REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 6620 OF 2008

Lakshmi Sreenivasa Cooperative Building Society .....Appellant

:Versus:

Puvvada Rama (Dead) by L.Rs. and Ors. ....Respondents

WITH

CIVIL APPEAL NO. 6625 OF 2008

J U D G M E N T

A.M. Khanwilkar, J.

1. These appeals arise out two separate suits filed for specific performance of agreements of sale in respect of land admeasuring Ac. 7.86 cents (3.18 hectares) in Survey No.59/2, situated in Kundavari Khandrika Village within the Sub Registry of Vijayawada.

2. The original respondent No.6, namely, Allu Appalanarayana, had filed a suit for specific performance before the Court of Subordinate Judge, Vijayawada, being Original Suit No.99/1981 for specific performance of the agreement dated 22nd November, 1979 executed in his favour by Puvvada Chandrashekhara Rao and Puvvada Siva Prasad, which was dismissed by the Trial Court on 20th October, 1997. Civil Appeal No.6625 of 2008 emanates from the said proceedings.

3. The appellant Society (appellant in both the appeals before this Court) had also filed a suit in respect of the self-same land for specific performance of the agreement of sale dated 16th October, 1981 read with the earlier agreement dated 30th June, 1977. Even this suit filed before the Subordinate Judge at Vijayawada, being O.S. No.351 of 1982 was dismissed by the Trial Court by common judgment dated 20th October, 1997. Civil Appeal No.6620 of 2008 arises from the said proceedings.

4. The legal representatives of original respondent No.6 preferred a first appeal before the High Court of Judicature, Andhra Pradesh at Hyderabad, being First Appeal No.1426 of 1997 against the dismissal of O.S. No.99/1981. Similarly, the appellant Society preferred First Appeal No.1492/1997 before the High Court of Judicature, Andhra Pradesh at Hyderabad, against dismissal of its suit, being O.S. No.351/1982.

5. The appeal preferred by the heirs and legal representatives of Allu Appalanarayana, however, was disposed of on 9th March, 2006 in view of the submissions made by the counsel for the appellant therein that respondent Nos.1 & 2/defendant Nos.1 & 2, Puvvada Chandrashekhara Rao and Puvvada Siva Prasad, respectively, had already executed a sale deed in respect of the suit property in their favour and, therefore, no further order was necessary in the pending appeal. The High Court disposed of the said appeal on that basis. Against that decision, as mentioned above, Civil Appeal No.6625 of 2008 has been filed by the appellant Society. It is doubtful whether this appeal preferred by the

appellant against the decision of the High Court dated 9th March, 2006 in First Appeal No.1426/1997 can be taken forward. We shall elaborate on this a little later.

6. The real controversy that needs to be addressed is in reference to the suit filed by the appellant Society, being O.S. No.351/1982 for specific performance of the contract of sale dated 16th October, 1981 read with the earlier contract dated 30th June, 1977, directing defendant Nos.1 to 5 (owners of the suit property), who are respondent Nos.1 to 5 in Civil Appeal No.6620/2008, to register a proper sale deed in favour of the appellant Society on receiving the balance of sale consideration at the time of registration or, in the alternative, directing execution and registration of such sale deed by the Court at their expense, and for permanent injunction restraining the 6th defendant (respondent Nos.6a. to 6g. - legal representatives) from interfering with the suit property and plaintiff's (appellant's) possession and enjoyment thereof in any way. The defendants contested the said suit and denied

having executed the suit agreements dated 30th June 1977 and 16th October, 1981.

7. On the basis of the pleadings, the Trial Court framed relevant issues and upon considering the oral and documentary evidence produced by the appellant/plaintiff, answered the material issues against the appellant/plaintiff. The Trial Court opined that the appellant/plaintiff had failed to prove the execution of the suit agreements. Similarly, the appellant/plaintiff had failed to prove that earnest money was paid to the owners of the land at the time of execution of the suit agreements or otherwise. Even on the factum of possession, as claimed by the appellant/plaintiff, the Trial Court opined that the appellant/plaintiff had failed to prove delivery of possession of the suit property to it by the owners upon execution of the suit agreement dated 30th June, 1977. The Trial Court further opined that the alleged suit agreements could not have been executed in view of the bar contained in the Urban Land Ceiling Act and even for that reason, the same were not valid. Having answered the

material issues against the appellant/plaintiff, the suit filed by the appellant being O.S. No.351/1982, was eventually dismissed with costs. Against the said decision, the appellant preferred A.S. No.1492/1997 before the High Court of Judicature, Andhra Pradesh at Hyderabad. The High Court was pleased to uphold the finding of fact recorded by the Trial Court against the appellant/plaintiff on the material issues. In that sense, both the courts have concurrently opined that the appellant/plaintiff failed to prove execution of the suit agreements dated 30th June, 1977 and 16th October, 1981 or of having paid earnest money in furtherance of those agreements and also being put in possession of the suit property, as claimed. At the same time, the High Court departed from the finding recorded by the Trial Court with regard to the issue as to whether defendant No.1 was a person of unsound mind. The High Court found that there was sufficient evidence to accept the said plea urged by defendant No.1. The High Court, therefore, dismissed the appeal preferred by the appellant Society and confirmed the order of dismissal of suit passed by the Trial Court.

8. The appellant has assailed the dismissal of its suit and appeal by the High Court by way of Special Leave to Appeal (Civil) No.16661 of 2006, which has been converted into Civil Appeal No.6620 of 2008. The thrust of the challenge is that the Trial Court as well as the High Court committed manifest error in analysing and appreciating the evidence on record in respect of material issues regarding execution of suit agreements, payment of earnest money to the owners at the time of execution thereof and including the factum of appellant/plaintiff having been put in possession of the suit property. It is urged that the crucial aspect as to the steps taken by the appellant for and on behalf of the owners for converting the land user and seeking permission of the appropriate authority for transfer of the land in favour of the appellant Society, has been overlooked. Those circumstances would reinforce the execution of the suit agreements in favour of the appellant. The appellant has also assailed the finding reached by the High Court on the factum of defendant No.1 being of unsound mind. It is urged that adverse inference

ought to have been drawn under Section 114 of the Indian Evidence Act, as defendant No.1 was not examined. The appellant would further contend that it was always ready and willing to perform its part of the contract and for which reason the Court ought to have decreed the suit filed by the appellant. It is contended that the appellant Society has acted upon the suit agreements and has made substantial investment on the suit property because it was put in possession thereof. The equities are in favour of the appellant for which reason the Court should lean in favour of granting decree of specific performance, as prayed.

9. The respondents, on the other hand, would contend that the Court should be loath in interfering with the concurrent findings of fact on material issues recorded by the two Courts against the appellant/plaintiff. Significantly, the Courts have held that the appellant failed to prove execution of the suit agreements. On that finding, the question of considering any other matter to further the relief of specific performance, would be an exercise in futility. Besides, both the Courts have

held that there was express prohibition for execution of suit agreements under the Urban Land Ceiling Act. The respondents submit that the Trial Court has rightly dismissed the suit filed by the appellant/plaintiff and, for the same reason, the High Court is justified in dismissing the first appeal preferred by the appellant. Resultantly, the present appeal preferred against the concurrent decisions ought to be dismissed.

10. As regards the companion Civil Appeal No.6625 of 2008, it is urged that the same is completely ill-advised inasmuch as it arises out of the suit instituted by the original respondent No.1 (respondent Nos.1a. to 1g. - legal representatives) for specific performance of agreement in his favour dated 22nd November, 1979. That suit came to be dismissed by the common judgment and order dated 20th October, 1997 passed by the Trial Court, against which respondent Nos.1a. to 1g. had filed First Appeal No.1426 of 1997. That appeal was not pursued any further in view of the subsequent developments. It necessarily follows that there was no adverse decree or for

that matter, any finding recorded against the appellant herein (defendant in the said suit) to which the appellant can take exception, much less by way of special leave petition. The fact that during the pendency of the first appeal, a registered sale deed was executed in favour of the appellant in First Appeal No.1426/1997 cannot be the basis to maintain an appeal under Article 136 of the Constitution. Hence, such appeal is devoid of merits.

11. We have heard Mr. Mohan Parasaran, learned senior counsel appearing on behalf of the appellant Society and Mr. M.N. Rao, learned senior counsel appearing on behalf of the respondents.

12. We shall take the last argument of the respondents, relating to maintainability of Civil Appeal No.6625 of 2008, first. We find substance in that argument. It is incomprehensible as to how the order passed by the High Court disposing of the first appeal without any adjudication can, by any standard, be considered as adverse to the defendant either in the matter of final decree or any finding

recorded by the Trial Court in O.S. No.99/1981 whilst dismissing the suit. As a result, Civil Appeal No.6625 of 2008 deserves to be dismissed as being devoid of merit, and in particular, as not maintainable.

13. Reverting to the former appeal, i.e. Civil Appeal No.6620 of 2008, the High Court has affirmed the findings of facts and the conclusion recorded by the Trial Court on material issues against the appellant/plaintiff. In that sense, the subject appeal questions the concurrent finding of fact recorded by the two Courts against the appellant/plaintiff. We are conscious of the fact that merely because two Courts have taken a particular view on the material issues, that by itself would not operate as a fetter on this Court to exercise jurisdiction under Article 136 of the Constitution. This Court in the case of ***Smt. Indira Kaur and Ors. Vs. Sheo Lal Kapoor***,[1] has observed as follows:

> "7. ..... Article 136 of the Constitution of India does not forge any such fetters expressly. It does not oblige this Court to fold its hands and become a helpless spectator even when this Court perceives that a manifest injustice has been occasioned. If and when the court is satisfied that great

[1] (1988) 2 SCC 488

injustice has been done it is not only the "right" but also the "duty" of this Court to reverse the error and the injustice and to upset the finding notwithstanding the fact that it has been affirmed thrice. There is no warrant to import the concept or the conclusiveness of divorce on the utterance of "Talaq" thrice in interpreting the scope of the jurisdiction of this Court under Article 136. It is not the number of times that a finding has been reiterated that matters. **What really matters is whether the finding is manifestly an unreasonable, and unjust one in the context of evidence on record.** It is no doubt true that this Court will unlock the door opening into the area of facts only sparingly and only when injustice is perceived to have been perpetuated. But in any view of the matter there is no jurisdictional lock which cannot be opened in the face of grave injustice. This view has been taken in *Variety Emporium* v. *Mohd. Ibrahim Naina* to which one of us (Thakkar, J.) was a party. The relevant passage in the words of Chandrachud, C.J. may be quoted with advantage: (SCC p. 255, para 6)

"It cannot be overlooked that three courts have held concurrently in this case that the respondent has proved that he requires the suit premises bona fide for his personal need. Such concurrence undoubtedly, has relevance on the question whether this Court should exercise its jurisdiction under Article 136 of the Constitution to review a particular decision. That jurisdiction has to be exercised sparingly. *But, that cannot possibly mean that injustice must be perpetuated because it has been done three times in a case. The burden of showing that a concurrent decision of two or more courts or tribunals is manifestly unjust lies on the appellant. But once that burden is discharged, it is not only the right but the duty of this Court to remedy the injustice.* Shri Tarkunde, who appears for the respondent, argued that this may lead and, in practice, does lead to different standards being applied by different courts to find out whether a concurrent decision is patently illegal or unjust. That, in the present dispensation, is inevitable. Quantitatively, the Supreme Court has a vast jurisdiction which extends over matters as far apart as Excise to Elections and Constitution to Crimes. The court sits in benches and not en banc, as the American Supreme Court does. Indeed, even if the entire court were to sit to hear every one of the eighty thousand matters which have been filed this year, a certain amount of individuality in the response to injustice cannot be avoided. It is a well known fact of constitutional history, even in countries where the

> whole court sits to hear every case, that the composition of majorities is not static. It changes from subject to subject though, perhaps, not from case to case. *Personal responses to injustice are not esoteric. Indeed, they furnish refreshing assurance of close and careful attention which the Judges give to the cases which come before them. We do not believe that the litigating public will prefer a computerised system of administration of justice: only, that the Chancellor's foot must tread warily.*"
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> (emphasis supplied)

14. Applying the principle expounded in the aforementioned decision, we must enquire into whether the finding recorded by the two Courts below is manifestly unreasonable and unjust in the context of the evidence on record. What seems to us is that the adverse findings recorded by the two Courts below against the appellant/plaintiff is based on the indisputable facts, such as neither were the attestors and scribe to the suit agreements examined to prove execution thereof by the real owners of the property nor was any explanation or justification forthcoming for such failure. The suit agreements are unregistered. The defendants have denied having signed any such agreement. No attempt was made by the appellant/plaintiff to confront the defendants and discharge the burden by examining any handwriting expert.

The appellant/plaintiff failed to produce any document to show that the nine members in whose favour the initial alleged agreement dated 30th June, 1977 was executed, have relinquished their possession in favour of the appellant/plaintiff. The co-owner of the property (5th defendant) was neither joined as party in the suit agreement dated 16th October, 1981, nor was his authority for execution of such agreement forthcoming. The other two purchasers, along with whom the suit agreement was executed, were also not examined. No proof was forthcoming regarding payment of earnest money amount at the time of execution of the suit agreements or otherwise made to the owners of the suit property. The appellant/plaintiff did not file any document to show that the cheque was encashed and availed by defendant No.4 as payment in respect of the suit agreement. No endorsement was taken on the suit agreement dated 30th June, 1977 (Exhibit A1), either of the vendors or vendee before or at any time after execution of the suit agreement dated 16th October, 1981 (Exhibit A2). The sole testimony of PW-1 regarding execution of the suit agreement was not enough to

prove its execution. No witness was examined to prove that there was any bargain and settlement between PW-1 and defendant Nos.1-4 in respect of the sale transaction prior to execution of suit agreement Exhibit A1. There is no recital in the suit agreement to the effect that along with defendant Nos.1-4, defendant No.5 had also agreed to sell the property and to execute the sale deed in favour of the appellant/plaintiff. There was no signature of defendant No.5 on the suit agreements or any reference to her, much less that she agreed to join with defendant Nos.1-4 for sale of the suit property. The suit agreements are executed by the first defendant alone and not by all the co-owners. The Trial Court, no doubt, did not accept the plea of defendant No.1 being of unsound mind. But the High Court, on analysis of the relevant evidence, has accepted the evidence as sufficient in that regard.

15. The Trial Court has made exhaustive analysis of evidence on record in the context of the material issue regarding execution of the suit agreements and answered against the

appellant/plaintiff, as can be discerned from paragraphs 27 to 29 of its judgment which read thus:

> "27) To prove the execution of Ex.A.1 defendant 1 to 4 and its runuinances the plaintiff did not examine the attestors and scribe of it. There is no explanation from the plaintiff for non examining the attestors of it. The plaintiff did not examine the scribe of it as he is no more and his son P.W.2 came and deposed the same and also identified the writings of his father. Except identifying the writings and signature of the scribe, the evidence of D.W.2 is not helpful to prove its execution and signatures of defendant 1 to 4 on Ex.A.1. As such the evidence of P.W.2 is not much helpful to prove the sale of the suit land and execution of Ex.A1 by respondent 1 to 4. Defendants 2, 3, and 4 who examined as D.W.2, D.W.3 and D.W.1 respectively denied their signatures on Ex.A.1 and also their execution of it in favour of P.W.1. No doubt, the first defendant did not came into witness box on the ground that he became mad or insane. It is the case of the plaintiff that defendant 1 to 4 sold the plaint schedule land to his and executed Ex.A.1 in his favour of receiving a part of sale consideration from him. In such circumstances non examination of first defendant does not give any adverse inference in proving Ex.A.1, as the other defendants i.e., defendant 2 to 4 examined to confront their signatures or Ex.A.1 and execution of it along with defendant 1. Similarly the non examination of first defendant, does not automatically prove the execution of Ex.A.1 without examining the attesters and scribe thereupon. The evidence of P.W.1 else goes to show that he occurred the attestor and they are not the men of defendants to attribute any motive to them. The plaintiff also did not examine any of the other 2 purchasers along with when we purchased and obtained Ex.A.1 to prove the execution of Ex.A.1 and signatures of defendants 1 and 4 agreeing to sell the suit schedule land and receiving of Rs.45,000/- from them. **Thus the sale testimony of P.W.1, without examining the attestes, and**

his co-purchasers is not at all helpful to prove the sale of the suit schedule land and execution of Ex.A.1 by defendant 1 to 4 infavour of P.W.1 on 30.7.1977. As such the plaintiff failed to prove execution of sale of the plaint schedule land under Ex.A.1 by defendant 1 to 4.

28) Coming to the subsequent development it is the case of the plaintiff that the defendants 1 to 4 also executed Ex.A2 contract of sale dt. 16.10.1981 infavour of the plaintiff society basing on earlier sale agreement Ex.A1 and the same conditions of Ex.A.1 have been adopted Ex.A2 agreement. PW.1 deposed that Ex.A.2 agreement was prepared in Navayuga Hotel at Vijayawada. One Gudivada Durga Rao and M. Satyanarayana are the attestors in Ex.A.2. He does not know where Durga Rao resides but he used to come to Vijayawada from Tadepally side. Satyanarayana is resident of Atta Ramayya Street in Governorpata, Vijayawada. He himself took both the attestors to Navayuga Hotel. He himself got Ex.A2 typed but he does not remember who gave the matter for typing. No rough draft was prepared before getting Ex.A.2 typed.

Except the evidence of P.W.1, there is no other evidence of attestors to prove Ex.A.2. There is no explanation from the plaintiff for non examination of the attestors. Further the attestors are his men and he got them and obtained their signatures on Ex.A.2. By the date of execution of Ex.A.2, dt.16.10.1981, the suit in O.S.No.99/81 was already filed against defendants 2 to 4, by defendant 6 herein. The defendants 1 to 4 also disputed their signatures on Ex.A.2 and also its execution infavour of the plaintiff society. The plaintiff society did not obtain any relinquishment deed of 8 other purchasers under Ex.A.1 to obtain subsequent agreement Ex.A.2 in the name of society. Similarly there is no endorsement on Ex.A.1 either of vendors or vendees about it cancellation in view of subsequent agreement Ex.A.2 infavour of society. In view of the above circumstances and without any evidence from the attestors, the sole testimony of P.W.1 is not at all helpful to prove the execution of Ex.A.2 by defendant 1 to 4 on 16.10.1981 in Navayuga hotel at

Vijayawada. The plaintiff filed a petition to reopen the matter and also permit his to lead rebuttal evidence but the defendant did not allow him to examine the attestors is also not a satisfactory explanation. Admittedly there was no memo reserving his right to lead rebuttal. Without examining the attestors during the course of examination of this witness, when the matter is coming up for argument, after closing the evidence of defendant, the plaintiff filing a petition to reopen the matter to examine his witnesses or attestors is not at all a justified ground to blame the defendants. **As such for non examining the attestors of Ex.A.1 and Ex.A.2 is not the fault of defendants as it is the duty of plaintiff to examine them in time. When it is the case the burden is on the plaintiff to prove the execution of Ex.A.1 and Ex.A.2 without examining the attestors and scribe of it blaming the defendants that they did not allow him to examining them at later stage by reopening the matter is of no use to satisfy the requirements in proving a document. Thus the plaintiff failed to prove the execution of Ex.A.W by defendant 1 to 4 prove the execution of Ex.A.2 by defendant 1 to 4 infavour of the plaintiff society in terms of earlier agreement Ex.A.1.**

29) It is the case of the plaintiff that defendant 5 agreed to sell the property along with defendant 1 to 4. Though the defendants 5 did not join in execution of sale agreement she had agreed to sell and also agreed to join in execution of sale deed. P.W.1 sale deposed that 10 or 15 days prior to Ex.A.1, he bargained with the vendors and settled the transaction. But the plaintiff did not adduce any evidence to prove that defendant 5 agreed to sell and also agreed to join in execution of sale deed and none of the witnesses are examined to prove that there was any bargain and settlement between P.W.1 and defendant 1 to 4 in respect of the sale transaction and also understanding between them prior to Ex.A.1. Further in Ex.A.1 and Ex.A.2 there is no recital to the effect that defendant 1 to 4 along with defendant 5 to the effect that defendant 1 to 4 along with defendant 5 agreed to execute the Regd. Sale deed. There

> circumstances also shows that defendant 5 did not agreed to sell the property and she did not agree to execute sale deed infavour of plaintiff. There is a gap of more than 4 years between Ex.A.1 and Ex.A.2. Not only Ex.A.1 but also Ex.A.2 does not bear the signature and reference of defendant 5 that she agreed to join with defendant 1 to 4 for sale of the suit schedule property. The plaintiff also failed to explain whey they did not obtain the signature of defendant 5 attestor on Ex.A.2 to say that she was aware and gave consent of this agreement and earlier agreement of Ex.A.1. If defendant 5 is aware and the plaintiff obtained any consent or at least intimation to defendant 5, they would have obtained the signature of defendant on Ex.A.2 – which came into existence after more than 4 years of Ex.A.1. In such circumstances the agreement Ex.A.1. and Ex.A.2 does not bind on defendant 5 as she is neither party nor it was with her consent and willing, such sale transaction took place."
>
> (emphasis supplied

16. That finding of the Trial Court commended to the High Court. The view so taken by the Trial Court is certainly a possible view and by no stretch of imagination can the finding recorded by the two Courts below on the material issue against the appellant be said to be manifestly unreasonable and unjust in the context of the evidence on record.

17. Having said this, it must necessarily follow that the appellant/plaintiff cannot be permitted to take the relief claimed in the suit any further sans proof of execution of suit

agreements in respect of which the relief of specific performance is sought. All other issues would recede in the background. It is, therefore, not necessary for us to dilate on the other issues, such as legal bar with regard to execution of such agreements and the effect thereof. The appellant/plaintiff must fail in getting any relief whatsoever in the absence of a valid and subsisting agreement operating between the parties in relation to which relief of specific performance can be granted. Notably, neither the agreement dated 30th June, 1977 nor the agreement dated 16th October, 1981 is a registered document. As observed earlier, no relinquishment deed has been executed by the nine vendees who were party to the alleged initial agreement dated 30th June, 1977. No endorsement was forthcoming in that regard. If so, the agreement dated 16th October, 1981 must stand or fail on its own. But before the execution of the second suit agreement dated 16th October, 1981 in favour of the appellant/plaintiff, the suit property was purported to be transferred in terms of the agreement dated 22nd November, 1979 in favour of respondent No.6 (original defendant No.6). During the

pendency of the proceedings before the High Court between the parties, a registered sale deed was executed in respect of the suit property in favour of respondent No.6 (defendant No.6) by the owners of the suit property. As a result of the registered sale deed, the heirs and legal representatives of original defendant No.6 claim to have become the owners and in possession of the suit property.

18. As regards the factum of possession, the Trial Court found that the appellant failed to prove the same and while answering issue No.5, it observed as follows:

> "33. Issue No.5: it is the case of the plaintiff that the defendants 1 to 4 delivered possession of the plaint schedule property on the date of sale under Ex.A.1 date 30.06.1977 in favour of the purchasers and subsequently they have delivered the same to the plaintiff society on the date of execution of Ex.a.2 dated 16.10.1981 and since then they have been in possession and enjoyment of the plaint schedule property. The defendants denied the delivery of possession to the plaintiff and their continuing over the name as on the date of filing of the suit. P.W.1 deposed that the Gram Panchayat approved layout which is Ex.A.7. Survey stones were painted for the plots and pipes were also arranged for the roads as per the layout and roads were formed. P.W.1 denied the 6th defendant took possession of the suit schedule property under Ex.A.1 in O.S. No.99/81 and he had been in possession of the same. P.W.1 deposed that the suit land is an agriculture land and he had seen copy of account No.2 available in the Urban Ceiling Authority Officer mentioning the name of the other defendants as enjoyers of the suit land. The village karnam

informed him that the suit schedule property stands in the name of the first defendant alone. P.W.1 admitted that he did not pay any cist for the suits land from 30.6.1977 to 16.10.1981. Subsequently he paid cist, but by then the other suit O.S. No.99/81 was also filed. He denied that they are not in possession or the suit land till he obtain interim injunction order and that he came into possession of the suit land only in pursuance of the injunction orders. The defendants from the beginning even before filing of the suit, by way of reply notice they have denied the sale transaction in favour of the plaintiff and also delivery of possession. The plaintiff did not file any document i.e. revenue records or cist receipts to show that he paid any taxes and to say that he was in possession of the plaint schedule property right from the date of Ex.a.1 i.e. from 30.6.1977 till he filed this suit in the year 1982. It is the case of the plaintiff that he along with 8 others purchased the property under Ex.a.1 and subsequently they all formed into a Society of the plaintiff and obtained another subsequent agreement from the defendants 1 to 5 under Ex.A.2 dated 16.10.1981 under Ex.A.2. But the plaintiff did not examine any of his co-purchasers to prove delivery of possession of the plaint schedule property to them by the defendants. Except the sale testimony of P.W.1, there is no other evidence to say that the defendants delivered possession to them on 30.6.1977 under Ex.a.1. If there was any such delivery of possession on 30.6.1977 and they have continued such possession and enjoyment over the plaint schedule property till the date of filing of the suit in the year 1982 they would have paid at least cist to the Revenue authorities and obtained receipts and also examined the other co-purchaser of P.W.1. In the absence of any such evidence, the version of the plaintiff that the defendants 1 to 4 delivered possession of the plaint schedule property to him and his other 8 purchasers on 30.6.1977 and they subsequently delivered it to the Plaintiff Society on 16.10.1981 under Ex.A.2 and also to say that they have been continuing in possession and enjoyment of the plaint schedule property is not at all be liable version. The obtaining of layout permission from the Gram Panchayat under Ex.A.7 and also writ petition and its proceedings questioning acquisition of the plaint schedule land by the plaintiff under Exs.A.17 to A.21 are not at all helpful to say possession and enjoyment of the plaintiff over the plaint schedule lands. Similarly the evidence of D.Ws.1 to 7 is also not helpful to say the possession and enjoyment of the plaintiffs over the plaint schedule property and also

> delivery of possession by the defendants 1 to 4 on 30.6.1977 under Ex.A.1. Hence, this issue is decided against the plaintiff."

19. The view so taken by the Trial Court commended to the High Court and has been affirmed by it. We find no reason to deviate from the said conclusion as it is not manifestly unreasonable or unjust in the context of the evidence on record.

20. Considering the above, we have no hesitation in upholding the conclusion arrived at by both the Courts below that the suit filed by the appellant/plaintiff deserves to be dismissed with costs. In the course of arguments, it was earnestly urged on behalf of the appellant before us that if the Court was not inclined to grant the prayer for specific performance, then this Court may direct the respondents to refund the earnest money paid to them in furtherance of the suit agreements. Ordinarily, such a prayer could be considered but in the peculiar facts of the present case, it may not be possible to entertain the same, not only because no such express prayer is sought in the plaint filed by the

appellant/plaintiff before the Trial Court, but also because accepting that prayer would result in taking a contradictory approach with the finding of the Trial Court and affirmed by the High Court and by us, that the appellant/plaintiff had failed to prove the factum of payment of earnest money amount to the owners of the suit property. Notably, the factum of execution of the suit agreements in itself is doubted. In view of the above, no relief can be granted to the appellant/plaintiff in the fact situation of this case.

21. We accordingly dismiss both the appeals with costs.

.....CJI.
(Dipak Misra)

.....J.
(A.M. Khanwilkar)

.....J.
(Dr. D.Y. Chandrachud)

New Delhi;
July 31, 2018.