be registered on 5th December, 1994. Under Section 40 of the TP Act, an agreement for sale gives rise to an obligation annexed to the ownership of the immovable property though it does not amount to an interest therein. Such right or obligation may be enforced against a transferee with notice thereof but not against a transferee for consideration and without notice of right or obligation. It would be contextually relevant to note that under Section 19 of Specific Relief Act, specific performance of a contract may be enforced against either party thereto and any person claiming under him by a title arising subsequently to the contract except a transferee, who has paid his money in good faith and without notice of the original contract.

25. A conjoint reading of aforesaid provisions leads to an inescapable inference that in the facts of the case at hand, the defendant No.5, who is claiming under defendant Nos.1 to 4 on the basis of a subsequent title, can be made liable to specifically perform the contract for sale executed by defendant Nos.1 to 4 in favour of the plaintiff, provided the other conditions are satisfied.

26. It is also necessary to note that there is no magic or charm in a compromise decree. By its own force a compromise decree does not stand on a higher pedestal than a contract between the parties, who have entered into such compromise or settlement. It is trite a consent decree is nothing but the contract between the parties superimposed with the imprimatur of the Court. The validity of the consent decree thus completely hinges upon the validity of the agreement or compromise on the strength of which it is made. Thus, if the subsequent agreement or title is subservient to the obligation created by a prior agreement by the vendor, the compromise decree would not insulate such subsequent agreement from the consequences that emanate in the event of the specific performance of the first agreement.

27. The purpose for which a subsequent transferee is required to be joined in a suit for specific performance also deserves to be kept in view. To convey complete title to the plaintiff, in the event of grant of decree of specific

performance of the contract, the transferee is made to join in the execution of the instrument alongwith the vendor. A profitable reference in this context can be made to the decision of the Supreme Court in the case of Durga Prasad vs. Deep Chand AIR 1954 SC 75 where the Supreme Court underscored the necessity of impleading the transferee of the vendor in a suit for specific performance of the contract to sell immovable property, in the following words:

"42. In our opinion, the proper form of decree is to direct specific performance of the contract between the vendor and the plaintiff and direct the subsequent transferee to join in the conveyance so as to pass on the title which resides in him to the plaintiff. He does not join in any special covenants made between the plaintiff and his vendor; all he does is to pass on his title to the plaintiff. This was the course followed by the Calcutta High Court in Kafiladdin v. Samiraddin AIR 1931 Cal 67(C), and appears to be the English practice. See Fry on Specific Performance, 6th edition, page 90, Paragraph 207 ; also Potter v. Sanders (1846) 67 ER 1057 (D). We direct accordingly.

(emphasis supplied)

28. In the case of Dwarka Prasad Singh vs. Harikant Prasad Singh (1973) 1 SCC 179 after following the decision in the case of Durga Prasad

(supra) while resolving the controversy with regard to the question whether in a suit for specific performance against a purchaser with notice of a prior agreement of sale the vendor is a necessary party or not, another Three-Judge Bench of the Supreme Court enunciated the law as under:

"..... This Court has, however, held in Lala Durga Prasad & Another v. Lala Deep Chand & Others ([1954] S.C.R, 360) that in a suit instituted by a purchaser against the vendor and a subsequent purchaser for specific performance of the contract of sale the proper form of the decree is to direct specific performance of the contract between the vendor and the plaintiff and further direct the subsequent transferee to join in the conveyance so as to pass on the title which resides in him to the plaintiff. This was the course followed by the Calcutta High Court in the above case and it appears that the English practice was the same. Thus according to this decision, the conveyance has to be executed by the vendor in favour of' the plaintiff who seeks specific performance of the contract in his favour and the subsequent transferee has to join in the conveyance only to pass his title- which resides in him. It has been made quite clear that he does not join in any special covenants made between the plaintiff and his vendor. All that he does is to pass on his title to the plaintiff. In a recent decision of this Court in R. C. Chandiok & Another v. Chunni Lal Sabharwal & Others ([1971] 2 SCR 573) while passing a decree for specific performance of a contract a direction was made that the decree should be in the same form as in Lala Durga Prasad's case. It is thus difficult to sustain the argument that the vendor is not a necessary party when, according to the view accepted by this Court, the conveyance has to be executed by him although the subsequent purchaser has

also to join so as to pass on the title which resides in him to the plaintiff.”

29. Mr. Gupta attempted to salvage the position by forcefully submitting that the plaintiff in the instant case has not sought relief of specific performance against defendant No.5. I am afraid, this submission does not carry much conviction. Once defendant No.5 is impleaded as a party defendant and in view of the aforesaid enunciation of law the defendant No.5 becomes a necessary party to the suit for specific performance, the fact that no relief is claimed against defendant No.5 does not detract materially from the suit for specific performance. It is trite, whether the plaintiff is entitled to the various reliefs claimed in the plaint is a matter for adjudication at the trial. For the same reason, the submission on behalf of defendant No.5 that the plaint does not disclose a cause of action against defendant No.5 falls through.

30. The conspectus of aforesaid consideration is that the impugned order deserves to be sustained, albeit, for different reasons. Resultantly, the application deserves to be rejected.

31. Hence, the following order:

:ORDER:

(i) The application stands rejected with costs.

(ii) By way of abundant caution, it is clarified that the observations are confined to determine the legality, propriety and correctness of the impugned order and the trial court shall not be influenced by any of the observations while adjudicating the suit.