

**Shyam Kumar Inani**

v.

**Vinod Agrawal & Ors.**

(Civil Appeal No. 2845 of 2015)

12 November 2024

**[Vikram Nath\* and Prashant Kumar Mishra, JJ.]**

#### **Issue for Consideration**

Whether the Appellants are entitled to specific performance of an Agreement to Sell dated 30.08.1990. Whether the Agreement to Sell dated 30.08.1990 executed by one Sushila Devi was valid and enforceable; whether such execution could be proved by a General Power of Attorney holder; whether the plea of pardanashin status, illiteracy and old age affected the validity of the sale; whether the suit was barred by limitation under Article 54 of the Limitation Act; whether plaintiffs were in possession and whether consideration had been paid; whether plaintiffs were always ready and willing to perform their part of the contract; whether the subsequent sale deeds executed during pendency of suit were protected under Section 52 of the Transfer of Property Act and whether they violated the doctrine of *lis pendens*; and whether the High Court rightly reversed concurrent findings of the Trial Court.

#### **Headnotes<sup>†</sup>**

**Sale of Immovable Property – Specific Performance – Validity of Agreement to Sell, Proof, Possession, Limitation, and Appellate Interference –** The appellant-plaintiffs sought specific performance based on an Agreement to Sell with full consideration paid and possession of 23.98 acres of disputed agricultural land obtained from Sushila Devi, who passed away in 1992 – The Trial Court decreed the suit, validating the agreement, but the High Court reversed the decision, raising concerns over under-valuation, vagueness of the agreement, absence of direct testimony by all plaintiffs, lack of boundary specifications, bar of limitation, and pardanashin status of the executant – The High Court also questioned the credibility of the Power of Attorney holder's testimony:

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**Held:** Supreme Court restored the Trial Court's decree, concluding that the Agreement to Sell was valid and enforceable under the Contract Act and Specific Relief Act – It held that procedural and substantive requirements were satisfied, with no conclusive proof of fraud – The Court emphasized that the burden of proving fraud lies on the defendant – The absence of boundary descriptions was not fatal to enforceability where the property was clearly identifiable and plaintiffs were in possession – It was further held that not every plaintiff must depose if a Power of Attorney holder with firsthand knowledge proves execution. [Paras 1, 2, 37]

**Inference of fraud must be clearly established – The defendants alleged that the Agreement to Sell was procured through fraudulent means, citing undervaluation, vague boundaries, and Sushila Devi's alleged incapacity:**

**Held:** The Supreme Court emphasized that fraud must be strictly pleaded and proved – The burden to proof lies squarely on the party alleging it – Defendants failed to produce any direct or circumstantial evidence showing deception, coercion, or concealment by the plaintiffs – Allegation of fraud was unsubstantiated – No material produced to prove fraud or misrepresentation – The Supreme Court noted that the Trial Court correctly found the transaction to be genuine and voluntary, and the High Court erred in accepting a speculative charge of fraud. [Para 35.1]

**Specific Relief – Validity – Proof of Execution by Power of Attorney Holder – The Power of Attorney holder, M.K. Maheshwari, had personal involvement in the transaction, which was corroborated by an attesting witness and handwriting expert – The High Court made misplaced adverse inference from non-examination of other plaintiffs:**

**Held:** Valid execution established – The Court relied on *Man Kaur v. Hartar Singh Sangha*, (2010) 10 SCC 512 to affirm that a Power of Attorney holder with personal knowledge may validly depose – The Court distinguished the decision in *Vidyadhar Vishnupant Ratnaparkhi v. Manikrao Babaraao Deshmukh*, (1999) 3 SCC 573, to argue adverse inference for non-examination of plaintiffs, on facts as the Power of Attorney holder had firsthand knowledge and testified credibly – The Supreme Court distinguished *Janki Vashdeo v. IndusInd Bank*, (2005) 2 SCC 217 and *Rajesh*

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*Kumar v. Anand Kumar*, (2024) SCC OnLine SC 981, cited to challenge validity of POA evidence, on the ground that POA holder in this case had direct knowledge and personal involvement. [Paras 25–29, 34.4- 34.5 35.2]

**Limitation – Article 54 – Second part applicable – No fixed time for performance – Cause of action arose upon refusal – The agreement did not fix a time for registration – After Sushila Devi's death, mutation was denied in 1994 – Suit filed in 1995 was within limitation:**

**Held:** Suit not time-barred – The second part of Article 54 applied – Section 54 prescribes that when no date is fixed for performance, the limitation period begins when the plaintiff has notice that performance is refused – The Court rejected the High Court's view that the limitation began immediately upon execution or death of the executant – The agreement was consistently acted upon and the plaintiffs had performed their part by paying full consideration and remaining in possession. [Para 30]

**Pardanashin Status – No pleading or proof – Age/illiteracy – No seclusion – Voluntary execution – High Court assuming Sushila Devi to be a pardanashin lady, applied higher evidentiary threshold to the Agreement to Sell:**

**Held:** Sushila Devi not entitled to pardanashin protection – Presumption of undue influence not applicable – Burden of proof not discharged by defendants – The Supreme Court found no pleading or credible evidence to support such status – It distinguished *Mst. Kharbuja Kuer v. Jangbahadur Rai*, AIR 1963 SC 1203, relied on by respondents to invoke stricter scrutiny in transactions involving pardanashin women, on facts, as Sushila Devi's status was not analogous due to the absence of seclusion or concealment – It also distinguished *Krishna Mohan Kul v. Pratima Maity*, (2004) 9 SCC 468 relied on to suggest incapacity due age and infirmity, on facts – Unlike the 100-year-old bedridden woman in that case, Sushila Devi was active and voluntarily executed the agreement. [Paras 34.2–34.3]

**Possession and Title – Possession since 1990 – Title deeds handed over – Part performance under Section 53A TPA – Evidence supported by documents and conduct – The plaintiffs**

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had been in settled possession of the suit land since 1990, following execution of the Agreement to Sell – They produced documentary proof including the original sale deed, Rin Pustika, and land revenue receipts have paid land revenue, indicating de facto and de jure control – The defendants failed to rebut the evidence of possession and title handover – It also distinguished *Thiruvengadam Pillai v. Navaneethammal*, (2008) 4 SCC 530, cited to argue execution defects, as the plaintiffs were in possession, stamp duty and evidentiary support were both satisfied in present case:

**Held:** Plaintiffs' continuous possession supported by documentary evidence established part performance – The Court found that possession pursuant to a lawful agreement, coupled with part payment and willingness to perform, attracted protection under Section 53A of the Transfer of Property Act. [Paras 31–32, 34.1, 34.6-34.8]

**Readiness and Willingness – Full consideration paid – Continuous willingness – Delay attributable to defendants –** The plaintiffs paid the full consideration under the Agreement to Sell at the outset and remained ready and willing to execute the formal sale deed – The delay was due to the inaction of defendants – The plaintiffs' consistent conduct and attempts to seek mutation and performance were evident:

**Held:** Plaintiffs complied with Section 16(c) of the Specific Relief Act. [Paras 20.4, 21.4]

***Lis Pendens* – Section 52 TPA – Sale during pendency – Violation of injunction – Purchasers not bona fide – Doctrine to prevent frustration of judicial process –** On 18.01.2001, while the suit for specific performance was pending and after an injunction was granted on 04.12.2000, the defendants executed four sale deeds in favour of third parties:

**Held:** Sale deeds executed during pendency and in violation of injunction were void – Doctrine of *lis pendens* squarely applied – Purchasers could not claim protection under bona fide doctrine due to notice of pending suit and injunction – The Court distinguished *Thomson Press (India) Ltd. v. Nanak Builders and Investors Pvt. Ltd.*, (2013) 5 SCC 397 and *Yogesh Goel v. Govind Narayan*, 2024 SCC OnLine SC 169, which were cited by the defendants to

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support protection of pendente lite purchasers – In those cases, the purchasers had either no notice or the dispute lacked injunction orders at the time of sale – In contrast, here the purchasers had clear notice of the pending suit and express injunctive restraint. [Paras 33, 34.6-34.8]

**No enforceability bar due to vagueness – Boundaries identifiable – Undervaluation not conclusive of mala fides – The defendants also contended that the Agreement to Sell was vague and lacked specific demarcation of boundaries, and that the consideration was below market rate:**

**Held:** Agreement not invalid for lack of precise boundaries or lower-than-market consideration – No mala fides established – The Court clarified that minor imprecision in boundary description does not affect enforceability where the property can otherwise be identified with certainty – Further, undervaluation alone does not establish fraud or invalidate the contract when possession, consideration, and intention to perform are established. [Paras 34.6]

#### **Case Law Cited**

*Thiruvengadam Pillai v. Navaneethamma* [2008] 3 SCR 23 : (2008) 4 SCC 530; *Mst. Kharbuja Kuer v. Jangbahadur Rai & Ors.* [1963] Supp. 1 SCR 456 : AIR 1963 SC 1203; *Vidyadhar Vishnupant Ratnaparkhi v. Manikrao Babarao Deshmukh and Ors.* [1999] 1 SCR 1168 : (1999) 3 SCC 573; *Janki Vashdeo Bhojwani & Anr. v. Indusind Bank Ltd. and Anr.* [2004] Supp. 6 SCR 681 : (2005) 2 SCC 217; *Rajesh Kumar v. Anand Kumar* [2024] 5 SCR 612 : 2024 SCC OnLine SC 981; *Thomson Press (India) Ltd. v. Nank Builders & Investors (P) Ltd.* [2013] 2 SCR 74 : (2013) 5 SCC 397 – distinguished.

*Krishna Mohan Kul v. Pratima Maity and Ors.* [2003] Supp. 3 SCR 496 : (2004) 9 SCC 468; *Yogesh Goyanka v. Govind* [2024] 7 SCR 668 : 2024 SCC OnLine SC 169 – referred to.

*Man kaur v. Hartar Singh Sangha* [2010] 12 SCR 515 : (2010) 10 SCC 512; *Pawan Kumar Gupta v. Rochiram Nagdeo* [1999] 2 SCR 767 : AIR 1999 SC 1823 – relied on.

#### **List of Acts**

Specific Relief Act, 1963; Limitation Act, 1963; Contract Act, 1872.

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### List of Keywords

Agreement to Sell; Specific performance; Limitation; Power of Attorney; Possession; Pardanashin; Bonafide purchasers; Violation of injunction.

### Case Arising From

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2845 of 2015

From the Judgment and Order dated 15.03.2012 of the High Court of M.P at Jabalpur in FA No. 372 of 2001

With

Civil Appeal No(s). 2846, 2850, 2847, 2848 and 2852 of 2015

### Appearances for Parties

P. S. Patwalia, Rahul Sripat, Sr. Advs., Santosh Kumar, Madhurendra Sharma, Rajiv R. Mishra, Ms. Suruchi Yadav, Yadav Narendra Singh, Advs. for the Appellant.

Sudhanshu Shashikumar Choudhari, Ardhendumauli Kumar Prasad, Sunil Kumar, Sr. Advs., Harshvardhan Jha, Mrs. Yugandhara Pawar Jha, Ms. Srishti Mishra, Aman Pathak, Ms. Shuchi Bharti, Ms. Tunika Sharma, Akshat Shrivastava, Satvic Mathur, Divyakant Lahoti, Kumar Vinayakam Gupta, Ms. Praveena Bisht, Ms. Vindhya Mehra, Kartik Lahoti, Adith Menon, Ms. Samridhi Bhatt, Ms. Shreya Gokel, Ms. Anushka Awasthi, Rohan Thawani, Ms. Vandana Sehgal, Ms. S. Ambica, Advs. for the Respondents.

Shree Prakash Sinha, Rakesh Mishra, Ms. Mohua Sinha, Nawalendra Kumar, Ms. Shwetam, Rishabh Kumar, Shekhar Kumar, Anoop Kashyap, Advs. for the Interveners.

### Judgment / Order of the Supreme Court

#### Judgment

**Vikram Nath, J.**

1. The six appellants are the plaintiffs in a suit for specific performance of a contract. The Trial Court decreed the suit. However, the High Court, on first appeal, allowed the appeal, set aside the order of the Trial Court and dismissed the suit. Aggrieved, the present appeals by the plaintiffs.

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2. The dispute relates to 23.98 acres of Khasra Nos.546, 547 and 548 situate in village Godar Mau, Tehsil Huzur, District Bhopal. It is an admitted position between the parties that a larger area measuring 27.56 acres of the aforesaid three khasra numbers was purchased by one Sushila Bai, wife of late Chandra Mal Aggarwal, *vide* registered sale deed dated 29.04.1966 executed by erstwhile owner Vijay Chhatti for a sale consideration of Rs.7,000/- . Based on the said instrument, the name of Sushila Bai was mutated in land revenue records.
3. The appellants filed separate suits for specific performance in May, 1995 against the legal heirs of Sushila Devi.
4. It would be relevant to mention here that in the plaint, defendant nos.1, 2, 3, 4 and 5 were the other legal heirs of late Sushila Devi. We have mentioned the name of Kailash Aggarwal separately as he had a distinct role to play in the entire transaction. The sequence of events which would be discussed and pleaded upon at a later stage will reflect upon the role of Kailash Aggarwal. However, needless to say that Kailash Aggarwal was the eldest son of Sushila Devi. All the plaints are more or less identically worded, as such, we are not giving any specific details of the separate suit schedule property for each of the plaint, but we have generally dealt with the plaint allegations. Briefly stated the plaint allegations are as follows:
  - a) Sushila Devi was the owner of the suit schedule property. She entered into an Agreement to Sell on 30.08.1990 with each of the appellants separately after receiving the entire sale consideration. The appellants had taken over actual possession, having paid the entire sale consideration, the suit schedule property was agricultural land and cultivated by the appellants.
  - b) Details of the land covered and the sale consideration with respect to six Agreement to Sell are as follows:

S. NO.	Khasra No.	Area	Consideration	Name of Purchaser
1.	548	3.48 acres	Rs.58,000/-	Bharat Kumar Lathi
2.	547	3.50 acres	Rs.70,000/-	Shyam Kumar Inani

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3.	547	4.0 acres	Rs. 80,000/-	Suryakanta Maheshwari w/o KD Maheshwari
4.	547	4.0 acres	Rs. 80,000/-	Ram Kumar Inani
5.	546	4.50 acres	Rs. 90,000/-	Sangeeta Maheshwari d/o K.D. Maheshwari
6.	546	4.50 acres	Rs. 90,000/-	K.D. Maheshwari

- c) The defendants are the legal heirs of Sushila Devi and Agreement to Sell was binding upon them, but they declined to fulfil their legal obligation by executing the sale deed in favour of the appellants and had instead applied for mutation for the suit schedule property which had been allowed by the revenue authority.
- d) As the entire sale consideration had been paid as per the contents of the Agreement to Sell, the appellants were put into possession also. The original title deed of 1966 in favour of Sushila Devi was also handed over to the appellants. The witnesses to the Agreement to Sell were Dipesh Chandra Patni PW-2 and one Mr. Sharma. As the entire sale consideration had been paid, the time was not the essence of contract and the same was also incorporated in the Agreement to Sell in clause 6. Smt. Sushila Devi executed a registered General Power of Attorney in favour of M.K. Maheshwari on 04.09.1990. She died on 25.12.1992 leaving behind the respondent nos. 1, 2, 3, 9 and 10 as her legal heirs and representatives.
- e) The legal heirs applied for mutation of their names over the suit schedule property to which objections were filed by the appellants. However, they were unsuccessful, and the Tehsildar directed for mutation of the names of the legal heirs by order dated 23.02.1999.
- f) The appellants, *vide* notice dated 28.04.1994 called upon the legal heirs of Sushila Devi to execute the sale deed. However, the same was not honoured.

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- g) The appellants instituted six separate Civil Suits, each seeking a decree for specific performance of an Agreement to Sell dated 30.08.1990, against the legal heirs of Sushila Devi, compelling them to execute the sale deed in accordance with the said agreement. In these suits, the following reliefs were similarly claimed:
- (i) A decree directing the defendants to specifically perform their obligations under the Agreement to Sell dated 30.08.1990 by registering a sale deed for the agricultural land under the respective khasra numbers in favour of the appellants. Alternatively, a direction was sought for the court itself to execute a legal sale deed for the disputed property in favour of the appellants.
  - (ii) An award of costs of the suit in favour of the appellants and against the defendants, along with any other reliefs deemed appropriate by the court.
  - (iii) A permanent injunction restraining defendants no. 1 to 5 from alienating, altering or placing any encumbrances on the said property, and from transferring the suit property to any third party or governmental authority.
  - (iv) A declaration that the subsequent transfer of the suit property, effected on 18.01.2001, was void and not binding on the appellants.
- h) Further, it was brought on record, by way of amendment to the plaint that the defendant numbers 1 to 5 on the basis of the mutation order passed on 23.02.1999 was likely to alienate the suit schedule property in favour of third party and, later on, by a further amendment, it was brought on record that defendant nos. 2 to 5 by four separate sale deeds actually alienated the suit schedule property in favour of newly added dependent nos. 7 to 10 on 18.01.2001. State of Madhya Pradesh was also made a party to the suit as defendant no. 6. Trial Court passed an interim injunction order on 04.12.2000 putting a restraint on the alienation of the property in suit.
- i) Despite there being an injunction order restraining the defendants from alienating the suit schedule property, the appellants were

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always ready and willing to perform their part of the contract which only required registration of the sale deed as the entire sale consideration had already been paid. A prayer for specific performance of the contract was made based on such plaint averments.

5. A brief written statement was filed by the respondent State of Madhya Pradesh-defendant number 6 (respondent no.8) to the effect that the suit schedule property fell in urban area (Nagariya Kshetra) under the Nagar Bhumi Seema Adhiniyam and as per the requirements of the said Act, it was only after the enforcement of the new Master Plan, that the actual area of land which the owner would be entitled to possess, would be determined. As such, the defendant would not have any right to sell the property, nor would the plaintiff have any right to buy these properties. The plaintiff is, thus, not entitled to any relief.
6. Defendant nos. 2, 3 and 4, namely Vinod Aggarwal, Jagdish Aggarwal and Usha Aggarwal, three of the legal heirs of Sushila Devi filed a joint written statement. They denied the contents of the plaint except to the extent that Sushila Devi was the owner of the suit schedule property. It was further stated that she had never executed any Agreement to Sell. It was, thus, claimed that the suit deserves to be dismissed.
7. The subsequent purchasers, under the sale deed dated 18.01.2001, filed a separate written statement denying the plaint allegations. They also denied that any Agreement to Sell dated 30.08.1990 was executed by Sushila Devi. No specific answer has been given as to whether the sale deed dated 18.01.2001 in their favour was executed in violation of the injunction order. They also took the plea that the Agreement to Sell required compulsory registration and also payment of sufficient stamp duty which was not done, as such, the same was not admissible in evidence.
8. It was further stated in their written statement that the sale consideration mentioned in the Agreement to Sell was much below the prevailing market rate which indicated *mala fide* on the part of the appellants. A plea was also raised to the effect that the suit scheduled property was owned by a HUF and as such the Agreement to Sell having been executed only by Sushila Devi without the consent or confirmation of the other members of HUF, the Agreement to Sell was void. On such averments, the defendant nos. 7 to 10 stated that the suit was liable to be dismissed.

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9. The Trial Court, on the pleadings of the parties, framed the following issues as stated in paragraph 8 of the judgment along with its findings on each issue. The same are reproduced hereunder:

“

<b>Issues</b>	<b>Finding</b>
1. Whether an Agreement was executed on 30.08.90 with the plaintiff by the mother of the defendants late Sushilabai for the sale of the disputed land situated in Godar Mau Khasra No.548 area 3.49 acres?	Sushilabai had executed an agreement dated 30.08.90 for the sale of disputed land with the plaintiff.
2. Whether the plaintiff making full payment of the Agreement to late Sushilabai obtained the possession of the disputed property on 30.08.90 itself?	All the amount of the bai was paid by the plaintiff to Sushila bai and the possession of the disputed property has been obtained.
3(a) Whether the plaintiff has been always ready to comply with the Agreement?	In compliance with the agreement the plaintiff has been willing and ready to fulfil.
3(b) Whether the defendants have refused to comply with the agreement?	The Defendants have refused to comply with the Agreement.
4. Whether the dispute being of agricultural land, the State of M.P. is necessary party?	Proved
5. Whether the Defendant No.2 to 5 had sold the disputed land to Deft. No.7 to 10 even there being order of prohibition during the course of trial?	Yes
6. Whether the plaintiff is entitled to get 4 sale deeds dated 18.01.2001 to be declared null and void?	All four sale-deeds dt.18.01.2001 concerning up to the extent of the disputed land the plaintiff is entitled to get declared null and void.
7. Relief and expenses	As per last para of the judgment & Decree issued.”

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10. The parties led both oral and documentary evidence in support of their respective cases. The Trial Court, *vide* judgment dated 14.05.2001, decreed all the suits as contained in paragraph 45 of the judgment. The operative part of the judgment of the Trial Court is reproduced hereunder:

“.....

1. The disputed land situated in Godar Mau in respect of Khasra No.548 area 3.48 acres which was sold by registered sale-deed dated 18.01.2001 b Usha Aggarwal to Md. Shakir Khan, Vinod Aggarwal to Irfan Khan, Sangita Aggarwal to Ashok Jaiswal and Jagdish Aggarwal in favour of Tomo has been executed, the lands of this Khasra No. to that extent of about 4 sale deeds are declared null and void.
2. That in favour of the plaintiff defendants No.1 to 5 may get executed the sale deed within a period of two months of the disputed land Khasra No.548 area 3.48 acres.
3. In respect of the above land, the expenses are to be incurred on getting the registered sale deed by the plaintiff.
4. The cost of this suit of the plaintiff will be borne by the defendants and the defendants will bear their own expenses.

....”

11. **RCS No.47A/01 and one more were** decided on 14.05.2001 and thereafter by a separate judgment dated 05.10.2001, four other suits were decreed, details whereof are given in the table below:

S.No.	Civil Suit No.	Party Name	Decided on.
1.	RCS No. 22-A/97	Bharat Kumar Lathi vs. Kaliash Agarwal & 9 others. (Pankaj Maheshwari – Power of attorney Holder)	14.05.2001

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2.	RCS No. 23-A/97	Shyam Kumar Inani Vs. Kailash Agarwal & 9 ors.  Filed through self (KDM Power of attorney prosecuted later)	14.05.2001
3.	RCS 45-A/01	Smt. Suryakanta vs. Kailash Agarwal and ors. (KDM Power of attorney)	05.10.2001
4.	RCS 46-A/01	Raj Kumar Inani Vs. Kailash Agarwal & ors. (KDM Power of attorney)	05.10.2001
5.	RCS 47-A/01	Sangeeta Maheshwari Vs. Kailash Agarwal & ors. (KDM Power of Attorney)	05.10.2001
6.	RCS 48-A/01	K.D. Maheshwari vs. Kailash Agarwal and ors. (KDM Power of Attorney) Filed through self	05.10.2001

12. Aggrieved by the aforesaid two judgments, the defendants filed an appeal under section 96 of the Code of Civil Procedure, 1908 before the High Court. The High Court, by the impugned judgment, has allowed all the six appeals and after setting aside the judgment of the Trial Court dismissed the suits. Aggrieved, the plaintiffs are in appeal before this Court.
13. Before proceeding further, briefly, the evidence led by the appellant-plaintiffs and the defendant-respondents may be noticed. The appellants examined either the plaintiff or his Power of Attorney holder as PW-1. Further, the attesting witness to the Agreement to Sell dated 30.08.1990, Dipesh Patni was examined as PW-2 and Mahesh Kumar Maheshwari was examined as PW-3, who was said to have been Power of Attorney holder of Sushila Devi, *vide* registered deed of Attorney dated 04.09.1990. R.K. Pathik was examined as PW-4 as Handwriting Expert (HWE).
14. On behalf of the defendants, Mohd. Shakir Khan was examined as DW-1. One of the legal heirs of Sushila Devi, namely Vinod Kumar

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Aggarwal, was examined as DW-2, and Naveen Chandra Deshpande was examined as DW-3 as Handwriting Expert (HWE). On behalf of the plaintiffs, the Power of Attorneys of the respective plaintiffs were filed and exhibited. The Agreement to Sell dated 30.08.1990 was also filed and duly proved as Exhibit-P/2. The original documents handed over by Sushila Devi to her Power of Attorney holder Mahesh Kumar Maheshwari were also filed which included loan book, Ex.-P/3, Original Sale deed dated 29.04.1966, Ex.-P/4, and the Power of Attorney in favour of Mahesh Kumar Maheshwari, Ex.-P/5

15. Further, the defendants filed documents relating to the sale deed in favour of the defendants 7 to 10 along with supporting documents like loan book etc. which were marked as Exhibits - D/1 to D/6. The list of documents with brief description filed by the plaintiffs as also the defendants in one of the suits is given hereunder: -

### **“Documents filed by the Plaintiffs”**

Exhibit P-1	Sale agreement dated 30.8.1990
Exhibit P-2	Registered General Power of Attorney dated 4.9.1990 executed by Smt. Sushila Devi in favour Shri M.K. Maheshwari
Exhibit P-3	Legal notice dated 28.04.1994
Exhibit P-4	Postal Receipt
Exhibit P-5	Sale-deed dated 29.4.1966 executed by Vijay Chhatti in favour of Smt. Sushila Devi in respect of Khasra Nos. 546, 547 and 548 area 9.3, 15.5 and 3.3 acres, total are 27.56 acres situated in Godarmau, Tahsil Huzur District Bhopal
Exhibit P-6	<i>Rin Pustika</i> issued in favour Smt. Sushila Devi
Exhibit P-7	Registered Power of Attorney dated 20.04.1995 executed by Shri Ramkumar Inani (Plaintiff) in favour of Shri K.D. Maheshwari.
Exhibit P-8	Judgment and decree dated 14.05.2001 passed by learned Second Additional District Judge, Bhopal in Civil Suit no.22-A/1994 [Bharat Kumar Lathi vs. Kailash Agrawal]

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Exhibit P-9	Judgment and decree dated 14.05.2001 passed by Second Additional District Judge, Bhopal in Civil Suit No.23-A /1997 [Shyam Kumar Inani vs. Kailash Agrawal]
Exhibit P-9A	Evidence of Vinod Kumar Agrawal in Civil Suit No.23-A/1997 [Shyam Kumar Inani vs. Kailash Agrawal]
Exhibit P-10	Report of Handwriting Expert Shri R.K. Pathik

**Documents filed by the Defendants**

Exhibit D-1	Bhu Adhikar Evam <i>Rin Pustika</i> issued in favour of Kailash, Vinod and Jagdish
Exhibit D-2	<i>Rin Pustika</i> issued in favour of Irfan Khan
Exhibit D-3	<i>Rin Pustika</i> issued in favour of Modh. Shakir
Exhibit D-4	<i>Rin Pustika</i> issued in favour of Mr. Tommy
Exhibit D-5	<i>Rin Pustika</i> issued in favour of Ashok Jaiswal
Exhibit D-6(c)	Order sheets of Ceiling Case passed by Additional Collector/Competent Authority
Exhibit D-7	Covering letter dated 28.08.2001 together with opinion of Shri N.C. Deshpande (Handwriting Expert)
Exhibit D-8 to D-20	Copies of specimen signature of Smt. Sushila Bai

16. We have mentioned this list only for the purpose of showing as to what were the documents generally filed by the parties. Most of the documents were common for all the six suits. The difference in different suits could be of numbering of the documents as exhibits but, more or less, they are one and the same.
17. We may now briefly refer to the discussion and analysis made by the Trial Court including the documents relied upon by it while decreeing the suit. The Trial Court thoroughly analysed the claims of both the parties, particularly focusing on the Agreement to Sell dated

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30.08.1990 and the subsequent conduct of the parties. Following findings were recorded by the Trial Court:

- 17.1. The Trial Court found that the appellants had paid the entire sale consideration at the time of the agreement, and the possession of the disputed land was handed over by Sushila Devi to the plaintiff-appellants. The appellants remained in possession of the land since 30.08.1990, using it for agricultural purposes. The Trial Court also noted that after Sushila Devi's death on 17.12.1992, the appellants had repeatedly requested the defendants, as legal heirs, to execute the sale deed in their favour, which the defendants failed to do. This refusal constituted the cause of action for filing the suit for specific performance.
- 17.2. The Trial Court relied on the Power of Attorney holder, Pankaj Maheshwari, as a key witness. He testified to his personal knowledge of the facts, the execution of the agreement, and the possession handed over to the plaintiff. Notably, Pankaj Maheshwari also presented crucial documents, including the original loan book, the registered sale deed of 1966, and the Power of Attorney, all of which were duly exhibited before the Trial Court. The agreement was witnessed by Dipesh Chandra Patni and one Mr. Sharma. Dipesh Chandra Patni was examined as plaintiff's witness supporting the appellants' case.
- 17.3. The defendants, despite alleging fraud and forgery regarding the execution of the agreement and Power of Attorney, failed to appear or provide any rebuttal evidence. The Trial Court emphasized that the burden of proving fraud lay with the defendants, who did not present any credible evidence to support their claims. The Trial Court held that the defendants' absence and failure to present any substantial challenge to the appellants' evidence effectively confirmed the validity of the agreement.
- 17.4. Further, the Trial Court addressed the sale of the disputed property by the defendants to subsequent purchasers, Defendant Nos. 7 to 10, during the pendency of the trial. It noted that a prohibition order had been passed restraining such a transfer, yet the defendants proceeded with the sale in violation of the Court's directive. As a result, the four sale

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deeds dated 18.01.2001 were declared null and void.

- 17.5. In its final findings, the Trial Court ruled that the appellants had been ready and willing to perform their obligations under the agreement. The suit was found to be within the period of limitation, as the cause of action arose when the legal heirs of Sushila Devi refused to execute the sale deed after her death.
- 17.6. The Trial Court directed that Defendant Nos. 1 to 5 must execute the sale deed in favour of the plaintiff within two months and further declared the sale deeds executed in favour of Defendant Nos. 7 to 10 as null and void.
18. Now, we briefly refer to the reasoning and findings of the High Court in allowing the appeal.
  - 18.1. The High Court first scrutinized the Agreement to Sell dated 30.08.1990, emphasizing that it was not registered, and the sale consideration appeared to be significantly below the market rate prevailing at the time of the alleged transaction. The High Court found this to be an indicator of potential *mala fides* on the part of the plaintiff-appellants.
  - 18.2. Furthermore, the High Court noted that the agreement lacked specific details concerning the boundaries of the disputed land, leading to ambiguity about the property that was to be conveyed.
  - 18.3. On the issue of possession, the High Court observed that while the appellants claimed to have been put in possession of the land by Sushila Devi, there was no substantial evidence to corroborate this assertion.
  - 18.4. The High Court found that the appellants had failed to convincingly establish their possession of the land in question, which significantly weakened their case for specific performance.
  - 18.5. In addition, the High Court placed significant weight on the fact that the appellants did not enter the witness box to testify in support of their claims. Instead, the appellants relied on their Power of Attorney holder, Pankaj Maheshwari, to provide testimony. The High Court emphasized that while a Power of Attorney holder may testify regarding facts within their personal knowledge, critical facts regarding the execution of the

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Agreement to Sell could only be testified to by the appellants themselves. The failure of the appellants to take the witness stand led the High Court to draw an adverse inference under the established legal principle that the best evidence should be produced, especially when a party to the agreement is alive and capable of testifying.

- 18.6. The High Court further examined the issue of fraud and misrepresentation, which had been raised by the defendants. It found that the entire transaction was shrouded in suspicion, given the low consideration, the alleged absence of clear possession by the plaintiffs, and the fact that the legal heirs of Sushila Devi were unaware of the agreement. The High Court concluded that the burden of proving the validity of the agreement rested on the appellants, particularly in light of the defence of fraud, but the appellants had failed to discharge this burden satisfactorily.
- 18.7. On the issue of limitation, the High Court disagreed with the Trial Court's finding. The High Court held that the suit was barred by limitation under Article 54 of the Limitation Act, 1963. It found that the cause of action for filing the suit arose immediately after the death of Sushila Devi in 1992, yet the suit was filed only in 1995. Given that no specific time was stipulated in the agreement for the execution of the sale deed, the High Court concluded that the suit was not filed within the prescribed period of three years from the date of Sushila Devi's death or the time when the right to sue first accrued. Based on these findings, the High Court concluded that the plaintiffs had failed to prove their case for specific performance of the Agreement to Sell, and the sale deeds executed in favour of Defendant Nos. 7 to 10 were not liable to be declared null and void. The High also recorded a finding that the vendor Sushila Devi was entitled to the benefits admissible to a *Pardanashin* lady and relied upon the judgments in the case of **MST. Kharbuja Kuer vs. Jangbahadur Rai & Ors.**<sup>1</sup> and **Krishna Mohan Kul.**<sup>2</sup> The High Court, thus, allowed the appeal, set aside the decree passed by the Trial Court, and dismissed the suits filed by the plaintiffs.

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<sup>1</sup> AIR 1963 SC 1203 (para 6)

<sup>2</sup> (2004) 9 SCC 468

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19. We have heard Shri P.S. Patwaria and Shri Rahul Sripat, learned senior counsels appearing for the appellants, Shri Sunil Kumar, Shri Sudhanshu Shashikumar Choudhari and Shri Ardhendumauli Kumar Prasad, learned senior advocates appearing for different respondents in different appeals and Shri Shekhar Kumar, advocate for the intervenor.
20. Briefly summarised, the arguments advanced on behalf of the appellants by learned senior counsel are to the following effect:
  - 20.1. The Agreement to Sell dated 30.08.1990 executed by Sushila Devi was duly proved and it was valid and binding on the legal representatives of late Sushila Devi. Our attention has been drawn to the oral evidence as well as documentary evidence led by the plaintiffs in support of the said Agreement to Sell. The same would be dealt with at an appropriate stage.
  - 20.2. It was next submitted that the defence taken by the respondents regarding plea of fraud and misrepresentation with respect to Agreement to Sell dated 30.08.1990, would be required to be established by the defendants as the onus of proof in this regard laid on the defendants. The High Court, in the impugned judgment, erred to shift the burden on the plaintiff-appellants, even though the High Court had specifically recorded that the defendants had failed to lead any evidence in respect of misrepresentation and fraud.
  - 20.3. An objection and argument was raised by the respondents with regard to the plaintiffs not entering the witness box to prove Agreement to Sell dated 30.08.1990, and that the evidence led by their Power of Attorney could not establish such facts. The submission is that one of the plaintiffs, namely K.D. Maheshwari, had entered the witness box in his suit and he had the Power of Attorney of the other five plaintiffs. This witness, thus, had full knowledge of the facts relating to Agreement to Sell as he was present at the time of the execution of the Agreement to Sell dated 30.08.1990 as one of the agreements was in his favour. It was submitted that only a technical objection was being raised by the respondent to frustrate the valid claim of the appellants.
  - 20.4. The High Court erred in observing that there was no readiness and willingness on the part of the plaintiff-appellants. In fact, the

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plaintiff-appellants had discharged their full burden of payment of the entire sale consideration at the time of execution of the Agreement to Sell and had also received possession of the suit schedule property. The only requirement left was of execution of the sale deed and its registration, for which, according to the appellants, they had been requesting the legal heirs of late Sushila Devi but as they declined and applied for mutation of their names, the appellants instituted the suit for decree of specific performance. It was not that any obligation on the part of the plaintiff-appellants towards Sushila Devi, or after her death her legal heirs, remained. The issue of readiness and willingness would arise where any obligation of the plaintiff-purchaser towards the seller was liable to be fulfilled and had not been fulfilled within the time that may have been stipulated in the Agreement to Sell. It is for this reason only that the time was not the essence as stated in paragraph 6 of the Agreement to Sell.

- 20.5. With respect to the submissions of the intervenor of being *bona fide* purchasers for value, it was submitted that the said intervenors would only get the rights which their vendors had and if the rights of the vendors are extinguished, no better right can be claimed by the intervenors, who are the second set of subsequent purchasers after the High Court decided the appeals by the impugned order.
- 20.6. The High Court erred in holding that the suit was barred by limitation. Once there was no specific time frame mentioned in the Agreement to Sell for performance, in view of the second part of the Article 54 of the Limitation Act, the limitation to file the suit of three years would run from the time of refusal by the seller, which in this case arose in 1994 when the mutation proceedings were initiated. The suit was well within time as it was filed in May 1995.
- 20.7. The observations and the findings by the High Court regarding the vagueness of the Agreement to Sell and to declare the said document as void is also not sustainable in law and such plea could not have been raised by the seller having accepted the consideration.
- 20.8. The conduct of the defendants has not been correctly appreciated by the High Court which would actually disentitle

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them from raising their defence and contesting the claim of the appellants. In this respect, reference has been made to the oral evidence of the defendants which has been dealt with at an appropriate stage later in this judgment. Referring to the expert evidence relating to the genuineness of the signature of Sushila Devi on the Agreement to Sell dated 30.08.1990, it was submitted that even the expert witness introduced by the defendants, Shri N.C. Deshpande, DW-3 had stated in his report to the effect that this report would not go to establish that the Agreement to Sell was not signed by Sushila Devi. Thus, the defendants had failed to establish their claim that no Agreement to Sell had been executed by Sushila Devi.

21. On behalf of the respondents, the following submissions have been made which are summarised hereunder: -
  - 21.1. The plaintiff-appellants failed to prove the Agreement to Sell dated 30.08.1990 as also the General Power of Attorney dated 04.09.1990. Our attention was drawn to the evidence led by the plaintiffs as also the defendants in support of the submissions which would be dealt with appropriately at a later stage while analysing the arguments. Reliance was placed upon the judgment of this Court in the case of **Thiruvengadam Pillai vs. Navaneethammal and Anr.**<sup>3</sup>
  - 21.2. Not only the plaintiffs failed to prove the execution of Agreement to Sell and General Power of Attorney, but they also failed to prove the contents of the Agreement to Sell and the General Power of Attorney. The submission that the contents of the General Power of Attorney and the Agreement to Sell were not read out and explained to the executor, namely Sushila Devi as she was an old illiterate lady, it was submitted that Sushila Devi would thus fall in the category of a *Pardanashin* lady and would be entitled to the protection available to the *Pardanashin* lady as explained and settled in the following judgments:
    - **MST. Kharbuja Kuer vs. Jangbahadur Rai & Ors. (Supra)**
    - **Krishna Mohan Kul vs. Pratima Maity and ors.(para 17)**

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<sup>3</sup> (2008) 4 SCC 530<sup>#</sup> (Para 19)

# Ed. Note: "530" instead of "250" in terms of subsequent corrigendum.

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21.3. The plaintiffs did not enter the witness box and therefore could not have proved the Agreement to Sell executed on 30.08.1990. Execution of a document could be proved only by a person present at the time of the Agreement to Sell. Reliance is placed upon the following four judgments:

- **Vidyadhar Vishnupant Ratnaparkhi v. Manikrao Babarao Deshmukh and ors.<sup>4</sup>**
- **Janki Vashdeo Bhojwani & Anr. V. Indusind Bank Ltd. And Anr.<sup>5</sup>**
- **Man kaur vs. Hartar Singh Sangha<sup>6</sup>**
- **Rajesh Kumar vs. Anand Kumar<sup>7</sup>**

21.4. The readiness and willingness were not proved by the plaintiff-appellants as they never made any efforts to get the sale deed executed and registered after getting the same typed out on the payable stamp duty. The suit was not filed within a reasonable time as it was not filed from three years of the execution of the Agreement to Sell or from the date of death of Smt. Sushila Devi who had died on 25.12.1992. The suit was filed about two and a half years from the date of death of Sushila Devi and about four and a half years from the date of execution of the alleged Agreement to Sell. As such, no discretionary relief should be granted in such a case where a suit is filed with such delay.

21.5. The Agreement to Sell did not contain the specific boundaries of the land covered by the same and the same being vague, as such, no specific performance could have been granted. Possession has always remained with Sushila Devi and thereafter her legal heirs and now is with the transferees as has been held by the High Court. The sale deeds executed during the pendency of proceedings would not outrightly be declared as void but would only be subject to adjudication. Reliance is placed upon the following judgments:

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4 (1999)<sup>‡</sup> 3 SCC 573 (para 17)

5 (2005) 2 SCC 217

6 (2010) 10 SCC 512 (para 17 & 21)

7 (2024) SCC OnLine SC 981

<sup>‡</sup> Ed. Note: "1999" instead of "1993" in terms of subsequent corrigendum.

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- **Thomson Press (India) Ltd. V. Nank Builders & Investors (P) Ltd.<sup>8</sup>**
- **Yogesh Goyanka v. Govind<sup>9</sup>**

- 21.6. On the above submissions, no discretionary reliefs should be granted to the plaintiff-appellants and the High Court has rightly declined the same.
22. On behalf of the intervenor, in addition to what has been submitted on behalf of the respondents, further submissions are summarised hereunder:-
- 22.1. **Bona Fide Purchaser Without Notice:** The intervenor argued that they purchased the suit property (22 acres) from Respondent Nos. 4 to 7 on 26/03/2012 and 31/03/2012 through a registered sale deed for a total consideration of Rs. 7.92 crores. At the time of the purchase, the intervenor had no knowledge of the pending litigation. They only became aware of the appeals after the purchase and filed the intervention applications accordingly.
- 22.2. **Lis Pendens Doctrine Not Applicable:** The intervenor submitted that the doctrine of *lis pendens* under Section 52 of the Transfer of Property Act, 1882, does not apply in their case as the sale took place after the High Court's judgment on 15/03/2012 and before the Supreme Court's order on 30/04/2012 directing the parties to maintain the status quo. Therefore, they asserted that no litigation was pending during this period, and the transfer of the property was lawful.
- 22.3. **Registered Sale Deeds Valid:** The intervenor contended that no relief can be granted to the appellants in the absence of a specific challenge to the registered sale deeds executed in their favor. They argued that as *bona fide* purchasers for value, their rights should be protected.
- 22.4. **Agreement to Sell and Specific Performance:** The intervenor further highlighted that the Agreement to Sell dated 30.08.1990 was vague and lacked specific details regarding the boundaries

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8 (2013) 5 SCC 397 (para 53)

9 (2024) SCC OnLine SC 1692 (para 16 & 17)

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of the land. This made the agreement void under Section 29 of the Contract Act, 1872.

- 22.5. **Power of Attorney Holder's Limitations:** The intervenor pointed out that the plaintiffs relied on Power of Attorney holder to prove the Agreement to Sell, which was contrary to settled law. The intervenor cited the case of **Janki Vashdeo** (supra), to argue that a Power of Attorney holder cannot depose for acts done by the principal unless they had direct knowledge of the transaction.
- 22.6. **Lack of Readiness and Willingness:** The intervenor argued that the plaintiffs failed to demonstrate readiness and willingness to execute the sale deed, which is a crucial requirement under Section 16(c) of the Specific Relief Act, 1963. They submitted that the plaintiffs never acted to get the sale deed executed and failed to take any concrete steps before the death of Sushila Bai on 25/12/1992.

## ANALYSIS

23. The present case is one of non-concurrent judgement, where the Trial Court, after appreciating and analysing the evidence on record, decreed the suit, however the High Court, on appeal, reversed the findings of the Trial Court and dismissed the suit for specific performance. We have carefully gone through the pleadings and the evidence on record. The findings recorded by the Trial Court and the High Court have already been briefly summarised. The key points germane to the litigation are briefly stated below: -
- (i). Whether the Agreement to Sell dated 13.08.1990 was validly executed and proved?
  - (ii). Whether the General Power of Attorney executed by Sushila Devi in favour of M.K. Maheshwari on 04.09.1990 and duly registered created any doubt or suspicion on the conduct of the plaintiff-appellants?
  - (iii). Whether the plaintiffs not entering into the witness box in five of the suits would call for an adverse inference, although their Power of Attorney had entered the witness box?
  - (iv). Whether the suit was barred by limitation?

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- (v). Whether the forgery alleged by the defendants was actually proved by way of proper pleading and evidence to establish the same or was it just taken as a casual defence?
- (vi). Whether Kailash Aggarwal (defendant No.1), the eldest son of Sushila Devi, having not filed any written statement nor having entered the witness box on behalf of the defendants, would have an effect of adverse bearing against the defendants?
- (vii). Whether the finding of the High Court that Sushila Devi was a *Pardanashin* lady, and thus entitled to the benefit of the same, was actually pleaded and proved by the defendants?
- (viii). Whether the plaintiff-appellants producing the original sale deed of 1966 under which Sushila Devi had acquired the rights of ownership and the original Rin Pustika of Sushila Devi was a relevant fact and would it adversely impact the defendants?
- (ix). Whether the alienation by the defendant-legal heirs of Sushila Devi in gross violation of interim injunction granted by the High Court would have an impact on the validity of the sale deed executed in favour of the 3<sup>rd</sup> parties and also have an adverse impact on the conduct of the defendants?
- (x). Whether there was any issue of readiness and willingness relevant in a case where, at the time of entering into the Agreement to Sell, the purchaser had paid the entire sale consideration to the seller?
24. We now proceed to deal with the each of the above points framed by us to test whether the judgment of the Trial Court or the High Court deserved to be maintained.
- 1. AGREEMENT TO SELL DATED 30.08.1990**
25. In all, there are seven Agreements to Sell executed by Sushila Devi in favour of different purchasers on 30.08.1990, and accordingly, seven suits were filed. Before us, only six purchasers are in appeal. With respect to the 7th purchaser, apparently the matter is pending before the High Court or the Trial Court. One of the purchasers is K.D. Maheshwari, who is the plaintiff in suit RCS No. 48-A/01. He held the Power of Attorney for the four other purchasers who are before us. K.D. Maheshwari appeared as PW-1 in five suits, either

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as the plaintiff in his own suit or as the Power of Attorney holder for the other four plaintiffs. In one case, the plaintiff Bharat Kumar Lathi had executed Power of Attorney in favour of Pankaj Maheshwari. In the said suit, he examined himself as PW-I. K.D. Maheshwari proved the execution of the Agreement to Sell, the payment of the full consideration to Sushila Devi, and also that Sushila Devi and the witnesses duly signed the Agreement to Sell. In addition, the plaintiffs examined one of the attesting witnesses to the Agreement to Sell, namely Dipesh Chandra Patni as PW-2. Further, M.K. Maheshwari, who had a registered Power of Attorney from Sushila Devi executed on 04.09.1990, was also examined as PW-3, and he supported the plaintiffs stating that Sushila Devi had executed the Agreement to Sell after receiving the full consideration. The plaintiffs also examined Mr. R.K. Pathik, a handwriting expert, to prove that the signatures on the Agreement to Sell were that of Sushila Devi.

26. The plaintiff-appellants, thus, discharged their burden of proving the transaction between Sushila Devi and the plaintiffs on 13.08.1990, the passing of the consideration, and the execution of Agreement to Sell.
27. Coming to the evidence of defendant-respondents, the legal heirs of Sushila Devi, one Mohd. Shakir Khan was examined as DW-1, one of the legal heirs of Sushila Devi namely Vinod Aggarwal was examined as DW-2, and one N.C. Deshpande, a handwriting expert, was examined as DW-3. Mohd. Shakir Khan is the subsequent purchaser. He had no personal knowledge of the transaction that took place on 30.08.1990 at the time of execution of the Agreement to Sell. Vinod Kumar Aggarwal was one of the sons of Sushila Devi, and was admittedly not residing with her. Defendants had set up a case that the Agreement to Sell was a forged document, and had denied its execution and also passing of any consideration. In support of their allegation of forgery, the defendant had examined Mr. N.C. Deshpande, a handwriting expert, as PW-3. Interestingly, Mr. N.C. Deshpande could not come to a definite conclusion that the signatures on the Agreement to Sell, upon being compared with the admitted signatures, could not be said to be definitely not of Sushila Devi. He, in fact, made a candid admission that according to his opinion, it could not be said that the signatures on the Agreement to Sell were not of Sushila Devi. The star witness of the defendants could have been Kailash Aggarwal, the eldest son, in whose presence the Agreement to Sell had been executed and also the subsequent

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registered Power of Attorney in favour of M.K. Maheshwari. For reasons best known to the legal heirs of Sushila Devi (the original defendants), Kailash Aggarwal chose not to appear in the witness box. This clearly reflects that original defendants were trying to avoid to face the real facts and, therefore, they avoided Kailash Aggarwal from entering the witness box. In the totality of consideration of evidence on record with regard to the execution of Agreement to Sell, we are of the view that the same had been validly proved by the plaintiff-appellants and the defendants had failed to establish their claim that it was a forged document.

**2. PLAINTIFF NOT ENTERING THE WITNESS BOX**

28. Any adverse inference drawn by the High Court for the reason that the plaintiffs did not enter the witness box to prove the Agreement to Sell, in our opinion, was completely misplaced. Mr. K.D. Maheshwari is one of the purchasers and plaintiff in his suit for specific performance. He was throughout present in the transaction which took place on 30.08.1990. He held the Power of Attorney from the other plaintiffs and therefore, it was not necessary for each of the plaintiffs in separate suits to appear and prove the transaction of 30.08.1990. Mr. K. D. Maheshwari, who was examined as PW-1 in each of the suits whether in his capacity as plaintiff or as Power of Attorney from other plaintiffs, was fully justified in establishing the facts that transpired on 30.08.1990. The Trial Court had examined this aspect and had found favour with the plaintiffs. The finding of the High Court on this aspect is not approved in view of the above.

**3. EFFECT OF THE REGISTERED POWER OF ATTORNEY  
DATED 04.09.1990**

29. Sushila Devi on 04.09.1990, in the presence of her son Kailash Aggarwal, executed a General Power of Attorney in favour of M.K. Maheshwari, who happened to be the real brother of K.D. Maheshwari, one of the purchasers. If Sushila Devi executed the Power of Attorney, no fault could be found with the same, as she wanted herself to be free from repeatedly going to the Registry Office for execution and registration of sale deeds. No suspicion could arise on account of execution of General Power of Attorney which was a registered document. Any challenge to the same by her legal heirs was without any basis and totally based on conjectures. The

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*bona fides* of the plaintiffs are also apparent from the fact that if they were actually doing any mischief, fraud, or misrepresentation, they would have immediately got the sale deeds executed and registered through the Power of Attorney of M.K. Maheshwari soon after its execution on 04.09.1990. But, they did not do so and continued to request Sushila Devi and, later, her legal heirs to execute the sale deed, even after her death. However, when they failed to do so and upon the death of Sushila Devi, applied for mutation of their names in the revenue records and the plaintiff-appellants had to file objections in the revenue proceedings, they were compelled to file the suit.

**4. LIMITATION**

30. The limitation for filing a suit for specific performance is three years from the date fixed for the performance or if no such date is fixed, when the plaintiff had notice that the performance is refused as stipulated in Article 54 of the Schedule to the Limitation Act, 1963. In the present case, the Agreement to Sell did not mention any date for the performance, nor did Sushila Devi refuse at any point of time and soon after the death of Sushila Devi in December 1992, the plaintiffs having come to know of the mutation proceedings by her legal heirs, they proceeded to file the suit, after giving notice in May 1995, which was well within a period of three years. The High Court fell in error in holding that the suit is barred by limitation as it was filed after more than three years from the date of execution of Agreement to Sell. The High Court failed to take into consideration that it was the second part of Article 54 of the Schedule to the Limitation Act which would be applicable once there was no date fixed for performance in the Agreement to Sell.

**5. ORIGINAL TITLE DEEDS WITH THE PLAINTIFFS-APPELLANTS**

31. Sushila Devi had purchased the property in question in the year 1966 by way of a sale deed dated 23.04.1966. The said sale deed would normally be in possession of Sushila Devi or her legal heirs. Surprisingly, the said original sale deed of 1966 was filed and duly exhibited by the plaintiffs-appellants. Even the original *Rin Pustika* in the name of Sushila Devi was also filed by the plaintiffs-appellants and duly exhibited. Kailash Aggarwal (Sushila Devi's eldest son)

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is said to have been present both at the time of Agreement to Sell dated 30.08.1990 and again at the time of execution and registration of General Power of Attorney on 04.09.1990. Original title deed and *Rin Pustika* must have been handed over in his presence. How and why the original sale deed of 1966 and *Rin Pustika* of Sushila Devi were in possession of the plaintiffs-appellants had not been explained by the defendants, nor did they dispute that the 1966 sale deed and the *Rin Pustika* in the name of Sushila Devi were forged and fabricated documents. This clearly shows that the transaction which took place on 30.08.1990 was valid transaction, the full sale consideration was paid, and it is only thereafter that the seller would part with the original title deed and the *Rin Pustika* and hand them over to the purchasers.

**6. POSSESSION**

32. A purchaser who has paid the full consideration and received the original title deeds from the seller would have taken possession under normal circumstances. Any possession taken by any other party thereafter would be unauthorised and illegal. Therefore, the finding of the High Court regarding plaintiff not being in possession and therefore the suit being barred in law, is untenable. It is relevant to mention here that the plaintiffs-appellants had produced *Rin Pustika* of the revenue department to show that they had been paying the land revenue.

**7. VIOLATION OF INJUNCTION**

33. The plaintiffs-appellants had sought amendments in the plaint and had expressed their apprehension that the legal heirs of Sushila Devi, the original defendants, were likely to alienate the land in favour of the third party. Upon their application, the Trial Court had passed an interim injunction order on 04.12.2000, restraining the defendants from alienating the property in dispute. Despite the same and having full knowledge of the interim injunction order, the defendant nos. 2, 3, 4 and 5 executed four separate sale deeds on 18.01.2001 in favour of third parties, who were later on impleaded in the suit as defendant nos. 7, 8, 9 and 10. This conduct by the original defendants (legal heirs of Sushila Devi) clearly indicates their desperation, as they wanted to further gain financial benefits by hook or by crook and, therefore, alienated the property in violation of the injunction

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order. Such sale deed would be a void document. The conduct of the original defendants disentitles them from any discretion being exercised in their favour, as they blatantly and knowingly violated the interim injunction order. The High Court failed to take note of this conduct of the original defendants.

34. Learned counsel for the respondents have relied upon a number of authorities. However, we find that none of the authorities cited by the respondents really extend any help or benefit to them as the same are all distinguishable on facts, as would be clear from the following references in brief:

34.1. The respondents have relied upon the judgement of this Court in **Thiruvengadam Pillai** (Supra) to argue that the plaintiffs failed to prove the execution of the Agreement to Sell dated 30.08.1990 and the General Power of Attorney dated 04.09.1990. In that case, the Court dismissed the suit for specific performance because the agreement was written on old stamp papers purchased years earlier, the attesting witnesses were close relatives of the plaintiff and one was not examined, possession was not delivered despite being stated in the agreement, and there was no expert verification of the thumb impression alleged to be that of the defendant. The plaintiff also failed to discharge the burden of proof, and the appellate court wrongly shifted this burden to the defendants. However, the present case is distinguishable on key facts. Here, the Agreement to Sell was executed on appropriate stamp paper without irregularities, and the plaintiffs diligently discharged their burden by providing credible evidence, including the testimony of PW-1 (either the plaintiffs or their Power of Attorney holder with personal knowledge) and the attesting witness PW-2, who was not a close relative but an independent witness. Moreover, the plaintiffs produced the original title deed of 1966 and the Rin Pustika, handed over by Sushila Devi—a fact not contested by the defendants—which corroborates the genuineness of the transaction. An expert handwriting analysis affirmed the authenticity of Sushila Devi's signature, and the defendants' expert could not conclude otherwise. Unlike in **Thiruvengadam Pillai** (Supra), the plaintiffs in this case were given possession of the property, have been cultivating it, and have been paying land revenue.

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- 34.2. The respondents further contended that Sushila Devi, being an old and illiterate lady, fell into the category of a *pardanashin* woman entitled to special protection under the law, as established in the case of **Mst. Kharbuja Kuer** (Supra). In that case, the Court held that the burden of proving that a *Pardanashin* lady understood the contents of a document lies on the person seeking to enforce it. However, the facts of the present case are materially different. Firstly, there is neither any pleading nor any evidence to suggest that Sushila Devi was a *Pardanashin* lady who lived in seclusion; mere old age and illiteracy do not suffice to classify her as such. She had independently conducted property transactions in the past, including the purchase of the suit property in 1966, demonstrating her active involvement in legal and financial matters. Secondly, the plaintiffs have adequately discharged any burden of proof by providing credible evidence that the contents of the Agreement to Sell and the General Power of Attorney were duly explained to her. The attesting witness, PW-2, testified that the documents were read over and explained to Sushila Devi before she affixed her signature. Additionally, her son, Kailash Aggarwal, was present during the execution of these documents, and there is no allegation that he raised any objections or that any undue influence was exerted. The defendants have failed to provide any evidence to the contrary or to establish that Sushila Devi did not understand the nature of the transactions. Therefore, the reliance on the principles laid down in **Mst. Kharbuja Kuer** (Supra) is misplaced, as the circumstances of that case are distinguishable from the present one, and the respondents' argument on this ground cannot be sustained.
- 34.3. The respondents have also relied upon the judgment in **Krishna Mohan Kul** (supra), involving an old, illiterate, and physically incapacitated person who allegedly executed a deed of settlement. This Court held that when an aged, illiterate, and infirm person is involved, the burden of proving the validity of the document lies on the beneficiary, who must demonstrate that the executant was in a fit state to understand the transaction and that no undue influence was exerted. However, in the present case, while Sushila Devi was elderly and illiterate,

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there is no evidence to suggest that she was physically or mentally incapacitated at the time of executing the Agreement to Sell and the General Power of Attorney. Unlike in **Krishna Mohan Kul** (supra), where the executant was over 100 years old, paralytic, and bedridden, Sushila Devi was capable of managing her affairs and had a history of independently conducting property transactions.

- 34.4. The respondents have also relied upon the judgment in **Vidyadhar Vishnupant** (supra) to contend that the plaintiffs' absence from the witness box prevents them from proving the execution of the Agreement to Sell dated 30.08.1990, as such execution must be attested by someone present at the time. In **Vidyadhar Vishnupant** (supra), this Court observed that when a party refrains from testifying and avoids cross-examination, it may lead to an adverse inference against that party's case. However, the circumstances of the present case are significantly different. The plaintiffs' interests were represented by their Power of Attorney holders, namely Shri K.D. Maheshwari and Shri Pankaj Maheshwari. Shri K.D. Maheshwari is himself one of the purchasers and a plaintiff in his own suit. He appeared as PW-1 in all the suits, either as the plaintiff or as the Power of Attorney holder for the other plaintiffs. He had personal, firsthand knowledge of the execution of the Agreement to Sell, being directly involved in the transaction and present at the time of its execution. His detailed testimony provided substantial evidence supporting the plaintiffs' claims. Similarly, Shri Pankaj Maheshwari acted as the Power of Attorney holder for the plaintiff Bharat Kumar Lathi and also appeared as a witness. He had personal knowledge of the transaction and corroborated the execution of the Agreement to Sell and the payment of the consideration. Both Shri K.D. Maheshwari and Shri Pankaj Maheshwari were intimately connected with the transaction and were competent to testify about the facts in issue. Moreover, one of the plaintiffs did enter the witness box in his own suit, further reinforcing the plaintiffs' case. Unlike in **Vidyadhar Vishnupant** (supra), where the defendant deliberately avoided the witness box, here the plaintiffs ensured that competent and directly involved witnesses testified on their behalf.

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- 34.5. The respondents have cited several other judgments to argue that the plaintiffs' failure to personally testify is detrimental to their case. In **Janki Vashdeo** (supra), this Court held that a power of attorney holder cannot depose on behalf of the principal regarding matters within the principal's personal knowledge. In **Rajesh Kumar** (supra), the Court reiterated that non-appearance of the plaintiff in the witness box can be fatal in specific performance suits. However, the circumstances in the present case are distinct as already discussed above. Therefore, the principles from the cited cases do not apply here, as the plaintiffs have adequately proved their case through competent witnesses with personal knowledge.
- 34.6. The respondents have then referred to the judgment in **Thomson Press (India) Ltd.** (supra) to argue that the Agreement to Sell lacks specific boundaries of the land, rendering it vague and unenforceable, and that possession has always remained with Sushila Devi and her heirs, now with the transferees, as held by the High Court. They further contend that the sale deeds executed during the pendency of the proceedings are not void but subject to adjudication. However, the circumstances and legal issues in **Thomson Press (India) Ltd.** (Supra) are not comparable to the present case. In **Thomson Press (India) Ltd.** (Supra), this Court dealt with the impleadment of a transferee *pendente lite* in a suit for specific performance and discussed the doctrine of *lis pendens* under Section 52 of the Transfer of Property Act. This Court held that a transferee *pendente lite* is bound by the outcome of the litigation and may be added as a party to the suit, especially if the transfer was made with knowledge of the pending proceedings and in violation of an injunction. In contrast, the present case revolves around the enforceability of the Agreement to Sell dated 30.08.1990, which sufficiently identifies the property through detailed descriptions, including khasra numbers, area, and location. The absence of explicit boundary details does not render the agreement vague or unenforceable, as the property can be clearly identified from the information provided. Moreover, the plaintiffs have been in possession of the suit property since the execution of the Agreement to Sell, actively cultivating it and paying land revenue, which contradicts the respondents' claim that possession remained with Sushila Devi and her heirs.

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- 34.7. Regarding the sale deeds executed during the pendency of the suit, while such transfers are not *void ab initio*, they are subject to the doctrine of *lis pendens* and cannot prejudice the plaintiffs' rights under the prior Agreement to Sell. The transferees acquire the property subject to the outcome of the pending litigation and cannot defeat the plaintiffs' claim for specific performance. Therefore, the legal principles established in **Thomson Press (India) Ltd.** (Supra) do not apply to the present case, and the respondents' arguments based on that judgment do not hold in light of the facts and circumstances here.
- 34.8. Similarly, the respondents have also relied upon the judgment in **Yogesh Goyanka v. Govind** (supra) where this Court dealt with the impleadment of a transferee *pendente lite* who had notice of the pending litigation. In that case, the Court held that while transfers made during the pendency of a suit are not *void ab initio* under Section 52 of the Transfer of Property Act, the transferee's rights are subservient to those of the parties in the litigation. The Court allowed the impleadment of the transferee to protect his interests, especially when there was a possibility of collusion between the original parties. However, the facts and legal issues in *Yogesh Goyanka* are different from the present case. In *Yogesh Goyanka*, the Court addressed whether a transferee *pendente lite* could be impleaded in a suit to protect his interests. In contrast, the present case involves the enforceability of the Agreement to Sell dated 30.08.1990 and whether the subsequent sale deeds executed during the pendency of the suit affect the plaintiffs' rights. While the respondents argue that the sale deeds are not void but subject to adjudication, the doctrine of *lis pendens* ensures that such transfers cannot prejudice the plaintiffs' prior contractual rights.
35. Having thoroughly examined the judgments and authorities cited by the respondents, it is imperative to consider the primary precedents relied upon by the appellants. We will analyse their applicability to the present case.
- 35.1. The appellants have relied upon the judgment in **Pawan Kumar Gupta v. Rochiram Nagdeo**<sup>10</sup> to assert that when fraud and

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misrepresentation are alleged by the defendants, the burden of proof lies upon them to substantiate such claims. In the present case, the defendants contended that the Agreement to Sell dated 30.08.1990 was forged and fraudulent. However, they failed to provide credible evidence to support these allegations.

In **Pawan Kumar Gupta** (supra), this Court held that when a party alleges fraud or that a transaction is *benami*, the onus is on that party to prove the allegation. The Court emphasized that the apparent tenor of a document is presumed to be true unless disproved by the party alleging otherwise. The burden does not shift to the party relying on the document to prove its validity beyond its face value. **Pawan Kumar Gupta** (supra) reinforces the appellants' position and supports their claim for specific performance of the contract.

- 35.2. The appellants have further relied upon the judgment in **Man Kaur** (supra) to substantiate the argument that a power of attorney holder can depose on behalf of the principal in respect of acts and transactions that the attorney has personal knowledge of. In this case, this Court clarified that while an attorney holder can definitely testify regarding the acts they have personally carried out on behalf of the principal, they cannot testify about matters requiring personal knowledge of the principal, such as the principal's state of mind or readiness and willingness to perform obligations under a contract. In the present case, the power of attorney K.D. Maheshwari was himself one of the vendees and all the transactions in the six suits having taken place simultaneously on the same day, same time and at the same place he was well aware personally of all the facts.
36. The subsequent purchasers and the intervenors, who had further purchased the property from third parties, will only get rights of their vendors. And if the vendors did not have any rights, the vendees cannot be said to be in any better position.
37. For all the reasons recorded above, the appeals are allowed. The impugned judgment and order of the High Court is set aside in all six appeals, and that of the Trial Court is restored. As the subsequent purchasers also joined in this litigation by filing impleadment/intervention application(s), we allow the same. We further direct

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that all the respondents, including the newly added respondents, shall execute the sale deed in favour of the appellants as per the directions of the Trial Court. Appellants to provide amended copy of the memo of parties within four weeks.

*Result of the case:* Appeals allowed.

<sup>†</sup>*Headnotes prepared by:* Aishani Narain, Hon. Associate Editor  
*(Verified by:* Shadan Farasat, Sr. Adv.)