

(1996) 09 AHC CK 0022
In the Allahabad High Court
Case No : Second Appeal No. 1021 of 1995

Prag Narayan Mook Badhir Vidalaya Samiti	APPELLANT
Vs	
Hukam Singh and Others	RESPONDENT

Date of Decision : 12-09-1996

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 3, 100, 96
Easements Act, 1882 — Section 52
Registration Act, 1908 — Section 17, 17(1)
Societies Registration Act, 1860 — Section 6
Specific Relief Act, 1963 — Section 16
Transfer of Property Act, 1882 — Section 54
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 2(1), 49, 5
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 209

Citation : (1997) 1 CivCC 458

Hon'ble Judges : A.P. Singh, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

A.P. Singh, J.—This second appeal by Plaintiff has been filed u/s 100 of CPC praying for setting aside the judgment and decree dated 6.7.1995 which has been passed by the VIII Additional District Judge dismissing Appellant's suit for specific performance of contract of sale against the Defendant-Respondents which had been decreed by the Additional Civil Judge, Aligarh by judgment and decree dated 9.1.1979.

2. The facts of the case briefly stated are as follows:

Appellants filed suit for specific performance of their contract of sale entered by Defendant-Respondents, hereafter Respondents, for selling the land in suit to the Plaintiffs after Plaintiffs paid the remaining amount of Rs. 15,000 to the Defendants. According to Appellants Respondents agreed to sell plots in suit to them for a sum of Rs. 35,000 out of which at the time of agreement a sum of Rs.

20,000 was paid by them to Respondents. Respondents were to obtain permission from authorities for transferring the land but despite permission having been obtained by them and despite request of Appellants. to execute the sale-deed, hence, the suit. Respondents denied having entered into agreement of sale with the Appellant No. 1 and denied that the said Appellant was entitled to file the suit or to demand execution of sale deed on the strength of the agreement Ext.5, which could be enforced only by Sri Devendrajit Singh Wadra, who as manager of Appellant No. 2 had been a party to the contract of sale. It was also stated that Plaintiff No. 2 too could not file the suit for specific performance nor he could enter into contract of sale as it was not a juristic person. It was further stated that Respondents obtained the permission for transfer of the land and thereafter a number of times they approached Sri D.S. Wadra to pay the remaining amount and get the sale-deed executed but Sri Wadra paid no attention and now Plaintiff cannot maintain the suit as they themselves were not interested in purchasing the land in suit as they had moved the Collector for making compulsory acquisition of the land in suit and some other land for the purpose of making construction of school and hostel building though the proceeding could not materialise for the reason that the cost of the land assessed by the Collector was far too more than the amount mentioned in the agreement deed. It was also pleaded that Appellants were never willing and ready to perform their part of the contract so they had no money ready and available with them to pay the remaining sum of Rs. 15,000 for getting the sale deed executed. Number of other pleas were raised by the Respondents presently for the disposal of the appeal; their mention in this judgment is not required.

3. On the pleadings of the parties several issues were settled and the suit of the Appellants was decreed by the trial Court (The Additional Civil Judge, Aligarh) vide judgment and decree dated 9.1.1979. The Respondents filed appeal u/s 96 of the code of Civil Procedure. The said appeal was heard and decided by the VIIIth Addl. District Judge, Aligarh. The Lower Appellate Court vide its judgment and decree allowed Respondents appeal upholding their pleas that suit was not maintainable at the instance of Plaintiffs; the Lower Appellate Court, however, made a direction that out of sum of Rs. 30,000 deposited in the Court, a sum of Rs. 15,000 will be withdrawn by Appellants whereas the remaining sum of Rs. 10,000 will be withdrawn by the Respondents. The costs was directed to be borne by the parties.

4. In support of appeal, Sri K.N. Tripathi, Senior Advocate appearing on behalf of the Appellants raised following contentions:

(i) Plaintiff No. 2 was capable of filing suit and entering into contract and to hold property the view taken to the contrary by the Lower Appellate Court is wrong; in the alternative, the acts done by the Plaintiff No. 2 will be presumed to have been done by Plaintiff No. 1 which owns Plaintiff No. 2.

(ii) From the averments of Paras 8, 9 and 10 of the plaint readiness and willingness of the Plaintiff to purchase the property as per the agreement was

duly made out the Lower Appellate Court was not right in holding that there was no pleading in the plaint in that respect.

(iii) The fact that the Plaintiff-Appellants approached the district authorities for compulsory acquisition of the land in suit along with some other land under the provisions of the Land Acquisition Act will not by itself indicate that they were not inter-stated in purchasing the land in suit under the terms of the agreement of sale and the Lower Appellate Court was wrong in drawing the conclusion to the contrary;

(iv) Statement made by Respondents in Para 6 of the W.S. amounts to their admission of the fact that Sri Devendra Jeet Singh Wadra entered into the agreement of sale as Secretary of Plaintiff No. 1.

5. I have heard the arguments of the learned Counsel for the Appellants, but decree commenting upon it, it is necessary to refer to the findings which have been recorded by the Lower Appellate Court on which Appellants suit was dismissed.

Lower Appellate Court framed as many as eight points for determination in the appeal. The points framed by the Lower Appellate Court were:

- (1) Whether the agreement dated 17.12.1974 was enforceable agreement, if so, at whose stance?
- (2) Whether Appellants were always ready and willing to perform their part of the agreement and are still ready and willing to do so?
- (3) Whether the position of the land given in the agreement deed is vague and uncertain, if so, its effect?
- (4) Whether the agreement dated 17.12.1974 is admissible in evidence for being unregistered?
- (5) Whether relief of possession in respect of agricultural land can be granted by the Civil Courts?
- (6) Whether Plaintiffs are entitled to get compensation of Rs. 5,000 from the Respondents?
- (7) Whether Urban Ceiling Act has any impact on the case? and
- (8) Whether Plaintiffs are entitled to get back their sum of Rs. 20,000 which was paid by them to the Defendants at the time of the agreement.

6. The Lower Appellate Court held that the agreement dated 17.12.1974 was not enforceable by Plaintiff No. 1 because it was not a party to it and it cannot be enforced by the Plaintiff No. 2 who not being a juristic person did not possess the right to enter into contract or to file suit and hold property, agreement entered on his behalf will be deemed to have been executed between the Respondent and Sri Devendra Jeet Singh Wadra who alone could file the suit. The second point

too was decided against the Appellants on the ground that no fact was stated in the plaint that the Plaintiffs were always and still ready and willing to purchase the land in suit and to perform their part of the contract. It was further held that facts stated in Para 10 of the plaint, did not comply with the mandatory requirement to flow in respect of pleadings on the question, the Lower Appellate Court also rejected contentions of Appellants that Para 13 of the replication amounted to pleading and the same should be read to satisfy the requirements of law regarding necessary facts to be pleaded in a suit for specific performance. It held that replication was not part of pleadings, therefore, what was state din Para 13 of the replication would not form part of pleading required to be made in the plaint. It was further held that even if Para 13 of replication was read as part of the plaint still it did not fulfill the legal requirements. Point No. 3 too was decided against the Appellant it was held that description of the property in the agreement was not clear which was vague, therefore, no decree could be prepared as per the relief claimed in the suit as the same will be rendered meaningless. Point No. 4 too was decided against the Appellant it was held that the agreement dated 17.12.1974 was not admissible in evidence for the reason of being unregistered, it was found that the same was required to be registered inasmuch as in that agreement Respondents had extinguished their right of possession in the land by delivering it to the Appellants, who were also invested with the right to use the land from that very day in whatever manner they choose without even having to worry about damage to the crops of Respondents standing thereto, which under the provisions of Section 17(ii)(b) of Registration Act was required to be registered. Point No. 5 was also decided by the Lower Appellate Court against the Appellants. It held that since they had already been in possession over the land in dispute at the time of execution of the agreement, therefore, relief of possession claimed by them amounted to restoration of possession in their favour which relief could be granted only by the Revenue Court and not by the Civil Court inasmuch as the land in dispute was agricultural land in respect whereof suit for possession would be maintainable under the provisions of Section 209 U.P.Z.A. and L.R. Act, 1951. Point No. 6 was also decided against Appellants. It was held that they were not entitled for payment of any compensation. On point No. 7 Lower Appellate Court held that since the provisions of the urban Ceiling Act were applicable to the land in the city of Aligarh and the land in suit is situated within the area in which the Act is applicable and since the land is agricultural land it cannot be sold without obtaining permission from the competent authority and since the agreement of sale is for transfer of land for non-agricultural purposes, the same was unenforceable. On Point No. 8, as already observed the relief was granted for refund of the amount to the Plaintiffs as a gesture or kindness though no relief in that respect was claimed in the suit.

7. I, now take up first the question whether the document (Ext.5) called contract of sale is actually enforceable. A contract of sale of immovable property, if it is required to be registered by law relating to registration, will not be enforceable if

it is not registered. Law relating to registration of documents provided that a document which purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent of the value of Rs. 100 and upwards to or in immovable property shall have to be registered. Exception to it is that in case, the document does not itself operate to create any right, title or interest of a value of Rs. 100 or upwards to or in immovable property but only creates a right to obtain another document which when executed, will create, declare, assign, limit or extinguish any such right title or interest, then the document will not be required to be registered.

8. Law of registration does not require registration of an instrument relating to contract in respect of transfer of immovable property if by that agreement or contract"

(a) no interest, right or title is created in favour of a person;

(b) the document in question does not limit or extinguish the right or title of the holder of that immovable property;

(c) the document does not declare or assign any right, interest etc. in favour of any person;

(d) the immovable property in question is not valued at Rs. 100 or more;

(e) the document by itself does not do any of the above (a) to (d) but creates right in favour of any person to obtain another document which when executed, will result in either of the above (a) to (e).

9. Documents except those exempted by the State Government from registration, which do not fall in either of Clauses (a) to (e), are required to be registered by the law of registration. In case, document which is required to be registered is not registered, it is not admissible in evidence in proof of any transaction in respect of the property to which it relates and will offer no right in favour of the person holding such document so as to enable him to enforce it by taking recourse to suit.

10. The above legal position is not disputed by Sri Tripathi; he however, contends that the contract in question does neither operate or purports to create, declare, assign, limit or extinguish either in present or in future any right or title or interest in the property in suit, it only, according to him, creates a right in favour of the Plaintiff to obtain another document which, when executed will create, declare, assign, limit or extinguish a right, title and interest in the suit property in the favour of Appellants. Sri Tripathi on the above reasoning points out that the agreement in question, therefore, is, admissible in evidence and Appellants have a right to enforce it by means of the suit which has given rise to the present appeal.

11. To test the legitimacy of the suggestion of Sri Tripathi about the nature of the

document in question it is necessary to examine as to whether it comes within any of the exceptions which has been carved out by Clause (2) of Section 17 or it will fall in one of the categories by Section 17(1). In case, it is found to be a document of any of the category provided for in sub-clauses (a) to (e) of Clause (1) of Section 17 obviously it will neither be admissible in evidence nor it will be enforceable in the suit filed by Appellants as is ordained by Section 49 of the Act as a necessary legal consequence of non-registration of document of which registration u/s 17(1) of Registration Act or u/s 54 of Transfer of Property Act, 1882 is necessary.

12. The question so posed hereinabove, thus, has to be solved from the perusal of the agreement deed, Ext.5 so as to find out from its contents as to what has been conveyed through it by Defendant to the other party.

13. The exact words, relevant for the point which have been used in the agreement deed, are as follows:

(Matter in Hindi - Not reproduced - Ed.)

14. Above words used in the transfer deed relevant in this regard, if translated in English, will read somewhat as follows:

Possession over Plot Nos. 1,2 and 3 which is subject-matter of the agreement deed has already been given. However, on the said land wheat crop is standing which belongs to the vendors but in case purchasers decide to make construction of building before the said crops are ripe for being harvested they will be in a position to do so without being responsible for the damage to the crops and the vendors will have no objection in purchasers doing so. The land, subject-matter of the agreement is bhumidhar of vendors and it is not subject to any type of bar against transfer or mortgage and the vendors have absolute right for the said transfer. The purchasers have absolute right to use the land either by making constructions of building thereon or in any other method they so like.

The words used in the agreement deed in question indicates following things in unmistakable terms:

(i) Sum of Rs. 20,000 was paid by the other party to Defendants as consideration;

(ii) Other party has been vested with the right to get a sale-deed executed for the transfer of the suit land from Defendants on payment of Rs. 15,000 which remains unpaid;

(iii) the other party has been given right of possession over the land in suit and to raise constructions thereon of school building and hostel building and to use the land in other manner they so liked;

(iv) Extinction of the right of possession of the Defendants over the land in suit except on the standing crops depending at the option of the other party for choosing the time to exercise their right of having the land.

15. Thus, the agreement deed operates to create right of possession in favour of the other party and its user for the purposes they wanted to purchase it or for any other purpose depending on their own will without caring for the loss to the standing crops on which transfers right though had been reserved till it was ripe for harvesting. It also limits and extinguishes the right of Defendants to continue to remain in possession of the land in suit with effect from the date of agreement except to collect their standing crop depending upon decision of the other party as to the time when they wished to use the said land.

16. The agreement in question, therefore, does not leave any right in the land with Respondents except for the following:

(i) In case, the other party does not decide to use the land in any manner they chose and the crop standing thereon is not destroyed then to collect it when it is ripe.

(ii) to receive a sum of Rs. 15,000 more for executing the sale-deed so as to transfer absolute title and right in the land in suit in favour of the other party. In case, the other party does not want to purchase the land and fails to pay the remaining sum of Rs. 15,000 which it agreed to pay and the agreement of sale is repudiated then, the right to claim back possession of the land in suit after their eviction.

17. Sri Tripathi, however, in vain tried to term the rights created in the document as a licence and not an interest in the land in suit. He sought to take refuge to the provisions of Section 52 of the Indian Easements Act, 1882 so as to get out of the rigour of the provisions of Section 17(1) of the Registration Act.

18. Section 52 defines licence: it says when a person is granted a right which he otherwise does not have, in or upon an immovable property of the grantor, to do or continue to do something, doing of which in absence of the grant would be illegal. which is neither easement or an interest in the property it is called licence.

Thus, a right will be a right acquired by a person by way of licence if,

(i) it is not the right of that person acquired by himself by way of an interest or a right by way of easement; and

(ii) it is granted by the owner of an immovable property authorising that person to do or continue to do something which in absence of the grant would be unlawful.

From the above definition of licence, it seems that if a person himself has acquired a right or interest in an immovable property through an instrument, the right conveyed in his favour in that instrument, will not be licence.

19. Word "licence" is interchangeable with word "permission". Permission or licence is granted for use of an immovable property for a particular purpose given by the grantor to the grantee which as of necessity inheres retention of dominant right of possession over the immovable property with the grantor. For

licence, it is necessary that the granter retains his right of possession unto himself and authorises use of that immovable property by the licensee for a particular purpose; where an immovable property has been given through an instrument in the exclusive possession of another person and that other person by virtue of that instrument has been authorised to use the land in question in the manner he decides by himself without caring for any damage or loss which may occasion to its true owner, the instrument will be construed as one creating interest in the property in favour of the person to whom exclusive possession thereon has been given in that instrument. Such an instrument, is not licence; it may either be lease or conditional sale. In *Qudrat Ullah Vs. Municipal Board, Bareilly*, , where an instrument transferring exclusive possession of immovable property in favour of transferee was held to be a lease and not licence. The real test is that licence does not create interest in the property. *B.M. Lall (Dead) by Lrs. Vs. Dunlop Rubber and Co. Ltd. and Others*, , where a document creating interest in the property was held lease and not a licence.

20. From the words used in the agreement of sale, the document in question, in my opinion, operates to transfer Respondent's right of possession in the land in suit in favour of the other party to it except for the transfer of title over it which is postponed and is destined to take place after the remaining amount of Rs. 15,000 is paid to the Respondent by the other party.

21. In this background of the case, suggestion of the learned Counsel for Appellants that what has been given by the vendors to the purchasers was a licence and not an interest or right in the land in suit is not acceptable. I have no hesitation in concluding that the instrument in question is a contract of sale of the land in suit witnessing transfer of interest in the land in suit by the transferors in favour of transferees conferring on them absolute right to use the land in suit in the manner and for the purpose the transferees wished to use it followed with the forfeiture of the right of transferors possession over the and in suit from the date of the contract for a consideration of a sum of Rs. 20,000 which had been paid to them by the purchasers. The document, therefore, in my opinion, was compulsorily registrable under the provisions of Section 17(1)(b) of the Registration Act and consequence of its non-registration as provided in Section 49 of the said Act was that no right of the transferors in the immovable property which was subject-matter of that agreement was affected and the agreement cannot be received as evidence of any transaction nor the id document can form basis of claim of the Plaintiffs nor it can be specifically enforced by them by filing suit.

22. Coming to the next point I find that this point too is fully made out in favour of the Respondents and the suit is liable to be dismissed for the reason of absence of necessary pleadings in the plaint.

23. Order VI of the CPC provides pleadings which generally has to be made either in the plaint or in the written statement Rule 3 of Order VI reads as follows:

3. forms of pleading. - the Forms in Appendix A when applicable, and where : they are not applicable forms of the like character, as nearly as may be, shall be used for all pleadings.

Forms 47 and 48 in Appendix A to the Schedule attached with the CPC prescribe the necessary facts which have to be pleaded by the Plaintiff in a suit for specific performance of contract. Paragraph 3 of Form 47 reads as. follows:

3. The Plaintiff has been and still is ready and willing specifically to perform the agreement on his part of which the Defendant has had notice.

Paragraph 5 of Form 48 in the same Appendix too provides the same thing, which reads as under:

5. The Plaintiff is still ready and willing to pay the purchase money of the said property to the Defendant.

Pleadings prescribed in above two Forms, namely Form 47 and Form 48 are the standard pleadings which in one or the other way, at the discretion of the Plaintiff, must be made in a suit for specific performance; failing which the suit will not be maintainable and will be liable to be dismissed.

24. A Division Bench of this Court in the case of Sarda Prasad Singh v. Sheo Shankar Lal 1982 ACJ 80 has held: "In a suit for specific performance of contract, in view of Paragraph 3" of Forms 47 of Appendix "A" it is necessary for Plaintiff to specifically plead that he has been and still is ready and willing to perform his part of contract which is also requirement in Section 16 of the Specific Relief Act." Supreme Court in the case of Ouseph Varghese Vs. Joseph Aley and Others, has held that "in a suit for specific performance if the pleadings provided in Paragraphs 3 and 5 of Forms 47 and 48 respectively are found having not been made the suit cannot succeed and is liable to be dismissed. It is no doubt true that exact words which have been used in Paragraphs 3 and 5 of Forms 47 and 48 respectively need not be used in the pleadings of Plaintiff but pleadings to the effect indicated in those paragraphs must be made in the plaint in one or the other way, failing which the suit cannot succeed. A Division Bench of this Court in Mahmood Khan and Another Vs. Ayub Khan and Others, , has also held that "no aid of replication filed by the Plaintiff can be taken for making out the ground that the pleadings as required in the above mentioned forms of Appendix "a" have been made in the plaint." The Division Bench has held that in absence of pleading of the facts no evidence by the Plaintiff could supply the gap left in the plant and what is required is that the pleadings of the above facts must be made in the plaint". To the same effect reference may be made to the observation made by another Division Bench of this Court in Narendra Bahadur Singh Vs. Baijnath Singh and Another, .

25. In the background of the above legal position it is necessary now to examine the pleadings made by the Appellants in the plaint which they had filed in the present suit of specific performance against the Respondents. It was contended

by Sri Tripathi at the Bar that requisite pleadings in respect of readiness and willingness of the Appellant as per the requirements of the CPC referred to herein above have been made by Appellants in paragraphs 8,9 and 10 of the plaint read with Paragraphs 13 and 16 of the replication. To test as to whether the legal requirements of the essential pleadings have been made by Appellants in Paragraphs 8,9 and 10 of the plaint, it is necessary to extract the same hereunder:

8. That the Plaintiffs requested the Defendants to execute the sale-deed as per the terms of the agreement deed but the Defendants always avoided to execute the sale-deed as per terms of the agreement on the one or the other pretext.

9. That the Plaintiffs, thereafter gave a notice dated 27.12.1976 to the Defendants but the Defendants in reply to the said notice gave false and incorrect reply and refused to execute the sale-deed and further repudiated the contract, hence, the Plaintiffs are compelled to file the suit.

10. That the Plaintiffs have always been ready and willing to get sale-deed executed as per the terms of the agreement and still ready to get the sale-deed executed after payment of the balance of the amount to the Defendants but the Defendants are not ready and willing to perform their part of the contract.

26. So far paragraphs 8 and 9 are concerned no averment of the facts which are required to be pleaded as per paragraph 3 of Form 47 and Paragraph 5 of Form 48 has been made. However, in Paragraph 10 what has been stated is that the Plaintiffs have always been ready and willing to get the sale deed executed and are still ready to get the sale deed executed after payment of the balance amount to the Defendants. As already noticed above the pleadings which must be made by the Plaintiff in the plaint is that "he had been and is still ready and willing specifically to perform the agreement on his pail. There is no statement in either of these paragraphs that the Plaintiffs had been and are still ready and willing to perform their part of the contract. What they said in Paragraph 10 of the plaint is that "they have been ready and willing and are still ready to get the sale deed executed" which is quite different from the statement that the Plaintiffs "have been and are still ready and willing to perform their part of the contract" (agreement) for getting the sale-deed executed. Thus, necessary pleading which must be made in the suit for specific performance regarding the earlier and present readiness and willing-ness of the Plaintiffs to perform their part of the agreement has not been made in the present plaint. Now it is necessary to notice the pleadings of the Plaintiffs in paragraph 13 and 16 of the replication which according to the learned Counsel remove this technical lacuna in the plaint from which plaint suffered.

Paragraph 13 and 16 of the replication read as under:

13. That paragraph 15 of the written statement is not admitted and the allegation made therein are specifically denied. The Defendants to the best of these Plaintiffs knowledge never approached Sri D.J. Singh Vadra nor he ever

informed the Plaintiffs to obtain the sale deed. The Defendants have purposely made false allegations. The Plaintiffs have always been ready and are still ready to get the sale-deed as per terms of the agreement and are entitled to get decree for specific performance of contract.

16. That the contents of paragraph 18 of the written statement are not admitted. Thus, Plaintiffs have always been ready and willing to get the sale-deed as per terms of the agreement and they were always ready and are interested to purchase the property directly. The Plaintiffs never moved the authorities for acquiring the land in suit even if Plaintiffs ever moved for acquisition proceedings this shows interest of the Plaintiffs in the land in suit.

The two paragraphs of the replication of the Appellants too reiterated their statement which had been made by them in Paragraph 10 of the plaint. Paragraphs 8,9 and 10 of the plaint and Paragraphs 13 and 16 of the replication taken together also do not make out the pleadings which is necessarily required to be made by the Appellants in their plaint as per the mandatory requirements of the CPC in Rule 3 of Order VI read with Forms 47 and 48 of the Appendix "A" of its first Schedule.

27. As indicated above-there is total absence of pleadings on the part of the Appellants in their plaint or even in their replication to the effect that they had been and are still ready and willing to perform their part of the agreement and that they are still ready and willing to pay the purchase money of the said property to the Defendants. The words used in the plaint and also in replication "have always been ready and willing to get the sale-deed executed as per the terms of the agreement" cannot be taken to mean exactly the same thing which is meant by the words used in Paragraphs 3 and 5 of Forms 47 and 48 of Appendix "A" respectively.

I am, therefore, of the view that:

(a) Pleadings which are required to be made in the plaint must be pleaded in the plaint itself and not in the replication and pleadings in the replication cannot be pressed into service for filling the gaps which have been left in the plaint.

(b) The pleadings made by the Appellants in Paragraphs 8,9 and 10 of the plaint do not constitute pleadings which must be made in a suit of specific performance as provided in Paragraph 3 of Form 47 and Paragraph 5 of Form 48 of Appendix "A" of the Code:

(c) The requirements of Rule 3 of Order VI of the CPC to plead and prove the facts stated in Paragraph 3 of Form 47 and Paragraph 5 of Form 48 in Appendix "A" of the Schedule is a mandatory requirement in a suit for specific performance, and the suit must fail in absence of said pleadings and proof.

(d) Even if Paragraphs 13 and 16 of the replication are read together with paragraphs 8,9 and 10 of the plaint the facts which are required to be pleaded and proved as per the provisions of the Code indicated herein above have not

been pleaded by the Plaintiffs. The suit, therefore, is liable to be dismissed on this ground too.

28. There is yet another aspect which also renders the suit of the Appellants incompetent and liable to be dismissed. It is admitted to the Appellants that after execution of the agreement deed in question they had approached the Collector of the district where the land in suit lies for the compulsory acquisition of the land in suit and some other land under the provisions of Land Acquisition Act and in that regard certain steps had been taken by the Collector which included assessment of the value of the land which the Appellants wanted the Collector to acquire for them. However, for one or the other reason proceedings for compulsory acquisition of the land in suit and also of the other land had to be dropped whereafter Appellants approached Respondents by sending a notice to them demanding execution of the sale-deed as per terms of the agreement. This fact, in my opinion, by itself demonstrate that Plaintiffs had given up their desire to perform their part which they were required to perform under the agreement and had no intention to purchase the land in suit in terms of the agreement deed, They instead of asking the Defendants to accept the sum of Rs. 15,000 and execute the sale-deed, approached the Collector to acquire the land in suit compulsorily under the provisions of the Land Acquisition Act.

29. I have, therefore, no hesitation in holding that the Appellants not only filed to plead that they had been and are still ready and willing to perform their part of the contract but on the other hand Defendants have succeeded in establishing that the Plaintiffs were at no time willing or ready to perform their part of the contract of sale whereto they have taken resort after having failed to get the land in suit Compulsorily acquired under the provisions of Land Acquisition Act.

30. I do not find any error in the conclusion reached by the lower appellate Court on the question that Appellant No. 1 not being a party to the contract of sale possessed no right to file the suit for its enforcement. There should be no doubt that Plaintiff No. 1 was not a party to the contract of sale Ext.5 which had been entered into by Plaintiff No. 2 through Shri Vadra who at the relevant time was its Manager. Shri Vadra in due course of time ceased to be Manager of Plaintiff No. 2 and Sri A.N. Agarwal succeeded him. Shri A.N. Agarwal accordingly served a notice on Defendants on behalf of Plaintiff No. 2. The suit, however, was filed by both Plaintiff No. 1 and Plaintiff No. 2 on the basis of the agreement deed executed in favour of Plaintiff No. 2 and notice sent by Plaintiff No. 2. Plaintiff No. 2 is only a college which has no legal entity of its own and for that reason it cannot hold property nor can sue or be sued. It is not a juristic person, therefore, the Defendants were right in advancing the plea that the agreement was virtually an agreement between them and Sri Vadra acting as Manager of Plaintiff No. 2 and it was Shri Vadra lone and not any one else who could file the suit for enforcing the agreement. Shri Tripathi, however, placed reliance on a judgment of the Court of a learned single Judge in Atar Singh v. IIIrd Additional District Judge, Aligarh 1982 ARC 624. The learned single Judge dealing with the

case under U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972, wherein the plea on the basis of exemption u/s 2(1)(b) of that Act was claimed in respect of building which was occupied by a recognised educational institution. In Paragraph 5 of the learned single Judge observed as follows:

Therefore, it is clear that the exemption provided for in Section 2(1)(b) of the U.P. Act XIII of 72 is for the benefit of the recognised educational institutions and such institutions are either recognised Intermediate College, Higher Secondary Schools or High Schools so far as the U.P. Intermediate Educational Act is concerned.... However, it is important to note that the Intermediate education Act has not endowed such educational institutions cannot be said to be legal persons in the manner in which a company incorporated under the Companies Act or other bodies incorporated under other statutory enactments can be said to be legal persons. There is nothing in the Intermediate Education Act laying down that such recognised educational institutions will have the right to hold property and to act otherwise in the manner in which incorporated bodies are entitled to act by virtue of their incorporation.

Again in Paragraph 7 of the judgment, the learned Judge further observed:

Under the Societies Registration Act even though a society cannot be treated as a corporate body in the manner in which a company incorporated under the Companies Act can be treated to be a corporate body still, there are provisions in the said Act which enable the society to sue or be sued in the name of its office bearers u/s 6 of the Societies Registration Act, 1860. a society can own property vide Section 5 of the Act. Very often educational institutions are run by the societies registered under the Societies Registration Act, 1860. In such cases, the right to sue on the basis of contract will not inhere in the educational institution because the same has no legal personality and the same is in the eyes of law a mere name. The society, however, which runs such institution can undoubtedly sue or be sued on the basis of the contracts even though such contracts are in relation to the affairs and management of the educational institution run by the society. If a suit were to be filed by an educational institution in its own name, the same will be liable to be thrown out on the ground that the educational institution has no existence in law. It cannot enter into a contract and it cannot sue or be sued. Even if a contract is entered into by it, it will be held that the same has been entered into by the society or the corporate body running the educational institution. Legal title in the property and the right to sue or be sued or to enter into contract vests in the society registered under the Societies Registration Act and it was running the educational institution known as Dharam Samaj Degree College. If the suit had been filed in the name of the Degree College, it would have been held to be not maintainable because of the Degree College as such lacked the status to sue or be sued in law.

Emphasis as laid on the aforementioned observation of the learned single Judge in Para 7 to support the plea that though the contract entered into by Appellant

No. 2 may not have been in the name of Appellant No. 2 but the same by taking the aid of the above view will be deemed to have, been in the name of Appellant No. 1, which is a society duly registered under the Societies Registration Act and own Appellant No. 2.

31. Shri M.K. Gupta, learned Counsel for the Respondents, however, placed reliance on the observation made by the Learned Judge in Paragraph 5 to emphasise that college which is not a juristic person has no legal entity and power to hold and dispose of property and to enter into contract and to sue or be sued. The contract of sale entered into by Plaintiff No. 2, therefore, will not be enforceable by Plaintiff No. 1 because Plaintiff No. 1 was not a party to the contract. It is, further emphasised by Shri Gupta that no doubt there are certain observation by the learned single Judge in Paragraph 7 from which it can be said that the learned single Judge was of the view that a contract in the name of the college can be enforced by the society which runs the college though it was not a party to it but the context in which the observations were made in Paragraph according to learned Counsel were quite different from the one in the present case.

32. I agree with the learned Counsel that the observation made in Paragraph 7 were not in connection of the suit for specific performance of contract entered into by a non-juristic person but in context of the exemption granted to such person from the operation of the Rent Act to the buildings in which educational institutions were being run. As a matter of fact Plaintiff No. 1 not being party to the contract which was entered into by a non-juristic person having no right to enter into contract has also no right to enforce the contract and file the suit. Its registration under the Societies Registration Act it was said by Shri Gupta too had lapsed on the date when the suit was filed. I am, however, not prepared to enlarge scope of enquiry in the case on this aspect for the reason that I am in agreement with the learned Counsel for the Respondents that the observations which were made by the learned single Judge in paragraph 7 will have no bearing in a suit for specific performance as the said observations, were not at all required for decision of the points involved in the case which was confined only to the applicability of the exemption clause to the buildings occupied by recognised educational, institutions. I, therefore, endorse the view taken by the lower appellate Court that the present suit at the instance of Plaintiff No. 1 as also at the instance of Plaintiff No. 2 was not maintainable for the reason that Plaintiff No. 1 was not party to the contract of sale, therefore, it had no right to demand specific performance of that contract and also that Plaintiff No. 2 possessed no power under law to enter into contract and to file suit for enforcement of that contract. The suit was, therefore, liable to be dismissed on this ground as well.

33. The last point which remains for consideration in this appeal is whether statement made in paragraph 6 of the written statement by Respondents and statement of D.W.2 made in his oral testimony can be read in isolation of the

statement made in the written statement.

34. The point has been raised by learned Senior Advocate to criticise the conclusions reached by the Lower Appellate Court on the point that Appellant No. 2 not being a party for the contract has no locus standi to file the suit. The point is essentially one depending on the appreciation of evidence and construction of the pleadings.

35. It was argued by Sri Tripathi that statement made in Para 6 of the written statement by Defendant clearly established that Devendra Jeet Singh Wadra had entered into the agreement of the sale with the Respondent in his capacity as Secretary-cum-Manager of Plaintiff No. 1. According to him, in view of the clear admission of the Respondent there should be no reason to question the right of Appellant No. 1 to maintain the suit and claim the relief of specific performance of that agreement. It is, further argued that the said statement of the Respondent in para 6 of the W.S. will have to be read separately from his statement as a witness (D.W.2) and it cannot be diluted by taking recourse to the statement of D.W.2 made in the trial Court by way of his oral testimony.

36. It is note-worthy that the trial Court came to the conclusion, on the basis of the statement of the Defendant in Para 6 of the written statement filed by them, that Devendra Jeet Singh Wadra had entered into the agreement of sale with the Defendant as Manager of Plaintiff No. 1. It was on the basis of this statement that the trial Court held the suit maintainable on behalf of Plaintiff No. 1. On the other hand, learned Counsel for Respondents drew my attention to the Defendant-Respondents' pleadings in other paragraphs of the written statement as also the amendment application which had been filed by them for amendment of their said plea in Para 6 of the W.S.

37. I have examined the rival contentions and find that the trial Court recorded the finding on the basis of admission of Respondents in Para 6 of the W.S. wholly unmindful of the averments made by them in other paras of the W.S. and the amendment application which Respondents filed for amendment of their plea in Para 6 of the W.S. on the ground that it was a typing error that Plaintiff No. 1 was written instead of Plaintiff No. 2. The plea of Respondents in their application for amendment was fully consistent with their stand in other paragraphs of their W.S.

38. Relevant paras of the written statement of Respondents are worthy of being noticed which are as under:

6. That Paras 7,8,9 and 10 of the plaint as stated are not admitted and they are denied except that the answering Defendant at the time of execution of the agreement of sale with Sri Devendra Jeet Singh Wadra as Secretary-cum-Manager of Plaintiff No. 1 were in receipt of the sum of Rs. 20,000. The facts are given in additional pleas.

In para 17 of the written statement, it is further stated as under:

That without prejudice to the legal and valid objections that there has been entered into no contract of sale with the Plaintiff No. 1 as alleged and it was a contract between the Defendants and Sri Wadra, manager, the Defendants submit that the conduct of the Plaintiff and the present alleged Manager Sri A.N. Agarwal has been such, which also disentitled them for filing the suit or to seek any relief.

In para 12 it has been stated as follows:

That there has been caused no breach of contract executed between the Defendants and Sri Devendra Jeet Singh Wadra as manager, Prag Narain Mook Vadhira Vidyalyaya.

39. In the background of above facts, it was most improper on the part of the trial Court and also wholly unjustified on the part of the learned Counsel for the Appellants to take undue advantage of the typing mistake which had accidentally occurred in Para 6 of the written statement of Respondent whereas from Paras 12 to 17 of the same written statement it was fully established that Defendants questioned the right of Plaintiff No. 1 to file the suit for the reason that agreement had not been entered by Sri Wadra on its behalf. For the reasons, stated above, the arguments of the learned Counsel is not acceptable and is accordingly rejected.

40. No other point has been pressed in support of this appeal.

41. After considering the above-mentioned arguments of the learned Counsel for Appellants and its reply given by learned Counsel for the Respondents and in view of the discussions made herein above, I do not find any justifiable reason to allow this appeal and set aside the judgment and order of the Lower Appellate Court. In my opinion, the Lower Appellate Court has rightly set aside the findings recorded and judgment and decree passed by the trial Court as, in my opinion also the suit of the Appellant for the reasons already indicated above, was not maintainable and was liable to be dismissed. The Lower Appellate Court was, therefore, fully justified in dismissing the suit.

42. In the result, the appeal fails and is accordingly dismissed with costs.