
Supreme Court Of India

Civil Appeal No. 6006 Of 2001 (With C.A.
No. 336 Of 2002)

Judgment Date:

13-07-2004

H.P.A. International

Vs

Bhagwandas Fatechand Daswani .

Bench :

{ **HON'BLE MR. JUSTICE SHIVARAJ**
V. PATILHON'BLE MR. JUSTICE
D.M. DHARMADHIKARI }

Citation :

2004 (6) SCC 537 ; AIR 2004 SC 3858 ;

2004 (6) SCALE 188 ; [2004

]Supp(3)SCR31 ; JT (2004) 5 SC 408 ;

Judgment

Dharmadhikari, J.

1. These two cross appeals have been preferred against common judgment dated 24.4.2001 passed by the Division Bench of the High Court of Madras by which decree of Specific Performance of Contract of sale of the suit property granted by the learned single judge has been set aside with certain directions to adjust the equities between the parties.

2. The facts of the present case should be an eye opener to functionaries in law courts at all levels that delay more often defeats justice invariably adds complications to the already complicated issues involved in cases coming before them, and makes their duties more onerous by requiring them to adjust rights and equities arising from delay.

3. This introductory comment is occasioned by the fact that against the judgment of the learned single judge passed on 6.9.1988 the appeal was earlier heard by the Division Bench of the High Court on 22.3.1989 but it passed the judgment after a period of

about five years on 24.1.1994. It dismissed the appeal and confirmed the decree of Specific Performance of the Contract granted by the single judge.

4. In appeal preferred by the defendants, this Court by order passed on 13.1.2000 (reported in 2000(2) SCC 13) remanded the appeal to the Division Bench of the High Court for a fresh decision only because of long gap of five years in hearing arguments and decision of appeal by the High Court.

5. After remand the Division Bench reheard the appeal and by the impugned judgment dated 24.4.2001 has allowed it. The decree granted by the learned single Judge of partial relief of Specific Performance of Contract of Sale of life interest of the vendor in the suit properly has been set aside.

6. With this background the facts of the case may be stated:-

7. The owner of the suit property namely, Mouna Guruswamy Naicker, (hereinafter referred to as the 'vendor') grandfather of respondent No. 6 (G.D. Narendra kullamma Naicker) executed a Will and two Codicils on 7.3.1948. Under the Will, the vendor herein was bequeathed the right of enjoyment during his life, of the estate of the testator, including the suit property (described as Municipal Door No. 36C, Mount Road, Madras-600 002) but without powers of alienation. In the Will, it was provided that after the death of the vendor, his male issue living at the time of his death would take all the properties absolutely. In the absence of any such male issue of the vendor, the properties would be taken by other descendants (hereinafter referred to as the 'reversioners').

8. Shri M.G. Naicker, the testator died on 23.10.1956. On 26.6.1977, the vendor entered into an agreement of sale of the suit property with the appellant HPA International, a partnership firm (hereinafter referred to as the vendee). It was clearly recited in the agreement that the sale of the property was necessitated because of the pressing demands of public authorities towards, dues and tax liabilities on the estate and likelihood of coercive recovery of public dues by attachment and sale by public auction. The vendor, therefore, agreed to sell and the purchaser agreed to purchase the entire interest in the suit property at Mount Road, Madras inclusive of life interest of the Vendor and the interest of the reversioners (described as remainder men) free from

all encumbrances, for a total price of 5.5. lacs. A sum of Rupees 25,000/- was paid as advance. The balance of the sale consideration was to be paid by the purchaser by bank drafts in favour of the concerned public authorities for discharging the public dues and taxes. The purchaser agreed to pay Rupees 18,000/- to the tenant in occupation of the property which was the liability of the vendor. The vendor agreed to obtain at his own cost and expense of the sanction of the High Court of Madras for sale of his life interest and interest of the remainder men in the property. The agreement further provided that in case the sanction of the Court was not accorded for the sale, the agreement shall forthwith stand cancelled and the vendors shall return the advance amount of Rupees 25,000/- to the purchaser.

9. There was a separate stipulation in the agreement that if after the sanction of the Court the vendor commits breach of the contract he shall return the advance money of Rupees 25,000/- and pay a sum of Rupees 15,000/- to the vendee by way of liquidated damages for failure to complete the sale. The agreement further provided that if after the sanction of the Court, vendee commits breach and does not complete the sale, he shall be liable to pay to the vendor a sum of Rupees 15,000/- by way of liquidated damages.

10. The relevant part of opening recitals and clauses 1, 2, 3, 4, 6, 7, 9 & 15 of the agreement dated 26.6.1977 Ex. P1 are reproduced hereunder as rights, and equities of the contesting parties are dependent on its proper construction, and understanding:

AGREEMENT OF SALE

“This Agreement of Sale executed at Madras this 26th day of June, 1977 between G.D. Narendra Kullamma Naicker, son of the M. Dorai Pandian alias Subba Naicker, Hindu, aged about 38 years and now residing at Plot No. 24, Second Stage, Panmanabha Nagar, Adyar, Madras - 20, hereinafter referred to as the Vendor of the one part and HPA INTERNATIONAL a firm having its business office at No. 15/16, Casa Major Road, Egmore, Madras-8 represented herein by its Managing Partner H.A. Aleemuddin, hereinafter called the PUTVHASER of the other part:

Whereas the Vendor is the Paternal grandson of late Mounaguruswamy Naidu, Zamindar of Naickarpatti,

Madurai District, whereas the said Mounaguruwamy Naidu owned and possessed large immovable properties consisting of Houses and lands situate in Madurai district and in Madras City.

Whereas he executed his last Will and Testament dated 7.3.1948 and two Codicils to the said Will, whereas he had bequeathed thereunder a life estate in all the said properties to his grandson, the vendor herein, whereas he provided therein that after the life time of the vendor, his male issue, if any, who may survive him, should take all his properties absolutely, whereas he also provided in the said Will that if the vendor should die without leaving any male issue, his brothers and in default of brothers, his brothers' male issue who may be alive at the time of death of vendor should take the property absolutely and in default of any of them, the testators' daughter and son's daughters then living at the time of the death of the vendor should take the property absolutely.

Whereas the said Mounaguruswami Naidu died on 23.10.1956, whereas the vendor's father M. Doraipandian alias Subba Naicker obtained probate to the said Will and Codicils from the High Court, Madras in OP No. 14 of 1957 and was administering the estate until 4.12.1963 when he delivered possession of the estate to the vendor under orders of the High Court, Madras. Whereas the vendor is in possession of the said estate ever since then and has been administering the same.

Whereas the vendor has not begotten any issues, male or female, until now, whereas the vendor's father died on 29.4.1972. Whereas the vendor had to spend very large sums of money for Managing the vast extent of agricultural lands comprised in the estate and the net income from the same ever since the vendor took up management of the same until now has been very negligible and practically nil.

Whereas the house properties have also not yielded any surplus income after discharge of liabilities.

Whereas large sums of money by way of public dues such as Agricultural income Tax, Capital Gains Tax, Income-Tax, Wealth tax, penalties and interest, property tax, Urban Land Tax, compulsory deposits, etc. payable on the various assessments could not be paid and discharged as and where demanded for want of requisite net income from the estate to meet the same and on account of paucity of funds in the estate.

Whereas there is now due towards the said Public debts and public liabilities a sum of nearly six lakhs, whereas consequent on the inability of the estate to pay the same, interest on the said public debts are accruing from day to day thereby increasing the liability of the estate enormously. Whereas in consequence of the inability and failure of the estate to meet the said public debts within the periods of the respective demands, penalties are also levied thereby further swelling the public Debt liabilities of the estate.

Whereas the vendor apprehends that eventually the public debts and liabilities may swallow up the estate whereas the payment of all the said Public Debts and dues and public liabilities is a first charge on the entire state.

Whereas the vendor also apprehends that in the circumstances the State and Public Authorities may take coercive steps and bring the properties comprised in the Estate to sale for the realisation of the public Debts and Liabilities. Whereas the vendor also apprehends that if the properties are brought to sale in public auction by coercive steps by the state they may be sold away for ridiculously low and nominal prices and that the estate would thereby be put to enormous loss and damage, whereas the vendor has therefore considered it imperative in the interest of the estate to sell some of the properties of the estate and to discharge the public dues and liabilities payable by the estate from the net sale proceeds thereof, in order to save the remaining portion of the estate.

Whereas house, ground and premises bearing Municipal Door No. 36-C, Mount Road, Madras-2 and more fully described in the Schedule hereto is comprised in the said estate.

Whereas the vendor has therefore negotiated for a sale of the same with a view to utilize the entire net sale proceeds thereof for discharge of the public debts and dues and public liabilities of the estate.

Whereas the Purchaser has offered to purchase the said property described in the schedule hereto in its entirety, that is inclusive of the interest of the remainder men after the life time of the vendor and free from all encumbrances, charges or trusts whatsoever for the net sum of Rs. 5.5 lakhs (Rupees five and a half lakhs) only upon and subject to the performance of all the terms and conditions mentioned hereinbelow:

Whereas the vendor has considered the said offer to be fair, reasonable and best according to present market conditions and in the circumstances of the case.

Whereas the vendor has also considered that it is in the best interest of and beneficial to the estate to accept the offer in order to discharge the Public Debts and dues and public Liabilities of the estate and to save the estate from coercive steps by the State and from a forced sale of the properties comprised in the estate in public auction and has therefore deemed it fit, proper and necessary to accept the said offer.

Now This Agreement Witnesseth as follows in pursuance of the premises and agreement hereinabove recited:

1. The vendor doth hereby agrees to sell and the purchaser does hereby agrees to purchase the entire interest, both present and future, in house ground and premises bearing Municipal Door No. 36-C, Mount Road Madras-2 inclusive of the life interest of the vendor and the interest of the remaindermen and free from all encumbrances, charges of trusts whatsoever from the net sum of Rupees five and a half lakhs and subject to and upon all the terms and conditions mentioned below:
2. The sale is of the entire interests in the said property namely, the present interest of the vendor and the interest of the remaindermen or reversioners after his death.
3. This agreement is subject to the passing of the vendor's title to the property and the vendor's rights to sell the entire interest, present and future in the property by the Purchaser's advocate.
4. The vendor shall obtain at his own cost and expense the sanction of the High Court, Madras for the absolute sale as aforesaid of the entire interest in the property inclusive of the interest of the remaindermen or reversioners after the life time of the vendor.
5. The purchaser has this day paid to the vendor a sum of Rs. 25,000/- (rupees twenty five thousand only) by bank draft bearing No. CL/AA 779570 dated 24.6.1977 drawn on the State Bank of India, Adyar, Madras, in favour of the vendor, as advance

towards agreement of sale.

6. In case sanction of the Court is not accorded as aforesaid, this agreement shall forthwith stand cancelled and the vendor shall forthwith return the advance amount of rupees twenty five thousand to the purchaser.

7. If the sanction of Court is obtained the sale shall be completed within a period of three months thereof.

8.....

9. The balance of the sale price of Rs. Five lakhs twenty five thousand shall be paid by the purchaser at or before the execution and registration of the sale deed by bank draft drawn in favour of the respective concerned Public Authorities on behalf of the vendor for discharge of the public debts and dues and public liabilities of the said estate and other liabilities binding on the said property, viz. The advance of Rs. 18,000/- liable to be returned to the tenant of the said property by the vendor and the commission payable by the vendor to the broker on this transaction.

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15. If after the sanction of court to the aforesaid sale is obtained the vendor fails to complete the sale he shall be liable to refund forthwith to the Purchaser the advance of rupees twenty five thousand and also pay a sum of rupees fifteen thousand to the Purchaser by way of liquidated damages for his failure to complete the sale. If after the sanction of court is obtained the purchaser fails to complete the same he shall be liable to pay to the vendor a sum of rupees fifteen thousand by way of liquidated damages for his failure to complete the same.“

11. At the time of execution of the agreement Ex. P1 dated 26.6.1977 the Testator's only daughter and the three sisters of the vendee were the reversioners in accordance with the terms of the Will because by that

time the vendor had no male issue.

12. In accordance with the terms of the sale agreement the vendor filed Civil Suit No. 471/77 (originating Summons Suit) on the original side of the High Court for seeking sanction of the court for sale of full interest in the property inclusive of his own life interest and the interest of reversioners. The reversioners were impleaded as parties to that suit.

13. On 16.1.1978, one of the reversioners viz., Saraswati Devi filed a written statement objecting to the grant of sanction for sale and prayed for dismissal of the suit. Another reversioner Prema Gangaiya adopted the written statement filed by other reversioner and objected to the sale.

14. As the sanction sought from the Court was opposed by the above-named reversioners, the vendor sent a lawyer's notice on 11.9.1979 to the vendee stating therein as under:

“In view of the prolonged proceedings in obtaining sanction of Court, for sale of the above said property and the pressing demands from Tax Authorities, my client Mr. G.D. Narendra, hereby cancels the agreement of sale referred to above and the advance sum of Rs. 25,000/- paid by your draft under the above said agreement, is, therefore, refunded by his check bearing No.... dated 11.9.1979.“

15. Soon after issuance of the above lawyer's notice, the vendor, on 12.9.1979, instructed his lawyer stating that the suit seeking sanction of the Court was not likely to be decided early and the chances of grant of sanction being remote, the suit be withdrawn.

16. It may be mentioned at this very stage that eventually the suit was not, in fact, withdrawn and, as would be stated in detail hereinafter, the suit was prosecuted by the vendee himself who got himself transposed in the suit as co-plaintiff.

17. The vendee sent a detailed reply to the lawyer's notice sent by the vendor canceling the agreement. In this reply, the vendee attributed mala fides to the vendor in rescinding the agreement. In his reply, the vendee acknowledged that the sale was necessitated because of public liabilities towards taxes and other dues in respect of the property but it was alleged that

there was no such pressing demand from any tax authorities creating an urgency as to compel the vendor to rescind the contract. It was alleged in the reply that the vendor was negotiating a sale for higher price with one Bob Daswani and to effectuate sale in favour of the new purchaser, one of the partners of the vendor firm was called for discussion. It is disclosed from the evidence led in the trial that Bob Daswani and respondent Fateh Chand Daswani who were shown and impleaded as two different persons, were one and the same although initially attempt was made by the defendants to mislead the Court that they were two persons and the subsequent sale to respondents 1 to 5 was without knowledge of prior agreement with the vendee. The purchaser of the suit properties shall hereinafter be referred as the subsequent vendee.

18. What is to be taken note of from the lawyer's reply for vendee to the lawyer's notice for the vendor is that the former had alleged breach of contract on the part of the vendor with attributing intention to the latter of selling the property for higher price to third parties. The other relevant part of the reply to lawyer's notice sent by the vendee is the acknowledgement of the fact of necessity of sale of the property for discharging public taxes and dues although in reply it was reiterated that the vendee was always ready to discharge tax liability in accordance with the sale agreement. The relevant part of the reply reads thus:

“The very object of the intended sale is for discharge of the income tax and other tax liabilities and my clients are always ready to discharge the same as per the sale agreement.”

19. It may be mentioned at this very stage that in his reply sent through his lawyer to the lawyer's notice of the vendor cancelling the agreement, the vendee did not express desire to purchase life interest of the vendor without insisting on transfer of interest of the reversioners which was subject matter of the suit filed for seeking sanction of the Court.

20. On 29.12.1979, the vendor sold his life interest in the suit property for a sum of Rs. 4.40 lacs by executing registered instrument in favour of respondents 1 to 5 (shortly referred to as the subsequent vendee). What is apparent from the contents of the subsequent sale deed Ex. D1 dated 29.12.1979 executed in favour of the subsequent

vendee is that large part of the sale consideration in different sums aggregating to Rs. 2.68 lacs was paid directly by the subsequent vendee to various authorities to discharge public dues and taxes like Corporation Property Tax, Urban Land Tax and Income Tax arrears.

21. The subsequent vendee by separate release deeds dated 21.10.1980, 22.1.1980, 22.2.1980 and 29.4.1980 obtained surrender of rights individually from the reversioners by paying each of them a sum of Rs. 20,000/-.

22. After receiving the lawyer's notice and cancellation of the sale agreement, the vendee on 25.3.1981 got himself impleaded as a party-respondent in Suit No. 471/77 which was filed to seek sanction of the Court.

23. On 16.8.1981 the vendee filed Civil Suit No. 423/81 seeking Specific performance of the Agreement of Sale agreement Ex. P.1

24. Under order dated 17.12.1981 passed in Civil Suit No. 471/77 seeking sanction of the Court, the vendor got himself transposed as co-plaintiff . The two suits i.e. Civil Suit No. 471/77, seeking court sanction for sale under the agreement Ex. P1 and Civil Suit No. 423/81 seeking Specific Performance of the Agreement of Sale, were clubbed and tried together by the learned single Judge on the original side of the High Court.

25. After the pleadings were completed in two suits, the vendee on 25.11.1986 filed an affidavit purporting to be under Section 12(3) of the Specific Performance Act of 1963 stating therein that without prejudice to his claim for transfer of full interest in the suit property to him under the agreement of sale, if he was found not entitled to maintain the suit seeking sanction of the Court for sale of full interest in the property a decree be granted for Specific Performance of transfer of life interest of the vendor in the suit property. The relevant part of the affidavit claiming lesser relief of sale of life interest of the vendor reads as under:

“I submit that the relief as prayed for in CS No. 471 of 1977 can be granted by this Hon. Court. The relief prayed for in the present suit is for a decree for specific performance in respect of the entire property with full rights of the first defendant and of the reversioners. Without prejudice to what is stated above, it has become necessary for me to file this

affidavit before commencement of the trial of the suit under the following circumstances.

I state that in the event of this Hon. Court taking the view and coming to the conclusion that the plaintiff herein as the second plaintiff in C.S. No. 471 of 1977 is not entitled to maintain the suit and pray for the relief sought for, then, I submit that this Hon. Court may be pleased to decree the suit in CS No. 423 of 1981 for specific performance of the life interest of the first defendant and direct the defendants in the suit to execute the sale deed in favour of the plaintiff to the extent of the life interest of the first defendant.“

26. In view of the above averment made in the affidavit filed by the vendee in which he alternatively claimed lesser relief of transfer of only life interest in the suit property of the vendor, the learned single Judge by common judgment dated 6.9.1988 dismissed Civil Suit No. 471/77 seeking sanction of the Court for sale as infructuous. The relevant part of order of the learned single judge dismissing Civil Suit for sanction as infructuous reads thus:

“While so, by affidavit dated 25th November, 1986, Messrs. HPA International, swore in CS No. 423 of 1981, that in the event of this Court coming to the conclusion that Messrs. HPA International as 2nd plaintiff in CS No. 471 of 1977 is not entitled to maintain the suit as prayed for, HPA International is restricting their claim in CS No. 423 of 1981 for specific performance of the agreement Ex. P1 with reference to the life-estate of Narendra Kallumma Naicker alone and for a direction to the defendants in that suit to execute the sale deed in favour of the plaintiff to the extent of the life-estate of Narendra Kullamma Naicker as provided under Section 12(3) of the Specific Relief Act for the consideration of Rs. 5,50,000/- for which he had bargained for the whole interest in the suit property.

In view of the above affidavit filed by Messrs. HPA International in CS No. 423 of 1981, this suit viz. CS No. 471 of 1977 has become infructuous. Further, this Court cannot compel the reversioners to part with their interest.

As such, I find that the suit in CS No. 471 of 1977 has become infructuous, and it is dismissed as infructuous accordingly. No costs.“

27. It may be stated that this part of the common judgment dismissing Civil Suit No. 471/77, in which sanction for sale was sought from the Court, has not been appealed against before us although learned counsel for the vendee has contended that no separate appeal was required to be filed against dismissal of the suit for court's sanction as infructuous because the common judgment passed in the suit seeking sanction of the suit for sale and the suit for specific performance is under appeal before us. We shall deal with this argument separately at the appropriate stage as to whether any separate appeal was required to be filed against dismissal of suit seeking sanction of the Court for sale, as having been rendered infructuous.

28. The learned single judge by the impugned common judgment decreed Civil Suit No. 423/81 in favour of the vendee to the extent of directing conveyance of life interest in the suit properties of the vendor under the Agreement Ex. P1. It was further held that as the subsequent vendee has purchased the property with knowledge of the prior sale agreement with the vendee the former should join in re-conveying the property to the latter.

29. it is necessary to take note of the legal and factual issues decided by the learned single Judge in favour of the vendee. On the issue whether the vendee can be granted lesser relief directing conveyance of life interest of property of the vendor, the learned single Judge held in favour of the vendee thus:

“A perusal of the oral and documentary evidence clearly proves that DW1 has no regard for truth. Further, the built-in-clauses namely clauses 4 & 6 in Ex. P1 have been introduced for the benefit of the plaintiff. The non-enforcement of those clauses will not prejudice the Ist defendant. As such I find that the facts of this case amply illustrate the forethought of the framers of the Specific Relief Act in introducing Section 12 therein. The failure to get sanction of the court by the Ist defendant to convey the whole of the interest of the suit property as contained in clause 4 of Ex. P1 agreement is not a bar for the plaintiff herein to enforce Ex. P1 since he has relinquished the benefit that accrues to him, which will not prejudice the Ist defendant. In view of the relinquishment of the right given to the plaintiff under clause 4 of Ex. P1, clause 6 of the agreement becomes otiose.“

30. In granting decree of Specific performance of Conveyance of life interest of the vendor, learned single Judge further held thus:

“Where the agreement involved in this suit is capable of separation, one consisting of enforceable portion viz. the life interest of the first defendant and unenforceable portion viz. interest of remainder men and reversioners.”

31. The learned single judge found that the equity was in favour of the vendee as the vendor has been found guilty of misrepresenting Bob Daswani and Fateh Chand Daswani as two persons when they were the same and the negotiations for subsequent sale were held in presence of one of the partners of the vendee. The learned single judge on this aspect of the judgment comments thus:

“It is a pity that third defendant who is considered to be an enlightened citizen having international connections with so much of wealth has not come forward to state at the earliest opportunity that he carries the name Bob Daswani also. that shows that guilty conscious of the third defendant. Having projected his image as Bob Daswani, the presence of the first defendant and the plaintiff on 9.9.1979 he wanted to hoodwink the plaintiff for getting his sale-deed in the name of the third defendant so as to plead that third defendant is bona fide purchaser for value 'without notice'. But anticipating that his claim would be exposed he omitted to mention the aforesaid facts that he and his wife and children are bona fide purchasers for value only. They omitted to state 'without notice.’”

32. It needs to be mentioned at this stage that learned counsel appearing for the subsequent vendee has not disputed in this appeal that the sale in favour of the subsequent vendee was with notice of the prior sale agreement Ex. P1 with the vendee.

33. Against the judgment granting decree of specific performance of sale of life interest of vendor in the suit property, an appeal was preferred by the subsequent vendee to the Division Bench of the High Court. As has been mentioned earlier, the Division Bench concluded hearing of the appeal on 22.3.1989 but pronounced judgments almost five years after on

24.1.1994 and dismissed the appeal. That judgment has been set aside by this Court by order dated 13.1.2000 reported in 2000(2) SCC13. This Court remanded the appeal for re-hearing by the Division Bench of the High Court. After re-hearing, the Division Bench by the impugned judgment dated 24.4.2001 has allowed the appeal preferred by the subsequent vendee. The decree granted for conveying life interest of the vendor in the suit property has been set aside. The only relief granted to the plaintiff, is that out of the rental income realised by the plaintiff during long pendency of the appeal, a sum of Rs. 5.5. lacs has been deducted to deprive the subsequent vendee of that sum for his misconduct of projecting Bob Daswani and Fateh Chand Daswani as two persons when, in fact, they were one. Rest of the rental income recovered by the plaintiff vendee has been directed to be paid to the subsequent vendee as a consequence of success of appeal and setting aside of the decree for specific performance.

34. Before considering the various grounds urged in this appeal, it is necessary to briefly indicate the basis on which the Division Bench on re-hearing of the appeal - reversed the judgment of the learned Single Judge.

35. Construing the relevant clauses of the contract of the Division Bench held that clause (6), which placed an obligation on the vendor to approach the court for sanction of sale of interest of reversioners, was incorporated not with a view to safeguard interest of the vendee alone but it was a term meant for benefit of both the parties. The Division Bench in paragraph 31 held thus:

“The sanction referred to in the agreement is a sanction which was clearly meant for the benefit of both the parties to the agreement. The plaintiff was interest only in the purchase of entire interests' in the property, had made the agreement subject to such interest being lawfully conveyed and accepted liability for payment of liquidated damages if it failed to obtain the sale deed after the sanction was obtained. Plaintiff not having contracted with the reversioners to buy their interest, could not have secured the 'entire interest' in the property without an order of this Court directing conveyance of the reversionary interest to the purchaser. The sanction of the Court was clearly meant for the benefit of the purchaser as well as the vendor.”

36. The Division Bench has taken the view that as the sanction for sale was not granted by the Court as was contemplated by the parties under the terms of the agreement; the contract was rendered un-enforceable. The Division Bench concluded thus:

“Appellants are entitled to contend that the contract is a contingent one, and that the contingency contemplated by the parties no having occurred, the contract, regard being had to what had been expressly provided by the parties in clause 6 of the agreement, had collapsed by implosion, the dismissal of the suit for sanction having triggered it.”

37. With regard to dismissal of Civil Suit No. 471/77 seeking sanction of the Court as infructuous and having attained finality because of non-preferring of appeal by the vendee- plaintiff in paragraph 25 & 34, the Division Bench held thus:

“It is now a matter of record that the sanction sought for the sale of reversionary interest was not given the Civil Suit 471 of 1977 having been dismissed that dismissal has become final. By virtue of clause 6, the suit agreement Ex. P1, forthwith stood cancelled, if that clause was meant for the benefit of both the parties to the contract. If the contract thus stood cancelled the suit for specific performance had necessarily to be dismissed.

That suit for sanction, CS No. 471 of 1977, was in fact prosecuted by the respondent herein, who after becoming a party to that proceeding, had itself transposed as a co-plaintiff. Having thus put itself in a position where it could seek sanction, plaintiff's failure to lead evidence on the justification for sanction, on the ground that it had invoked S. 12(3) of the Specific Relief Act, is a default which cannot now be turned to its advantage, after the suit for sanction was dismissed.”

38. The claim allowed for grant of lesser relief of conveyance of life interest of the vendor in the suit property, was negatived by the Division Bench and the decree granted by single judge was reversed by recording the following conclusion:

“The suit agreement being an integrated whole was one and indivisible incapable of being split into an agreement for sale of life interest and another for the sale of reversionary interest. What perished was the whole of the contract and not only a part. What was contemplated by the parties to the agreement was the sale of 'entire interest' in the property provided sanction was given, and in the event of sanction not being given the agreement stood cancelled as a whole leaving each of the parties to arrange their affairs as they thought fit wholly unhampered by anything contained in the agreement. The agreement contemplated the sale of all interests in the property if sanction was forthcoming, and no sale of any part of the property in case sanction was not given. The bargain was for all or nothing. It was not open to the court to make a new contract for the parties after the contract in its entirety had perished.”

39. The Division Bench negatived the claim seeking conveyance of life interest in the property of the vendor, also on the ground of delay and equity by observing thus:

“Plaintiff cannot be allowed to claim performance in part several years later. Had the plaintiff been earnest about relinquishing its claim for reversionary interest, it could have obtained Narendra's life interest in 1977 itself, and at any time up to the execution of the sale deed by Narendra in favour of appellants in 1979. Narendra was eager to sell and had been waiting for the plaintiff to take a sale deed from him. The sale by Narendra to appellants was for the purpose inter alia, of raising the monies required for paying the arrears of revenue - funds which the plaintiff could have provided by obtaining conveyance of his life interest, but was not so provided. Having regard to these facts the prayer for part performance made during the course of the trial at a stage when it was evident that the suit as laid was doomed to failure, was not one which could be acceded to. The trial court was in error in granting that prayer by ignoring the plaintiff's conduct.”

40. As a result of the conclusion reached as mentioned above, the Division Bench allowed the appeal and set aside the decree of granting Specific Performance of the Contract Ex. P1 to the extent of conveyance of life interest of the vendor. A decree of refund of full sale price to the vendee was however granted. Since pending the appeal, the decree granted by the learned

single judge had been executed and possession had been obtained by the vendee, who had raised further construction on the property and collected rents from the tenants, the Division Bench in paragraph 63 made directions to adjust the rights and equities between the parties with regard to the amounts spent by the each of them on putting up their own constructions and rental income realised by each of them from the property. We shall separately deal with that aspect at appropriate stage of our judgment.

41. We have heard the learned counsel appearing for the contesting parties at great length. Apart from long oral arguments, written submissions have been made and plethora of case law has been placed before us on various legal contentions advanced. Considering the view that we propose to take and the conclusions reached by us, we do not consider it necessary to deal with each of the rulings cited before us by the learned counsel at the Bar. We will confine our consideration to certain rulings directly on the issues and few others touching them.

42. In substance, the main submission advanced by learned counsel Shri K. Parasaran on behalf of the vendee is that the vendor clearly committed a breach of the terms of the sale agreement Ex. P-1. During pendency of the suit seeking sanction of the Court, the contract was formally terminated by lawyer's notice dated 11.9.1979 sent by him. It is submitted that actions such as of sending notice of terminating the contract, thereafter instructing his lawyer to withdraw the suit for sanction followed by the negotiations which were proved to have been held to sell the suit property to the subsequent vendee, were clearly mala fide attempts on the part of the vendor to resile from the contract for getting higher price for the property. It is pointed out that an attempt was made to mislead the Court by creating confusion that Bob Daswani and Bhagwandas Daswani were two different persons and the subsequent vendee had no knowledge of the prior agreement entered with the plaintiff-vendee. This deception sought to be practised on the opposite party and the court was exposed during trial and the learned single Judge has imposed penalty on the subsequent vendee for the misconduct of misleading the court. It is submitted that the subsequent vendee having purchased the property with knowledge of the prior agreements holds the property in trust for the benefit of the prior vendee and is obliged in law to make over the property to the prior vendee under decree for specific performance of the prior contract. Sections

90, 91 & 92 of the Indian Trusts Act are relied for the above proposition and need reproduction at this stage for better appreciation of the arguments advanced on this point on behalf of the vendee:

“Section 90. Advantage gained by qualified owner - Where a tenant for life, co-owner, mortgagee or other qualified owner of any property, by availing himself of his position as such, gains an advantage in derogation of the rights of the other persons interests in the property, or where any such owner, as representing all persons interested in such property, gains any advantage he must hold, for the benefit of all persons so interested, the advantage so gained, but subject to repayment by such persons of their due share of the expenses property incurred, and to an indemnity by the same persons against liabilities properly contracted, in gaining such advantage.

Section

91. Property acquired with notice of existing contract - Where a person acquires property with notice that another person has entered into an existing contract affecting that property, of which specific performance could be enforced, the former must hold the property for the benefit of the latter to the extent necessary to give effect to the contract.

Section

92. Purchase by person contracting to buy property to be held on trust - Where a person contracts to buy property to be held on trust for certain beneficiaries and buys and property accordingly, he must hold the property for their benefit to the extent necessary to give effect to the contract.“

43. In elaborating the above argument to support claim of specific performance of the contract, the further submission made is that the act of rescinding contract, pending suit for sanction of the court and selling the property with only life interest to the subsequent vendee, who later on obtained surrender deeds from the reversioners by independently paying them, were acts done in conspiracy between vendor and the subsequent vendee. They were self-induced actions to render the suit for seeking sanction as infructuous and frustrate the contract. It is contended that in such a situation, the prior vendee can take recourse to section 90 read with sections 91 & 92 of

the Indian Trusts Act, and is entitled to seek specific performance of the contract of full rights of the property i.e. life interest of the vendor and spes successionis of the reversioners. To give effect to the right of vendee to specific performance the vendor, reversioners and subsequent vendee can be compelled in law to convey full title of the property to the plaintiff.

44. The alternative argument advanced on behalf of the plaintiff-vendor is that although the petitioner is, in law, entitled to conveyance of full title in the property by the vendor, the reversioners and the subsequent vendee, he has restricted his claim to the lesser relief of seeking conveyance only of life interest in the property of the vendor. Such relief can be granted under section 12(3) of the Specific Relief Act as the vendee is willing to pay full agreed consideration for lesser relief of conveyance of life interest in the property. Reliance is placed on Lala Durga Prasad vs. Lala Deep Chand. (1954 SCR 360 at page. 367); Jhumma Masjid Vs. Kodimaniandra Devaiah (1962 Supp (2) SCR 554 at pg. 570); Soni Lalji Jetha vs. Sonkalidas Devchand (1967(1) SCR 873 at pg. 879); and Narandas Karsondas vs. S.A. Kamtam (1977(3) SCC 247).

45. It is argued that the Division Bench of the Madras High Court was wrong in coming to the conclusion that the contract was a contingent one and as the court did not grant sanction for sale of reversioners interest and dismissed the suit seeking sanction as infructuous, the contract failed. The contention advanced is that where the grant of sanction of the court was frustrated by the vendor himself by the prematurely rescinding the contract and instructing his lawyer not to prosecute the sanction suit, the dismissal of the suit as infructuous was self-induced by the vendor. The vendor cannot be allowed to take advantage of his own wrong. The law and equity is in favour of the plaintiff-vendee. Reliance is placed on Ganga Saran vs. Ramcharan Ram Gopal (1952 SCR 36 at pg. 42).

46. Alternatively, it is submitted that even though sanction could not be obtained from the court for transferring interest of the reversioners, the law permits the equity court to grant lesser relief of directing conveyance of life interest of the vendor on payment of full agreed consideration, in accordance with section 12(3) of the Specific Relief Act. In this respect, it is contended that the Division Bench of the High Court was wrong in holding that there was undue delay on the part of the plaintiff-vendee in exercising

the option for lesser relief of transfer of life interest of the vendor. Further it is also contended that the option exercised for lesser relief was not 'conditional', as is sought to be projected by the other side. It is submitted that when both suits for seeking sanction and for specific performance were jointly tried, exercise of option by filing affidavit stating that it was without prejudice to the right of obtaining full title with sanction of the court, cannot be said to be conditional to deny relief under section 12(3) of the Specific Relief Act.

47. In support of the claim for lesser relief of transfer of life interest, it is submitted that the clause in the contract requiring sanction of the Court for transfer of 'reversioners' interest was a condition solely in favour of the plaintiff-vendee which he could waive and the vendor could not insist on fulfillment of that condition as a fundamental term of the contract.

48. In reply to the plea of the finality of the decree of dismissal of sanction suit as infructuous, being not appealed against, it is submitted that the proceedings for sanction are summary in nature, under the rules and procedures of Madras High Court framed for its original side. That suit for sanction which was of summary nature happened to be clubbed with the suit for specific performance. The two suits jointly tried. A common judgment was passed dismissing the sanction suit as infructuous and partly decreeing the suit for specific performance. An appeal was filed against the common judgment. Therefore, non-filing of appeal against the dismissal of sanction suit as infructuous does not operate as res judicata and is no ground to refuse specific performance of the grant of decree of specific performance of contract for transfer of life interest for which no sanction of the court was needed. Reliance is placed on S.P. Chengalvaryu Naidu vs. Jagannath (1994(1) SCC 1) and Sheoparsan vs. Ramnandan (AIR 1916 PC 78 at pg. 81).

49. Rest of the contentions advanced at the Bar on behalf of the plaintiff-vendee, in our opinion, are not required to be separately dealt with because of the view we propose to take and the conclusion reached by us which shall be elaborated hereinafter.

50. Learned senior counsel Shri Soli J. Sorabjee appearing for the subsequent vendee rested his argument on his main submission that the sale agreement was a contingent contract - the contingency named being sanction of the court which did not

materialize. Upon failure of that contingency, the agreement stood cancelled forthwith under clause (6) of the agreement. On failure of the happening of the contingency, the agreement had been rendered unenforceable in accordance with section 32 of the Indian Contract Act read with definition of 'Contingent Contract' contained in section 31 of the said Act:-

“Section 31- A 'contingent contract' is a contract to do or not do something, if some event, collateral to such contract, does or does not happen.

Section 32. Enforcement of contracts contingent on an event happening - Contingent contracts to do or not to do anything if an uncertain future event happens cannot be enforced by law unless and until that event has happened.

If the event becomes impossible, such contracts become void.“

51. Heavy reliance is placed on decisions of Privy Council reported in Dalsukh M. Pancholi vs. Guarantee Life & Employment Insurance & Co. (AIR 1947 PC 182 at pg. 186); Narain Pattro vs. Aukhoy Narain Manna (ILR 12 Calcutta 153 at pg. 155); Sreemati Kalidasi Dassee vs. Sreemati Nobo Kumari Dassee (20 CWN 929 at pgg. 937, 938 & 939); and Golab Ray & Anr. vs. Muralidhar Modi and others (AIR 1964 Orissa 176 at pgg. 180 & 181).

52. The decision cited by the other side in the case of Mrs. Chandnee Widya Vatee Madden vs. Dr. C.L. Kataial & others (1964 (2) SCR 495), is sought to be distinguished on the ground that there the vendor without sufficient reason withdrew the application made to the Chief Commissioner for sanction and therefore, the relief granted was to direct the vendor to make the necessary application for sanction. In that case, it was further made clear that ultimately if the sanction was refused, the plaintiffs would be entitled only to damages as decreed by the High Court.

53. With regard to the claim allowed for grant of lesser relief of transfer of life interest, the contention in reply is that the agreement Ex. P-1 was a single indivisible and inseparable contract based on sanction of the court. By segregating the contract, no new contract can be created by the Court and take recourse to section 12(4) of the Specific Relief Act in impermissible. Reliance is placed on William Graham

vs. Krishna Chandra Dey (1925 PC 45); Abdul Haq vs. Mohammed Yebia Khan and others (AIR 1924 Patna 81 at pg. 84); and Hiralal Lachmiram Pardesi vs. Janardhan Govind Nerlekar and Anr. (AIR 1938 Bombay 134).

54. The claim for conveyance of life interest is also opposed on the ground that the option exercised under section 12(3) of the Specific Relief Act was not unconditional and without reservations. There was no surrender of claim to the interest of the reversioners. Such a conditional claim for lesser relief was rightly rejected by the Division Bench of the High Court. Reliance is placed on T.V. Kochuvareed & Anr. vs. P. Mariappa Gounder & other (AIR 1954 TC 10, para 40); Bolla Narayan Murthy vs. Cannamaneedi Madhavayya and Anr. (1947 (2) MLJ 347); and Surjith Kaur vs. Naurata Singh and Anr. (2000) 7 SCC 379).

55. The additional ground urged to oppose claim for lesser relief of the conveyance of life interest is that such option under section 12(3) of the Specific Relief Act was not exercised at the first available opportunity when a formal legal notice was given by the vendor to terminate the contract anticipating remote possibility of grant of sanction. It is submitted that the option for lesser relief was claimed when the joint trial had already commenced in the suits and all the pleadings of the parties had been completed. It was not an unconditional offer to obtain life interest. The provisions of Section 12(3)(b)(i) & (ii) of the Specific Relief Act were thus not fully complied with which require for obtaining partial relief of specific performance, unconditional surrender of remaining part of the contract.

56. In reply to the argument that the sanction suit was not prosecuted by the vendor deliberately to render it infructuous with a design to back out from the contract in conspiracy with the subsequent vendee, it is pointed out that despite service of notice terminating the contract, the suit was not in fact withdrawn. Soon thereafter the vendee got himself impleaded and later transposed in the suit as co-plaintiff. In the course of trial of sanction suit with suit for specific performance, the vendee exercised option by an affidavit of claiming lesser relief of life interest. He himself was thus responsible for rendering the sanction suit infructuous. It is argued that if it was possible to obtain sanction of the court on the ground of continuous pressure on the property for recovery of public dues, the order of the

single judge on original side dismissing the sanction suit as infructuous should have been challenged in appeal by the vendee. In any case when the subsequent vendee had gone in appeal against the decree granted for life interest in the suit for specific performance, the vendee could not have allowed the dismissal of the sanction suit to attain finality by not filing cross appeal against the same. Even in this Court, there is no appeal preferred and no ground urged challenging the dismissal of the sanction suit as infructuous. It is, therefore, submitted that one of the essential terms of the obtaining sanction of the court having been rendered impossible of performance, the contract for sale of the property was rightly held by the Division Bench of the High Court to have failed rendering it incapable of specific performance.

57. Lastly, it is submitted that grant of specific relief being discretionary the court should decline the relief to the plaintiff-vendee as the sanction suit got delayed and ultimately no sanction was granted. The vendor had no other option but to sell the property to clear the taxes and public dues for saving the property from being attached and sold through coercive process of recovery of public dues and possibly at a price less than the prevailing market price. The subsequent vendee has purchased separately the life interest of the vendor which alone he could convey and obtained separate surrender-deeds from the reversioners by paying each of them price of their interest. In the agreement Ex. P-1 entered with the vendee, as also in the sale-deed obtained by subsequent vendee, there is clear mention of the fact of pressure on the property for recovery of taxes and public dues. In the sale-deed obtained by the subsequent vendee, there is recital that taxes and public dues were directly paid by the subsequent vendee to the public authorities. The contents of the agreement of sale Ex. P-1 and the sale-deed Ex. D-1 are evidence of the fact that early disposal of the property was the pressing necessity to ward off coercive recovery from the property.

58. The additional argument advanced in opposing the claim for lesser relief of conveyance of life interest is that the clause requiring the sanction of the court for transfer of the reversioners' interest was a term of contract for the benefit of both the vendor and the vendee. The Court's sanction would have protected the vendor from claims and possible legal proceedings against him by the reversioners. Court's sanction was also for the benefit of the vendee to ensure effectuation of the agreement of sale which purported to sell entire

interest that is life interest of vendor and spes successionis of reversioners. The term of seeking court's sanction being a term in common interest - both of vendor and the vendee, the vendee could not be allowed to unilaterally waive it by restricting his claim to life interest. There is also no pleading and evidence to justify claim set up by the vendee. The dismissal of sanction suit as infructuous was induced by the vendee becoming a co-plaintiff and filing an affidavit restricting his claim to life interest. It was, therefore, a self-defeating act on the part of the vendee and the Division Bench of the High Court rightly dismissed the suit for specific performance for the life interest.

59. After hearing the argument at length advanced by the counsel for the parties and perusing the record of the case, the basic question that first needs consideration is whether there was any breach of contract on the part of the vendor so as to justify the grant of relief of specific performance of the contract of sale. We do not consider it necessary to deal with the legal contention whether clause (4) of the contract requiring vendor to obtain sanction of the court was an exception clause or a fundamental term of the contract. From the recitals of the sale agreement Ex. P-1 and particularly those requiring the vendee to discharge public debts and dues directly as part of the consideration of sale, it is clear that the necessity of sale for the vendor arose for safeguarding the property from being put to auction and sale through coercive process of recovery of public dues. Naturally, the vendor wanted to obtain market price of the property and desired to avoid sale of the property through a coercive process at a lesser price. That there was outstanding taxes and public dues have not been disputed by the vendee and in fact, they are acknowledged by him in reply to the lawyer's notice sent by the vendor terminating the contract. In the reply sent through lawyer by the vendee, it is clearly acknowledged that tax dues were there but it is stated that the alleged pressure from tax authority was merely as an excuse to terminate the agreement. The motive attributed to the vendor that he tried to wriggle out of the sale agreement Ex. P-1, only to obtain higher price of his property by selling it to the subsequent vendee, is not borne out from the evidence on record. The contents of the sale-deed Ex. D-1 dated 29.12.1979 executed in favour of the subsequent vendee clearly show that a subsequential portion of agreed consideration of Rs. 4,40,000/- was paid directly by cheques towards the property Tax (Rs. 50,383.98) to

Corporation of Madras, Urban Land Tax to Tehsildar (Rs. 36,860.70) and income tax (Rs. 1,10,000/-) to Income-Tax Officer. The above payments made by the subsequent vendee to public authorities justify the stand of the vendor that there were pressing demands of public authorities on the property and the sale of the property, well before the impending initiation of coercive recovery by public authorities, was an urgent necessity.

60. The main contention advanced against the vendor is that the contract term clause (4) imposed a liability on him to seek sanction of the court for transfer of full title in the property. During pendency of suit for sanction, actions on the part of the vendor such as terminating the contract by sending a lawyer's notice and instructing his lawyer to withdraw the suit for sanction, amounted to committing breach of the contract.

61. The agreement was entered into on 26.6.1976. The reversioners opposed sanction by filing written statements on 16.1.1978. It is long after, on 11.9.1979 by lawyer's notice, the vendor terminated the contract. The sanction suit was pending from 26.6.1976. Even after two years, the sanction was not granted. The question is whether the agreement Ex. P-1 contemplated that the vendor should have waited for grant of sanction by the court for an indefinite period of time. The recitals of the agreement of sale clearly mention the necessity of the sale arising from the pressure of public dues and taxes. The vendor could not have waited for an unreasonably long period of pendency of sanction suit when commencement of recovery proceedings for public dues and taxes could have commenced any time. There is no period fixed in the terms of the contract, for obtaining sanction of the court, but keeping in view the other terms of the contract and the pressing requirement for sale of the property to clear public dues, it has to be held that the obtaining of court's sanction within a reasonable period and in any case within a period well before commencement of recovery proceedings for dues and taxes was in contemplation of the parties as an implied term. Notice served for terminating the contract, after waiting for two years for sanction by the court, cannot be a breach of the contract on the part of the vendor. The argument that the vendor rescinded the contract only because he had entered into secret negotiations with the subsequent vendee to obtain higher price for the property is not borne out from the evidence. We cannot attach too much importance to the fact of initial

attempt made by subsequent vendee to conceal knowledge of the existing contract with the vendee when sale-deed was obtained by the former. For the misconduct of misrepresentation and attempt to mislead the court, the Division Bench of the High Court has rightly deducted a sum of Rs. 5.5. lacs from the rental income found payable to the subsequent vendee. We propose not to disturb the same. But the aforesaid misconduct of subsequent vendee does not render the act the vendor in rescinding the contract to be an act of breach of contract which can be said to have been committed solely with desire to obtain higher price of the property.

63. In this respect, it is also relevant to state that although by lawyer's notice, the vendor terminated the contract and instructed his lawyer to withdraw the suit for sanction, but in fact, the suit was not withdrawn. The vendee got himself impleaded initially as defendant to the suit and then sought his transposition as co-plaintiff. That part of the sanction of the vendee cannot be castigated as self-defeating because he was naturally interested in prosecuting the suit for sanction diligently to obtain conveyance of full rights in the property. However, the further act on the part of the vendee of filing an affidavit restricting his claim only to life interest resulted in dismissal of the suit for sanction as infructuous. The learned single judge trying jointly the two suits came to the conclusion that as the vendee gave up his claim for transfer of interest of the reversioners, the court's sanction was not required. He dismissed the suit for sanction as infructuous.

64. In this appeal on behalf of the vendee it is now contended that had the suit for sanction been prosecuted by the vendor bona fide and diligently, as stipulated in the terms of the contract, the court might have granted sanction despite objection of the reversioners because there was likelihood of loss of the property in process of recovery of public dues by auction and sale. If that was the legal position, the vendee ought not to have suffered the alleged wrongful dismissal of suit for sanction as infructuous. When decree granted for conveyance of life interest of the vendor in the suit for specific performance was challenge by the subsequent vendee before the Division Bench of the High Court, the vendee could as well have preferred cross appeal against the dismissal of the suit for sanction as infructuous. He was a co-plaintiff in that suit and had an independent right of appeal. The non-filing of any appeal against dismissal of sanction suit as infructuous is a clear indication that

the vendee was satisfied with the grant of decree merely of specific performance of conveyance of life interest of the vendor. It is not open to the vendee now to question the correctness of the dismissal of the suit for sanction as infructuous by the learned single judge.

65. The next question that arises is whether the terms of the contract justify grant of decree of specific performance for lesser relief of conveyance of life interest of the vendor.

66. The argument advanced on behalf of the subsequent vendee seems prima facie acceptable that the contract Ex. P1 is one single indivisible contract for sale of full interest in the property that is life interest of the vendor and spes successiois of the reversioners with sanction of the court. The reversioners were not parties to the sale agreement Ex. P-1 entered with the vendee. At the time when the sale agreement was entered into, the parties were conscious that the vendor had only life interest in the property and he could not convey more than his own interest. It was open to the vendee to obtain conveyance of interest of the reversioners by obtaining release deeds from them by paying them consideration for surrender of their interest, as was done by the subsequent vendee. Another course open to him was to enter into separate agreement with the reversioners or insist on the reversioners joining the sale agreement. It seems the vendee entered into a speculative deal for obtaining full interest in the property depending upon the sanction to be granted by the Court. It seems to be in contemplation of the parties that if the reversioners objected, the court might refuse sanction. They could as well foresee that despite the reversioners' objection, the court might grant sanction. The transfer of full interest in the property was, therefore, dependent on sanction of the court. To meet this contingency, there were specific terms such as clauses (4) and (6) incorporated in the contract whereby it was clearly agreed that the vendor shall obtain sanction of the court at his own expense and costs and if the sanction was not accorded by the court, the agreement would stand cancelled and the advance money refunded to the vendee. Clause 15 of the agreement could come into operation only if the court granted sanction and any of the parties failed to complete the sale. Clause (15) had no operation when the sanction was not accorded to the sale.

67. As has been seen from the facts of this case, the

vendor did apply for sanction, waited for two years and when it found that the reversioners opposed the grant of sanction, cancelled the contract. The sanction suit, despite instructions to his lawyer was not, in fact, withdrawn. The suit for sanction frustrated not because the vendee became co-plaintiff but because he filed an affidavit restricting his claim to life interest of vendor. The life interest was not agreed to be separately sold apart from the interest of the reversioners. The terms of sale agreement Ex. P-1 clearly stipulate sale of full interest in the property. Whatever may be the reasons, the sanction of the court could not be obtained for sale of interest of the reversioners. The reversioners were not parties to the sale agreement Ex. P-1. In such a situation, the question is whether in law and equity, the vendee can insist that the vendor should convey, if not full interest, his own life interest in the property.

68. If the vendee intended to seek conveyance separately of the life interest of the vendor, the earliest opportunity for him was when he had received notice dated 11.9.1979 sent through lawyer by the vendor cancelling the contract. Assuming that at that time he could not opt for lesser relief as the suit for sanction was pending, he could have, in any case, opted for conveyance of life interest of the vendor soon after he came to know of the negotiations for sale with Bob Daswani, which took place in the presence of the partners of the plaintiff-vendee. Even after deriving the knowledge of the execution of the sale deed dated 29.12.1979 Ex. D-1 the option to obtain lesser relief of transfer of life interest was not exercised. It was exercised as late on 25.11.1986 by filing an affidavit and at the time when pleadings of the parties were completed and the joint trial in the two suits had already commenced. During long pendency of the suits between 1979 to 1986, the parties interested in the property changed their positions.

69. The vendor by executing registered sale deed in favour of the subsequent vendee got his public dues paid to relieve the pressure on the property and obtained market price of the property. After obtaining possession of the property pursuant to the sale deed, the subsequent vendee has raised construction, and inducted tenants. Accepting the legal stand based on sections 90, 91 & 92 of the Indian Trusts Act that the subsequent vendee, being a purchaser with knowledge of prior agreement, is holding the property as a trustee for the benefit of the prior vendee, the vendor, who changed his position by effecting subsequent sale

cannot be compelled to convey his life interest when such lesser relief was not claimed at the earliest opportunity and the terms of the contract did not contemplate transfer of life interest alone.

70. On duly appreciating of the evidence on record, construing specific terms of the contract and considering the conduct of the parties, we have arrived at the conclusion that the recession of the contract, due to non-gr