(2013) 07 BOM CK 0061

In the Bombay High Court

Case No : Notice of Motion (L) No. 965 of 2012 in Suit No. 2454 of 2012

M/s. Pride Associates and Others APPELLANT

Vs

Damodardas Bhaidas Bhuta and Others RESPONDENT

Date of Decision : 26-07-2013

Acts Referred:

Evidence Act, 1872 — Section 115
Specific Relief Act, 1963 — Section 12, 12(4), 22, 22(2)
Succession Act, 1925 — Section 307
Transfer of Property Act, 1882 — Section 41, 43, 44, 8

Citation : (2013) 5 ABR 729

Hon'ble Judges : S. J. Kathawalla, J

Bench : Single Bench

Advocate : Ankit Lohia, Instructed by Smt. Nilam Santosh Pawar, for the Appellant; Ravi Kadam , Instructed by M/s. Divya Shah Associates for Defendant Nos. 1 to 6 and Mr. D.D. Madon , Instructed by Mr. Jayesh R. Vyas for Defendant Nos. 9 to 11, for the Respondent

Judgement

S. J. Kathawalla, J.—The above Suit is filed by the Plaintiffs for specific performance of an Agreement for Sale dated 4th June, 2005 ("Suit Agreement") (at Exhibit-A, Page 44 of the Plaint), executed by Defendant Nos. 1 to 4 and late Mrs. Hansa R. Modi, whose legal heirs are Defendant Nos. 5 and 6, and for conveyance in favour of the Plaintiffs of Plot bearing Survey No. 37, Hissa Nos. B, C and D and CTS No. 429-B and 429/1 to 286 of Village Mogra, Taluka Andheri, Andheri (East), Mumbai Suburban District, admeasuring 27,000 sq. mtrs. or thereabouts, referred to in the pleadings as "the suit property". The Plaintiffs have in the Suit taken out the above Notice of Motion for appointment of a Court Receiver as the Receiver of the suit property and for a temporary injunction restraining the Defendants from in any manner dealing with, transferring, alienating, encumbering, creating third party rights and/or parting with possession of the suit property. The facts in the matter are briefly set out hereunder:

2. The Plaintiff No. 1 is a registered Partnership Firm and Plaintiff Nos. 2 to 9 are the Partners of Plaintiff No. 1. The family tree of the Defendants is as under:

(a) Defendant No. 1, late Mr. Vasantrai B. Bhuta, late Smt. Bhanumati C. Sheth and late Mrs. Hansa R. Modi were the two sons and two daughters of late Mr. Bhaidas D. Bhuta respectively;

(b) Defendant No. 2 and late Mrs. Jayashree P. Dalal are the son and daughter of late Mr. Vasantrai Bhuta respectively;

(c) Defendant No. 3 is the son of late Mrs. Jayashree P. Dalal;

(d) Defendant No. 4 is the daughter of late Smt. Bhanumati C. Sheth;

(e) Defendant Nos. 5 and 6 are the legal heirs of late Mrs. Hansa R. Modi;

(f) Defendant Nos. 7 and 9 are the sons of Defendant No. 1. Defendant Nos. 8 and 10 are the wives of Defendant Nos. 7 and 9 respectively;

(g) Defendant No. 11 is the wife of Defendant No. 2.

3. As can be seen from the Suit Agreement, Defendant Nos. 1 to 4 and late Mrs. Hansa R. Modi represented to the Plaintiffs that they are the legal heirs of late Mr. Bhaidas D. Bhuta. Under the Suit Agreement read with the Declaration dated 21st June, 2005 (annexed at Exhibit-C to the Plaint at page 74), Defendant Nos. 3 and 4 and late Mrs. Hansa R. Modi relinquished their rights in respect of the suit property in favour of Defendant Nos. 1 and 2.

4. According to the Plaintiffs, relying on the representations made by Defendant Nos. 1 to 4 and late Mrs. Hansa R. Modi, the Plaintiffs executed an Agreement for Sale in respect of the suit property for a consideration of Rs. 95/- per sq. ft. amounting to a total consideration of Rs. 2,75,99,400/-. Under the Suit Agreement, Defendant Nos. 1 to 6 were obliged to hand over all the documents of title to the Plaintiffs in order to make out a clear and marketable title and remove all defects in title including claims; to execute all documents for perfecting the title of the Plaintiffs; and to execute a General Power of Attorney in favour of the Plaintiffs.

5. Out of the total consideration of Rs. 2,75,99,400/-, Rs. 50,00,000/- was paid on or before the execution of the Suit Agreement. The balance consideration was payable within a period of six months i.e. by December 2005, the same was subject to finalization after survey of the plot and after ascertaining the exact area. However, the Plaintiffs out of the total consideration of Rs. 2,75,99,400/-, paid a sum of Rs. 1,55,00,000/- upto 20th May, 2006. It is submitted by the Plaintiffs that it is clear that the Defendant Nos. 1 and 2 continued to accept consideration from the Plaintiffs beyond the specified period of six months and never considered time to be the essence of the contract.

6. According to the Plaintiffs, they were thereafter informed that the Defendant Nos. 7 and 8 had filed Suit No. 1299 of 2006 before this Court and vide an order

dated 5th May, 2006, this Court had restrained, inter alia, all the Defendants herein from in any manner "dealing with or disposing of or transferring or alienating or encumbering or parting with possession of the suit property".

7. The Plaintiff No. 1 herein filed Chamber Summons No. 1582 of 2006 in Suit No. 1299 of 2006 before this Court and sought to be impleaded as a party Defendant in Suit No. 1299 of 2006. The Plaintiffs expressed their readiness and willingness to perform the Suit Agreement and to pay the balance consideration. However, the Defendant Nos. 7 and 8 filed Affidavits-in-reply to the Chamber Summons, inter alia, contending that the Plaintiffs herein are not necessary parties to the suit; the decree would not in any manner bind the Plaintiffs herein; the Plaintiffs are free to file independent proceedings; and the Plaintiffs herein are not concerned with the controversy involved in the Suit and have no locus.

8. The said Chamber Summons No. 1582 of 2006 filed by the Plaintiffs came to be dismissed by this Court by an order dated 9th February, 2007, on the ground that the Plaintiff No. 1 was neither a proper nor necessary party to the Suit for administration of the estate of late Mr. Bhaidas D. Bhuta. The Learned Single Judge (Coram: Mrs. R.S. Dalvi, J.) also made certain observations as regards the validity of the Suit Agreement for want of registration and payment of stamp duty. The Plaintiffs have submitted that such observations of the Learned Single Judge have to be read in the light of the issue before the Court i.e. the question whether the Plaintiffs herein were necessary or proper parties.

9. On 7th March, 2008, the Suit Agreement was lodged for adjudication of stamp duty. However, according to the Plaintiffs, due to procedural reasons, the adjudication did not take place for a long period of time. Subsequently on 28th August, 2011, since the injunction on the suit property was not vacated and for some time the Suit Agreement was not traceable in the office of the stamp authorities, the Plaintiffs withdrew the Suit Agreement from the adjudication office under the cover of a letter dated 25th August, 2011.

10. According to the Plaintiffs, in or about February 2012, the Plaintiffs discovered that on 3rd August, 2011, the Defendants had entered into Consent Terms in Suit No. 1299 of 2011 and this Court had passed an order dated 3rd August, 2011, in terms of the Consent Terms. The Plaintiffs were also given to understand that the injunction in respect of the suit property had been vacated by this Court. The Plaintiffs therefore requested Defendant Nos. 1 and 2 to execute a conveyance in favour of the Plaintiffs in respect of the suit property and the Plaintiffs expressed their readiness and willingness to pay the balance consideration. The Consent Terms dated 3rd August, 2011, executed inter se between the Defendants herein and the others, inter alia, provided as under:

(i) The Defendants herein have inter se settled their disputes and differences;

(ii) The Consent Terms are in pursuance of the Family Agreement entered into between the parties;

(iii) The bequest under the Will and the Probate stand modified to the extent and in the manner set out herein;

(iv) The suit property herein is partitioned and the undivided shares are to be held jointly. The agreed, defined and absolute undivided share of the Defendants are as under:

(a) Defendant Nos. 7 and 8 herein: 16.67%

(b) Defendant No. 1 herein: 16.65%

(c) Defendant Nos. 9 and 10 herein: 16.67%

(d) Defendant Nos. 2 and 11 herein: 50%

(v) Various other properties which are the subject matter of the Will are re-allotted to the parties therein and consideration is exchanged between the parties;

(vi) The Consent Terms are irrevocable, final and binding on all the parties; and

(vii) All allegations made by Defendant Nos. 7 and 8 herein against the other Defendants in the Suit are unconditionally withdrawn by Defendant Nos. 7 and 8 herein.

11. As stated in paragraph 3 of the Consent Terms dated 3rd August, 2011, the Consent Terms were arrived at as per the Agreements inter se between the Defendants named as Family Arrangement-I and Family Arrangement-II, both dated 3rd August, 2011. The Family Arrangement-I in recital ''B'' thereof records that Defendant Nos. 1 to 4 and late Mrs. Hansa R. Modi with whom the Plaintiffs have entered into the Suit Agreement are the legal heirs and representatives of late Mr. Bhaidas D. Bhuta as per the provisions of the Hindu Succession Act, 1956. In paragraph ''O'' of the Family Arrangement-I at page 262 of the Plaint, it is stated that "as per the provisions of the said Will, the devises or bequests made thereunder by the said Bhaidas Bhuta to the said Trust have failed to take effect". It is further stated in recitals ''R'' and ''S'' that the Family Arrangement is being entered into for the purpose of settling longstanding disputes and differences amongst the family members.

12. In Clauses 11 to 14 of the Consent Terms, the Defendants herein have inter alia not only acknowledged and confirmed the Suit Agreement but have also agreed to accept consideration under the Suit Agreement. The terms as recorded in the Family Arrangement-I in paragraphs 11 to 14 are reproduced hereunder:

11. The Property being CTS No. 429B and 429/1 to 286 of Village Mogra (hereinafter referred to as "the said Mogra Property") more particularly described in Annexure "VII" hereto is at present standing in the name of said Bhaidas Bhuta, said Damodardas and late Vasantrai Bhuta in following proportion:

(a) Late Bhaidas Bhuta - 55%

(b) Late Vasantrai Bhuta - 16.75%

(c) Damodardas Bhuta - 16.75%

12. The parties hereto do hereby confirm that said Damodardas, said Dinesh, said Jash, said Triguna and Hansa Mody (now deceased) have already agreed to sell the said Mogra Property (more particularly described in Annexure "VII hereto) to M/s. Pride Associates (said Pride). The said Damodardas and others have entered into Agreement for Sale with the said Pride for sale of the said Mogra Property described in Annexure "VII" hereto. Pursuant to the said Agreement for Sale dated 4th June 2005, the said Damodardas has received a sum of Rs. 67,50,000/- (Rupees Sixty Seven Lakhs Fifty Thousand only) and said Dinesh has received a sum of Rs. 87,60,000/- (Rupees Eighty Seven Lakhs Sixty Thousand only) from the said Pride.

I) In view the lapse of considerable time in the market value of the Property described in Annexure "VII" hereto has increased. The said Damodardas and said Dinesh (on behalf of Ila) are negotiating with the said Pride either to increase the consideration or cancel the Agreement for Sale executed with them. Pending negotiations with the said Pride said Damodardas shall pay Rs. 22,49,640/- each to said Ashok along with said Smita and said Naresh along with the said Chitra being the amount received by him under the said Agreement for Sale dated 4th June, 2005.

(II) All the parties have unilaterally agreed that since the said Pride has not made any substantial progress for settlement with other co-owners and made payment to other co-owners, the said Dinesh (on behalf of Ila), said Naresh, said Chitra, Said Ashok and the said Smita shall jointly endeavour to renegotiate the terms of the said Agreement for Sale, with the said Pride either to cancel the said Agreement for Sale or pay the price acceptable to all the parties.

(III) In the event if the said Damodardas, said Ashok, said Smita, said Naresh, said Chitra and said Dinesh (on behalf of Ila) succeed in renegotiating of the price with the said Pride, the consideration which would be received for the said Mogra Property described in Annexure "VII" hereto shall be distributed in following manner:

(a) Damodardas b - 16.75%

(b) Ashok and Smita jointly - 16.62%

(c) Naresh and Chitra jointly - 62%

(d) Ila 50% (50% out of the shares of said Bhaidas i.e. 33.25% and 16.75% being the share inherited as heir of Vasantrai Bhuta) The amount already received by the said Damodardas and Dinesh shall first be adjusted against their share at the time of receiving the consideration.

(IV) In the event the said Pride agrees to cancel the said Agreement for Sale then the said Mogra Property shall stand allotted to said Damodardas, said

Ashok, said Smita, said Naresh, said Chitra and said Ila in the proportion set out hereinabove and they shall jointly sell the said Mogra Property and share the sale proceeds in the same proportion as set out hereinabove within 4 months from execution hereof.

13. In the event the negotiation with the said Pride could not be materialized then all the parties shall jointly prosecute the suit and bear costs for the same in proportion to their respective shares.

14. Provided further it is agreed amongst the parties hereto that in the event if the said Agreement for Sale is terminated, determined or cancelled for any reason whatsoever and the parties are required to refund the amounts payable to the said Pride then the parties who have received such funds shall refund the same and the parties who have not received any amount shall not be required to compensate in the repayment.

It is further recorded in paragraphs 37 and 38 of the Family Arrangement-I that the parties hereto, including the Defendants herein, shall do, execute or cause to be done and execute all such acts, deeds, and things and/or supply information and/or sign documents and other papers as are required to give effect to the Family Arrangement. It is an undisputed position that the Consent Terms dated 3rd August, 2011, along with the Family Arrangement-I and Family Arrangement-II now form a part of a decree of this Court.

13. According to the Plaintiffs, till about the first week of March 2012, Defendant Nos. 1 and 2 expressed their readiness and willingness to convey the suit property in accordance with the terms of the Suit Agreement. However, in the first week of March 2012, Defendant Nos. 1 and 2 contended that they were not in a position to convey the suit property, since the Defendant Nos. 7 to 11 were not parties to the Suit Agreement. Immediately thereafter, the Plaintiffs issued public notices dated 10th March, 2012, annexed at Exhibits-L and O of the Plaint at pages 223 to 226.

14. In reply to the public notice issued by the Plaintiffs, Defendant Nos. 1, 2, 7 to 11, by their Advocate''s letter dated 12th March, 2012, addressed jointly on their behalf contended as under:

2. Our clients are shocked and surprised to read the public notice caused to be published by you for and on behalf of your clients M/s. Pride Associates, for the reasons set out hereinafter:

(i) You are aware that your clients had approached the Hon''ble High Court for adjudicating disputes between our respective clients in respect of the said Property on the basis of the Agreement for Sale dated 4th June, 2005 (hereinafter referred to as "said Agreement") and the Hon''ble High Court in its order dated 9th February, 2007 expressly ruled and the abstract of the said Order is as follows:

...the Applicant (your clients) derive no right, title and interest thereon since the document is neither registered nor sufficiently stamped. Thus, the Applicant cannot sure on the Agreement.

(ii) Assuming without admitting and as contended by your client in the said Public Notice that the said Agreement is valid, legal and binding, our clients have instructed us to state that in fact your clients have not complied with any of their obligations under the said Agreement and hence your clients have no right, title or interest on the said Property.

(iii) Our clients have already conveyed to your clients termination of the said alleged Agreement due to non-compliance of obligation by your clients in the past.

(iv) Our clients do not admit that any Power of Attorney (POA) was executed by our clients, as contended by you in the Public Notice. However, without prejudice to our clients contentions, our clients call upon you to offer inspection of the said Power of Attorney, if any, executed by our clients and assuming without admitting that such a Power of Attorney is executed by our clients, our clients hereby revoke the same and call upon your clients to return the original thereof duly marked as "Cancelled" together with the original of the said Agreement which already stands terminated.

15. On 14th March, 2012, the Defendant Nos. 1, 2, 7 to 11 jointly issued a public notice dated 12th March, 2012, stating that they were negotiating with third parties to sell the suit property.

16. In the circumstances, the Plaintiffs filed the present Suit on 19th March, 2012, and the present Notice of Motion has been taken out by the Plaintiffs to seek interim reliefs as set out hereinabove. In the present Notice of Motion, this Court (Coram: S.J. Vazifdar, J.) by an order dated 21st March, 2012, passed an ad-interim order restraining the Defendants from creating third party rights in respect of the suit property. Defendant Nos. 9 to 11 filed an Appeal against the ad-interim order dated 21st March, 2012. The Hon''ble Division Bench vide an order dated 3rd April, 2012, expedited the hearing of the present Notice of Motion and continued the ad-interim order.

17. Mr. Ankit Lohia, the learned Advocate appearing for the Plaintiffs, submitted that Defendant No. 1 was the Executor of the Estate of late Mr. Bhaidas Bhuta and was entitled to deal with the Estate under the provisions of Section 307 of the Indian Succession Act, 1925. He submitted that though the Suit Agreement does not reflect that Defendant No. 1 had entered into the Suit Agreement in his capacity as an Administrator of the Estate of late Mr. Bhaidas D. Bhuta, the misrepresentation, if any, with regard to the capacity in which Defendant No. 1 was dealing with the suit property, does not vitiate the Suit Agreement. He contended that the principles of Section 115 of the Evidence Act, 1872 and Section 43 of the Transfer of Property Act, 1882, would apply and Defendant No. 1 would be bound by the Suit Agreement even in his capacity as an Executor of the Estate. In support of his submission, he relied upon the judgment of this

Court in Mithibai Vs. Meherbai, . He further relied on the Judgment of the Delhi High Court in the case of Smt. Chand Rani Mehra and others Vs. Om Shankar Mehra, and the judgment of the Hon''ble Supreme Court in Renu Devi Vs. Mahendra Singh and Others, .

18. Relying on the aforesaid judgments, the Learned Advocate for the Plaintiffs submitted that Defendant Nos. 1 to 6 are not entitled to rely upon the misrepresentation, if any, in the Suit Agreement with regard to the capacity in which they were acting. He submitted that the fact that Defendant Nos. 1 to 6 represented to the Plaintiffs that they are the sole owners of the property does not vitiate the Suit Agreement merely because Defendant No. 1 was entitled to deal with the suit property in a different capacity. It is further submitted that once it is held that Defendant No. 1 was entitled to deal with the suit property in his capacity as an Executor of the Estate, merely because the document has not been executed by Defendant No. 1 in his capacity as an Executor, does not disentitle the Plaintiffs from a decree of specific performance against the Estate of late Mr. Bhaidas D. Bhuta, inasmuch as Defendant No. 1 is estopped from pleading want of title under the provisions of Section 115 of the Evidence Act, 1872.

19. The learned Advocate appearing for the Plaintiffs submitted that Defendant No. 1 as the Executor of the Estate, was entitled to deal with the suit property without probate being obtained and title in the suit property would vest in the Executor immediately upon the death of the testator. He submitted that in the present case, Defendant Nos. 7 to 11 exercised their remedies against the Executor (Defendant No. 1), and under the Consent Terms in paragraph 12 (1) at page 271, agreed to accept the benefit under the Suit Agreement. He therefore submitted that the Defendants cannot be permitted to challenge the authority of Defendant No. 1 to deal with the suit property. He further submitted that the allegations against Defendant No. 1 with regard to the alleged lack of authority have been unconditionally withdrawn by consent of all the parties. The learned Advocate appearing for the Plaintiffs, without prejudice and in the alternative to his above submissions, further submitted that Defendant Nos. 7 to 11, who contend to be the co-owners of the suit property, are in law put to an election with regard to the Suit Agreement. Under the Family Arrangement - I annexed to the Consent Terms dated 3rd August, 2011, filed in Suit No. 1299 of 2006, Defendant Nos. 7 to 10 have clearly elected to accept benefit under the Suit Agreement by agreeing to accept a part of the consideration pending the alleged negotiations with the Plaintiffs. He submitted that Defendant Nos. 7 to 11 have voluntarily made a choice of accepting the benefit under the Suit Agreement and therefore have renounced everything inconsistent with it. The mere fact that the acceptance of benefit is subject to renegotiation with the Plaintiffs does not make the election qualified. In support of these submissions, the learned Advocate appearing for the Plaintiffs relied upon the Judgment of this Court in Sir Mahomed Yusuf Vs. Hargovandas Jivan, and the judgment of the Hon''ble Supreme Court in the case of C. Beepathumma and Others Vs. V.S.

Kadambolithaya and Others, .

20. The learned Advocate appearing for the Plaintiffs further submitted that Defendant Nos. 7 to 10 have expressed an unequivocal intention to accept and retain the benefits of the Suit Agreement pending the alleged negotiations. Once having elected to accept the benefit of even a part of the contract, the Defendants have renounced their right, if any, to dispute the Suit Agreement and/ or the authority of Defendant Nos. 1 to 6 to deal with the suit property. He submitted that under the Family Arrangement - I, all the Defendants treated the Agreement as valid and binding till such time as the same was jointly terminated by the Plaintiffs and the Defendants. The fact that the Defendants jointly expected performance from the Plaintiffs is also clear from the termination notice dated 12th March, 2012 (annexed at Exhibit-Q to the Plaint) inasmuch as the Suit Agreement is jointly purported to be terminated by the Defendants on the alleged ground of non-performance. It is further submitted that the allegations with regard to the lack of authority of Defendant No. 1 to deal with the suit property, as stated in Suit No. 1299 of 2006 filed by Defendant Nos. 7 and 8, have been unconditionally withdrawn under Clause 52 of the Consent Terms at page 273 of the Plaint. Further, other than Defendant Nos. 7 and 8, no other person claiming to be interested in the suit property has filed any suit/proceeding to challenge the rights created by Defendant Nos. 1 and 2.

21. It is submitted that the fact that the Defendants treated the Agreement as valid is also clear from Clauses 12 to 14 of the Family Arrangement wherein the Defendants have jointly agreed to terminate the Suit Agreement. It is therefore clear that at the time when the Consent Terms were entered into as well as on 12th March, 2012, the Defendants did not perceive the Suit Agreement to be invalid on the alleged ground of lack of authority of Defendant No. 1.

22. The learned Advocate appearing for the Plaintiffs, in the alternative to the above submissions, submitted that it is clear from the Plaint in Suit No. 1299 of 2006 that the authority of Defendant No. 1 to deal with the Estate of late Mr. Bhaidas D. Bhuta was never disputed by any of the Defendants and it was "for the first time" when the Suit Agreement was entered into, that the authority of Defendant No. 1 was disputed. It is therefore submitted that the Defendant No. 1 was the ostensible owner of the property and the purported real owners of the property cannot dispute an alienation made by the ostensible owner. Therefore, the Plaintiffs are entitled to rely upon the provisions of Section 41 of the Transfer of Property Act and seek a decree for specific performance against all the Defendants. It is also submitted that pursuant to the purported modification of the Will of late Mr. Bhaidas D. Bhuta and the probate granted by this Court, the Defendants have rearranged their respective shares in the Estate of late Mr. Bhaidas D. Bhuta, the Defendants have relinquished their right under the Will, and can no longer rely upon the Will as the source of title. The arrangement entered into by way of the Consent Terms is an independent contract between the parties entered into subsequent to the Suit Agreement and therefore is not

binding upon the Plaintiffs.

23. Without prejudice to the above contention and in the alternative it is submitted on behalf of the Plaintiffs that Defendant No. 1 is admittedly a joint owner of the suit property to the extent of 16.65 per cent. It is further submitted that under the Consent Terms, Defendant Nos. 2 and 11 herein have an undivided 50 per cent joint interest in the suit property. It is submitted that at least with regard to the joint shares of Defendant Nos. 1 and 2, the Plaintiffs are entitled to specific performance and conveyance of the undivided interest. It is further submitted that Defendant Nos. 7 and 8 have not contested the present Notice of Motion and therefore the Plaintiffs are entitled to an injunction with respect to the undivided 16.67% share of Defendant Nos. 7 and 8. It is therefore submitted that even assuming without admitting that the Plaintiffs are not entitled to a decree of specific performance against Defendant Nos. 9 and 10, the reliefs as prayed for in the present Notice of Motion ought to be granted. This is without prejudice to the submission of the Plaintiffs that since Defendant Nos. 9 and 10 are acting jointly with Defendant No. 11, Defendant Nos. 9 and 10 would be bound in the same manner as Defendant No. 11. It is further submitted that the intention of the Defendants to sell the suit property jointly is clear from the public notice dated 12th March, 2012 published on 14th March, 2012 (Exhibit-R on page 324 of the Plaint). The contention of the Defendants that they have an independent interest and that they are distinct from each other is contrary to the admitted documents on record viz. the Consent Terms, Family Arrangement I, termination notice dated 12th March, 2012 and the public notice dated 12th March, 2012, wherein the Defendants have acted jointly.

24. It was therefore submitted on behalf of the Plaintiffs that they have made out a prima facie case in their favour and that if the reliefs sought in the Notice of Motion are not granted, grave and irreparable harm, loss, injury and prejudice will be caused to the Plaintiffs whereas no harm, loss, damage, injury and prejudice will be caused to the Defendants if the reliefs as sought for by the Plaintiffs are granted. It is submitted that the balance of convenience is in favour of the Plaintiffs and against the Defendants. It is submitted that the Notice of Motion therefore be allowed.

25. The Learned Senior Advocate appearing for Defendant Nos. 1 and 2 submitted that in the absence of Defendant Nos. 9 to 11 being bound by the Suit Agreement, no decree of specific performance can be granted inasmuch as the contract is not divisible. It is submitted that the Agreement proceeds on the basis that Defendant Nos. 1 to 6 are the only owners of the property and there is no representation that the interest of Defendant Nos. 9 to 11 is being represented by Defendant No. 1. Therefore, the Agreement does not bind Defendant Nos. 9 to 11. It is also submitted that the Plaintiffs for the purpose of obtaining interim reliefs have to show that they were aware of the Will prior to the execution of the Suit Agreement. In fact, the Plaintiffs have denied knowledge of the Will in paragraph 6 at page 219 of the Affidavit in support of the Chamber Summons

No. 1582 of 2006 in Suit No. 1299 of 2006.

26. It is further submitted on behalf of Defendant Nos. 1 and 2 that the Consent Terms at page 271 only recite the factual position and do not amount to an admission. It only shows that Defendant Nos. 1 and 2 were persuading Defendant Nos. 9 to 11 to honor the contract entered into by Defendant Nos. 1 and 2. There is no concluded contract with the other Defendants and the Agreement, if any, at page 271, is only an agreement to negotiate. It is submitted that the Plaintiffs can only succeed if the Plaintiffs show that there was an intention by Defendant Nos. 1 and 2 to be bound by the Suit Agreement independently, even though the other Defendants would not be bound. It is further submitted that under the provisions of Section 12 of the Specific Relief Act, the Plaintiffs are required to relinquish the part of the contract which Defendant Nos. 1 and 2 are unable to perform. It is further submitted that under the provisions of Section 12 of the Specific Relief Act, 1963, the Plaintiffs are required to show that, that part for which the Plaintiffs are seeking performance, stands on a separate and independent footing from the part of the contract which cannot be performed. Relying upon the judgment in (1924) L.R. 52 I.A. 90 (Privy Council) , it was submitted on behalf of the Defendant Nos. 1 and 2 that specific performance of the undivided share of Defendant Nos. 1 and 2 cannot be granted. As regards the letter of termination dated 12th March, 2012, it is submitted that the said letter is not an affirmation of the rights of the Plaintiffs and/or the validity of the Suit Agreement. In fact, the language of the letter of termination is that the other Defendants are not bound.

27. The Learned Advocate appearing for Defendant Nos. 1 and 2 submitted that the Chamber Summons taken out by the Plaintiffs for impleading them as Defendants in Suit No. 1299 of 2006, filed by Defendant Nos. 7 and 8 herein was refused by this Court (Coram: R.S. Dalvi, J.) by recording a finding that the Plaintiffs have no right, title or interest in the suit property since the said document was neither registered nor stamped and that the Plaintiffs cannot seek specific performance of the said Agreement. No appeal was filed against this order nor any suit instituted. In fact, thereafter the only action taken by the Plaintiffs was that though on 7th March, 2008, the Plaintiffs lodged the said Agreement with the Collector of Stamps for adjudication of stamp duty, the same was unilaterally withdrawn by them. This withdrawal clearly demonstrates that the Plaintiffs had second thoughts about the Agreement and did not want to spend money on stamp duty and registration and they were therefore not ready and willing to perform their part of the said Agreement.

28. The Learned Senior Advocate appearing for Defendant Nos. 9 to 11 submitted that the judgments relied upon by the Plaintiffs do not apply to the facts of the present case. It is submitted that until the property is partitioned, it cannot be sold. The Plaintiffs have not prayed for partition and are therefore not entitled to an order of injunction. Since there was no partition, the rights of all the co-owners would be affected.

29. It is further submitted on behalf of Defendant Nos. 9 to 11 that by an order dated 9th February, 2007, passed in Chamber Summons No. 1582 of 2006, taken out by Plaintiff No. 1 in Suit No. 1299 of 2006 to implead them as party Defendant in the said suit, this Court clearly recorded that the Plaintiff No. 1 derived no right, title or interest since the purported Agreement was neither registered nor sufficiently stamped. It is further submitted that the Plaintiffs were not bona fide purchasers and were fully aware of the partition and devolution of the plot of land bearing S. No. 37, Hissa No. 8B, admeasuring 4 acres 16 gunthas in favour of late Bhaidas Bhuta. Defendant Nos. 1 to 4 did not and do not have any authority to bind these Defendants in any manner whatsoever in respect of the Plot of land bearing S. No. 37, Hissa No. 8B, admeasuring 4 acres 16 gunthas which Plot devolved upon the late Bhaidas Bhuta and which further in turn devolved upon Defendant Nos. 7 to 11.

30. It is further submitted on behalf of Defendant Nos. 9 to 11 that if the Plaintiffs want to rely upon Clause 12 at page 271 of the Plaint, the Plaintiffs are bound by all the clauses therein. Referring to the letter of termination dated 12th March, 2012, it is submitted that the same is pursuant to the Consent Terms and is not an acceptance of the validity of the Agreement. The letter is issued only so that there is no ambiguity at a later stage.

31. The Defendant Nos. 9 to 11 relied upon the Judgment of the Hon''ble Supreme Court in Ramdas Vs. Sitabai and Others, , in support of their contention that since the shares were undivided and there were other co-owners of the property, the property could not be sold by a registered sale deed for a share beyond the vendor''s share, nor could the vendor deliver possession till the property is partitioned. Since there was no partition, the rights of all the co-owners would be affected.

32. The Learned Senior Advocate appearing for Defendant Nos. 9 to 11 further submitted that the Suit Agreement was submitted for adjudication of stamp duty and the document was withdrawn on 28th August, 2011. This clearly shows that the case of Defendant Nos. 9 to 11 that the Agreement stood terminated in August, 2011 stood proved. Also, it clearly shows that the Plaintiffs were not ready and willing to perform the Suit Agreement.

33. With regard to the Judgments cited by the Plaintiffs on the principle of election viz. the judgment of the Hon''ble Supreme Court in Beepathuma (supra) and the judgment of the Madras High Court in K. Shanmugham (supra), it is submitted that there is nothing on record to show that the amount which was payable under the Consent Terms was in fact paid. In fact, Defendant Nos. 9 to 11 have not received any consideration. The Learned Senior Advocate appearing for Defendant Nos. 9 to 11 has therefore submitted that the Notice of Motion deserves to be dismissed with costs.

34. The Learned Advocate appearing for the Plaintiffs has denied and disputed the aforestated submissions advanced on behalf of the Defendants. He has

reiterated that the Plaintiffs deserve interim relief as sought in the Notice of Motion.

35. I have considered the submissions advanced on behalf of the Plaintiffs as well as the Defendants. According to the Plaintiffs, they are entitled to specific performance of the Suit Agreement dated 4th June, 2005, executed by Defendant Nos. 1 to 4 and late Mrs. Hansa R. Modi, of whom Defendant Nos. 5 and 6 are the legal heirs, in respect of the suit property. It is the case of the Plaintiffs that the Defendant No. 1 was the Executor of the Estate of the late Bhaidas Bhuta. It is submitted that though the Suit Agreement did not recite that Defendant No. 1 executed the same in the capacity of such Executor, since Defendant No. 1 had the authority to deal with the estate, Defendant No. 1 would be bound by the Suit Agreement in his capacity as an Executor and the Plaintiffs are entitled to seek specific performance of the Suit Agreement against the Defendants. In support of their contention, the Plaintiffs relied on the Judgment in Mithabai vs. Meherbai (supra). Defendant Nos. 1 to 6 and 9 to 11 contend that the Plaintiffs are not entitled to specific performance inter alia on the ground that there is no clause in the Suit Agreement setting out that Defendant No. 1 had executed the Suit Agreement in his representative capacity as an Executor. In fact, it is represented in the Suit Agreement that the Defendant Nos. 1 to 4 are the sole owners of the suit property. The Defendants have therefore submitted that the Plaintiffs who were not even aware of the existence of the Will at the time of the execution of the Suit Agreement cannot be heard to say that the Suit Agreement is executed by the Defendant No. 1 in his capacity as an Executor of the Will of Bhaidas Bhuta, and that the Suit Agreement having been executed by Defendant No. 1 in such capacity is binding on all the beneficiaries of the Will and therefore capable of specific performance. The Defendants have submitted that the Judgment in the case of Mithabai vs. Meherbai (supra) will not apply to the present case because in the case of Mithabai vs. Meherbai (supra), the widow who executed the document had recited all her capacities with respect to the property, which is not so in the present case.

36. In view of these rival submissions, the Judgment in the case of Mithabai vs. Meherbai (supra) becomes relevant. The facts of that case are briefly reproduced as under:

One Jasvir Bhudar died in the month of May, 1893, leaving him surviving his widow Bai Divali as his only heir according to Hindu Law. He left a will, dated the 2nd day of May, 1893, whereof he appointed his widow, the said Bai Divali, the sole executrix. Bai Divali proved the Will and obtained probate thereof on the 11th November, 1893. From the schedule to the Petition for probate it appears that Jasvir Bhudar owned an immovable property at Jambli Mohola and another immovable property at Falkland Road, an outstanding debt of Rs. 36,000, stock-in-trade of the value of Rs. 2,000, and household furniture and apparel of a small value. After obtaining probate of the will, Bai Divali sold the property at Falkland

Road to Ratanbai and conveyed the same to her by a conveyance dated the 2nd day of June, 1894. On the 28th November, 1898, Ratanbai conveyed to N.C. Shroff the said property. The Defendants are the heir and legal representatives of the said N.C. Shroff. Bai Divali died on the 6th January, 1917 and the Plaintiff claiming to be the reversionary heir of Jasvir Bhudar has filed this suit praying that it may be declared that Bai Divali only took a widow''s estate under the Will of her husband and that on the death of Bai Divali she became entitled to the said Falkland Road property and that the Defendants should be ordered to deliver possession of the said property to the Plaintiff.

In that case, this Court came to the conclusion that Bai Divali only had a life interest in the suit property and could not convey the suit property as a beneficial owner. The evidence recorded by the Court showed that Bai Divali had intended to convey the property as a beneficial owner and she was under the impression that she took the property absolutely under the will of her husband. The Court came to the following conclusion:

Then in the conveyance there is a covenant for title given by Bai Divali. At the date of the conveyance (Exh. B) the Falkland Road property, which is in dispute in the suit, was in the hands of Bai Divali as executrix and she was competent as executrix to sell it to Ratanbai, who was a bona fide purchaser for valuable consideration. But it is argued that she did not sell or convey as executrix because the deed shows that she intended to convey as beneficial owner being under the impression that she took the property absolutely under the will of her husband.

I am of opinion that the deed shows that Bai Divali conveyed the whole property and all the title she possessed in the property, and that would include the right and title possessed by her as executrix: See Gangabai Vs. Sonabai, and Biraj Nopani vs. Pura Sundary Dasee (1914) 16 Bom. ER 796, P.C."

Mr. Mehta has further argued that it would be dangerous to hold that if a Hindu widow, who is also an executrix, sold and conveyed, she should be deemed as conveying as an executrix. I do not see any danger in so holding. The Legislature has expressly applied Section 90 of the Probate and Administration Act to all Hindus, including Hindu widow, and u/s 90 of the Probate and Administration Act a Hindu widow, who is appointed an executrix, would be entitled to sell as executrix the property left by her husband, if no restriction was imposed on her powers of disposing of the property by the Will which appointed her executrix.

There are no words used in his will imposing any restriction on the powers of the executrix. Therefore, there was nothing to prevent Bai Divali from selling and conveying this property as executrix. If she could have sold as executrix u/s 90 by so stating expressly in the conveyance, I do not see any difficulty in holding that she sold in all capacities she possessed when the deed (Exh. B) does not expressly say in what particular capacity she has sold but merely recites all the capacities. I, therefore, hold that the sale to Ratanbai should be deemed to be a sale by Bai Divali as the executrix of the will of Jasvir Bhudar

No doubt, as the Defendants have contended, in the case of Mithabai, the widow who executed the document had recited all her capacities with respect to the property. However, the fact remains that the document was silent as to the capacity in which she executed the particular document of transfer and in fact the evidence showed that she had intended to convey the property as a beneficial owner and not as an executrix. The Court still held the sale to be a sale in her capacity as an executrix. Therefore, in my view, the Judgment supports the Plaintiffs at least at this prima facie stage.

37. The Plaintiffs have also submitted that though Defendant No. 1 has not acted in his capacity as an Executor, the principles of Section 115 of the Evidence Act, 1872 and Section 43 of the Transfer of Property Act, 1882 would apply, and the Defendant No. 1 would be bound by the Suit Agreement even in his capacity as an Executor. The Defendants have denied and disputed this submission. They have submitted that in fact Defendant Nos. 1 to 4 have represented in the Suit Agreement that they are the only owners of the suit property.

38. The Hon''ble Supreme Court in the case of Renu Devi vs. Mahendra Singh (supra) explains the principle of the common law doctrine of estoppel by deed and the equitable doctrine by stating that a man who has promised more than he can perform, must make good his contract when he acquires the power of performance. The Defendants have argued that Defendant Nos. 9 to 11 here have made no representation and cannot be bound by the Suit Agreement. The scheme of Section 43 of the Transfer of Property Act and the principle of common law and equity is not to permit a vendor to rely upon his misrepresentations as to his own title or authority. In the present case, the Defendant No. 1 had the title and authority to transfer. Notwithstanding his misrepresentation as to his authority, if such title is capable of transferring property, the property ought to be transferred. Section 8 of the Transfer of Property Act also provides that: "unless a different intention is expressed or necessarily implied, a transfer of property passes forthwith to the transferee all the interest which the transferor is then capable of passing in the property and in the legal incidents thereof....".

39. I am therefore satisfied that whatever interest the Defendants (i.e. Defendant No. 1) had in the suit property which he was capable of transferring, prima facie can be considered to have been dealt with by the Defendants. There is nothing in the Suit Agreement, either express or by necessary implication, to show that the Defendant No. 1 did not intend to transfer the property which he was capable of transferring as an Executor of the Will of Bhaidas Bhuta. Though the Plaintiffs have relied on several authorities on the same issue, in my view, the same need not be set out and discussed herein at this prima facie stage.

40. Again, Defendant Nos. 7 and 8 filed a suit before this Court being Suit No. 1229 of 2006 wherein it is admittedly contended that Defendant No. 1 and late Mr. Vasantrai Bhuta were the Executors of the Will; Defendant No. 1 dealt with

the properties of the Estate from time to time; properties other than the suit property herein were also sold by Defendant No. 1; it is only after Defendant No. 1 had entered into the Suit Agreement, the Plaintiffs therein (Defendant Nos. 7 and 8 herein) for the first time in their lives, did not accept the unilateral decision of Defendant No. 1; Defendant No. 1 failed to distribute the proceeds of sale of, inter alia, the suit property, in accordance with the will; and that the alienation of properties is contrary to the Will. The said Suit was settled by filing of Consent Terms by the Plaintiffs and the Defendants therein, which was stated to be in terms of a Family Arrangement between the parties. The said Family Arrangement provided for shares of Defendant Nos. 7 to 11, which shares have been accepted by the Defendants. As an intrinsic part of the arrangement agreed to between the Defendants, Defendant Nos. 7 to 11 confirmed that Defendant Nos. 1 to 6 had agreed to sell the suit property to the Plaintiffs and received consideration for the same and that Defendant Nos. 7 to 11 shall accept part of the sale proceeds from Defendant No. 1 pending negotiation with the Plaintiffs. The Consent Terms/Family Arrangement not only do not state that the Suit Agreement had been executed by Defendant No. 1 in favour of the Plaintiffs without authority or is null and void against any of the Defendants, but in fact the allegations made in the Plaint which are recorded hereinabove including the allegation that the alienation of the properties was contrary to the Will of Bhaidas Bhuta, were all withdrawn under the Consent Terms. The Consent Terms were accepted by the Court and the suit was disposed of in terms thereof. The election of Defendant Nos. 7 to 11 is therefore prima facie complete. Electing to accept the Suit Agreement and benefits thereunder on the condition of renegotiation with the Plaintiffs, does not alter the effect of such election. The Judgment of the Hon''ble Supreme in the Court of Beepathuma (supra) and the decision of the Madras High Court in K. Shanmugham (supra) expound the doctrine of election stated in the following classic expression: "That he who accepts a benefit under a deed or will or other instrument, must adopt the whole contents of that instrument, must confirm to all its provisions and renounce all rights that are inconsistent with it".

41. I am therefore prima facie satisfied that Defendant Nos. 7 to 11 have voluntarily elected to accept the Suit Agreement under the Consent Terms and the Family Arrangement and that the mere fact that acceptance of such benefit was subject to renegotiation with the Plaintiffs does not make the election qualified. The Plaintiffs are therefore correct in their submission that assuming that the Defendant No. 1 had no authority to deal with the property coming to the share of Defendant Nos. 7 to 11, the aforestated subsequent election by the said Defendants to accept the Suit Agreement, makes the Suit Agreement binding on all the Defendants. In view thereof, the submissions advanced on behalf of the Defendants qua the Consent Terms and the Family Arrangement are not accepted at least at this prima facie stage.

42. The Plaintiffs are also correct in their contention that it is clear from the notice of termination dated 12th March, 2012, issued jointly by all the

Defendants, that the Defendants expected performance from the Plaintiffs and terminated the Suit Agreement on the alleged ground of non-performance of the Plaintiffs'' obligation. The submissions of the Defendants contrary thereto are not accepted.

43. The Defendants have submitted that Chamber Summons No. 1582 of 2006 filed by the Plaintiffs came to be dismissed by this Court on the ground that the Plaintiff No. 1 was neither a proper nor necessary party to Suit No. 1299 of 2006 filed by Defendant Nos. 7 and 8 for administration of the Estate of late Bhaidas Bhuta. It is submitted that in the said decision, the Learned Single Judge (Coram: R.S. Dalvi, J.) has observed that the Plaintiffs are not entitled to specific performance of the Suit Agreement for want of registration and payment of stamp duty. It is therefore submitted that the Plaintiffs are not entitled to the reliefs prayed for in the suit and consequently are also not entitled to interim reliefs. In my view, the observations made by the Learned Single Judge whilst dismissing the Chamber Summons No. 1582 of 2006 on the ground that the Plaintiffs are neither a proper nor necessary parties to the Suit for administration of the Estate of late Bhaidas Bhuta have to be read in the light of the issue before the Court i.e. the question whether the Plaintiffs herein were necessary or proper parties to Suit No. 1299 of 2006, only because certain passing observations are made by the learned Single Judge whilst dismissing the Chamber Summons taken out by the Plaintiffs for being joined as parties to the Suit qua their right to seek specific performance of the Agreement, does not foreclose the right of the Plaintiffs to file an independent suit seeking specific performance of the Suit Agreement and pray for interim reliefs therein. In fact, Defendant Nos. 7 and 8 who have opposed Chamber Summons No. 1582 of 2006 filed by the Plaintiffs have themselves submitted before the Learned Single Judge that the decree passed in the suit for Administration of the Estate of late Mr. Bhaidas Bhuta would not in any manner bind the Plaintiffs herein and the Plaintiffs are free to file independent proceedings. In view thereof, the submission advanced on behalf of the Defendants that the Plaintiffs are not entitled to specific performance of the Suit Agreement in view of the observations made by the learned Single Judge in Chamber Summons No. 1582 of 2006 is baseless, untenable and cannot be accepted.

44. The Defendants have also submitted that the Plaintiffs are not entitled to any reliefs in the Suit since the Plaintiffs after lodging the Suit Agreement with the Collector of Stamps for adjudication of stamp duty have unilaterally withdrawn the same, thereby clearly demonstrating that the Plaintiffs had second thoughts about the Agreement and did not want to spend money on stamp duty and registration and they were therefore not ready and willing to perform their part of the Suit Agreement. The Plaintiffs have denied and disputed the aforesaid contention raised by the Defendants. The Plaintiffs submitted that they have withdrawn the adjudication application only because the same was lying with the Registry for a long time and in view of the interim order in Suit No. 1229 of 2006, the Plaintiffs were not able to take any further steps in the matter, and

also because for quite some time the copy of the Agreement was not traceable in the Registry. The submission advanced on behalf of the Defendants cannot be accepted since at no point of time the Plaintiffs have demonstrated conduct which would show that they were not ready and willing to pursue with the Suit Agreement. The facts set out in the pleadings prima facie establish the fact that the Plaintiffs were at all times ready and willing to perform the said contract. In fact, a Learned Single Judge of this Court in the case of Marine Container Services (I) Pvt. Ltd. Vs. Rajesh Dhirajlal Vora, has in answer to an objection regarding admissibility of the document of guarantee on the ground of the same being unstamped has held that at the interim stage the document of guarantee can be relied on by the Plaintiffs for seeking interim reliefs from the Court. When a document is produced for being admitted in evidence, and the said document is found to be insufficiently stamped, the Court can impound the document and recover the required stamp duty. The Learned Judge further held that since the document is on stamp paper, it cannot be brushed aside on the ground that it is insufficiently stamped and the Court cannot decline interim relief.

45. As regards the submission of the Defendants that until the property is partitioned, it cannot be sold and the Plaintiffs have not prayed for partition, I am of the view that in the event this Court finally comes to the conclusion that Defendant Nos. 9 to 11 are not bound by the Suit Agreement, it would always be open to the Court to either make the decree subject to partition or in the alternative, partition the suit property at the joint request of the Plaintiffs and the Defendants or either of them. The provisions of Section 22 of the Specific Relief Act, 1963, specifically confer the power upon this Court to pass a decree of partition in a suit for specific performance. The fact that the partition has not been prayed for by the Plaintiffs, the same cannot operate as a bar to grant of interim reliefs at this stage inasmuch as u/s 22(2) of the Specific Relief Act, 1963, a prayer for partition can be added at any stage of the proceedings. In the present case, the partition would only be contingent upon this Court, at the hearing of the suit coming to a conclusion that Defendant Nos. 9 to 11 are not bound by the Suit Agreement.

46. With regard to the submission of the Defendant Nos. 9 to 11 that the Suit Agreement is not binding upon them in any manner howsoever, and reliance being placed upon the Judgment of the Hon''ble Supreme Court in Ramdas vs. Sitabai (supra), it is to be pointed out that the suit in that case was relating to possession of the suit property. The Defendants therein, who claim to be the co-owners of the property resisted the suit on the ground that possession would not be handed over to the Plaintiffs, as the Plaintiffs only had an undivided share. In fact, in paragraphs 17 to 19 of that Judgment, the Hon''ble Supreme Court has relied upon the law in the case of a Hindu Undivided Family and stated that a co-sharer (purchaser) of an undivided share cannot be put "in possession". It has been however expressly held that an undivided share of a co-sharer may be the subject matter of sale.

47. With regard to the submission of Defendant Nos. 1 and 2 viz. that in the absence of Defendant Nos. 9 to 11 being bound by the suit agreement, no decree of specific performance can be granted and that the contract is not divisible, the Plaintiffs are correct in their submissions, that under the provisions of Section 44 of the Transfer of Property Act, a co-owner of a property is entitled to deal with his undivided right, title and interest; in paragraph 37 at page 24 of the Plaint, the Plaintiffs have specifically pleaded that they are ready and willing to take conveyance of the undivided right, title and interest of Defendant Nos. 1, 2 and 11 and in the alternative Defendant Nos. 1 and 2 alone, that on account of Defendant Nos. 7 and 8 not having resisted the present Notice of Motion, at least at the prima facie stage, the Plaintiffs would be entitled to specific performance against Defendant Nos. 7 and 8; the contention of Defendant Nos. 1 and 2 is contrary to the provisions of the Transfer of Property Act, Section 12(4) of the Specific Relief Act and the well settled law in this regard.

48. With regard to the contention of the Defendants that specific performance of the undivided share of Defendant Nos. 1 and 2 cannot be granted, the reliance upon the judgment in Graham v. Krishna Chunder Dey, as submitted by the Plaintiffs can be clearly distinguished on facts inasmuch as (i) the facts stated in the head note clearly mention that "the purchaser had declined to take conveyance of Plot A"; (ii) There was a finding of fact that the contract was not divisible and the Plaintiff was not entitled to the benefit of Section 16 of the old Act (equivalent to Section 12(4) of the present Act). In the present case, the Plaintiffs have specifically pleaded readiness and willingness to accept performance of part of the contract. Further the interest of Defendant Nos. 1 and 2 can be independently transferred u/s 44 of the Transfer of Property Act. The submissions recorded by Defendants Nos. 1 and 2 in their written submissions and the case law relied therein also do not assist the Defendants. In view of the above, I am satisfied that the Plaintiffs have made out a prima facie case in their favour of being entitled to specific performance of the Suit Agreement and are therefore entitled to the interim relief sought in prayer clause (b) of the Notice of Motion. The balance of convenience is also in favour of the Plaintiffs and against the Defendants. In the circumstances, I confirm the ad-interim order passed by this Court dated 21st March, 2012 and pending the hearing and final disposal of the Suit, the Defendants are restrained by an order and injunction not to sell, alienate, encumber, part with possession and/or create any third party rights in respect of the suit property. The Notice of Motion is accordingly disposed of.

