

---

**(2011) 01 PAT CK 0093**  
**In the Patna High Court**  
**Case No : First Appeal No. 5 of 2008**

|                                 |    |            |
|---------------------------------|----|------------|
| Smt. Krishna Dey and Another    | Vs | APPELLANT  |
| Smt. Sarita Dokania and Another |    | RESPONDENT |

---

**Date of Decision :** 04-01-2011

**Acts Referred:**

**Citation :** (2011) 01 PAT CK 0093

**Final Decision :** Allowed

---

### **Judgement**

Mungeshwar Sahoo, J.—In both the first appeals the Defendants-Appellants have challenged the judgment and decree dated 29.11.2007 passed by Sri Keshav Murti Tiwary, Sub Judge Vth, Purnea in Title Suit Nos. 426 of 1999 and 427 of 1999.

2. It may be mentioned here that the above two suits were filed by the Plaintiffs-Respondents against the original Defendant-Appellant Ashish Kumar Dey for specific performance of contract. During the pendency of these appeals the Defendant-Appellant died and the legal representatives have been substituted. In both the first appeals same set of facts are there, the Defendant is same, the points raised in both the appeals are same and the evidences adduced in both the suits are of similar nature, judgments and decrees were passed on the same date by the same Sub-Judge and, therefore, with the consent of the parties both the appeals are heard together as the learned Counsels are also same for both the parties and both the appeals are being disposed of by this common judgment. The only difference is regarding area of the land and date of execution of the agreement to sell and the last date for execution of the sale deed. The rest facts appear to be same.

3. In both the appeals, the Plaintiffs-Respondents filed the aforesaid suits i.e. Title Suit No. 426 of 1999 (giving rise First No. 5 of 2008) and Title Suit No. 427 of 1999 (giving rise First Appeal No. 8 of 2008) for a decree for specific performance of contract against the Defendants-Appellants in respect to the suit land detailed in Schedule-A in the plaint of both the suits.

4. The case of the Plaintiffs in Title Suit No. 426 of 1999 is that in the month of July 1999 the Defendant fell in need of money and approached the Plaintiff No. 1 through the Plaintiff No. 2 to purchase suit land measuring 5-1/2 kattha @ Rs. 1,25,000/- per kattha and received Rs. 26,001/- as earnest money. Pursuant to the said oral contract again the Defendant received Rs. 25,000/- on 27.7.1999 and executed Zerbeyananama on his letter pad in presence of witnesses in favour of Smt. Sarita Dokaniya the Plaintiff No. 1 on the same day showing the total earnest money received as Rs. 51,001/- out of total consideration amount of Rs. 6,87,501/-. The Defendant agreed to execute a registered sale deed after receiving the balance consideration amount within 30.9.1999. The Plaintiffs repeatedly requested the Defendant to receive consideration amount and execute the sale deed but the Defendant delayed and, therefore, lastly on 4.9.1999 the Plaintiff No. 1 served a registered legal notice requesting him to perform his part of the contract. The Defendant replied the notice on 20.9.1999 showing his inability to perform his part of the contract. Thereafter the suit was filed on 30.9.1999 pleading that the Plaintiff No. 1 has been and is still ready and willing to pay the remaining consideration amount of Rs. 6,36,5000/- to the Defendant.

5. The case of the Plaintiffs in Title Suit No. 427 of 1999 is that the Plaintiffs agreed to purchase the suit land i.e. 3-1/2 kattha @ Rs. 1,25,000/- per kattha and paid Rs. 5,005/-. Thereafter pursuant to the said oral agreement the Defendant executed Zarabayanama i.e. agreement to sell dated 25.7.1999 in presence of witnesses. The Defendant agreed to execute the registered sale deed after receiving balance consideration amount within 31st October 1999. On 29.7.1999 the Defendant further received Rs. 50,000/- and granted a receipt. Thus, the Defendant has received Rs. 55,005/- as earnest money out of total consideration amount of Rs. 3,97,915/-. The rest pleadings are same as that of Title Suit No. 426 of 1999. In this case also notice was served on the Defendant on 4.9.1999 and the Defendant replied on 20.9.1999 showing his inability to perform his part of contract then the Plaintiffs filed the suit on 30.9.1999 pleading that the Plaintiffs were and are still ready and willing to perform their part of contract.

6. The defence of the Defendant-Appellant in both the suits is same. The Defendant besides taking various legal pleas such as the suit is not maintainable, the suit is bad for non-joinder of the necessary party etc. mainly contended that the suit land originally belonged to Uma Rani Devi who died in 1982 leaving behind her son the Defendant and one daughter Deojani Dey and, therefore, the suit plot is in joint possession of the Defendant and his sister. The Defendant's sister Deojani Dey died in the year 1998 leaving behind her two daughters namely Aditya Ray Choudhary and Pratiti Ray Choudhary and a son named as Amber Ray Choudhary who came in joint possession with the Defendants. Therefore, they are necessary party. Further defence is that the Plaintiffs never offered the balance consideration money nor they took any step to purchase non-judicial stamp and, therefore, they were never ready and willing to perform their part of the contract.

7. The further defence is that when his co-sharers came to know about the agreement to sell the suit land they opposed and showed their resentment by sending registered notice through their advocate on 23.8.1999 objecting the contract to sell. The copy of the notice was also sent by registered post to the Plaintiffs. In absence of partition the contract for sale cannot be specifically enforced. The Defendant on receipt of the registered notice from his co-sharers approached the Plaintiffs and requested them to receive back the earnest money but they refused and they send the pleader's notice dated 4.9.1999. The Defendant sent a reply through his advocate on 20.9.1999 mentioning therein the entire circumstances and the difficulty he was facing and the objection which the co-sharers are raising and requested in writing to take back the earnest money but the Plaintiffs without appreciating the difficulty and without taking into consideration the hardship filed the suit. According to the Defendant he is living alone on the first floor and the entire ground floor is under occupation of tenants who utilized compound area of holding. The wife of the Defendant resides in Kolkata at her mother's place who was undergoing prolong illness and treatment. The only son of the Defendant is a doctor. Since the wife was not feeling convenient, she suggested the Defendant to sell the suit property and purchase a flat in Kolkata and to shift there. Therefore, the Defendant agreed to sell but his son also on coming to know this fact revolted against the proposed sell on the ground that he will start a nursing home in the suit premises and further the mother-in-law of the Defendant also died and, therefore, the Defendant gave up the idea of purchasing a flat at Kolkata. The further defence is that the suit land was Raiyati land of Praful Kumar Sen. He settled the suit land to Vinod Bihari Mazumdar and Smt. Shantimay Devi as under Raiyati as such the settlee acquired under Raiyati right. They sold their interest to Uma Rani Devi by registered sale deed dated 25.10.1943 and, therefore, Uma Rani Devi also got only under Raiyati interest which is not transferable. The suit land is within the campus of the house and the house stand on half portion and the entire land is within one campus.

8. On the basis of the above pleadings in both the suits same issues were framed as follows:

(1) Is the suit as framed maintainable ?

9. After trial the learned court below found issue Nos. 4 and 5 in favour of the Plaintiffs. The learned court below held that since the agreement is admitted and it is also admitted fact in the suit that the Defendant has voluntarily entered into agreement and has accepted offer of the Plaintiffs and he is now denying to perform his part of the contract only due to protest of his co-sharers which is not lawful in this suit and there is no statutory bar and any difficulty in the performance of the agreement. The learned court below while deciding issue No. 6 held that there was enough opportunity to the Plaintiffs to purchase the stamp to get the sale deed executed till the expiry date if the execution of deed had not been denied by the Defendant by sending a notice in writing and therefore,

decided the issue in favour of Plaintiffs. While deciding issue No. 7 the learned court below held that the Defendant cannot deny to perform his part of contract on the ground that he has no right to transfer the suit land accordingly, decided the said issue in favour of the Plaintiffs. Likewise issue Nos. 1, 2 and 3 were also decided in favour of the Plaintiffs.

10. Learned Counsel Mr. Sushanto Kumar Das, appearing on behalf of the Appellants submitted that the alleged deed of agreement Ext.-1 is a letter-pad of the Defendant-Appellant and signed by the Defendant only and one witness but he is not examined and according to Section 10 of the Indian Contract Act it is not a contract and, therefore, is not enforceable by the court because the Plaintiffs had not signed the said document. According to the learned Counsel since it is signed only by the Defendant it is a unilateral document and, therefore, the terms and conditions are not binding on the parties. The learned Counsel further submitted that the learned court below without considering this aspect of the matter has decreed the Plaintiffs' suit. The learned Counsel further submitted that the Defendant was not the absolute owner of the properties and, therefore, also the suit for specific performance could not have been decreed by the court below. The learned Counsel further submitted that earlier the Defendant was under impression that his sister's heirs will not claim the properties and, therefore, he agreed to sell for purchasing a flat at Kolkata but when on coming to know this fact his son revolted and heirs of his sister objected to the proposed sale, the Defendant requested the Plaintiffs showing his inability to sell the property within the time for which the date of registration of sale deed was fixed but the learned court below without consideration the hardship and the difficulty of the Defendant granted the decree for specific performance of contract. According to the learned Counsel since the Defendant requested to take back the earnest money within a very short period and that too within the last date for execution and registration of sale deed (in First Appeal No. 5 of 2008 the last date of 30.9.1999 and in First Appeal No. 8 of 2008 the last date was 31.10.1999). The intention of the Defendant was bona fide and in reality he was facing difficulty and, therefore, the learned court below should have refused to grant discretionary relief of specific performance of contract. The learned Counsel further submitted that it is not the dishonest intention of the Defendant and the Defendant is not taking this defence in the written statement only after filing suit by the Plaintiffs and, therefore, the bona fide of the Defendants should have also been considered. The learned Counsel further submitted that the situation for which the Defendant agreed to sell the property was changed because of the fact that the son of the Defendant revolted and vehemently opposed the sale of the suit property and also the fact that the other co-sharers gave registered notice objecting the sale and because of death of mother-in-law the Defendant changed his mind to shift to Kolkata, the discretion should not have been exercised in favour of the Plaintiffs. The learned Counsel further submitted that in the suit land the Defendant has only half share. The house is standing on half portion of the suit land and half portion is vacant. Out of the said half portion of vacant land

i.e. out of 12 kattha the Defendant has got only six kattha but by these two agreements the proposed sale is for 9 kattha. Moreover, the said vacant land is used as angan/courtyard of the house and the said land is enclosed within the boundary of the house and, therefore, if the strangers are allowed to enter into said premises there shall be multiplicity of the proceedings. According to the learned Counsel the Defendant was under impression earlier that the legal heirs of his sister will not be claiming the property and he will shift to Kolkata therefore, he entered into agreement but because of subsequent event and development he expressed his inability to perform his contract which should have been considered by the learned court below.

11. The learned Counsel further submitted that the Defendant has got under Raiyati interest and, therefore, he cannot transfer title by sale deed and, therefore, the agreement is unenforceable. Learned Counsel further submitted that the Plaintiffs were never ready and willing to perform their part of the contract because except the notice and oral evidence nothing has been brought on record to show that they ever offered the consideration amount or they purchased the stamp paper. On these grounds the learned Counsel for the Appellants submitted that the impugned judgments and decrees are liable to be set aside.

12. On the other hand, the learned Senior counsel Mr. N.K. Agarwal appearing on behalf of the Plaintiffs-Respondents in both the appeals submitted that the learned court below has considered all aspect of the matter and found that the points raised by the Appellants are untenable and decreed the Plaintiffs' suit. The learned Counsel further submitted that in this case pursuant to oral agreement, Ext.-1 was written and signed by the Defendants himself and, therefore, it is a contract within the meaning of Section 10 of the Contract Act. The learned Counsel further submitted that there is no bar in decreeing the suit for specific performance of contract relating to joint property because the purchaser will have the right to sue for partition and they will be getting their share adjusted in the share of the Defendant but on that ground the suit for specific performance cannot be dismissed. The learned Counsel further submitted that the Plaintiffs were and are still ready to perform their part of the contract and well within time they also served notice i.e. on 4.9.1999 which was replied by the Defendant-Appellant on 20.9.1999 expressing his inability to perform his part of the contract. There was no question of purchasing the stamp paper. In the facts and circumstances only because stamp paper has not been purchased it cannot be said that the Plaintiffs were not ready and willing to perform their part of contract and moreover, suit has been filed by the Plaintiffs on 30.9.1999 within three months of the date of agreement. So far the hardship to the Defendant is concerned the learned Counsel submitted that the Defendant was a doctor and entered into the agreement with open eyes knowingly the full facts and, therefore, it cannot be said that he was under wrong impression that his co-sharers will not claim the property. Moreover, it is only a ground to deny the execution of sale deed. The learned Counsel further submitted that no doubt

granting of relief for specific performance of contract is discretionary but it should be exercised judiciously and not arbitrarily and moreover grant of relief for specific performance of contract is a rule and not to grant is an exception only. The learned Counsel further submitted that so far under Raiyati interest is not transferable is concerned, it relates to question of title and whatever interest the Defendant got through the sale deed from the original under Raiyat will be transferred to the Plaintiffs and moreover in the suit for specific performance of contract the title cannot be gone into and the Defendants cannot deny to perform his part of contract on the ground that he has no title. The Plaintiffs shall purchase the same with open eyes on their own risk. On these grounds, the learned Counsel for the Respondents submitted that the first appeals are liable to be dismissed.

13. In view of the above rival contentions of the parties, the point arises for consideration is this appeal is:

As to whether the Plaintiffs are entitled for a decree for specific performance of contract with respect to the suit properties and whether the impugned judgment and decrees are sustainable in the eye of law ?

14. Mr. Das appearing on behalf of the Appellants firstly assailed the judgment of the court below on the ground that the agreement Ext.-1 could not have been enforced specifically because it is not an agreement as the Plaintiffs have not signed on it. The learned Counsel on this point relied upon various decisions such as Mirahul Enterprises and Others Vs. Mrs. Vijaya Sirivastava and Mr. R.R. Sood, ; Pushpa Bai Vs. Dr. Williams and Others, and M/s. Trinmurthy Constructions Vs. Smt. Vijaya Lakshmi Gadgil, . Since this question has already been settled by the Hon"ble Supreme Court in the case of Aloka Bose v. Parmatma Devi 2009 SCC 1527, in my opinion it is not desirable to discuss the decisions cited by the learned Counsel for the Appellants. In Aloka Bose case (Supra) a similar question was under consideration i.e. as to whether an agreement to sell executed only by the vendor and not by the purchaser is valid or not. The Hon"ble Supreme Court held at paragraph 7 that an agreement of sell comes into existence when the vender agrees to sell and the purchaser agrees to purchase for an agreed consideration on agreed terms. It can be oral. It can be by exchange of communications which may or may not be signed. It may be by a single document signed by both the parties. It can also be by a document in two parts, each party signing one copy and then exchanging the signed copy as a significance of which the purchaser has the copy signed by the vender and a vender has a copy signed by the purchaser or it can be by the vender executing the document and deliver it to the purchaser accepts one. In the said paragraph it has been held that in India an agreement of sale signed by the vendor alone and delivered to the purchaser and accepted by the purchaser has always been considered to be a valid contract in the event of breach by the vender it can be specifically enforced by the purchaser. There is however, no practice of purchaser alone signing an agreement of sell. In the present case also

it is the specific pleading of the Plaintiffs in both the suits that there was oral agreement and pursuant to the oral agreement the Defendant executed the Ext.1 in the presence of witnesses signed by the Defendant only. Therefore, this judgment of the Hon''ble Supreme Court clearly covers the present question raised by the learned Counsel for the Appellants. Moreover, in the present case the Defendant is not disputing execution of Ext.1. I therefore, find no force in the submission of the learned Counsel for the Appellants.

15. The next contention of the learned Counsel for the Appellants is that the Plaintiffs were never ready and willing to perform their part of the contract. According to the learned Counsel they never offered the consideration amount nor they purchased stamp paper to show their readiness and willingness to pay balance consideration amount. The Defendant replied by Ext.-4 i.e. notice dated 20.9.1999 informing the Plaintiffs that he is not in a position to execute the sale deed. The Defendant admitted the execution of Ext.-1. He also admitted to receive the earnest money and, therefore, requested the Plaintiffs to take back the earnest money. Now therefore, he cannot say that the Plaintiffs never offered him the balance consideration amount. The witnesses examined on behalf of the Defendants DW 1 and DW 2 have fully supported their case of readiness and willingness and moreover the suit itself has been filed within the last date for execution of the sale deed. In such circumstances, the objection of the Defendant-Appellants that the Plaintiffs have not stated as to on which date they offered the consideration amount cannot be accepted and on that account alone it cannot be said that the Plaintiffs were not ready and willing to perform their part of contract. When the Defendant by written notice dated 20.9.1999 Ext.-4 expressed his inability to execute and register sale deed the Plaintiffs were not expected to have purchased the stamp necessary for execution of sale deed.

16. The learned Counsel for the Appellants next submitted that the Defendants was not the absolute owner of the suit property and, therefore, he cannot be compelled to sell the share of other co-sharer. The Defendants earlier entered into the agreement to sell thinking that the other co-sharer will not object and moreover the Defendants had the intention to settle at Kolkata. The learned Counsel further submitted that the other co-sharer has got half share in the house as well as in the vacant land and, therefore, in the vacant land the Defendants has got only 6 kattha land in his share and the agreement to sell in both the suit is for 9 kattha. This happened because the Defendants had no knowledge that the co-sharer will object to sell but subsequently they objected. The further contention is that it is in the boundary of the house and it is used as angan/garden of the house.

17. In reply to this, the learned Counsel for the Plaintiffs-Respondents submitted that specific performance in respect to share of property of the Defendant cannot be refused on the ground that property is owned by other co-sharers and in the event of decreeing the property will have to be partitioned. According to the learned Counsel it is not legal infirmity. In support of his contention, the learned

Counsel relied upon a decision of the Hon''ble Supreme Court in a case of Kartar Singh Vs. Harjinder Singh and others, . In that case, it appears that the Defendants entered into contract for himself and on behalf of his sister for sale of all the properties. He undertook to get the sale deed registered. It was specifically mentioned in the agreement that he had agreed to sell not only his entire share in the property but also that of his sister's share and that he would be responsible for getting the sale deed executed from his sister. His sister refused to sell the property of her share. The Hon''ble Supreme Court held that this is not a case which is covered by Section 12 of the Specific Relief Act. It is clear from Section 12 that it relates to the specific performance of a part of a contract. In that case so far the contracting party is concerned he has agreed to sell whole of his share. So far selling of his sister's share is concerned it was a separate contract which was severable from the contract of the contracting party although it was incorporated in one agreement. The Hon''ble Supreme Court also found that in fact there was no contract between the Plaintiff and the Defendants' sister. The valid contract was with Respondents in respect of his share of the property. In the present case this is not the fact. The Defendant entered into the agreement to sell assuming himself to be the absolute owner of the property and this is the case of the Plaintiffs also. No doubt, it is well settled as has been held in the case of Kartar Singh (Supra) that whenever a share in the property is sold the vendee has a right to apply for partition of the property and get the share demarcated but in the present case, the share of the Defendant is only 6 kattha. When the co-sharer objected, he requested the purchasers to take back the earnest money and out of the three persons one received back the amount but these two Plaintiffs filed the suits. Therefore, from the facts of the present case at our hand, it appears that the Defendants entered into an agreement to sell the property thinking himself to be the absolute owner and in fact in both the appeals he agreed to sell 9 decimals which is much in excess of his share. The question is can he be compelled to execute the sale deed with respect to excess of his share. The other aspect is if he is compelled to execute with regard to his share only then with regard to which agreement of sale. If he is compelled to execute sale deed with regard to the agreement involved in First Appeal No. 5 of 2008 then why should not the other agreement be also enforced and vice versa. In no case he can satisfy both the agreement. It will lead multiplicity of proceedings between the purchasers and the other co-

sharers. It is also admitted fact that the said land is within the one compound wall and used as garden of the house.

18. In the present case the further fact is that within two months of the agreement the Defendants requested the Plaintiffs to get back the earnest money on the ground stated above. He had shown to the Plaintiffs the difficulty which he was likely to face in executing the sale deed. He also gave written notice about his difficulty. No doubt he admitted the execution of Ext.-1 in both the suits but subsequently he found difficulties in performing his part of the contract. It appears that when the Defendant sent notice dated 20.9.1999

showing his inability, the Plaintiffs instituted both the suits on 30.9.1999 on the last date in one case and before the last in another case to compel the Defendant for execution of sale deed. The question is whether the court will shut the eyes in the present facts and circumstances and compel the Defendant to perform is part of the contract without considering his hardship. It is well settled principles of law that the subsequent facts can be taken into consideration by the court while exercising its discretionary jurisdiction. Only because the Plaintiffs are ready and willing to perform their part of contract the decree for specific performance should not be granted without taking into consideration the subsequent events. In the present case, it appears that bona fide the Defendant on receiving the notice from the co-sharers approached the Plaintiffs to take back the consideration amount. He explained his difficulties. Had the Defendants raised this plea in the written statement only it would have been overruled saying that it is merely the defence for the sake of defence and the action of the Defendant is not bona fide. It is the specific case of the Defendant in the pleading and also in the evidence that prior to entering into agreement he did not foresee the hardship that may come in future in performing his part of the contract. As soon as he came to know about his difficulty, to show his bona fide he approached the Plaintiffs and requested them to receive back the amount.

19. Section 20 of the Specific Relief Act reads as follows:

"20. Discretion as to decreeing specific performance.- (1) The jurisdiction to decree specific performance is discretionary, and the Court is not bound to grant such relief merely because it is lawful to do so; but the discretion of the Court is not arbitrary but sound and reasonable, guided by judicial principles and capable of correction by a Court of appeal. (2) The following are cases in which the Court may properly exercise discretion not to decree specific performance- (a) where the terms of the contract or the conduct of the parties at the time of entering into the contract or the other circumstances under which the contract was entered into are such that the contract, though not voidable, gives the Plaintiff and unfair advantage over the Defendant; or (b) where the performance of the contract would involve some hardship on the Defendant which he did not foresee, whereas its non-performance could involve no such hardship on the Plaintiff; (c) where the Defendant entered into the contract under circumstances which though not rendering the contract voidable, makes it inequitable to enforce specific performance. Explanation 1.- ...Explanation 2.- ... (3) The Court may properly exercise discretion to decree specific performance in any case where the Plaintiff has done substantial acts or suffered losses in consequence of a contract capable of specific performance.

(4) The Court shall not refuse to any party specific performance of a contract merely on the ground that the contract is not enforceable at the instance of the other party."

20. It is well settled principles of law that the grant of decree u/s 20 of the Specific Relief Act is the discretion of the court and cannot be claimed as a

matter of right. The court should take into consideration the circumstances of each case and the subsequent events while granting the decree for specific performance. At the same time the court should not exercise the said discretion any jurisdiction arbitrarily but should be based on sound judicial principles. It is also settled principles of law that where purchaser will be forced to enter upon new litigation i.e. a decree in the suit would only lead to further litigation the court should not exercise the discretion in favour of granting a decree for specific performance of contract. In the present case, the facts which are in favour of the Defendants-Appellants are that:

(1) The Defendants entered into the agreement to sell with an intention to purchase a flat at Kolkata but on the death of mother-in-law he left this idea.

(vi) As soon as objection was raised by the co-sharers and his son revolted to the sale the Defendant approached the Plaintiffs within two months of the agreement requesting them to take back the consideration amount. (vii) Out of the huge consideration amount as Rs. 6,87,501/- in First Appeal No. 5 of 2008 only small amount of Rs. 51001/- was paid as earnest money and likewise in the other first appeal out of Rs. 3,97,915/- only Rs. 55,005/- was paid as earnest money which the Defendant was ready to return back within two months but the Plaintiffs refused to accept. (viii) The conduct of the Plaintiffs is that they instituted the suit on 30.9.1999 with a view to compel the Defendant when he expressed his difficulties and hardship.

21. These are subsequent events after the agreement. From the above discussions, it appears to me that any one factors mentioned above which are in favour of the Defendants-Appellants may not by itself sufficient to deny the relief but cumulative effect of those factors coupled with the bona fide prompt action of the Defendant to pay back, in my opinion is sufficient to deny the relief as in the facts and circumstances of the case it will cause great hardship to the Defendants-Appellants. Moreover, the circumstances specified in Section 20 of the Specific Relief Act are not exhaustive but are only illustrative. In the present case, no doubt the Defendants agreed to sell but within two months he requested to take back the money showing his difficulties. He explained the circumstances to the Plaintiffs but the Plaintiffs instead of understanding his difficulties filed the case and so it appears to me that the Plaintiffs are using the case as instrument of operation to have unfair advantage. It is not the fact that the Defendant himself knowingly and deliberately brought this hardship upon him.

22. In view of the above discussions, in my opinion this is a fit case where the discretion should be exercised in favour of the Defendants and accordingly, it is held that this is not a fit case for grant of relief in favour of the Plaintiffs. The learned court below has not at all considered these aspects of the matter and granted the decree for specific performance of contract. However, since the Defendants had admitted to have received the earnest money as stated above, the Plaintiffs are entitled only to receive back the said amount from the Defendants.

23. In the result, both the first appeals are allowed and the impugned judgments and decrees in both the first appeals are set aside and both title suits filed by the Plaintiffs-Respondents are hereby dismissed.

24. In the facts and circumstances of the case, the parties shall bear their own costs.