



20th Shankarrao Kanitkar (National Level)

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MOOT PREPOSITION

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1. STATEMENT OF FACTS

FACTS OF THE CASE

On 01st January 2004, the Original Vendors, namely Rajesh Kumar Sharma and Smt. Padma Sharma (landowners), executed an unregistered Agreement to Sell (ATS) concerning 180 acres of agricultural and pastoral land bearing Survey Nos. 156/1 and 157/2, situated in Village Kharapur, Bilaspur District, Himachal Pradesh, for a total sale consideration of Rs. 45,00,000/- . Out of which the original vendees paid an amount of Rs. 3,00,000/- as earnest money to the Original Vendors. It was agreed between the parties that an additional amount of Rs. 5,00,000/- will be paid by the original vendees to the original vendors at the time of registration of Agreement to Sell (ATS) and the balance sale amount will be paid at the time of the registration of the Sale Deed.

The ATS included conditions precedent to be fulfilled by the Original Vendors before the execution of the sale deed. These conditions are:

- To obtain a forest clearance certificate from the State Forest Department regarding portions of land abutting protected forest areas.
- To secure a “no objection” certificate from the District Irrigation Department as the land fell within a major irrigation project command area.
- To provide for the resettlement and rehabilitation — by way of alternative land and/or assistance — of six identified tenant families occupying portions of the property.

On 26th November 2004, one Sunil Anand Rao Desai, nephew of the Original Vendors, instituted Original Suit No. 18 of 2004 in the Court of Principal Senior Civil Judge at Shimla against the Original Vendors seeking Partition and possession of certain properties including the subject land and revocation of partition deed dated 29.12.1996 (unrelated to the present case) to which original vendees were not parties. On 14th December 2004, an order of status quo came to be passed by the Principal Senior Civil Judge, restraining any transfer of the subject land.

When the Original Vendees came to know about the Institution of Suit No. 18 of 2004, they took steps to enforce their rights under the ATS and sought to implead themselves as parties in the suit by filing an impleadment application dated 01st May 2005. The application was

rejected by the Principal Senior Judge. Aggrieved by this order, the original vendees preferred a Writ Petition before the High Court which was dismissed by the High Court.

During the pendency of the Original Suit No. 18 of 2004, the original Vendees fulfilled the conditions precedent imposed by the ATS, i.e., to obtain the forest clearance, received no objection certificate on behalf of the vendors, and also persuaded the 6 tenants residing on the land to relocate themselves to some other portion of the land. **Vendees also paid some consideration amounting to around 8,12,500 Rs to the Vendors.**

On 12th November 2006, the Original Vendors sent a legal Notice (Notice of Termination) to the Original Vendees thereby terminating the ATS and informing them of their inability to execute a Sale deed for two reasons:

- Long Pendency of Original Suit No. 18 of 2004 and the Status Quo order
- Death of one of the Original Vendors, i.e., Smt. Padma Sharma

In the said notice of termination, the original vendors called upon the original vendees to take back the earnest money paid by them and treat the ATS as cancelled within one month from the date of receipt of said notice, failing which the ATS would be “deemed to be cancelled”. The relevant portion of the said notice is provided in Annexure 1.

To this notice, the Original Vendees gave a reply on 23rd November 2006 stating as follows:

(i) That they had fulfilled the terms of the ATS by obtaining a forest clearance certificate from state forest department, secured no objection certificate from irrigation department and provided for resettlement and rehabilitation of six identified families, which otherwise was the obligation of the original vendors under the ATS.

(ii) That they had time and again requested the original vendors to perform their part of the obligation of executing the sale deed;

(iii) That they were always ready and willing to perform their part of the contract;

(iv) That the further performance of the ATS had to be suspended due to the order of status quo passed in Original Suit No. 18 of 2004 and the same would not render the ATS unenforceable;

(v) That the original vendors were duty bound to execute the sale deed in their favour after the disposal of Original Suit No. 18 of 2004;

(vi) That the death of one of the original vendors would not have the effect of cancellation of the ATS because the legal heirs would be bound to perform in that regard;

(vii) That for all the above grounds, the question of taking back the earnest money did not arise.

No further response was given by the original vendors to the aforesaid reply to their notice of termination.

On 15th October 2010, the plaintiff in Original Suit No. 18 of 2004, viz., Sunil Anand Rao Desai, filed a memo to withdraw the suit and get the status quo order vacated in effect thereto. On the basis of the withdrawal memo, the Principal Senior Civil Judge vide its order dated 19th October 2010 dismissed Original Suit No. 18 of 2004 as being withdrawn and thus, the status quo order came to be vacated.

Pursuant to the withdrawal of the said suit, the original vendors executed the sale deeds dated 25th October 2010 and 04th November 2010 respectively in favour of the subsequent purchasers, selling the subject land for a total sale consideration of Rs. 1,20,00,000/-.

Having obtained knowledge of the sale deeds executed in favour of the subsequent purchasers, the original vendees instituted Original Suit No. 54 of 2011 in the Trial Court on 04th March 2011 inter alia seeking the relief of specific performance of the ATS dated 01st January 2004 against both the original vendors and the subsequent purchasers.

I. TRIAL COURT JUDGEMENT DATED 25th March 2016

The Trial Court held that the Plaintiffs had successfully established the essential elements of their claim by proving the existence of the Agreement to Sell, the payment of earnest money and further sums, as well as their continuous readiness and willingness to fulfil contractual obligations. However, the Plaintiffs failed to demonstrate that the defendants, who subsequently purchased the suit property, had prior knowledge or notice of the subsisting agreement, and the defendants succeeded in proving their bona fide status as purchasers for valid consideration without such notice.

Despite these findings, the Court was not persuaded to grant the Plaintiffs specific performance, noting their inability to prove actual physical possession of the suit property and emphasizing that such relief would impose undue hardship and injustice on the **defendants**, who had already paid substantial consideration.

Consequently, the Plaintiffs were held entitled to a refund of the earnest money and additional sums paid towards the purchase, **amounting to Rs. 11,12,500/-**, with interest at nine percent per annum from the date of each payment till decree—while specific performance was denied, equitable restitution was secured for the Plaintiffs. (Annexure II)

II. APPEAL IN THE HIGH COURT OF HIMANCHAL PRADESH

Aggrieved by the judgment and decree dated 25th March 2016 passed by the Trial Court, the Appellants referred an appeal before the High Court. The principal ground of appeal was that the Trial Court erred in law by failing to appreciate the principle of caveat emptor (let the buyer beware) and the established doctrine of bona fide purchasers for value without notice.

The respondents contended that the Agreement to Sell was nothing more than an informal, unregistered document which could not create enforceable rights against them as innocent third parties who had acquired the Subject Land from the original vendors with full payment of consideration and without any knowledge or notice whatsoever of the earlier agreement.

The High Court allowed the appeal and framed the following points for determination:

Point for Determination: Whether the Defendants (Subsequent Purchasers) had established that they were Bonafide purchasers for value of the suit property?

The High Court held that the subsequent purchasers had been informed of the ATS by the original vendors and a copy of the notice of Termination of ATS was also shared with the subsequent purchasers. This in the High Court's opinion would indicate that the subsequent execution of sale deeds in favour of the subsequent purchasers was a deliberate act and in plain disregard to the subsisting ATS in favour of the original vendees.

The High Court also observed that as the original vendors had not responded to the reply of original vendees to the notice of termination, the termination of ATS could never be said to have reached to its logical end, and that the ATS was still alive and binding.

Thus, the High Court held that the subsequent purchasers were not bona fide purchasers of the subject land for value without notice as they were aware of the earlier ATS executed in favour of the original vendees. The High Court directed the subsequent purchasers to execute the sale deeds in favour of the original vendees and put them in physical possession of the subject land. The original vendees, in turn, were directed to pay the balance sale consideration to the subsequent purchasers. The relevant portion of the judgement is provided in **(Annexure IV)**.

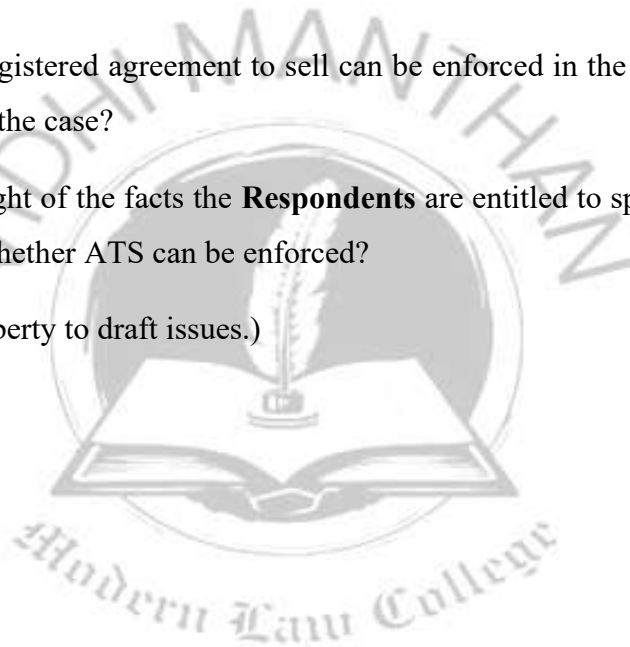
CURRENT CIVIL APPEAL TO SUPREME COURT OF INDIA

Aggrieved by the judgement of the High Court, the subsequent purchasers file the current appeal before the Supreme Court of India.

ISSUES FOR DETERMINATION

1. Whether the Subsequent Purchasers/ Appellant were Bonafide purchasers of the subject land?
2. Whether the revocation of agreement to sell by one party by serving notice valid in law?
3. Whether the Suit for specific performance of Contract is maintainable and is not barred by limitation?
4. Whether the unregistered agreement to sell can be enforced in the light of the present circumstances of the case?
5. Whether in the light of the facts the **Respondents** are entitled to specific performance of contract and whether ATS can be enforced?

(Participants are at liberty to draft issues.)



III. PARTIES INVOLVED IN THE CASE

Original Sellers/ Vendors (Defendants 1-2): Rajesh Kumar Sharma and Smt. Padma Sharma
(co-owners)

Original Buyers/Vendees (Plaintiffs/Appellants): Vikram Singh Patel and Priya Patel

Subsequent Purchasers (Defendants 3-10): Harjeet Kaur and others

Trial Court

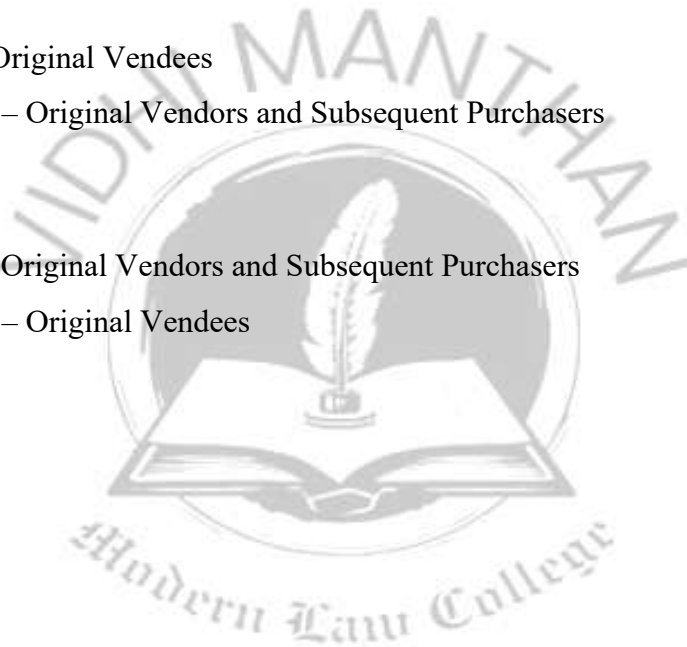
1. Plaintiff- Original Vendees
2. Defendants – Original Vendors & Subsequent Purchasers

High Court

1. Appellant – Original Vendees
2. Respondents – Original Vendors and Subsequent Purchasers

Supreme Court

1. Appellants – Original Vendors and Subsequent Purchasers
2. Respondents – Original Vendees



ANNEXURE 1: RELEVANT EXTRACT FROM NOTICE OF TERMINATION

The relevant extract from the Notice of Termination (dated 12 November 2006) reads as follows:

*"In view of the protracted litigation in Original Suit No. 18 of 2004 and the subsequent death of Smt. Padma Sharma (one of the Vendors herein), we are constrained to inform you that we are no longer in a position to proceed with the transaction contemplated under the Agreement to Sell dated 1st January 2004. The status quo order restraining any transfer of the Subject Land remains operative, and we cannot definitively ascertain our beneficial interest therein pending the outcome of the partition suit. Furthermore, the death of Smt. Padma Sharma has created legal complications with regard to the succession of her interest in the Subject Land. We cannot be expected to remain indefinitely bound by an agreement whose performance has become impossible by operation of law. You are hereby called upon to accept the refund of earnest money amounting to Rs. 3,00,000/- and to treat the Agreement to Sell **dated 1st January, 2004** as cancelled within a period of thirty (30) days from the date of receipt of this notice. In the event of your failure to comply with this notice, the Agreement to Sell shall be deemed to have been automatically cancelled as of this date, and we shall no longer be bound by any obligations thereunder. We reserve the right to take such steps as may be necessary to defend and protect our interests in the Subject Land in accordance with law."*

ANNEXURE 2: RELIEFS SOUGHT IN THE ORIGINAL SUIT

The Original Purchasers/Plaintiffs in the suit prayed for the following reliefs:

- (a) That the Defendants be specifically ordered to perform the Agreement to Sell dated 01 January 2004 and execute all instruments and take all steps necessary to put the Plaintiffs in full possession and enjoyment of the suit property as owners thereof, with all rights of ownership, after receiving the balance consideration from the Plaintiffs;
- (b) That in the event the Defendants fail or refuse to execute and register the sale deed in favour of the Plaintiffs, such acts be got done through a Court Commissioner appointed by this court at the cost of the Defendants.
- (d) Costs of the suit and such other reliefs as this court deems just, proper, and equitable in the circumstances of the case.



ANNEXURE 3: ISSUES FRAMED BY THE TRIAL COURT

The Trial Court, after hearing arguments from both sides, framed the following issues for determination:

1. Whether the Plaintiffs have proved that the Defendants agreed to sell the suit property bearing Survey No. 156/1 and 157/2, in the village of Kharapur, Bilaspur District, Himachal Pradesh, measuring approximately 180 acres, for a total sale consideration of Rs. 45,00,000/-, and that the Plaintiffs paid Rs. 3,00,000/- as earnest money to the Defendants?
2. Whether the Plaintiffs have proved that the Defendants agreed to execute and register the sale deed after fulfilling the condition precedent ?
3. Whether the Plaintiffs have proved that they were at all material times ready, willing, and able to perform their obligations under the Agreement to Sell?
4. Whether the Defendants have proved that the suit of the Plaintiffs is barred by law and is not maintainable?
5. Whether the defendants have proved that they are bona fide purchasers for valid consideration without notice of the Agreement to Sell in favour of the Plaintiffs?
6. Whether the Plaintiffs are entitled to the relief of specific performance of the Agreement to Sell?
7. What order or decree should be passed?

TRIAL COURT'S ANSWERS TO ISSUES:

Issue 1: That the original vendees successfully proved that the original vendors had agreed to sell the subject land for sale consideration of Rs. 45,00,000/- and had paid Rs. 3,00,000/- as earnest money.

Issue 2: That the original vendees successfully proved that the original vendors had agreed to register the sale deed after completion of conditions precedent.

Issue 3: That the original vendees claim to have paid Rs. 12,45,000/- in overall to the original vendors yet the evidence indicates that the original vendees had paid a total of Rs. 11,12,000/- to the original vendors. That the original vendees successfully proved that they were always ready and willing to perform their part of the contract.

Issue 4: (i) That the delay in filing the suit was caused due to the pendency of Original Suit No. 18 of 2010 and the original vendees had filed the suit after the execution of the sale deed by the original vendors in favour of the subsequent purchasers. Thus, the suit filed by the original vendees was within limitation from the date of the disposal of Original Suit No. 18 of 2004 as well as the execution of the sale deeds.

Issue 5: (v) That the original vendees failed to prove that the subsequent purchasers had prior knowledge of the ATS. That the subsequent purchasers have proved that they are bona fide purchasers of the subject land for valid consideration without notice. That the original vendees failed to prove that they were in actual possession of the subject land from the date of execution of the ATS and that the subsequent purchasers had bona fide purchased the subject land. Therefore, the grant of relief of specific performance in favour of the original vendees would cause hardship to the subsequent purchasers.

Issue 6: (b) Issues Nos. 5, answered in negative. (i) That the original vendees had failed to make good their case for grant of relief of specific performance.

Issue 7: (i) That the original vendees had failed to make good their case for grant of relief of specific performance and that in the alternative, the original vendees were entitled to refund of an amount of Rs. 11,12,000/- along with damages @9% p.a

ANNEXURE 4: RELEVANT PART OF THE HIGH COURT JUDGEMENT

“Apparently, there was no rejoinder to the reply notice. It is also not shown that the defendants had offered to return the advance amount received, nor was it claimed to have been returned. The termination of the agreement was hence not taken to its logical end. The unilateral termination could not therefore said to be valid and binding on the plaintiffs.

Defendants 1-2 were therefore aware of the circumstance that the advance amount paid by the plaintiffs was not refunded nor was it claimed to have been forfeited on any alleged breach of contract on the part of the plaintiffs. In the face of which, close on the heels of the plaintiff in the civil suit in OS 18/2004 having withdrawn the suit, that was claimed as an impediment for completion of the sale transaction, Defendants 1-2 having sold the property in favour of Defendants 3-10, who in turn were said to have been informed of the agreement of sale and the same having been terminated under the notice dated 12th November 2006 and a copy of the same also said to having been furnished to the said defendants, would plainly indicate that the sale transaction was carried out deliberately and blatantly in the face of a subsisting agreement of sale in favour of the plaintiffs, with a clear intention of defeating the said agreement of sale in favour of the plaintiffs.

Such a deliberate act on the part of Defendants 1-2 and 3-10 would not enable them to claim that as they have achieved a fait accompli, though defendants may claim to be innocent and bona fide purchasers for value, as it is found that they were aware of the agreement of sale in favour of the plaintiffs, it cannot be said that the contract is no longer capable of performance as the property is now in the hands of a third party. This may be true of genuinely bona fide purchasers and not such third-party purchasers who have brazenly entered into the transaction with eyes wide open and with notice of the subsisting agreement.

The consequence would be that even Defendants 3-10 would be obliged to complete the sale, as persons claiming under Defendants 1-2 by the due execution of a sale deed or sale deeds in favour of the plaintiffs and to convey the suit property in favour of the plaintiffs.

Incidentally, it is our firm opinion that it would be unjust to grant a lesser relief to the plaintiffs in directing the refund of the earnest money or to embark upon an exercise of determining any damages which the plaintiffs could very well claim. Such an exercise would have been justified if the defendants 3-10 had established their bona fides, which they have not.

In the result, the appeals are allowed, and the judgment of the trial court is set aside. The suit for specific performance is decreed. Defendants 3-10 shall execute sale deeds in favour of the

plaintiffs in respect of such portions of the suit property that they may have purchased from Defendants 1-2, in favour of the plaintiffs and put them in physical possession of the same. The plaintiffs shall pay the balance sale price in consideration thereof, proportionately. The sale transactions shall be completed within a period of three months, if not earlier. In the event of default on the part of the said defendants in this regard, the plaintiffs shall be entitled to have the sale deeds executed through the court below, in the manner as may be directed by it.”

