
20th SHANKARRAO KANITKAR MOOT COURT COMPETITION, 2026

10th January, 2026

BEFORE THE HON'BLE SUPREME COURT OF INDIA

In the matter of
CIVIL APPEAL NO. 54 OF 2011

Rajesh Kumar Sharma and ors

....Appellants

v.

Vikram Singh Patel and ors

....Respondents

UNDER ARTICLE 133 OF THE CONSTITUTION

MEMORANDUM on BEHALF of the APPELLANTS

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LIST OF ABBREVIATIONS

AIR	All India Reporter
Art.	Article
ATS	Agreement to Sell
Hon'ble	Honorable
KLT	Kerala Law Times
NOC	No Objection Certificate
No.	Number
Ors.	Others
SC	Supreme Court
SCC	Supreme Court Cases
SCR	Supreme Court Reports
TP Act	Transfer of Property Act, 1882
v.	Versus

INDEX OF AUTHORITIES**STATUTES**

1. The Transfer of Property Act, 1882
2. The Limitation Act, 1963
3. The Indian Contract Act, 1872
4. The Specific Relief Act, 1963
5. The Registration Act, 1908

BOOKS

1. Avtar Singh, Contract & Specific Relief (10th Edition, 2008)
2. Dr. R.K. Bangia, Contract One (8th Edition, 2021)
3. Sir Dinshaw Fardunji Mulla, The Indian Contract Act (16th Edition, 2024)
4. S.N. Shukla, Transfer of Property Act (27th Edition, 2008)
5. J. Vakil's, Commentaries on the Transfer of Property Act (7th Edition, 2025)
6. Avtar Singh, Transfer of Property Act (7th Edition, 2024)
7. T.R. Desai, Commentary on the Limitation Act (11th Edition, 2023)

CASE LAWS

1. Randhir Singh Chandolk v. Vipin Bansal, (2006) 135 DLT 56
2. S.N. Mundale v. New Mofussil Co. Ltd., AIR 1946 PC 97
3. Kartar Singh v. Harjindar Singh (1999) 3 SCC 517
4. T. Lakhshmipathi v. P. Nithyanandra Reddy, (2003) 5 SCC 150
5. Central National Bank Ltd. V. United Industrial Bank Ltd., AIR 1954 SC 181
6. Kapil Prasad Tiwari v. Raja Sahib Prahlad Sen, (1869) 2 BLR PC 11
7. Sashannah Chetti v. Ramasami Chetti, (1868) 4 MHC 7
8. Supreme General Films Exchange Ltd. v. Brijnath Singhji Deo, (1975) 2 SCC 530
9. K.N. Aswathnarayana Setty v. State of Karnataka, (2014) 15 SCC 394
10. Sefali Roy Chowdhary v. A.K. Dutta, (1976) 3 SCC 602
11. Sanjay Verma v. Manik Roy, (2006) 13 SCC 608
12. M. Narayanamma v. Lakshmididevi, AIR 2015 NOC 680 (Kar)
13. Boulton Bros & Co. v. New Victoria Mills Co, AIR 1929 All 87
14. Dhanraj Mills Ltd. v. Narsingh, AIR 1949 PAT 270
15. Master v. Garret and Taylor Ltd., AIR 1930 RAJ 126

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16. Ratanlal v. Brijmohan, AIR 1931 BOM 386
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17. Ahmmadsahab Abdul Mulla v. Bibijan, (2009) 5 SCC 462
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18. V. Muthusami v. Angammal, (2002) 3 SCC 316
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19. Kammana Sambamurthy v. Kalipatnapu Atchutamma, (2011) 11 SCC 153
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20. Nanjegowda v. Gangamma, (2011) 13 SCC 232
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21. G.H.C Ariff v. Rai Jadunath Majumdar Bahadur, (1931) 33 LW 586
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22. Dheeraj Developers (P) Ltd v Om Prakash Gupta, (2016) 116 ALR 484
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23. Gajanan Jaikishan Joshi v Prabhakar Mohanlal Kalwar, (1990) 1 SCC 166
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24. Acharya Swami Ganesh Dassji v Sita Ram Thappar, (1996) 4 SCC 526
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STATEMENT OF JURISDICTION

The current civil appeal is maintainable under the Article 133 of The Constitution of India

Article 133: Appellate jurisdiction of the Supreme Court in appeals from High Courts in regard to civil matters.

- (1) An appeal shall lie to the Supreme Court from any judgment, decree or final order in a civil proceeding of a High Court in the territory of India if the High Court certifies under article 134A—
 - a. that the case involves a substantial question of law of general importance; and
 - b. that in the opinion of the High Court the said question needs to be decided by the Supreme Court.
- (2) Notwithstanding anything in article 132, any party appealing to the Supreme Court under clause (1) may urge as one of the grounds in such appeal that a substantial question of law as to the interpretation of this Constitution has been wrongly decided.
- (3) Notwithstanding anything in this article, no appeal shall, unless Parliament by law otherwise provides, lie to the Supreme Court from the judgment, decree or final order of one Judge of a High Court.

STATEMENT OF FACTS

1. On **01st January 2004**, the Original Vendors entered into an **Agreement to Sell (ATS)** with the Respondents (Original Vendees) regarding the subject land, which comprises **180 acres**. The Respondents paid **substantial advance money** (earnest money) to the Vendors at this stage.
2. Subsequently, a legal dispute arose involving the property, marked as **Original Suit No. 18 of 2004**. On **14th December 2004**, the Court passed an **Order of Status Quo**, which legally restrained any alienation or transfer of the subject land, thereby impeding the performance of the ATS.
3. On **12th November 2006**, the Original Vendors served a **Notice of Termination** upon the Respondents. The Vendors cited two grounds for this termination:
 - a. The pendency of the litigation (Original Suit No. 18 of 2004).
 - b. The death of a co-owner, Smt. Padma Sharma.
4. The Respondents immediately challenged this termination by sending a **Reply dated 23rd November 2006**. In this reply, they refused to accept the termination and asserted their willingness to perform the contract. The Original Vendors received this reply but did not send a rejoinder, nor did they return the earnest money.
5. During the subsistence of the contract, the Respondents performed significant acts to clear the title and utility of the land, which were originally the duties of the Vendors. These acts included:
 - a. Obtaining **Forest Clearance**.
 - b. Obtaining the **Irrigation Department NOC**.
 - c. Resettling **six tenant families**.
6. The Original Vendors subsequently sold the subject land to the Appellants (Subsequent Purchasers). It is an admitted fact that the Appellants were explicitly informed of the prior ATS dated 01st January 2004 and were provided with a copy of the Notice of Termination dated 12th November 2006 before they purchased the property.
7. Following the disposal of the prior litigation (Original Suit No. 18 of 2004), the Respondents instituted **Original Suit No. 54 of 2011** seeking Specific Performance of the contract. The Trial Court granted a refund of earnest money, but the High Court reversed this decree (implied by the appeal context), leading to the present **Civil Appeal No. 54 of 2011** before the Hon'ble Supreme Court.

ISSUES RAISED

- 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?**

SUMMARY OF ARGUMENTS**1. Whether the Subsequent Purchasers/ Appellant were Bonafide purchasers of the subject land?**

The Appellants contend they are bonafide purchasers because the sale deeds were executed by competent parties for valid consideration, rendering them lawful and enforceable. Upon the dismissal of Original Suit No. 18 of 2004, the vendors' absolute right to alienate the land was restored as interim restraints stood vacated. The vendors and legal heirs acted within their capacity, supported by the belief that the prior Agreement to Sell was legally terminated via the 2006 Notice of Termination. Having paid a substantial consideration of Rs. 1,20,00,000/-, a fact validated by the Trial Court, the Appellants acquired valid title in good faith.

2. Whether the revocation of agreement to sell by one party by serving notice valid in law?

The appellants contend that the revocation of the Agreement to Sell (ATS) via the notice dated November 12, 2006, is legally valid. Under Section 39 of the Indian Contract Act, the vendors were disabled from performing their promise due to a "status quo order" in Original Suit No. 18 of 2004, making performance legally impossible. This absolute refusal was clearly communicated, and the vendees' failure to take substantial action until 2011 constitutes a waiver of rights.

Furthermore, under Section 52 of the Transfer of Property Act, the doctrine of lis pendens restricted property transfers during pending litigation. The appellants argue that executing the transfer while the court imposed a "Status Quo" order would have conflicted with legal rights and created a multiplicity of litigation. Thus, the notice of termination validly exercised the right to end a contract that reached a dead-end due to legal disabilities.

3. Whether the Suit for specific performance of Contract is maintainable and is not barred by limitation?

The appellants contend that the revocation of the Agreement to Sell (ATS) via the notice dated November 12, 2006, is legally valid. Under Section 39 of the Indian Contract Act, the vendors were disabled from performing their promise due to a "status quo order" in Original Suit No. 18 of 2004, making performance legally impossible. This absolute refusal was clearly communicated, and the vendees' failure to take substantial action until 2011 constitutes a waiver of rights.

Furthermore, under Section 52 of the Transfer of Property Act, the doctrine of lis pendens restricted property transfers during pending litigation. The appellants argue that executing the transfer while the court imposed a "Status Quo" order would have conflicted with legal rights and created a multiplicity of litigation. Thus, the notice of termination validly exercised the right to end a contract that reached a dead-end due to legal disabilities.

4. Whether the unregistered agreement to sell can be enforced in the light of the present circumstances of the case?

The appellants contend that the unregistered Agreement to Sell (ATS) is unenforceable under Section 54 of the Transfer of Property Act, as it creates no proprietary interest or charge on the land. Ownership requires a registered document, which the ATS lacks. Under Sections 17 and 49 of the Registration Act, registration is mandatory; thus, the unregistered ATS cannot affect the property or be received as evidence of the transaction.

Furthermore, the Doctrine of Part Performance (Section 53A) is inapplicable because the original vendees failed to prove actual physical possession, an essential requirement. Additionally, Section 17(1A) explicitly bars using unregistered documents to claim Section 53A benefits, rendering the ATS an informal document that cannot override the appellants' registered title

5. Whether in the light of the facts the Respondents are entitled to specific performance of contract and whether ATS can be enforced?

The Appellants argue that the Respondents are not entitled to specific performance because they failed to prove continuous readiness and willingness under Section 16(c) of the Specific Relief Act. Their five-year silence and inaction between the termination notice in 2006 and filing the suit in 2011 demonstrate a lack of conduct consistent with such readiness.

Furthermore, the Appellants plead a defense under Section 9, noting that litigation and "status quo" orders rendered performance legally impossible. They contend that enforcing the unregistered ATS would cause undue hardship to subsequent purchasers. Finally, they submit that monetary compensation and the refund of earnest money constitute an adequate alternative remedy.

WRITTEN PLEADINGS**1. WHETHER THE SUBSEQUENT PURCHASER/APPELLANT ARE BONAFIDE PURCHASERS OF THE SUBJECT LAND?**

¶1. It is most humbly submitted before the Hon'ble Court that the Appellants/Subsequent Purchasers are Bonafide purchasers of the subject land, as the sales deed is executed by the competent and lawful owners of the property, in favour of the subsequent purchasers is lawful, binding, and enforceable by law. An agreement is regarded as a contract when it is enforceable by law¹. There exists an agreement, in relation to the subject land, between competent parties, which was entered into out of free will and consent and for a valid and lawful consideration.

1.1 Competency of the Parties in Deed

¶2. It is submitted that, the parties were fully competent to execute the sales deed in 2010 in respect of the subject land. The sales deed was executed by persons in their contractual capacity, and, consequently, the transactions entered into were lawful and enforceable by law². Upon the dismissal of Original Suit No. 18 of 2004 on October 19, 2010, the Vendors' absolute right and legal competency to alienate the subject land was restored. All interim restraints on the subject land, including the status quo order stands vacated subject to the dismissal of Original Suit No. 18 of 2004 on October 19, 2010, consequently restoring the vendors' absolute interest and title over the subject land.

¶3. It is further submitted that, even if the death of one of the original vendors, Smt. Padma Sharma, initially led to procedural complication, the remaining Vendors and legal heirs, in accordance with the applicable law of succession, acted within their capacity to finalize the sale to the subsequent purchasers. The Hon'ble Supreme Court held that the co-owner can legally transfer title to the extent of their share³ and the legal heir upon the death of the original vendor became legal owner of the property and acquires all enforceable rights over the subject land⁴.

¶4. It is submitted that, the sale deeds were executed with the full, free, and voluntary

¹ Randhir Singh Chandold v. Vipin Bansal, (2006) 135 DLT 56

² SN Mundale v. New Mofussil Co. Ltd. AIR 1846 PC 97

³ Kartar Singh v. Harjinder Singh, (1999) 3 SCC 517

⁴ T.Lakshmipathi v. P. Nithyananda Reddy, (2003) 5 SCC 150

consent of the parties involved. An agreement upon the same thing in the same sense is known as true consent⁵. The Original Vendors and Subsequent Purchasers entered into the sale transaction willingly, without any coercion, undue influence, or fraud, following the lawful withdrawal of the Original Suit No 18 of 2004.

¶5. It is submitted that, the consent of the parties was based on the reasonable belief that the prior Agreement to Sell (ATS) stood legally terminated. The parties relied upon the Notice of Termination issued in 2006 by the original vendors, clearly communicating their inability to proceed due to legal complications and the death of a co-owner. There was no longer a meeting of minds between the Original Vendors and the Original Vendees. In the notice, the Original Vendors specifically stated that the Agreement to Sell (ATS) would be treated as cancelled and also invited the Original Vendees to take back the earnest money, and the ATS would be "deemed to be cancelled" if was not accepted within thirty days.

1.2 Lawful Consideration for Parties in the Deed

¶6. The appellant submits that, the contract between the Original Vendors and Subsequent Purchasers involves a significant and lawful consideration, which supports their status as bona fide purchasers. Consideration is a necessary element of a binding contract and the same reinforces the parties' willingness to perform the essential terms of the contract⁶. The Subsequent Purchasers paid a total sale consideration of Rs. 1,20,00,000/- for the subject land, demonstrating a genuine commercial transaction. (Section 23 of ICA) The lawful object of the consideration was the transfer of ownership following the withdrawal and resolution of the initial litigation.

¶7. The Trial Court validly concluded from the evidence on record and held that the subsequent purchasers had paid substantial consideration for the subject property through lawful means and that the transaction was genuine and bona fide in nature. The trial court made a clear remark that the Appellants succeeded in proving their status as purchasers for valid consideration. An agreement without valuable consideration is void or what is known as *Nudum pactum* and it cannot be enforced⁷. The Trial Court explicitly found that the other party had successfully established their status as bona fide purchaser.

¶8. It is submitted that, the Sale Deed executed between the original vendors and

⁵ Central National Bank Ltd. v. United Industrial Bank Ltd., AIR 1954 SC 181

⁶ Kapil Prasad Tiwari v. Raja Sahib Prahla Sen, (1869) 2 BLR PC 11

⁷ Sashannah Chetti v. Ramasami Chetti, (1868) 4 MHC 7

subsequent purchasers is a well written document which creates a civil-obligations upon the parties. The sales deed represent the final, written expression of the contract, establishing the subsequent purchasers as the Bonafide purchasers of the subject land. Thus, the Appellants have acquired valid title and interest in the property in good faith, and their rights deserve full protection under law.

2. WHETHER THE REVOCATION OF AGREEMENT TO SELL BY ONE PARTY BY SERVING NOTICE VALID IN LAW?

¶9. It is humbly submitted before this Hon'ble Court that the revocation of agreement to sell through the notice of termination is valid in law.

2.1 Applicability of Section 39 of the Indian Contract Act, 1872

¶10. It is most humbly submitted that, under Section 39 of the Indian Contract Act, 1872, when a party to a contract refuses to perform, or disabled himself from performing, his promise in its entirety, the promisee may put an end to the contract unless he has signified, by words or conduct, his acquiescence in its continuance⁸.

¶11. It is submitted that, the Original Vendors were disabled from performing the contract in its entirety due to the litigation filled in Original Suit No. 18 of 2004 and subsequent "status quo order" by the court, that restrained any transfer of the subject land. The performance became legally impossible for an indefinite period, effectively disabling the vendors from fulfilling the contract altogether.

¶12. It is submitted that, the refusal to perform the promise made be communicated to the other party⁹. The notice of termination on 12th November, 2006, was a clear and valid communication made by the Original Vendors to the Original Vendees. The notice explicitly put an end to the contract, as permitted under Section 39. The law requires that, it must be shown that the refusal is absolute and that the party had made quite plain his intention not to perform what was agreed by him¹⁰. First, the Original Vendors clearly communicated their intention through their notice, and then, they also did not respond to the Vendees' reply dated November 23, 2006, thereby reinforcing their earlier definitive stance to terminate the agreement rather than continuing it. The notice of termination specifically stated that failure to accept the earnest money within thirty days would result in the ATS being "deemed to have been automatically cancelled". By serving this notice, the Appellants exercised their right to terminate a contract that had reached a dead-end due to legal disabilities.

¶13. It is further submitted that, the law provides that the promisee may, if he thinks proper, treat the repudiation of the other party as a wrongful putting an end to the contract and

⁸ Boulton Bros & Co v New Victoria Mills Co., AIR 1929 All 87

⁹ Dhanraj Mills Ltd v Narsingh, AIR 1949 Pat 270

¹⁰ Master v Garret and Taylor Ltd., AIR 1930 Raj 126

¹¹ Ratanlal v Brijmohan, AIR 1931 Bom 386

may at once bring his action as on the breach of it¹¹. The Original Vendees had the right to sue immediately, but although, the notice of termination was received in 2006, the suit for specific performance was filed in 2011. The Original Vendees can be said to have been waived off their rights under ATS by taking no substantial action upon the notice of termination dated 12th November 2006. Thus, the revocation of agreement to sell by one party by serving notice is valid in law.

2.2 Termination of Notice legally sustainable under the spirit of 52 of TP Act, 1882

¶14. It is most humbly submitted before this Hon'ble Court that, the revocation of the Agreement to Sell (ATS) dated January 1, 2004, via the Notice of Termination dated November 12, 2006, was valid and legally sustainable under the spirit of Section 52 of the Transfer of Property Act, 1882.

¶15. It is submitted that, Section 52 of the Transfer of Property Act, 1882 deals with doctrine of *Lis Pendens*, which states that during the pendency of any suit in which any right to immovable property is "directly and specifically in question," the property cannot be transferred or otherwise dealt with by any party to the suit so as to affect the rights of any other party, except under the authority of the Court¹².

2.1 It is submitted that, under the procedural requirements of Section 52, the Appellants were well within their right to refuse to carry out the transfer of title while the pendency of suit on the subject land. It is a settled principle that any transfer made in during the pendency of suit, becomes subject to restraints, if any, passed by the court¹³.

¶16. The Hon'ble Supreme Court held that, the doctrine of *lis pendens* means that no party to the litigation can alienate the property in dispute so as to affect the other party, and rests upon this foundation that it would plainly be impossible that any action or suit could be brought to a successful termination if alienations *pendente lite* were permitted to prevail¹⁴.

¶17. It is submitted that, when title transfers are made in violation of court orders, the party committing such breach may incur liability to be punished, and the validity of the sale is upon discretion of the court¹⁵. The execution of agreement to sell (ATS) between the original vendors and original vendees, while the Court imposed 'Status Quo' order in

¹² Supreme General Films Exchange Ltd. v. Brijnath Singhji Deo, (1975) 2 SCC 530

¹³ K. N. Aswathnarayana Setty v State of Karnataka, (2014) 15 SCC 394

¹⁴ Sefali Roy Chowdhary v A. K. Dutta, (1976) 3 SCC 602

¹⁵ Sanjay Verma v Manik Roy (2006) 13 SCC 608

the original suit no. 18 of 2004, would have only conflicted with the rights of the parties involved further creating multiplicity of litigation.

¶18. It is submitted that, transfer of title while the suit upon the subject land remained unresolved, may not invalidate the transaction, but the idea is to not use the same to defeat the final outcome of litigation by simply transferring away property which is the subject- matter of a suit during the pendency of the suit¹⁶. The section must be interpreted strictly.

¹⁶ M. Narayanamma v Lakshmid devi AIR 2015 NOC 680 (Kar)

3. WHETHER THE SUIT FOR SPECIFIC PERFORMANCE OF CONTRACT IS MAINTAINABLE AND IS NOT BARRED BY LIMITATION?

- ¶19. It is humbly submitted before this Hon'ble Court that, the suit filed by the Respondents (Original Vendees) is clearly barred by the law of limitation as prescribed under Article 54 of the Schedule of the Limitation Act, 1963. High Court erred in law by holding that the suit was within limitation.
- ¶20. It is submitted that, the Article 54 of the Limitation Act, 1963, provides a three-year limitation period for a suit for specific performance. The three years is to be counted from the date fixed for the performance of what has been agreed upon by the parties to the contract, or, if no such date is fixed, then the date when the plaintiff is notified the refusal of performance¹⁷. In the present case, a notice of termination dated 12th November 2006 was issued by the Original Vendors, clearly explicitly communicating their inability to proceed with the transaction and calling upon the vendees to treat the Agreement to Sell (ATS) as cancelled.
- ¶21. It is submitted that, this notice constituted an unequivocal refusal of performance by the Original Vendors on the date of 12th November, 2006. Consequently, the three-year limitation period commenced from the date the Original Vendees (respondents) received the notice in November 2006. The Original Vendees filed the suit on 04th March 2011, which is more than four years after the notice of refusal, thus rendering the suit time-barred under the second part of Article 54.
- ¶22. It is submitted that, the notice of termination specifically called upon the Original Vendees to take back the earnest money within 30 days, failing to accept the refund and treat the ATS as cancelled, the ATS would be deemed to have been automatically cancelled. Even if the Original Vendees replied to the notice on 23rd November 2006, they were fully aware that the Vendors had refused to perform the contract and had further sent no reply to their contentions raised with respect to the agreement to sell. The law of limitation does not pause simply because a party sends a reply or because a separate litigation is pending, unless specifically barred by the law. Article 54 should be strictly interpreted. Once a notice of refusal is received, the limitation period is set in motion. The argument that the limitation should run from the disposal of the partition suit (19th October 2010) or the execution of subsequent sale deeds, holds no ground.

¹⁷ Ahmmadsahab Abdul Mulla v. Bibijan, (2009) 5 SCC 462

Once there is a clear refusal to perform the contract, the limitation period starts¹⁸.

¶23. It is submitted that, the Trial Court's finding that the suit was within limitation based on the date of disposal of the original suit no. 18 of 2004 is a misapplication of the second limb of Article 54. It must be noted that the refusal was communicated and notice of termination was served by the Original Vendors in November 2006. Furthermore, the Respondents' own reply on 23rd November 2006 acknowledges they were aware of the refusal to perform by the Original Vendors due to the 'long pendency of original suit no. 18 of 2004 and status quo order' as well as 'death of one of the original vendors, i.e, Smt. Padma Sharma". The mere existence of a status quo order in a suit where the Respondents were not even parties did not prevent them from filing a suit for specific performance to protect their rights. The suit filed in March 2011 is barred by time and, therefore, not maintainable.

¹⁸ V. Muthusami v. Angammal (2002) 3 SCC 316

4. WHETHER THE UNREGISTERED AGREEMENT TO SELL CAN BE ENFORCED IN THE LIGHT OF THE PRESENT CIRCUMSTANCES OF THE CASE?

¶24. It is humbly submitted before this Hon'ble Court that the unregistered agreement to sell cannot be enforced in the light of the present circumstances of the case, owing to the mandatory statutory obligation, of getting the ATS registered. Further, the section 53A of the Transfer of Property Act, 1882 is inapplicable.

4.1 Mandatory Registration Required for Enforceability

¶25. It is humbly submitted that, in the light of the present circumstances of the case, the unregistered Agreement to Sell (ATS) cannot be enforced by virtue of Section 54 of the Transfer of Property Act, 1882.

¶26. It is submitted that, Section 54 explicitly states that a contract for the sale of immovable property does not, of itself, create any interest in or charge on such property. Since the ATS remained unregistered, it never progressed beyond a mere personal obligation and failed to create any proprietary interest of the Original Vendees over the subject land. Furthermore, a contract of sale would not become a sale by payment of money because a sale requires a registered document¹⁹. The section recognizes only two methods of transfer of ownership: (i) registration; and (ii) delivery. In case of the agreement to sell, neither is applicable. The agreement to sell remains unregistered throughout, and the same holds no legal support.

¶27. It is submitted that, Section 17 of the Registration Act, 1908 mandates the registration of documents that create, declare, assign, limit, or extinguish any right, title, or interest in immovable property. The agreement to sell (ATS), being unregistered, fails to meet this mandatory requirement for creating an enforceable interest over the subject land. Furthermore, Section 49 of the Registration Act, 1908 provides that an unregistered document required to be registered shall not affect any immovable property comprised therein or be received as evidence of any transaction affecting such property. Consequently, the unregistered ATS cannot be used as evidence to establish a superior title or claim over the registered sale deeds executed in favor of the Appellants.

4.2 Inapplicability of Section 53A of TP Act

It is humbly submitted before this Hon'ble Court that, the doctrine of part performance

¹⁹ Kammana Sambamurthy v Kalipatnapu Atchutamma (2011) II SCC 153

as established in Section 53A of the Transfer of Property Act, 1882 cannot be relied upon by the original vendees. A fundamental requirement for Section 53A is that the transferee must have taken possession of the property or any part thereof in part performance of the contract. The Trial Court explicitly found that the original vendees failed to prove actual physical possession of the subject property. The Trial Court noted that granting specific performance over the subject land where possession was never handed over would cause undue hardship and injustice to the Appellants, who paid a substantial consideration of Rs. 1,20,00,000/-.

¶28. The Hon'ble Supreme Court held that possession is an essential requirement of the section; the transferee should have got possession of the immovable property covered by the contract²⁰. This section requires that vendee be put in possession, and, where he is already in possession, some further act in execution of the contract is necessary to constitute an act of performance. When the transferee is not in possession, there must be a transfer of possession in part performance of the contract and no other act, however unequivocal it may be, would suffice²¹. The Original Vendees cannot take the defence of this section as they were never put in possession and even after the refusal of performance was communicated, took no action for the same.

¶29. The appellants further contend that, Section 17 (1A) of the Registration Act, provides that an unregistered document cannot be used to claim the benefit of Section 53A. Since the ATS dated January 1, 2004, was not registered, the Respondents are legally barred from invoking the shield of part performance. The unregistered ATS is nothing more than an informal, unregistered document that cannot be enforced overriding the registered title of bona fide purchasers.

²⁰ Nanjgowda v Gangamma ((2011) 13 SCC 232

²¹ G. H. C. Ariff v Rai Jadunath Majumdar Bahadur (1931) 33 LW 586

5. WHETHER IN THE LIGHT OF THE FACTS THE RESPONDENTS ARE ENTITLED TO SPECIFIC PERFORMANCE OF CONTRACT AND WHETHER THE ATS CAN BE ENFORCED?

¶30. It is most humbly submit before this Hon'ble Court that, the Respondents are not entitled to specific performance as they failed to show readiness and willingness, essentials required under Section 16(c) of the Specific relief act, 1963.

5.1 Readiness and Willingness as per Section 16(c) of Specific relief act, 1963

¶31. It is submitted that, while the Trial Court found readiness and willingness, the Appellants argue that the Respondents failed to meet the strict requirements of Section 16(c). The Respondents instituted their suit on 04th March 2011, nearly five years after the notice of termination was sent by the original vendees to the original vendee, refusing to transfer the title over the subject land. Section 16(c) bars specific performance for any person who fails to prove that he has performed or has always been "ready and willing" to perform the essential terms of the contract. Readiness and willingness is essential to a suit for specific performance²².

¶32. The Hon'ble Supreme Court held that, the party claiming specific relief must prove that he has been all the time ready and willing to perform his part of the contract. Continuous readiness and willingness to perform, on the part of the plaintiff is a condition precedent for the grant of the relief. The Respondents' absence and complete silence between 2006, when the notice of termination was served and 2011 when the Respondents filed a suit for specific performance, demonstrates a lack of continuous readiness and willingness. They allowed the contract to remain dormant for years without seeking a declaration that the termination was invalid, thus losing their right to seek specific performance²³.

¶33. It is submitted that, in a suit, for specific performance of a contract for sale of land, the readiness and willingness of plaintiff is to be ascertained from his conduct²⁴. The conduct of the parties clearly indicates their lack the readiness and willingness to enforce the contract. The plaintiff failed to take timely steps for registration of the agreement to sell (ATS) as well as the execution of the sale deed, and thereafter, they remained inactive for a considerable period without any justifiable explanation. Such

²² Dheeraj Developers (P) Ltd v Om Prakash Gupta (2016) 116 ALR 484

²³ Gajanan Jaikishan Joshi v Prabhakar Mohanlal Kalwar ((1990) 1 SCC 166

²⁴ Acharya Swami Ganesh Dassji v Sita Ram Thappar (1996) 4 SCC 526

inaction and delay are wholly inconsistent with the conduct of a party who is genuinely ready and willing to perform the contract. Although section 10 makes specific performance a mandatory rule, it remains subject to the provisions contained in section 16. The respondents do not fulfill the essential of section 16, and therefore are not entitled to specific performance of the contract.

5.2 Defenses under Section 9 of the Specific Relief Act, 1962

¶34. It is submitted that, Section 9 provides for all defences open under the law of contract shall be open to the defendant, where any relief is claimed under this Chapter in respect of a contract. The Original Vendors were disabled from performing the contract in its entirety due to the litigation filed in Original Suit No. 18 of 2004 and subsequent "status quo order" by the court, that restrained any transfer of the subject land. The performance became legally impossible for an indefinite period, effectively disabling the vendors from fulfilling the contract altogether. Hence, under Section 39 of the Indian Contract Act, the Original Vendors legally concluded the contract.

¶35. It is submitted that, enforcing specific performance would cause undue hardship to the appellants. Granting specific performance of the unregistered Agreement to Sell (ATS), would cause grave hardship and injustice to the subsequent purchasers who have already paid a substantial consideration for the property. The Trial Court explicitly concluded that granting specific performance would cause undue "hardship and injustice" to the subsequent purchasers who had already paid substantial consideration, and are in valid possession of the subject land.

¶36. It is submitted that, the respondent has adequate alternative remedy in the form of monetary compensation. The Appellants argue that specific performance is a discretionary relief and should be denied when monetary compensation serves as an adequate and equitable alternative remedy. The Trial Court correctly determined that awarding this sum along with interest at 9% per annum from the date of payment constitutes sufficient equitable restitution for the Respondents. The Trial Court appreciating the evidence on record, specifically pointed out to the Respondents' inability to prove actual physical possession, and dismissal of the suit for specific performance.

²² Dheeraj Developers (P) Ltd v Om Prakash Gupta (2016) 116 ALR 484

²³ Gajanan Jaikishan Joshi v Prabhakar Mohanlal Kalwar ((1990) 1 SCC 166

²⁴ Acharya Swami Ganesh Dassji v Sita Ram Thappar (1996) 4 SCC 526

¶37. It is submitted that, the unregistered ATS is nothing more than an informal, unregistered document that cannot be enforced overriding the registered title of bona fide purchasers. And the Respondents are also not entitled to specific performance and should be limited to the refund of earnest money as decreed by the Trial Court.

PRAYER

Therefore, in the light of the questions raised, arguments advanced, and authorities cited, it is most humbly prayed and implored before the Hon'ble Court that:

- a. Set aside and quash the judgment and decree passed by the High Court of Himachal Pradesh, directing specific performance of the Agreement to Sell
- b. Restore and uphold the judgment and decree of the Trial Court, upholding the Appellants to be bona fide purchasers of the property.
- c. Declare that the Agreement to Sell dated 01st January 2004 was validly terminated and the same cannot be enforced against the Appellants.
- d. Award the costs of all litigations.

And/or

Pass any such order, direction, or relief that this Hon'ble court may deem fit and appropriate in the interests of justice, equity and good conscience.

All of which is humbly prayed

Place:

Date: 30/12/2025

TC/2604

Counsels on behalf of the Appellant.