

(2012) 09 KAR CK 0114

In the Karnataka High Court

Case No : Regular First Appeal No. 789 of 2009

Sri T. Thippaiah

APPELLANT

Vs

Smt. Gopamma and Others

RESPONDENT

Date of Decision : 03-09-2012

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2013) 2 AKR 728 : (2013) 1 KCCR 70

Hon'ble Judges : H. Billappa, J

Bench : Single Bench

Advocate : M.S. Narayana Rao Mahadevaiah, for the Appellant; Sriyuths B.S. Raghu Prasad for Respondent-3, M. Karunakar for Respondent-5 and N.S. Sanjay Gowda for Respondent-6, for the Respondent

Final Decision : Dismissed

Judgement

H. Billappa, J.—This appeal is by the plaintiff is directed against the judgment and decree, dated 24.03.2009, passed by; the I Addl. City Civil and Sessions Judge, Bangalore, in O.S. No. 3352/1986. By the impugned judgment and decree, the Trial Court has dismissed the suit of the plaintiff.

2. Aggrieved by that, the appellant/plaintiff has filed this appeal.

3. The respondents are defendants 1 to 6 in the Trial Court. The parties will be referred with reference to their rank in the original suit O.S. No. 3352/ 1986.

4. Briefly stated the facts are:

The appellant/plaintiff filed suit in O.S. No. 3352/1986 for mandatory injunction, specific performance and declaration that the sale deed executed by the defendants 1 and 2 in favour of the sixth defendant is not binding on the plaintiff. The case of the appellant/plaintiff was that the defendants 1 and 2 are the owners of Sy. No. 57/2 of Agrahara Dasarahalli village. The defendant No. 3 is the Power of Attorney Holder of defendants 1 and 2. The defendants 1 and 2

formed several sites in Sy. No. 57/2 and entered into sale agreement with the plaintiff on 28.12.1974 agreeing to sell and re-convey site No. 28 formed in Sy. No. 57/2 measuring 40" x 60" for a sum of Rs. 8,000/-. The defendants 1 and 2 received a sum of Rs. 1,000/- on the date of agreement and agreed to receive further sum of Rs. 7,000/- at the time of registration. The defendants 1 and 2 got the suit schedule site and other sites through registered partition deed dated 17.07.1969. Thereafter, the defendants 1 and 2 formed 29 sites and applied for re-conveyance. The re-conveyance was ordered in favour of the defendants 1 and 2 as per endorsement dated 24.03.1975. This was followed by another endorsement dated 20.12.1977. Re-conveyance in favour of defendants 1 and 2 was ordered subject to the condition that the defendants 1 and 2 shall deposit a sum of Rs. 1,73,000/- towards the layout charges. The defendants 1 and 2 informed the fifth defendant that they have either sold or entered into sale agreement with several persons and re-conveyance may be ordered in favour of the purchasers including the plaintiff. The defendants 1 and 2 furnished the names of the purchasers including the plaintiff. The defendant; No. 5 issued endorsement dated 27.2.1979 asking the plaintiff to pay layout charges of Rs. 5,965.18. The plaintiff paid the layout charges. Thereafter, the defendant No. 3, the power of attorney holder of defendants 1 and 2 has given affidavit to the fifth defendant on 24.11.1982 stating that the defendants 1 and 2 Have received the entire cost of the site from the plaintiff and requested the fifth defendant to issue possession certificate to the plaintiff. Thereafter, the defendants 1 and 2 obtained permission from the Urban Land Ceiling Authority to sell the property on 16.11.1984. It is stated, during 1979 itself, remaining amount of Rs. 7,000/- was paid by the plaintiff to the defendants 1 and 2. It was intimated to the fifth defendant. The plaintiff was asked to pay Rs. 3,517/- towards re-conveyance charges and produce no objection certificate from the defendants No. 1 and 2. The plaintiff produced no objection certificate from the previous owners to issue possession certificate. But, the fifth defendant insisted for the sale deed from the defendants 1 and 2 in favour of the plaintiff. Thereafter, the defendants 1 and 2 have agreed to sell the suit schedule property in favour of the defendant No. 4. Again, during the pendency of the suit, the defendants 1 and 2 have sold the property in favour of the defendant No. 6. Therefore, the plaintiff has prayed for mandatory injunction, specific performance and declaration.

5. The defendant No. 3, who is the Power of Attorney holder of defendants 1 and 2 has filed his written statement contending that the suit is not maintainable. Sy. No. 57/2 was acquired by the CITB vide preliminary notification dated 08.1.1964 published in the Gazette dated 06.02.1964 and final notification dated 11.12.1971 published in the Official Gazette on 02.03.1972. After taking possession, award has been passed on 06.08.1972 and the property has Vested with the CITB. The agreement dated 28.12.1974 entered into between the defendants 1 and 2 and the plaintiffs invalid and cannot be enforced. Before sale agreement, the suit property was acquired by the CITB. The plaintiff has no right for re-conveyance of the suit schedule property. It is denied that the balance sale

consideration amount of Rs. 7,000/- was paid by the plaintiff during the year 1979. It is stated, the claim is barred by limitation. Therefore, the defendant No. 3 has prayed for dismissal of the suit.

6. The defendant No. 4 has filed her written statement contending that the sale agreement dated 28.12.1974 is barred by limitation. She is not aware of the allegations made in the plaint. The defendants 1 and 2 agreed to sell the suit schedule property in her favour and permission was obtained from the Urban Land Ceiling Authority. She has paid the advance amount of Rs. 50,000/- to defendants 1 to 3. Therefore, the defendant No. 4 has prayed for dismissal of the suit.

7. The fifth defendant has contended, the land in Sy. No. 57/2 of Agrahara Dasarahalli village has been acquired and possession has been taken and award has been passed. The fifth defendant is the absolute owner including the suit schedule property. It is contended that the plaintiff has no right in the suit schedule property and he is not entitled for any possession certificate. In the additional written statement, it is contended that the mandatory injunction sought for is untenable. The entire land in Sy. No. 57/2 of Agrahara Dasarahalli village including the suit schedule property has been acquired by BDA. Therefore, the plaintiff has no right or interest in the suit schedule property. The fifth defendant is not a party to the sale agreement. Therefore, the sale agreement cannot be enforced against the fifth defendant. Therefore, the fifth defendant has prayed for the dismissal of the suit.

8. The sixth defendant has contended that he has purchased the suit schedule property from the defendant No. 3, the GPA holder of defendants 1 and 2 and he has "been put in possession of the suit schedule property. The suit schedule property has been purchased for a sum of Rs. 1,00,000/- It is contended, the defendant No. 6 is a bonafide purchaser and had no knowledge of prior agreement. Therefore, the defendant No. 6 has prayed for dismissal of the suit.

9. The trial Court has framed the following issues and additional issues:

Issues

1. Does the plaintiff prove the agreement of sale dated 28.12.1974 executed in his favour by defendant Nos. 1 & 2 in respect of the suit schedule property?
2. Is the suit barred by time?
3. Whether the plaintiff is entitled to obtain the sale deed from the defendant Nos. 1 to 3 in respect of schedule property pursuant to the sale agreement dated 28.12.1974?
4. Is the plaintiff entitled to possession certificate from the 5th defendant?
5. What decree/order?

Additional issues:

1. Whether the plaintiff proves that 1st and 2nd defendants obtained permission under Urban Land (Ceiling and Regulations) Act, 1976, on 16.11.1984 and that authorities permitted the 1st and 2nd defendant to register the sites in favour of the purchasers and intending purchasers including the plaintiff?
2. Whether the plaintiff proves that 1st and 2nd defendants executed the sale deed pertaining to the suit schedule property in favour of 6th defendant during pendency of the suit?
3. Does the plaintiff prove that defendant Nos. 1 to 3 and 5 are estopped from denying the re-conveyance of the suit schedule property to the plaintiff?
4. Does the plaintiff prove that the defendant No. 3 had no authority to execute the sale deed dated 19.01.1991 pertaining to the suit schedule property in favour of the defendant No. 6 and it does not confer ownership of the schedule property on the 5th defendant?

Amended issue No 3 and 4

3. Whether the plaintiff is entitled to a sale deed from defendant Nos. 1 to 3 in respect of the schedule property by issue of mandatory injunction?

4. Is the plaintiff entitled to possession certificate from 5th defendant by issue of mandatory injunction?

10. The trial Court has answered the issue No. 2 and additional issue Nos. 1 and 2 in the affirmative and issue Nos. 1, 3 and 4 and additional issue Nos. 3 and 4 in the negative and consequently, has dismissed the suit.

11. Aggrieved by that, the appellant/plaintiff has filed this appeal.

12. The learned Counsel for the appellant contended that the impugned judgment and decree cannot be sustained in law. He also submitted that the trial Court has failed to consider the evidence on record in proper perspective. Further he submitted that the defendants 1 to 3 have furnished the names of 29 persons to whom the sites have to be re-conveyed and it includes the name of the plaintiff. He also submitted that individual letters were addressed and charges were collected. The plaintiff has paid the charges. The BDA has accepted the charges. The plaintiff has paid the full amount. Ex. P21 shows that re-conveyance deed was executed in favour of the plaintiff. Further he submitted that Ex. P32 has been executed in favour of Sri. Jagan Mohan Rao. He also submitted that the BDA cannot go back from its representation. The defendants 1 and 2 requested the BOA to reconvey and it was accepted. The defendants 1 and 2 wrote letter to the BDA stating that the sites may be re-conveyed to 29 persons by collecting necessary charges. List of 29 persons was also furnished. The plaintiff is one among them. There is no reason for the BOA to refuse to issue the possession certificate. The plaintiff has acquired right to get re-conveyance. The BDA is estopped from denying re-conveyance. He also submitted that the transfer of property in favour of defendants No. 6 is hit by the

principle of lis-pendens.

13. Placing reliance on the decisions of the Hon''ble Supreme Court in the Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others, and Sheelawanti and Another, Retired/Retiring Public Servants Forum, Joginder Kumar Sharma, Alam Singh and Others, Gurpiari Jolly, Prem Chopra, Dwarka Dass and Ravi Kher Vs. Delhi Development Authority and Another, the learned Counsel for the appellant submitted that the defendant No. 5 is bound by the principle of promissory estoppel.

14. Placing reliance on the decision of the Hon''ble Supreme Court in Mahboob Sahab Vs. Syed Ismail and Others, the learned Counsel for the appellant submitted that the defendants 1 to 3 and 5 are estopped by their conduct and the plaintiff is entitled for the relief claimed.

15. Placing reliance on the decision of this Court in The Bangalore Development Authority Vs. Smt. Ramakka (Deceased) by L.Rs, the learned Counsel for the appellant submitted that the resolution to re-convey is enforceable.

16. Further placing reliance on the decision of the Calcutta High Court in Ceean International Private Limited and Sukhendu Bhusan Basu Vs. Ashok Surana and Another, and this Court in Mohammed Ali Abdul Chanimomin Vs. Bisahemi Kom Abdulla Saheb Momin and Another, the learned Counsel for the appellant submitted that, the transfer of property during the pendency of the suit is hit by the principal of lis-pendens.

17. Placing reliance on the decision of the Hon''ble Supreme Court in Mst. Rukhmabai Vs. Lala Laxminarayan and Others, the learned Counsel for the appellant submitted that the cause of action for the suit arose when the BDA insisted for sale deed and the suit is within time.

18. As against this, the learned Counsel for the respondents submitted that the impugned judgment and decree does not call for interference. He also submitted that the sale agreement is dated 28.12.1974, the final notification is dated 11.12.1971 and possession has been taken on 02.05.1974 and re-conveyance has been ordered on 24.03.1975. The writ petition and the writ appeal filed by the petitioner in W.P. No. 15884/86 and W.A. No. 2653/86 have been dismissed. It is not mentioned in the plaint. Further, he submitted that Section 38(c) of the BDA Act provides for re-conveyance only in respect of persons holding the title deeds. The plaintiff has no title deed in his favour. Therefore, the endorsement has been issued in the year 1981 itself. Further he submitted that the suit is barred by limitation. He also submitted that based on the sale agreement, the plaintiff cannot claim re-conveyance. He also submitted that full'' consideration has not been paid. Further he submitted that the trial Court has rightly held that the sale agreement is a fraudulent document.

19. Placing reliance on the decisions of this Court in L.V. Hosalappa Since deceased by LR's Vs. The Bangalore Development Authority and Others, and

Gurukrupa Co-operative Housing Society Limited Vs. Bangalore Development Authority, learned Counsel for the 3rd respondent submitted that re-conveyance can be made, only in favour of erstwhile owner and not others and therefore, the plaintiff cannot claim re-conveyance.

20. Placing reliance on the decision of the Hon"ble Supreme Court in Ishwar Dutt Vs. Land Acquisition Collector and Another, the learned Counsel for the 3rd respondent submitted that resjudicata is applicable as the same issue has been decided in the earlier proceedings under Article 226 of the Constitution of India.

21. Further placing reliance on the decision of Supreme Court in Kaliaperumal Vs. Rajagopal and Another, the learned Counsel for the 3rd respondent submitted that the intention of the parties is relevant and the sale agreement is fabricated after the dismissal of the writ petition and the writ appeal.

22. Further placing reliance on the decision of the Supreme Court judgment in Prestige Lights Ltd. Vs. State Bank of India, the learned Counsel for the respondent No. 3 submitted that the plaintiff has suppressed the material facts and he has not approached the Court with clean hands and therefore, the plaintiff is not entitled for any relief.

23. Further he submitted that the trial Court on proper consideration of the material on record has rightly dismissed the suit and therefore, the impugned judgment and decree does not call for interference. He also submitted that the plaintiff has approached this Court in W.P. No. 15884/1986 for the same relief and this Court has rejected the writ petition. Thereafter, the plaintiff has preferred writ appeal in W.A. No. 2653/1986 and it has been dismissed on 14.01.1987. The plaintiff suppressing said fact has pursued the matter and therefore, not entitled for any relief. Further he submitted that the communication, if any, by the BDA will not create any right in favour of the plaintiff. He also submitted that the property did not exist on the date of sale agreement. Further he submitted that the property can be reconveyed only to the owner and not for others. Further he submitted that the acquisition is in the year 1971 and the sale agreement is dated 28.12.1974 and therefore, it is invalid and not enforceable.

24. The learned Counsel for the respondent No. 6 submitted that the impugned judgment and decree does not call for interference. He also submitted that the sale agreement is dated 28.12.1974 and the suit is filed in the year 1986 and therefore, the suit is barred by limitation. He also submitted that the sale agreement is created. He also submitted that the resolution dated 24.03.1975 is mentioned in the sale agreement dated 28.12.1974 which clearly indicates that the sale agreement is concocted. He also submitted that there can be no re-conveyance in favour of the agreement holder. He therefore submitted that the impugned judgment and decree does not call for interference.

25. In reply, the learned Counsel for the appellant submitted that there is no pleading regarding resjudicata. The 5th defendant has not stepped into the

witness box. The decision rendered in the writ petition and writ; appeal are not on merits. Further, he submitted that the 6th respondent is a subsequent purchaser during the pendency of the suit and therefore, the transfer is hit by the principle of lis-pendens. The defendants 1 and 2 have not filed separate written statement or stepped into the witness box. He also submitted that the persons who are similarly situated have been re-conveyed the site and therefore, the plaintiff is also entitled for re-conveyance. He placed reliance on the decision rendered in RFA. No. 2020/2005.

26. Placing reliance on the decision of Hon'ble Supreme Court in Vidhyadhar Vs. Manikrao and Another, the learned Counsel for the appellant submitted that where a party to the suit does not appear and state his case on oath and subject himself for cross-examination, the presumption is that the case set up by him is not correct.

27. Further placing reliance on the decision of the Calcutta High Court in Chotalal Shaw Vs. Ram Golam Shaw and Others, and Provash Chandra Dalui and Another Vs. Biswanath Banerjee and Another, the learned Counsel for the appellant submitted that, the party can waive a mandatory provision in his favour.

28. Further placing reliance on the decision of the Supreme Court in Gopal Krishnaji Ketkar Vs. Mahomed Haji Latif and Others, the learned Counsel for the appellant submitted that the Court can draw adverse inference against a person who is in possession of best evidence and does not produce it.

29. Placing reliance on the decision of the Supreme Court in C.G. Govindan Vs. State of Gujarat and Others, the learned Counsel for the appellant submitted that when the petition was summarily dismissed, such decision does not bind the party. Therefore, the decisions rendered in writ petition and writ appeal do not bind the plaintiff. Therefore, he submitted that the impugned judgment and decree cannot be sustained in law.

30. I have carefully considered the submissions made by the learned Counsel for the parties.

31. The points that arise for my consideration are:

1. Whether the appellant is entitled for the relief's claimed?
2. Whether the impugned judgment and decree calls for interference?

Point No. 1 and 2;

32. It is relevant to note, the suit is for mandatory injunction, specific performance and declaration. The appellant-plaintiff contends that there was a sale agreement dated 28.12.1974 between him and the defendants 1 and 2 agreeing to sell the suit schedule site for a sale consideration of Rs. 8,000/-. The suit schedule property along with other sites were re-conveyed in favour of the defendants 1 and 2 and they were directed to pay the "re-conveyance charges of Rs. 1,73,000/-. The defendants 1 and 2 informed the BDA that the sites may be

re-conveyed in favour of the agreement holders by collecting necessary charges. There were 29 persons to be re-conveyed. The plaintiff is one among them. The plaintiff has paid the necessary charges. Thereafter, the BDA without any valid reasons started insisting for the sale deed instead of re-conveying the property. Therefore, the plaintiff has prayed for mandatory injunction, specific performance and declaration.

33. The defendants 1 to 3 and 5 have contended that the suit schedule property is part; of Sy. No. 57/2 of Agrahara Dasarahalli village. The land in Sy. No. 57/2 of Agrahara Dasarahalli village was acquired through preliminary notification dated 08.01.1964 published in the gazette dated 06.02.1964 and final notification dated 11.12.1971 published in the gazette dated 02.03.1972. Thereafter, the possession has been taken on 02.05.1974. The plaintiff has created the sale agreement and he is not entitled for any relief.

34. The plaintiff has examined PWs. 1 and 2 and Exs. P1 to P36 have been marked.

35. The defendants have examined DW. 1.

36. Before this Court, the defendant No. 5 has produced Exs. D1 to D4 by way of additional evidence.

37. The plaintiff i.e., PW-1 has deposed supporting the plaint averments. He has reiterated the plaint averments. In his cross-examination, PW. 1 has stated that he had filed the writ petition urging the same contentions and it was dismissed. He does not remember whether he had preferred writ appeal and it came to be dismissed.

38. PW. 2 has deposed that he introduced the plaintiff to defendants 1 and 2 and they agreed to sell site No. 28 in Survey No. 57/2 of Agrahara Dasarahalli village. The plaintiff agreed to purchase the site for a sum of Rs. 8,000/-. The plaintiff brought two persons to sign the "agreement, as witnesses. Common agreement form was prepared. He filled up the blanks i.e., the date, name of the plaintiff and sale consideration amount of Rs. 8,000/-. A sum of Rs. 1,000/- was paid. All the blanks were filled up as instructed by the defendants 1 and 2. Thereafter, the defendant No. 1 put her thumb impression. The defendant No. 2 put his signature. He attested the thumb impression. Thereafter, the witnesses signed the agreement and he also signed the agreement.

39. In his cross-examination, PW-2 has denied the suggestion that Ex. P1-sale agreement is concocted and defendants 1 and 2 have not executed any sale agreement in favour of plaintiff.

40. DW. 1 the Power of Attorney holder of defendants 1 and 2. He has deposed supporting the written statement averments.

41. The plaintiff has produced Exs. P.1 to P.36. Ex. P.1 is the sale agreement dated 28.12.1974 executed by the defendants 1 and 2 in favour of the plaintiff.

The sale agreement is dated 28.12.1974. In the sale agreement it is mentioned that the defendants 1 and 2 have agreed to sell the site which has been reconveyed vide order dated 24.03.1975. Ex. P.2 is the letter dated 27.02.1979 asking the plaintiff to pay the layout charges at the rate of Rs. 22.37 per sq. yd. for the site measuring 40" X 60" in the re-conveyed layout in Sy. No. 57/2 of Agrahara Dasarahalli village. Exs. P.3 to P.6 are the receipts for having paid the amount towards re-conveyance charges. Ex. P.7 is the encumbrance certificate. Ex. P.8 is the letter addressed to the defendants 1 and 2 informing them that it has been decided to re-convey the land of 2 acres only inclusive of road portion in Sy. No. 57/2 of Agrahara Dasarahalli village. Exs. P.9 & Ex. P.10 are the letters dated 30.12.1977 addressed to the defendant No. 1 informing that the layout charges towards 2 acres of land re-conveyed in Sy. No. 57/2 of Agrahara Dasarahalli village works out to Rs. 1,73,000/-. Ex. P.11 is the letter dated 09.05.1978 addressed to 1st defendant informing that 29 sites, are available and requesting to furnish the address of all the 29 members. Ex. P.12 is the letter addressed to Chairman of BDA by the defendants 1 and 2 requesting to issue individual endorsement to the applicants to pay the layout charges. Ex. P.13 is the letter of defendant No. 3. Ex. P.14 is the acknowledgment. Exs. P.15 and P.16 are intimation requesting the plaintiff to produce the sale deed and No Objection Certificate from the Owner. Ex. P.17 is the certified copy of the General Power of Attorney in favour of the defendant No. 3 executed by the defendants 1 and 2. Ex. P.18 is the letter dated 30.05.1983 asking to pay the balance amount towards layout charges. Ex. 19 is the certified copy of layout plan.

42. Ex. P.20 is the challan for having deposited Rs. 220/-. Ex. P.21 is the proforma agreement dated 29.11.1982 between the plaintiff and the BDA. Ex. P.22 is the certified copy of the note sheet and orders pertaining to Sy. No. 57/2. Ex. P.23 is the certified copy of the plaint in O.S. No. 6962/1997. Ex. P.24 is the certified copy of the written statement in O.S. No. 6962/1997. Ex. P.25 is the certified copy of the agreement dated 16.10.1982 between Kanakalatha Pande and the BDA. Ex. P.26 is the certified copy of the allotment certificate in respect of site No. 13. Ex. P.27 is the certified copy of the possession certificate in respect of site No. 13 in Sy. No. 57/2. Ex. P.28 is the certified copy of the katha certificate in respect of site No. 13 in Sy. No. 57/2. Ex. P.29 is the copy of the agreement in respect of site No. 5. Ex. P.30 is the letter addressed to the allottee Umadevi to pay the layout charges. Exhibits P.31 and P.32 are the certified copies of the sale-deeds.

43. Ex. P.33 is the order passed in W.P. Nos. 32110-32111/1994. The writ petitions filed by the defendants 1 and 2 have been dismissed on the ground of delay and laches. Ex. P.34 is the certified copy of the order passed in W.P. No. 22898-899/1996. The writ petition filed by the defendants 1 and 2 have been dismissed as withdrawn with liberty to pursue the applications. Ex. P.35 is the representation of the plaintiff requesting to issue possession certificate. Ex. P.35(a) is the acknowledgement. Ex. P.36 is the copy of the notice requesting to issue possession certificate and sale agreement. Ex. P.36(a) is the

acknowledgement.

44. Ex. D1 is the certified copy of the order passed in W.P. No. 15884/1986. The writ petition filed by the petitioner i.e., the plaintiff has been rejected. Ex. D.2 is the certified copy of the order passed in W.A. No. 2653/1986. The writ appeal preferred by the plaintiff has been dismissed. Ex. D.3 is the certified copy of the order passed in W.P. Nos. 32110-11/1994. The writ petitions filed by the defendants 1 and 2 have been dismissed. Ex. D.4 is the certified copy of the order sheet in W.P. Nos. 32110-11/1994. From the evidence on record, it is clear, Sy. No. 57/2 of Agrahara Dasarahalli village belonged to the defendants 1 and 2. The land has been acquired vide preliminary notification dated 8.1.1964 and final notification dated 11.12.1971. Thereafter, possession has been taken on 02.05.1974 after passing the award. The land has vested with the BDA. Thereafter, the defendants 1 and 2 have requested the BDA to reconvey the property. The BDA has, passed resolution dated 24.3.1975 resolving to reconvey 2 acres of land in Sy. No. 57/2 of Agrahara dasarahalli village. The defendants 1 and 2 have been called upon to pay the layout charges of Rs. 1,73,000/-. The defendants 1 and 2 have requested the BDA to reconvey the property in favour of the agreement holders and list of 29 persons has been furnished. The plaintiff's name is at Sl. No. 28 in the list. The plaintiff has paid necessary charges. Thereafter, the BDA has insisted the plaintiff to produce the sale-deed. At that stage, the plaintiff has approached the Court. The plaintiff has filed suit in O.S. No. 3352/1986 i.e., the present suit on 20.8.1986. At the same time, the plaintiff has approached this Court in W.P. No. 15884/1986 seeking the same relief. This Court by its order dated 28.8.1986 has rejected the writ petition holding that the documents do not create any right in favour of the petitioner i.e., the plaintiff herein. Thereafter, the plaintiff has preferred writ appeal in W.A. No. 2653/1986. The Division Bench of this Court has dismissed the writ appeal declining to interfere with the order passed in W.P. No. 15884/1986. Thus, the order passed in W.P. No. 15884/1986 has become final. The order in W.P. No. 15884/1986 has been passed on 28.8.1986 and the order in W.A. No. 2653/1986 has been passed on 14.01.1987 on which date the suit in O.S. No. 3352/1986 was pending. The plaintiff has not whispered anything about the writ petition or the writ appeal in the plaint. It is only in his cross-examination, the plaintiff has admitted that he had filed the writ petition. He has stated, he does not know whether he had filed writ appeal. While the plaintiff has produced orders passed in W.P. Nos. 32110-32111/1994 and W.P. No. 22898/1996, he has not produced the orders passed in W.P. No. 15884/1986 and W.A. No. 2653/1986. It is obvious, the plaintiff has suppressed the orders passed in W.P. No. 15884/1986 and W.A. No. 2653/1986 and pursued the matter. This conduct of the plaintiff and (sic) orders passed in W.P. No. 15884/1986 and W.A. No. 2653/1986 disentitles the plaintiff from claiming the reliefs claimed in the plaint. While it is true, the evidence on record shows that some persons indicated by the defendants 1 and 2 have been reconveyed sites and they are similarly situated. But, the plaintiff has approached this Court and has taken the order against him and suppressing

the said fact, has pursued the matter. Therefore, the plaintiff is not entitled for any relief much less the reliefs claimed in the plaint. The Trial Court has dismissed the suit considering the material on record. The orders passed in W.P. No. 15884/1986 and W.A. No. 2653/1986 were not available to the Trial Court. They have been produced before this Court by way of additional evidence. The orders passed in W.P. No. 15884/1986 and W.A. No. 2653/1986 clearly disentitle the plaintiff from claiming the reliefs claimed in the plaint. Therefore, the impugned judgment and decree does not call for interference. There is no merit in this appeal and therefore, the appeal is liable to be dismissed. Points 1 and 2 answered accordingly.

Accordingly, the appeal is dismissed.

No costs, in the circumstances of the case.