

(2005) 09 DEL CK 0003

In the Delhi High Court

Case No : IA No. 3769 of 2005 in CS (OS) No. 644 of 2005

Smt. Sheela Gehlot

APPELLANT

Vs

Smt. Sonu Kochar and Others

RESPONDENT

Date of Decision : 06-09-2005

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, 151
Contract Act, 1872 — Section 10

Citation : (2006) 87 DRJ 328

Hon'ble Judges : Sanjay Kishan Kaul, J

Bench : Single Bench

Advocate : P.K. Aggarwal, for the Appellant; Ravinder Sethi Sanjay Gupta and Varsha Kriplani, for the Respondent

Final Decision : Dismissed

Judgement

Sanjay Kishan Kaul, J.—The plaintiff has filed the suit for specific performance or, in the alternative, for recovery of damages in respect of property bearing No. 60, Poorvi Marg, Vasant Vihar, New Delhi measuring 819 sq.yds.

2. The plaintiff had filed an application under Order 39 Rule 1 and 2 read with section 151 CPC (hereinafter referred to as "the Code") for ad interim injunction in respect of the property in question along with the suit and interim orders were granted on 11.5.2005 directing status quo to be maintained in respect of property at the stage when the summons were issued in the suit. Thereafter certain directions were passed for the plaintiff to appear in court along with documents to show that the plaintiff was capable of making the payment of Rs. 9.3 crores which was the stated consideration by the plaintiff in respect of the property in question and for the plaintiff to produce Income Tax Returns and pass book of bank accounts maintained by her. The plaintiff filed an affidavit with Income Tax Returns for the assessment year 2005-2006 along with details of bank account. The bank account showed meager amounts of couple of thousand rupees. It was found that the plaintiff was not in a position to pay the sated

consideration and thus the application was dismissed.

3. The plaintiff, aggrieved by the said order, filed an appeal before the Division Bench and the appeal was disposed of by the order dated 10.8.2005. This order was passed on agreement of the counsel for the parties that in view of the documents filed by the plaintiff, matter required a deeper consideration. The plaintiff showed a document from the HDFC Bank showing the financial capacity and that document was permitted to be filed in court. It is in view thereof that the application has come up again for hearing.

4. In order to appreciate the controversy, it is necessary to first deal with the averments made in the plaint. There is no dispute that the defendants No. 1 and 2 are the owners of the property while defendant No. 3 is their son. All the three defendants are based in France. Defendant No. 4 is the property broker who is alleged to have contacted the plaintiff and offered to sell the property in suit. It is stated that the defendant No. 4 claimed that he was authorised by defendant No. 1 and 2 and copies of relevant documents of title including the perpetual sub-lease deed dated 11.3.1969, occupancy certificate and conveyance deed were handed over to the plaintiff. The plaint goes on to state that in pursuance to the discussion between the plaintiff and defendant No. 4, a total sale consideration of Rs. 9.3 crores was finalised between the parties and that defendant No. 1 and 2 confirmed the sale consideration but desired that the entire amount would be payable by the plaintiff to the said defendants in one instalment at the stage of registration of the sale deed. The sale was to be completed within four or five months period of time. Since defendant No. 1 and 2 were old, it was represented that the defendant No. 3, their son, would be duly authorised to execute the sale deed on their behalf. Defendant No. 1 and 2 are stated to have informed the plaintiff that defendant No. 3 would enter into all communications with the plaintiff and would settle the terms of the sale deed. In order to satisfy defendants No. 1 and 2 of the creditworthiness of the plaintiff, the plaintiff got issued a letter/certificate dated 23.11.2004 regarding her creditworthiness. Not only this, another certificate dated 25.11.2004 was got issued from Vijaya Bank, Hauz Khas, New Delhi certifying that the plaintiff was solvent enough to make payment of Rs. 9.3 crores. Discussions are stated to have been held between defendant No. 3 and defendant No. 4 in respect of the draft sale deed and the same is stated to have been settled and finalised. Even the terms of the Special Power of Attorney to be executed by defendants No. 1 and 2 in favor of defendant No. 3 were discussed. Defendant No. 3 is stated to have expressed a desire to deal only through Standard Chartered Bank and thus the plaintiff opened an account with the said bank.

5. On 11.4.2005, defendant No. 3 is stated to have apprised the plaintiff that the price of the property had risen in the vicinity and thus defendants No. 1 and 2 wanted a higher consideration. This the plaintiff found wrongful and illegal and contrary to the agreement between the parties. A notice was sent by the plaintiff dated 13.4.2005 calling upon the defendants No. 1 and 2 to fulfill their

contractual obligations failing which a suit for specific performance and damages would be filed. In response to the said notice, the counsel for defendants No. 1 and 2 sent a reply dated 26.4.2005 denying any concluded agreement between the parties.

6. It is stated that the parties had agreed to all material terms including the sale consideration and that the price of the property has risen to about Rs. 12 crores and that is the reason for defendants No. 1 and 2 backing out of the transaction. The plaintiff claims to have been ready and willing to perform her part of obligations.

7. The defendants No. 1 and 3 have filed a common written statement denying any final agreement between the parties. It has been stated that only negotiations for sale of the property were going on through defendant No. 4, the agent of the plaintiff. Admittedly, there was no agreement signed or any advance paid. It is further stated that even the oral agreement is also alleged to have arrived at between the plaintiff and defendant No. 4. The husband of the plaintiff is stated to be a property magnet and who is trying to coerce the defendants No. 1 to 3 to sell the property though they are not willing to do so in view of the absence of any final agreement. It is further alleged that even if it is presumed that there was an agreement, the same was product of fraud, deceit and, Therefore, would be void.

8. The basic plea of the defendants is that there is no enforceable agreement of which specific performance can be enforced. Defendants No. 1 and 2 are stated to be NRIs, aged about 72 and 86 years of age respectively and that the ostensible price is about Rs. 12 crores while they are being coerced to sell the property for Rs. 9.3 crores. It is specifically alleged that defendant No. 4, a property dealer, was entrusted with the task of finding a buyer for the said property and was thus provided with copies of relevant documents. Defendant No. 4 was never appointed as an agent of defendants No. 1 and 2.

9. It is on the basis of the aforesaid pleas that the matter has to be considered. The documents filed by the plaintiff also become material since the admitted position is that there is no written agreement to sell. The fact that some negotiations were held with the plaintiff's property dealer are not disputed. The plaintiff did obtain the creditworthiness certificate from the bank. The additional document stated to have been filed in pursuance to the order of the Division Bench is stated to be a certificate of the HDFC Limited dated 9.8.2005. A copy of the same has been shown in court though the original has not been placed on record. The said certificate shows that a line of credit of Rs. 75 crores was sanctioned by HDFC Limited to M/s Ambience Projects Limited for development of various projects and the amount of Rs. 65 crores has already been disbursed. The balance Rs. 10 crores would be disbursed subject to creation of security to the satisfaction of the HDFC Limited for purchase of the property in question. These documents show that there is apparently creditworthiness of M/s Ambience Projects Limited which appears to be the company with which the

husband of the plaintiff or the plaintiff is associated.

10. The question, however, remains whether there was any agreed arrangement arrived at between the parties whereby the terms and conditions were settled. Since the agreement is alleged to be oral, it is the contemporaneous documents which would have to be considered. The only document in this behalf referred to is a draft of the sale deed and Special Power of Attorney which are stated to have been received through fax on 2.12.2004. A reading of the said draft sale deed as well as the submissions of the learned counsel for the plaintiff shows that apparently some fax was sent by the plaintiff and defendant No. 3 has made certain modifications and changes in the draft sale deed. This can only be deciphered from the endorsement made in the beginning whereby the fax is stated to have been sent to one Mr. Gahlot by defendant No. 3. In some of the paragraphs, it is not clear as to whether the specific matter has been scored out or underlined. There are changes made in the indemnity clause. Similarly there are other changes also made and a hand-written note is made at the end giving further changes. The plea of the learned counsel for the plaintiff is that these are cosmetic changes and since the consideration was stated in the draft sale deed, the same sows an agreement between the parties in respect thereof. However, no averment has been made as to in whose hand-writing these changes are alleged to have been made though purportedly it is addressed by defendant No. 3.

11. An important factor to be kept in mind is that the suit has been filed for specific performance of the oral agreement to sell dated 1.11.2004. The said paragraph of the plaint reads as under:

"4. That on 1st November, 2004 after some discussions and negotiations between the plaintiff and Defendant No. 4, a total sale consideration of Rs. 9,30,00,000/- (Rupees Nine Crore Thirty Lacs Only) was finalized between the parties for the purchase of the said entire property. The defendants Nos. 1 and 2 confirmed the said sale consideration and desired that the entire sale consideration would be payable by the plaintiff to the defendant in one Installment, i.e. at the time of execution and registration of the sale deed and handing over of the vacant and physical possession of the said property. The Parties also agreed and confirmed that the sale would be completed within the next 4-5 months. The defendants Nos. 1 and 2 expressed that due to their old age, they were unable to come to India from France for the purpose of execution and registration of the Sale Deed. They represented that Defendant No. 3, Shri Bal Kochar was their son and he would be duly authorized to execute the sale deed on their behalf in favor of the plaintiff. The defendants Nos. 1 and 2 told the plaintiff that defendant No. 3 would enter into all communications with the plaintiff and would settle the terms of the Sale deed. The defendants Nos. 1 and 2 represented that they would authorize Mr. Bali Kochar by mean of Special Power of Attorney to get the sale deed in respect of the said property executed in favor of the plaintiff."

12. A reading of the aforesaid paragraph shows that the agreement is stated to have been arrived at between the plaintiff and defendant No. 1, the broker. The only averment is that defendant No. 1 and 2 confirmed the said sale consideration. What were the exact terms and conditions of the agreement which were arrived at on 1.11.2004 have not been stated. In what manner were they confirmed by defendant No. 1 and 2 has also not been stated. The fact that the draft sale deed also bears additions and deletion would show that there was no finalisation of the terms and conditions of the agreement, if the draft sale deed can at all be called the agreed terms and conditions. The enforcement of the agreement is not of the draft sale deed but is of the oral agreement.

13. In my considered view, the facts do show that apparently there was no finalisation of any terms and conditions and the matter was still at a negotiation stage. Not a penny had passed between the parties nor were the terms and conditions reduced into writing. It has nowhere been stated nor has any document been filed to show that the so called corrected draft sale deed was ever accepted by the plaintiff. In such a circumstance, can there be said to be a concluded agreement arrived at between the parties? In my considered view, the answer to the same will be in the negative.

14. Learned counsel for the plaintiff strenuously sought to argue that it is not necessary to have all the terms and conditions of the agreement finalised as long as the property is identified and the consideration is finalised. Learned counsel in this behalf referred to the judgment of the learned Single Judge in Shri Ashok Kumar Goenka Vs. Shri Krishan Kumar Gupta, . That was a case where there was some dispute about the exact consideration payable. Only the sale consideration was disputed. Receipt of payment and part-performance of the contract was admitted. Since the sale consideration was not clearly stated in the Receipt-cum-Agreement, the court felt that the defendant could not take advantage of such omission at the juncture of the disposal of the interim application without trial. The receipt itself was not disputed. It is in these circumstances that interim orders were confirmed. This case is of no assistance to the plaintiff because in the present case the very agreement denied and the oral agreement is stated to have been arrived at between the plaintiff and the property broker originally the terms of which are not even set out in the plaint. It is not a case of dispute of only the value of sale consideration but there being no final arrangement at all being arrived at between the parties including the terms and conditions thereof.

15. Learned counsel for the plaintiff submitted by reference to the judgment of Nanak Builders and Investors Pvt. Ltd. v. Vinod Kumar Alag AIR 1991 Delhi 315 that there can even be an oral agreement. Para 8 of the judgment reads as under:

"8. Existence of a contract is sine qua non for the grant of relief of specific performance. The entire provisions of Specific Relief Act contained in Chapter II refer to contracts which can be specifically enforced or otherwise. As per the provisions of S. 2(h) of the Contract Act, "an agreement enforceable by law is a

contract". Even an oral agreement can be a valid and enforceable contract. Therefore, in the strict sense, it is not essential that a contract must be in writing. Where the parties contemplate a writing to complete the contract or where the contract is required by law or otherwise to be in writing, it will be necessary that the contract is reduced to writing. Further, where all the specific terms have been agreed upon and reduced into writing, the mere fact that it is stated that a formal contract will be executed does not render the writing, in the first instance, to be of no avail. These are certain general principles regarding formation of contracts."

16. There can be no dispute that there can be an oral agreement which can be valid and enforceable contract. However, in the said judgment it was observed that where parties contemplate a writing to complete the contract, it will be necessary that the contract is reduced into writing. In the present case, there is no finality to any of the writings. Nor even the oral arrangement arrived at has been set down which could be stated to be finalised. Learned counsel also referred to the judgment of the Privy Council in AIR 1946 97 (Privy Council) for the same purpose.

17. Learned counsel for the plaintiff also referred to the Division Bench judgment of this court in N.K. Widhani and Ors. v. Ajit Pershad Jain 2002 VII AD (Delhi) 164 to urge that the circumstances surrounding the contract can be looked into. There is no dispute about the proposition but as stated above, the circumstances go again the plaintiff rather than in her favor.

18. Learned counsel for the plaintiff next referred to the judgment of the apex court in Alopri Parshad and Sons Ltd. Vs. Union of India (UOI), to contend that the contract in question is an executory contract. It was thus submitted that even if part consideration has not been received in furtherance of the contract, the contract cannot be frustrated merely because of the change in circumstances in which the contract was made. Thus, if there is abnormal rise or fall in prices, a sudden depreciation of currency or such like matters, the same cannot affect the bargain. There is no doubt that there can be such a contract even without consideration since the contention of the plaintiff is that the consideration had to be paid only at the stage of execution as sale deed but for there to be an executory contract, there must be an agreement between the parties.

19. It has to be accepted that before a contract comes into being, there has to be a proposal and acceptance. These facts should be reflected either from a written document or in case of an oral agreement, from circumstances surrounding the alleged oral agreement. The documents filed show that only an exchange of draft sale deed and power of attorney were going on, if the case of the plaintiff is taken at its best, and there were no finally accepted terms and conditions of the agreement between the parties. It is not being set out by the plaintiff in the plaint or by any other document that the alleged draft sale deed was ever accepted by the plaintiff. This is apart from the fact that a specific performance in the suit is sought of the oral agreement to sell dated 1.11.2004

which is alleged to be between the property broker, defendant No. 4 and the plaintiff which is stated to be subsequently approved by defendant No. 1 and 2. As to when such approval took place and the circumstances therein have not been set out.

20. Learned counsel also sought to rely on the judgment of the learned Single Judge of this court in J.K. Rajgarhia Vs. Ravi Singh and Others, for relying on the principles for grant of interim relief under Order 39 Rule 1 and 2 of the Code. That was a case where a Memorandum of Understanding expressing the desire of the parties to execute a further contract was relied upon. The injunction was granted on the basis of this Memorandum of Understanding which expressed the desire to decide the manner in which transaction agreed to was to be executed. In the present case, there is no such agreement of a common intention.

21. Learned senior counsel for the defendants, on the other hand, submitted that the judgment of the apex court in Ganesh Shet Vs. Dr. C.S.G.K. Setty and Others, applies on all fours as a concluded contract in respect of sale of property is a sine qua non for specific enforcement of a contract. The Supreme Court relied on the observations in Pomeroy on "Specific Performance of Contracts" to conclude that "there has to be a greater degree of certainty in order to enforce the equitable relief of specific performance." It was observed in para 14 as under:

"In Pomeroy on "Specific Performance of Contracts" (3rd Edn) (Para 159) it is stated clearly that a "greater amount or degree of certainty is required in the terms of an agreement, which is to be specifically executed in equity, than is necessary in a contract which is to be the basis of an action at law for damages. An action at law is founded upon the mere non-performance by the defendant, and this negative conclusion can often be established without determining all the terms of the agreement with exactness. The suit in equity is wholly an affirmative proceeding. The mere fact of non-performance is not enough; its object is to procure a performance by the defendant, and this demands a clear, definite, and precise understanding of all the terms; they must be exactly ascertained before their performance can be enforced."

22. A reading of the aforesaid judgment thus clearly shows that there has to be a concluded contract, oral or in writing, with certainty about its terms.

23. Learned senior counsel for the defendants also referred to the judgment of the Division Bench of this court in c. The relevant portion reads as under:

"24. Before we proceed to analyze the evidence in this case and to appreciate the submissions made at the bar, it will be but necessary to take into consideration the provisions of Specific Relief Act and the requirements of law before a decree for specific performance be granted. Grant of decree for specific performance under S. 20 of the Specific Relief Act, 1963 rests in the discretion of the Court and cannot be claimed as of right. Parties seeking performance of contract must satisfy all the requirements necessary for seeking relief in equity. In exercising discretion, Court is obliged to take into consideration circumstances of the case,

conduct of the parties and the respective interests under the contract. At the same time, out should not be lot sight of that the discretion has to be exercised by the Court not arbitrarily but based on sound judicial principles. The first fundamental, which must be proved beyond all reasonable doubts is the existence of a valid and enforceable contract. Whereas valid and enforceable contract has not been made, Court will not make a contract for the parties. Specific performance will not be ordered if the contract itself suffers from some defect, which makes the contract invalid or unenforceable. Reference at this stage be made to a decision of the Supreme Court in Mayawanti Vs. Kaushalya Devi, .

25. Section 10 of the Contract Act defines as to what agreements are contracts. All agreements are contracts, if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object, and are not hereby expressly declared to be void. A true contract thus requires the agreement of the parties freely made with full knowledge and without any feeling of restraint. Parties must be ad-idem on the essential terms of the contract in case, it is an agreement to sell of immovable property, the law requires that it must with certainty identify the property agreed to be sold and the price fixed as consideration paid or agreed to be paid. Price has not been defined in Transfer of Property Act but that expression has to be understood in the same sense as is understood in the Sales of Goods Act. Every sale implies a contract of sale and like any other contract, the contract for sale of immovable property must be based on mutuality.

26. Where in a suit for specific performance of contract, the contract on which relief is based is found to be not a concluded contract, relief cannot be given on the basis of another contract alleged by the plaintiff to be a concluded contract, for which we make reference to the decision of Supreme Court in Ganesh Shet Vs. Dr. C.S.G.K. Setty and Others, . The facts in the said case were that the property was owned jointly by three brothers. The purchaser clearly stated that at their meeting with one of the brothers, he told that he is yet to consult his two brothers about sale consideration. Tenor of that sale consideration was not finalised in their meeting. It was held that there was no concluded contract between the parties on which decree for specific performance could not be passed. In the said case, Supreme Court held that in a suit for specific performance the evidence and proof of agreement must be absolutely clear and certain. Reference was made in the said decision to Property on "Specific Performance of Contracts" (3rd Edn) (para 159) wherein it is stated clearly that a "greater amount or degree of certainty is required in the terms of an agreement, which is to be specifically executed in equity, than is necessary in contract; which is to be the basis of an action at law for damages. An action at law is founded upon the mere non-performance by the defendant, and this negative conclusion can often be established without determining all the terms of the agreement witexactness. The suit in equity is wholly an affirmative proceeding. The mere fact of non-performance is not enough; its object is to procure a performance by

the defendant and this demands a clear, definite and precise understanding of all the terms; they must be exactly ascertained before their performance can be enforced...."

24. The Division Bench has thus clearly set out that there has to be first a valid and enforceable contract and if it is not a concluded contract, the relief cannot be given on the basis of the same.

25. Learned counsel also referred to the judgment of the Supreme court in *Mayawanti Vs. Kaushalya Devi*, wherein it was observed in paras 8 and 19 as under: "8. In a case of specific performance it is settled law, and indeed it cannot be doubted, that the jurisdiction to order specific performance of a contract is based on the existence of a valid and enforceable contract. The Law of Contract is based on the ideal of freedom of contract and it provides the limiting principles within which the parties are free to make their own contracts. Where a valid and enforceable contract has not been made, the court will not make a contract for them. Specific performance will not be ordered if the contract itself suffers from some defect which makes the contract invalid or unenforceable. The discretion of the court will be there even though the contract is otherwise valid and enforceable and it can pass a decree of specific performance even before there has been any breach of the contract. It is, Therefore, necessary first to see whether there has been a valid and enforceable contract and then to see the nature and obligation arising out of it. The contract being the foundation of the obligation, the order of specific performance is to enforce that obligation.

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

26. A reading of the aforesaid thus shows that there must be a consensus ad idem. Such meeting of mind is clearly absent in the present case in view of the facts discussed above.

27. Learned counsel also referred to the judgment of the Supreme Court in *Col. D.I. Mac Pherson Vs. M.N. Appanna and Another*, wherein it was held that if no counter offer is made but merely invitation to offer is there, there has to be an acceptance to the same. In the absence, there would be no concluded contract.

28. Learned counsel also referred to the Division Bench judgment of the Calcutta High Court in *Sanwarmal Goenka Vs. Soumyendra Chandra Gooptu*, in respect of

the principles to be kept in mind while considering an application under Order 39 Rule 1 and 2 read with Section 151 CPC. A letter of authority given to a broker was held to be only for purposes of enabling the parties to negotiate the same. The idea is to put the world to notice that there is desire to sell but to complete a contract for specific enforcement, there has to be certainty as to price, certainty as to parties, certainty as to property and certainty as to other terms. It would be useful to reproduce some of the relevant paragraphs which are as under:

"16. I am inclined to accept the contention of Mr. P.K. Das appearing on behalf of the respondent that the letter of authority of this kind merely gives an authority to the broker to get a suitable purchaser for the purpose of enabling parties to negotiate the sale. It is not an offer to the world at large so as to mean that the property is open for sale to anybody who would offer that minimum price. In order to have a completed contract for the specific enforcement thereof there must be four certainties viz. Certainty as to price, certainty as to parties, certainty as to property and certainty as to other terms (See Fry on Specific Performance 6th Edn. Page 157 et seq.)

"21. In Bowstead on Agency, Fourteenth Edition, page 88 in illustration 6 it is stated that an estate agent in England has normally no authority to sell land; even though he is instructed as to the price at which the vendor will sell, his function is to solicit offers and transmit them to his principal. But he may be authorised expressly or impliedly to sell though in such circumstances he normally has no authority to sign anything but an open contract. In any case, he is prima facie authorised to describe the property, state to an intending purchaser the circumstances which may affect its value and to receive a deposit, but not to receive payment, nor to warrant that it may legally be used for a particular purchase. In my opinion, that is also the position in India with regard to the broker who negotiates the sale and purchase of the land and buildings".

29. In my considered view, the conspectus of the aforesaid judgments which have been duly considered, leave no manner of doubt that in the present case, there cannot be said to be any certainty as to the terms arrived at between the parties. If there is no such certainty of the terms, how can there be a question of specific enforcement of the alleged contract? It is apparent that defendant No. 4 was only a broker who was negotiating the deal. No doubt if the deal would have concluded, possibly the documents had to be executed by defendant No. 3. However, it was not permissible for the broker to make a final commitment on behalf of the owners being defendant No. 1 and 2. It is at the stage of negotiation and finalisation that apparently, the deal fell through. The reason may be the non-agreement for the terms or otherwise. If prices had risen in the meantime, the defendant No. 1 and 2 cannot be compelled to sell the property to the plaintiff if they are not willing to do so since there was no finality to the terms which could be said to result in a concluded contract. In view of this legal position and the facts and circumstances of the case, the plaintiff has failed to make out any prima facie case. The fact that the subject matter is a immovable

property does not imply that the property must be preserved till the disposal of the suit. In any case, the plaintiff has sued for an alternative relief for damages. Thus, the criteria of irreparable loss and injury as also the balance of convenience is not satisfied in case of the plaintiff.

30. The document made available by the HDFC Limited also clearly shows that admittedly the deal is one by a property dealer and the plaintiff is only a nominee to carry out the transaction. The deal having fallen through, the present proceedings admittedly being utilised to pressurise the defendant No. 1 and 2 to enter into a contract for sale only with the plaintiff and to cast a doubt on the title of the property so that the defendant No. 1 and 2 are unable to negotiate for the sale of the property, which is admittedly their intention. The injunction order already has caused grave prejudice to the defendant No. 1 and 2 as they have not been able to deal with the property in question. The defendant No. 1 and 2 at this old age cannot be tied down to some concluded contract.

31. The application is without any merit and the same is dismissed with costs of Rs. 20,000/-.

32. Needless to say that the observations made for the disposal of the present application will not influence the final adjudication of the suit.