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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

***Reserved on: 21st August, 2026***
***Pronounced on: 20th November, 2026***

\# **CNR No. DLHC010286072015**

\+ EX.S.A. 1/2015 & CM APPL. 1558/2015

MR. GOVIND SINGH .....Appellant

Through: Mr. Kapil Gupta, Mr. Prateek Singh, Advs.

Versus

AJIT SINGH TOKAS .....Respondent

Through: Mr. Uttam Datt, Sr. Advocate with Mr.Rajat Sehgal, Ms. Sonakshi Singh, Mr. Naman Kumar, Mr. Samyak Jain, Advocates.

**CORAM:**
**HON'BLE MR. JUSTICE AMIT SHARMA**

**JUDGMENT**

**AMIT SHARMA, J.**

**1.** Present appeal filed under Section 100 read with Order XXI Rule 103 of the CPC seeks the following prayers: -

> "a). Summon the trial court record pertaining to Ex. 11/06 titled "Ajit Singh Tokas v/s Manohar Singh & Ors." pending before the Court of Learned Smt. Charu Aggarwal, Learned Senior Civil Judge, Tis Hazari; the record of Original Suit No. 289/86 titled "Shri Latif v/s Sh. Manohar Singh & Anr." disposed off vide orders dated 28.2.1995 by the Court of Learned Shri Vipin Kumar Gupta, Learned Civil Judge, Tis Hazari; record of RCA No. 3/2004 titled "Sh. Manohar Singh & Anr. v/s Sh.

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Latif" disposed off vide orders dated 16.11.2004 by the Learned Court of Shri S.K. Sarvaria, Learned ADJ, Tis Hazari and the record of RCA-16/11 titled "Sh. Ajit Singh Tokas v/s Sh. Manohar Singh & Ors." disposed off vide orders dated 13.10.2014 by the Court of Learned Shri Ajay Goei,, Learned ADJ, Tis Hazari Courts;

b). Set aside the order dated 13.10.2014 passed by the Learned Court of Shri Ajay Goei, Learned ADJ-12, Tis Hazari Courts, New Delhi in RCA-16/11 titled Sh. Ajit Singh Tokas v/s Sh. Manohar Singh & Ors.; and

c). Pass any other or further orders as this Hon'ble Court may deem fit and proper in the interests of justice."

**2.** Relevant facts, as per the appellant, significant for adjudication of the present appeal are as under: -

i) On 22.05.1986, one Mr. Latif filed a suit for permanent injunction against the appellant herein and his brother, bearing no. OS No. 289/86 titled as "*Sh. Latif v. Manohar Singh & Ors.*" with respect to suit property *i.e.* Khasra no. 182/1, measuring 11 Biswas, village Kalu Sarai, New Delhi. The parties went to trial on the following issues: -

"1. Whether the plaintiff is owner and in possession of the property in suit of Khasra no.182/1? OPP
2. Whether the plaintiff is entitled to the injunction as prayed for? OPP
3. Whether the property in suit is measuring 303 sq. yards and is in fact situated in khasra no.l82ll and 181/2 as claimed by the defendant. If so its effect.
4. Whether this land has been allotted as plot no.5 and it was conveyed to Smt. Raj Kaur. If so, its effect? OPD
5. Whether the suit is not maintainable? OPD
6. Whether the land in suit was allotted to Sewa Singh (husband of Raj Kaur and father of the defendants). If so, its effect? OPD
7. Relief"

Learned Civil Judge adjudicating the said suit *vide* order dated 28.02.1995 held in favour of the original plaintiff/ Mr. Latif and restrained the

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original defendant/ appellant and his brother from taking forcible possession of the suit property forming part of Khasra No. 182/1 measuring 11 Biswas, village Kalu Sarai, New Delhi and from demolishing the boundary wall of the suit property.

ii) Aggrieved by the order dated 28.02.1995, appellant herein challenged the said order in RCA 3/2004. Learned ADJ *vide* order dated 16.11.2004 dismissed the said civil appeal but reversed the findings of the learned Civil Judge on issue 4 and 6, in the following terms: -

> "Although I am not in agreement with the learned trial court that the documents proved by DW3 as the same are coming out of official record and are certified copies and, therefore, are public documents, irrespective of the fact that DW3 has failed to prove as to who has signed the documents. The documents can be taken as proved without formal proof of signatures on the same as these are certified copies of the public record. However, these documents proved by DW3 are not sufficient to prove that the suit land and plot no. 5 Kalu Sarai, New Delhi are the same.
>
> The only convincing evidence which can throw light on the above controversy is the statement of PW2, Sh. Jawahar Singh. It can be inferred from his statement that khasra girdwari for the year 1968 to 1974 are in the name of plaintiff. In his cross-examination he has stated that he has gone to the spot and on the spot defendant No. 3 i.e Smt. Raj Kaur widow of late Sh. Sewa Singh has possession of 11 biswas of land in khasra no. 182/1 and 5 biswas in khasra no. 181/2 but he has also stated in the cross-examination that in Ex D2 whatever land is shown, falls in khasra no 182/1 and 181/2. In the re-examination, he stated that khasra girdwari for the period 1975 to 1980 were recorded by him by verifying the spot. This witness is also heavily relied by the learned trial court while deciding issue no. 1 and rightly so as the statement of PW2, in my view, if read as a whole, shows that the suit for which relief is claimed by the plaintiff belongs to the plaintiff and suit land which is plot no. 5 Kalu Sarai, New Delhi and in the name and possession of defendant No. 3 is not the suit Land. Although I am not in agreement with the finding of the trial court on issue no. 4 and, therefore, finding of learned trial court on issue no. 4 is reversed but the fate of the suit

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> would remain the same as decided by the trial court as reversal of finding on issue no. 4 and as a consequence of which issue no. 6 also does not affect the fate of the suit.
>
> In view of the above, there is no merit in the appeal. Findings of the learned trial court on issues no. 1, 2, 3 and 5 is confirmed and that on issues no. 4 and 6 is reversed. The appeal is dismissed with no order as to cost."

It is relevant to note that defendant no. 3 in the original suit is the mother of the appellant herein *i.e.* Smt. Raj Kaur.

iii) In 2006, the respondent herein claiming to be the decree holder, sought execution of decree dated 28.02.1995, purporting that Sh. Latif conveyed all rights, title and interest in the suit property in his favour by executing agreement to sell and GPA dated 24.04.1995 and handed over possession of the suit land on 05.05.1995. The said execution petition, being Ex. No. 11/06, was duly contested by the appellant herein, and the same was dismissed *vide* order dated 25.02.2011 with the following observation: -

> "The ld. appellate court although, reversed the finding of trial court on issue no.4 and 6, but, was of the view that the fate of the suit would remain the same and does not alter the fate of the suit. It is admitted fact that the judgment of the ld. appellate court has not been challenged. Now the question arises, that in view of the finding of Id. appellate court to the effect that the suit land which is plot no.5 Kalu Sarai, New Delhi and in the name and possession of defendant no.3 is not the suit land, the decree of permanent injunction as passed vide judgment dated 28.02.1995, whereby, the defendants were restrained from taking forcible possession of the suit plot forming part of Khasra no. 182/2 measuring (0-11) biswas, situated at Village Kalu Sarai, UT gate. New Delhi and from demolishing the boundary wall of the suit property without due process of law, is executable. In view of the fact that plaintiff had not proved the site plan in main suit filed against the defendant and in view of the findings of Id. appellate court to the effect that the suit land which is plot no.5, Kalusarai, New Delhi and in the name and possession of defendant no. 3 is not the suit land, I am of the considered opinion that the decree is not executable against the

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> defendants. Accordingly, objections as filed on behalf of Judgment Debtors stands allowed and the execution petition as filed on behalf of DH stands dismissed. File be consigned to record room."

iv) Allegedly, frustrated by the order dated 25.02.2011, respondent through his accomplices illegally entered into plot no. 5, Kalu Sarai, New Delhi and started damaging property. Pursuant to the said incident, kalandra proceedings were initiated and respondent's accomplice were taken into custody and asked not to disturb peace. Subsequently, appellant filed an FIR No. 131/11 PS Malviya Nagar against the respondent and latter's FIR No. 18/2012 was registered pursuant to proceedings under Section 156 (3) Cr.P.C. and upon directions emanating from learned Court of MM, Saket, New Delhi dated 15.11.2011.

v) Respondent filed RCA No. 16/2011 challenging order dated 25.02.2011 passed in EX No. 11/06. Learned ADJ *vide* impugned order dated 13.10.2014 allowed the said appeal and revived the execution petition. Hence the present appeal.

**3.** Learned counsel for the appellant, in support of the present appeal made the following submissions: -

i) Since the respondent herein has not averred in the EX No. 11/06, that in spite of having had an opportunity of obeying the decree, the Judgment Debtors have wilfully failed to obey it, the execution petition is non-maintainable at the threshold. The averments should show the acts done by a Judgment Debtor in violation of the decree dated 28.02.1995. In fact, in the execution petition, the respondent has specifically averred and claimed that he was handed possession

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of the suit property by Sh. Latif on 05.05.1995 and since then he is in actual physical possession of the suit plot. Since there was no interference in the possession of the respondent, as per his own case, the execution petition was not maintainable on this ground alone and was thus rightly dismissed *vide* order dated 25.02.2011. Reliance for the same is placed on the following judgments:-

**a) Novartis A.G. v. Wander Pvt. Ltd.**[1]

**b) Raman Nambissan v. Damodaran Nambissan & Ors.**[2]

**c)Padmakshi Amma & Ors. v. P.K. Hashim**[3]

**d) Ramnath v. Smt. Tapesara & Ors.**[4]

Moreover, order dated 25.02.2011 correctly holds that the decree was not executable, since the plaintiff had never proved his site plan and such a fatal lapse to the claim of the plaintiff could not be covered up in execution proceedings. Reliance for the same is placed upon this Court's judgment in **Shushila Rani v. Sadhu Ram Jain**[5] and Virender **Singh v. Mangal Singh & Ors**[6].

ii) The unregistered agreement to sell dated 24.04.1995 executed between Sh. Latif and the respondent was on "possession basis" only. Though the agreement to sell as per Section 54 of the Transfer of Property Act, in itself, did not create any interest in such property, but even otherwise, in this case it did not transfer any right, title and interest in the suit property in favour of the Respondent, because it was an agreement only of the transfer the possessory

[1] 2009 SCC OnLine Del 1376, para 36
[2] 1995 SCC OnLine Ker 54, para 3 and 6
[3] 1998 SCC OnLine Ker 469, para 7 and 9
[4] 1984 SCC OnLine All 541, para 3 and 4
[5] RSA 145/2005, decided on 23.02.2011
[6] RFA 595/2003, decided on 13.01.2012

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rights. Further, Section 54 of the said Act and Section 17 of the Registration Act mandate registration of sale document of immovable property. Thus, the respondent having allegedly acquired possessory rights, on the basis of an unregistered document, cannot be treated to be a representative or successor-in-interest of the original plaintiff. Reliance for the same is placed upon **Suraj Lamp & Industries (P) Ltd. (2) v. State of Haryana**[7]. Further, the respondent cannot be treated as a person claiming under the plaintiff, under Section 146 CPC and thus, the execution petition filed by him was not maintainable.

iii) The original plaintiff, Shri Latif died on 29.07.1996 and on his death an application under Order XXII Rule 4 CPC was filed by the appellant and his brother, Manohar Singh, on 11.10.1996. By way of the said application, 8 sons of Sh. Latif were substituted as respondents. Since filing of RCA 3/2004 on 30.03.1995 till its judgement dated 16.11.2004, the respondent did not seek his substitution as the legal representative of Sh. Latif. However, if the respondent had acquired any right in the suit property, then he as legal representative of Shri Latif ought to have moved an application for substitution, if not immediately after acquisition of his purported possessory right but at least after the death of Shri Latif. It is stated that Section 2(11) of CPC defines "legal representative", as a person who in law represents the estate of a deceased person. The fact of alleged transfer of possessory right in favour of Respondent was not brought to the notice of the learned ADJ. Thus, there was deliberate and wilful concealment of a material fact.

[7] (2012) 1 SCC 656

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iv) It is the settled law that an injunction, being personal, does not run with the land. Thus, respondent had no right to file an execution of the decree of injunction obtained by his alleged predecessor-in-title. Reliance for the same is placed on **Somnath Honnnappa Bennalkar v. Bhimrao Subrao Patil**[8] and **Chinnamal v. Nagarathinammal**[9].

v) Learned Civil Judge *vide* judgement dated 28.02.1995 held that the Plot no. 5 allotted to Sh. Sewa Singh (husband of Smt. Raj Kaur, defendant no. 3) was different from the suit property. Even, learned ADJ *vide* order dated 16.11.2004 held that Plot no.5, Kalu Sarai, is in the name of Smt. Raj Kaur and is not the suit property. The learned ADJ also held that the demarcation report, Ex. D2 shows that the present appellant is in possession of 5 Biswas in Khasra No.181/2 and the remaining land in Khasra No.182/1. Further, Sh. Latif himself stated on oath that the defendants have no right in the suit property and is different from the plot of the defendants. Thus, decree of Permanent Injunction could not be enforced against the property of the appellant *i.e.* Plot No.5, Kalu Sarai and learned Appellate Court *vide* the impugned order dated 13.10.2014 has gone behind the decree to reopen the issue of identification of land over which the plaintiff staked his entitlement and the same is not permissible in view of Hon'ble Supreme Court Judgment in **Gurpreet Singh v. UOI**[10].

vi) Learned Civil Judge *vide* judgement dated 28.02.1995 held that the plaintiff has not been able to prove his Site Plan. Moreover, the plaintiff in his

8 1974 Indian Law Reports 1506, para 3
9 1989-2-L.W 192, para 3 and 4
10 (2006) 8 SCC 457

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cross examination disputed his own site plan and admitted that the Site Plan, filed by the defendants is correct and according to the site. Thus, if the site plan filed by the plaintiff was not correct according to the site, the ambiguity about the identification of the suit property could not have been removed in the execution proceedings. Regarding the site plan of the Plaintiff being not correct and not proved, reliance is placed on the judgment **Shushila Rani (*Supra*)**.

vii) In the garb of the decree of Permanent injunction, the respondent seeks to illegally take possession of the property of the appellant bearing No. 5, Kalu Sarai, New Delhi, when learned Civil Judge and Learned ADJ while passing their respective orders held that the suit property owned and possessed by plaintiff- Sh. Latif and the property of the appellant are different properties. Even the impugned order records that Smt. Raj Kaur had become owner of portion purchased by her and the property claimed by the plaintiff and the defendants are different. Smt. Raj Kaur had acquired Plot no. 5, Kalu Sarai by virtue of a conveyance deed dated 21.07.1981 and other documents, duly proved in evidence before the learned ADJ. In these circumstances, the remedy, if any, is to seek demarcation of the property.

viii) The plaintiff- Shri Latif or the present respondent, who allegedly claims to be representative/ successor-in-interest of the plaintiff, did not challenge order dated 16.11.2004, reversing the learned Civil Judge findings on issue nos. 4 and 6, thus the said order attained finality. Reliance for the same is placed upon **Gangai Vinayagar Temple v. Meenakshi Ammal**[11].

[11] (2015) 3 SCC 624

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ix) The suit property was declared as evacuee property *vide* order dated 30.09.1955, the plaintiff neither filed any objections thereto nor did he challenged the same *vide* any proceedings.

x) A perusal of pleadings in RCA 16/11 filed by the respondent would show that the same is titled as an appeal under Order 41 Rule 1 read with Section 151 CPC. However, the said provision had absolutely no applicability to the matter. Thus, the said appeal was not maintainable in the form in which it was filed.

xi) Amongst the documents adduced by the respondent at the stage of filing of execution petition, the respondent also placed on record an affidavit purportedly signed and executed by the Sh. Latif, wherein the said Sh. Latif makes a statement that, "*3. That I have no right, title, interest or concern of any nature with the said land.*" The said document is even witnessed by one of the sons of Sh. Latif, Mr. Ramjan s/o Latif, who was duly brought on record by the appellant herein during the first appeal after the demise of Sh. Latif as his legal representative. However, neither Sh. Latif, nor said Ramjan s/o Latif, despite purportedly having executed and witnessed respectively the alleged execution of affidavit dated 05.05.1995, did not at any point aver or state that the said persons no longer have any interest or title in the land as the same has been allegedly transferred to the respondent herein from 1995 till 2004, *i.e.* for nearly 9 years.

**4.** Refuting the submissions made of behalf of the appellant, learned Senior Counsel for the respondent submits as follows: -

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i) Present appeal is not maintainable as it is settled law that under section 100 CPC, second appeal is permissible only against the decree and not execution of the decree, that too when a substantial question of law is involved. In the present case, there is no decree passed by any of the Executing Courts below nor any substantial question of law is involved. The impugned order has merely revived the execution and has not passed any decree to that effect. The Executing Courts cannot be asked to hold a trial on the objections raised by the appellants as the Executing Courts cannot go behind the decree being devoid of such jurisdiction. Reliance is placed on **Vijender Kumar Aggarwal v. Department of forest & wildlife & Ors.**[12].

ii) As the issue with regard to transfer of rights in favor of the respondent herein is neither disputed by the respondent nor any legal heirs of the plaintiff in the suit, thus, objection cannot be taken by the appellant. Further, no appeal was preferred against the order dated 16.11.2004, therefore, finding with respect to the ownership/ possession of the plaintiff in the suit property and the appellant opportunity to prove that he has any right in the suit property attained finality.

iii) The respondent did not get impleaded in the first appeal, as only the plaintiff and his legal heirs were aware of the facts of the case and were competent to contest the matter. The respondent would have anyways been bound by any order passed. Therefore, the respondent only came into the picture at the stage of execution of the decree passed.

[12] 2013 SCC OnLine Del 5022

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iv) Provisions of Order XXI Rule 32 of the CPC, has not been adhered to in the Execution Petition and nowhere in the Execution Petition it has been stated that the Judgment Debtor had an opportunity to obey the Decree but failed to do so. Without Prejudice, in Column no. 10 of the Execution Petition, it was categorically pleaded that the Judgment Debtor and their representatives etc. be directed to not interfere with the peaceful possession of the Decree Holder over the suit property and not to obstruct the Decree Holder from raising boundary wall which forms part of the Decree. It is established that the Judgment Debtor was aware about the relief so claimed by the Decree Holder and no Objection of the present nature can be raised by the appellant at this stage. It is well settled that a Petition has to be read in entirety and not in piecemeal, reliance for the same is placed upon **Monaben Ketanbhai Shah and Ors. v. State of Gujarat and Ors.**[13] and **S.P. Mani and Mohan Dairy v. Dr. Snehalatha Elangovan**[14].

v) The Executing Court has all the powers to get the Decree executed in terms of the provision laid down under Order XXI Rule 16 of the CPC and there is no exception to the same. Reliance for the same is placed upon **Dhani Ram Gupta & Ors. v. Lala Sri Ram & Anr.**[15], **Sadhna Gupta & Ors. v. Shish Pal & Anr.**[16] and **Gangabai Gopaldas Mohata v. Fulchand & Ors.**[17].

vi) The Decree of Injunction was in respect of heritable and partible rights.

[13] (2004) 7 SCC 15
[14] 2022 SCC OnLine SC 1238
[15] (1980) 2 SCC 162
[16] 2016 SCC OnLine Del 3810
[17] (1997) 10 SCC 387

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It did not get extinguished with the death of the Sh. Latif, rather it ensures to the benefit of the Legal Heirs or the representatives of the deceased Decree Holder. Reliance is placed upon **G.M. Venkatappa v. Anjanappa & Anr.**[18] and **Muthukaruppa Pillai & Anr. v. Ganesan**[19].

vii) The judgment of the Learned Civil Judge and Learned ADJ did not depend on the deficiency of the identification of the Property. Both the Learned Courts after appreciating the evidence found that the property in question is owned and possessed by the Decree Holder. Rather a finding was passed against the Judgment Debtor that it was keeping an evil eye on the same. The Learned First Appellate Executing Court also reiterated the same factual position and directed the Learned Executing Court to execute the Decree rather than insisting on flimsy pleas to dismiss the Execution. The plot in question was always in possession of the Decree Holder and his assignee.

viii) In support of the aforesaid submissions, following judgments have been relied upon: -

**a) Prabhakara Adiga v. Gowri & Ors.**[20]**;**

**b) G.M. Venkatapaa v. Anjanappa**[21]**;**

**c) State of U.P. & Ors. v. Kamla Negi & Ors.**[22]**;**

**d) H. Anjanappa & Ors. v. A. Prabhakar & Ors.**[23]**;**

**e) Saraswati Devi & Ors. v. Santosh Singh & Ors.**[24]**;**

[18] 2007 AIHC 486
[19] (1995) Supp. 3 SCC 69
[20] (2017) 4 SCC 97
[21] 2006 SCC OnLine Kar 603
[22] 2024 SCC OnLine All 4644
[23] 2025 SCC OnLine SC 183
[24] 2025 SCC OnLine SC 1145

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**f) Sadhna Gupta & Ors. v. Shish Pal & Anr.[25];**

**g) Suraj Lamp & Industries (P) Ltd. (2) v. State of Haryana (*Supra*);**

**h) D. Rasaranjan & Anr. v. Y. Raja Rasaranjan & Ors.[26];**

**i) Satheesan Nair v. Nizarudeen & Ors.[27].**

**5.** Refuting the stand taken by the respondents, learned counsel for the appellant submitted that: -

i) With respect to the objection that the execution second appeal is not maintainable, as under Section 100 CPC the second appeal is permissible only against the decree. It is stated that assuming the present appeal is not maintainable, then applying the same principle even the first appeal filled by the respondent is not maintainable, which was filed against the order dated 25.02.2011. When the first appeal was preferred, entertained and decided by the first Appellate Court without going into the aspect of maintainability of the first appeal; when the present appeal is pending since the year 2015 and when the order passed by the first Appellate Court was contrary to law and beyond the powers vested in it, then this Court can invoke the supervisory power and jurisdiction vested under Article 227 of the Constitution of India to correct the error committed by the first Appellate Court, by setting aside the impugned order dated 13.10.2014 and allowing the present appeal. Reliance is placed on **North Delhi Power Limited (Now Known as Tata Power Delhi Distribution Limited) v. Mahindra Cold Storage[28]** and **Man Singh & Anr. v. Rajinder**

[25] 2016 SCC OnLine Del 3810
[26] 1985 SCC Online AP 179
[27] 2024 SCC OnLine Ker 3474
28 2018 SCC OnLine Del 9945, para 20-25

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**Parshad Sharma**[29].

ii) Further, present appeal is maintainable in view of Order XXI Rule 103 CPC. The appellant has not filed any objections u/s 47 of the CPC. The question of possession is determined under Rule 98-100 of Order XXI of the CPC.

**6.** Heard learned counsel for the parties and perused the records.

**7**. As already noted hereinabove, original plaintiff/ predecessor-in-interest of the respondent herein had filed a suit seeking permanent injunction against the original defendant/ appellant with respect to suit property *i.e.* Khasra No. 182/1, measuring 11 biswas, village Kalu Sarai, New Delhi. The case of the appellant/ original defendant was that the suit property is in fact situated in Khasra No. 182/1 and 181/2, ad-measuring 303 sq. yards and the same constitutes plot no. 5, which was conveyed to Smt. Raj Kaur, predecessor-in interest of the appellant. Accordingly, 7 issues were framed during the trial of the said suit. Relevant issues for the present controversy are as under: -

> *Issue no. 1*- Whether the plaintiff is owner and in possession of the property in suit of Khasra No.182/1?
>
> *Issue no. 3*- Whether the property in suit measuring 303 sq. yards and is in fact situated in Khasra No. 182/1 and 181/2 as claimed by the defendant. If so, its effect?
>
> *Issue no. 4*- Whether this land has been allotted no. 5 and it was conveyed to Smt. Raj Kaur, if so, its effect?

29 CRP No.8/2008 dated 19.12.2008, para 7 and 8

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*Issue no. 6*- Whether the land in suit was allotted to Sewa Singh (husband of Raj Kaur and father of the defendant), if so its effect?

**8.** Learned Trial Court *vide* judgment dated 28.02.1995, after examining all the material and evidences on record, decided all the issues in favour of the original plaintiff/ predecessor-in-interest of the respondents herein and decreed the suit accordingly. Subsequently, appellant/ original defendant challenged the aforesaid judgment by way of an appeal bearing RCA No. 3/2004 before the learned ADJ. While disposing of the said appeal on 16.11.2004, the learned ADJ observed and held as under: -

> "**The controversy in the appeal and the suit as well rests upon the finding of the disputed fact whether suit land in question falls in khasra no. 182/1 alone as alleged by the plaintiff and comprised of 11 biswas and 550 sq. yards or whether the suit land is of the area of 303 sq. yards and is situated in khasra nos. 182/1 and 181/2 both as alleged by the defendants and whether the suit land was acquired under the Displaced Persons (compensation and rehabilitation) Act, 1954 as alleged by the defendant if so whether such acquired land was allotted to Sh. Sewa Singh as plot no. 5 whether plot no. 5 and the suit property are the same.** The evidence led by the appellant/defendants came out of custodian record Ex PW3/1, Ex PW3/2, Ex PW3/3 which show that the plot n. 5 Kalu Sarai, New Delhi was allotted to SH. Sewa Singh and after his death it is now in the name of defendants No. 1 and 2. **The demarcation report Ex D2 proved by DW2 on record also show that defendant no. 2 is in possession of 5 biswas in khasra no. 181/2 and the remaining land in khasra no. 182/1. But these documents do not show that the suit land is the same plot no. Kalu Sarai, New Delhi.** Much reliance is placed upon the notification dated 17.8.1960 u/s 12 of Displaced Persons (compensation and rehabilitation) Act 1954 by which certain lands including khasra no. 182 and 181 of area 10 biswas and 12 biswas respectively were acquired. This notification at the most may show that out of land so acquired u/s 12 of the said Act, Sh. Sewa Singh was allotted the plot no. 5 which now is in the name and possession of defendant no. 3. The said notification nowhere (illegible) respondent/plaintiff or his father as the persons

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whose land was acquired in khasra no. 182. It is needles to say that land in khasra no. 182 need not be only disputed land and one khasra no. may consist of lands of different persons. The same khasra in the land may have different owners of different shares in the revenue record.

The appellants have relied upon the notification referred before to show that Karim Bux Shahbuddin was amongst earlier co-owners of khasra no. 182 etc of village Kalu Sarai alongwith other persons have left for Pakistan at the time of partition of the country. Therefore, their land being evacuee property was acquired u.s 12 of the Act and part of it was allotted as plot no. 5 to late Sh. Sewa Singh. The name of plaintiff is Latif and his father's name is Sheruddin. None of these two names figure in the name of persons in the said notification u/s 12 of the said Act from which it can be inferred that the suit land is the same land which is now in possession of defendant No. 3 as plot No. 5, Kalu Sarai, New Delhi against which the relief is claimed by the plaintiff in the suit. In the cross examination suggestion is given to the plaintiff that the disputed land belongs to Shahabuddin and he has denied the suggestion. Though he has admitted that Shahbuddin is son and elder brother of his father. Therefore, the nexus between the notification u/s 12 of the Act as referred before and plot no. 5 Kalu Sarai now in the name of the defendant no. 3 and in her possession is established and **it is also established that demarcation report Ex. D2 also belongs to the said plot no. 5, possession of which is with defendant no. 3 but it is not established on record that the suit land against which the respondent/plaintiff has claimed the relief of permanent injunction is the same land with the defendants are allegedly 303 dq. Yards and as plot no. 5 Kalu Sarai, New Delhi.**

Although I am not in agreement with the learned trial court that the documents proved by DW3 as the same are coming out of official record and are certified copies and, therefore, are public documents, irrespective of the fact that DW3 has failed to prove as to who has signed the documents. The documents can be taken as proved without formal proof of signatures on the same as these are certified copies of the public record. **However, these documents proved by DW3 are not sufficient to prove that the suit land and plot no. 5 Kalu Sarai, New Delhi are the same.**

**The only convincing evidence which can throw light on the above controversy is the statement of PW2, Sh. Jawahar Singh.** It can be inferred from his statement that khasra girdwari for the year 1968 to 1974 are in the name of plaintiff. In his cross-examination he has stated that he has gone to the spot and on the spot defendant No. 3 i.e Smt. Raj

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> Kaur widow of late Sh. Sewa Singh has possession of 11 biswas of land in khasra no. 182/1 and 5 biswas in khasra no. 181/2 but he has also stated in the cross-examination that in Ex D2 whatever land is shown, falls in khasra no 182/1 and 181/2. In the re-examination, he stated that khasra girdwari for the period 1975 to 1980 were recorded by him by verifying the spot. **This witness is also heavily relied by the learned trial court while deciding issue no. 1 and rightly so as the statement of PW2, in my view, if read as a whole, shows that the suit for which relief is claimed by the plaintiff belongs to the plaintiff and suit land which is plot no. 5 Kalu Sarai, New Delhi and in the name and possession of defendant No. 3 is not the suit Land. Although I am not in agreement with the finding of the trial court on issue no. 4 and, therefore, finding of learned trial court on issue no. 4 is reversed but the fate of the suit would remain the same as decided by the trial court as reversal of finding on issue no. 4 and as a consequence of which issue no. 6 also does not affect the fate of the suit.**
>
> In view of the above, there is no merit in the appeal. Findings of the learned trial court on issues no. 1, 2, 3 and 5 is confirmed and that on issues no. 4 and 6 is reversed. The appeal is dismissed with no order as to cost."
>
> *(emphasis supplied)*

**9.** Thus, the learned ADJ while dismissing the aforesaid appeal, confirmed the findings of the learned Trial Court on the issue no. 1, 2, 3 and 5, but reversed such findings on the issue no. 4 and 6. A perusal of the aforesaid findings of the learned ADJ would reflect that it had been conclusively proved on record that the suit property for which the relief of permanent injunction was granted, was not the same property of which the appellant was owner of.

**10.** Learned counsel appearing on behalf of the appellant tried to argue that since the findings of the learned Trial Court with respect to issue no. 4 had been reversed, the same would signify that the suit property for which permanent injunction had been granted is unidentifiable and in absence of the site plan of

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the same being proved in accordance with law, the decree dated 28.02.1995 is un-executable. This Court is unable to agree with the said argument of the learned counsel for the appellant. As seen from the record, issue no. 4 was only with respect to whether the suit land of which the appellant/original defendants had laid claim upon, had been allotted as plot no. 5 and the same was conveyed to Smt. Raj Kaur. Learned Trial Court while deciding the said issue did not accept the documents produced by the department as they were not proved in accordance with the procedure established by law. However, learned ADJ while dis-agreeing with the aforesaid finding held that documents produced by DW-3 can be taken as proved without formal proof of signatures as the same were certified copies of the public records, however, it reiterated that the said documents were not sufficient to prove that the suit property *i.e.* 182/1, measuring 11 Biswas, village Kalu Sarai, New Delhi and plot no. 5, Kalu Sarai are the same. Learned ADJ thereafter goes on to discuss the evidence of PW-2 and again reiterates the fact that the suit for which the relief had been claimed belongs to the original plaintiff/ predecessor-in-interest of the respondent and suit land which is plot no.5, Kalu Sarai, New Delhi, in the name of the Smt. Raj Kaur, mother of the original defendant/ appellant, was not the property for which the said suit had been filed. The use of term "*suit land*" by the learned ADJ with respect to plot no. 5, Kalu Sarai, New Delhi seems to be an inadvertent error. Thus, when Issue no. 4 was decided against the original defendant on the ground of inadmissibility of documents by the learned Trial Court, the same was reversed by the learned ADJ only to the extent that the land measuring 303 sq. yards, Kalu Sarai, New Delhi was allotted as plot no. 5, but simultaneously holding that it is not the same as the suit property.

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**11.** Similarly, with respect to issue no. 6, whether suit property was allotted to Sewa Singh, learned Trial Court had held as under: -

> "No doubt, plot No.5 was originally allotted to Sh. Sewa Singh and after his death to his widow Smt. Raj Kaur but as held earlier in the preceding paras that the defts. have miserably failed to show that the area of disputed plot is 303 Sq. Yds. or that it forms part of joint khasra No.s 182/1 and 182/2 or that plot No.5 has any nexus or connection with the suit plot. Therefore issues No. 4 and 6 are decided against the defts."

This finding was given by the learned Trial Court again on the ground that the evidence including the documents placed by the original defendant were not sufficient to prove the same. However, the said finding was reversed by the learned ADJ, only to the extent that the land of which the ownership was claimed by the original defendant was 303 sq. yards forming part of Khasra No. 182/1 and was allotted plot no.5. While reversing the findings on issue no. 6, learned ADJ clarified that the property claimed by the original defendant has nothing to do with the suit property for which the injunction was sought by the original plaintiff. Thus, the fate of the suit remained same as held by the learned Trial Court, even by reversing the findings on issue no. 4 and 6.

**12.** Learned ADJ from the very beginning flagged the issue that the disputed question of fact was whether the suit property was in Khasra no. 182/1 as alleged by the original plaintiff/ predecessor in interest of the respondent herein, which comprise of 11 biswas and 550 sq. yards or whether the said suit property is of 303 sq. yards and situated in Khasra No. 182/1 and 181/2, as alleged by the original defendant/ appellant. A clear finding by the learned ADJ in favour of the original plaintiff, no way creates a doubt with respect to the identification of the suit property. It is pertinent to note that the aforesaid findings were never challenged by the appellant herein/ original defendant,

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thus, the same attained finality. It is further noted that the issue no. 3 framed before the learned Trial Court *i.e.*, whether the suit property, as claimed by the original defendant, measures 303 sq. yards and situated in Khasra no. 182/1 and 182/2, had also been categorically held against the original defendants and the same was upheld by the learned ADJ and was never challenged by the original defendants.

**13.** The controversy with respect to identification of the suit property, now cannot be looked into in the execution proceedings, as was sought before the learned Senior Civil Judge while dismissing the execution petition of the respondents herein *vide* judgment dated 25.02.2011. A perusal of the judgment of the learned Senior Civil Judge shows that the same was factually incorrect by observing that the appellant/ original defendant was restrained from taking forceful possession of the suit plot forming part of Khasra No. 182/2, measuring (0-11) biswas, village Kalu Sarai, New Delhi. The suit property, as noted hereinabove, was at Khasra No. 182/1, measuring 11 Biswas, village Kalu Sarai, New Delhi.

**14.** The impugned order dated 13.10.2014 notes the above said findings of the learned ADJ and has rightly held that the dispute sought to be created by the appellant from the very beginning was categorically dealt by the learned Trial Court as well as by the learned ADJ and once the decree had been granted, the Executing Court could not go behind the decree and again revisit the aforesaid dispute with regard to identification of the property. It is further pertinent to note that the issue of site plain not being proved by the original plaintiff/ predecessor in interest of the respondent before the learned Trial

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Court was not an issue raised before the learned ADJ and the same cannot now be raised in execution proceedings.

**15.** Learned counsel for the appellant has placed reliance on **Shushila Rani (*Supra*)**, to submit that since site plan filed by the plaintiff was incorrect, the ambiguity about the identification of the suit property could not have been removed in the execution proceedings; however, the said reliance is misplaced, as in the present case, the concurrent findings with respect to identification of the suit property as well as the property belonging to the defendant has been categorically held to be separate.

**16.** The next submission on behalf of learned counsel for the appellant was that the respondent herein had acquired the subject property by way of an unregistered agreement to sell executed with Sh. Latif and as such, in view of Section 54 of Transfer of Property Act, such document could not create any interest on the property. It is submitted that Section 54 of the Transfer of Property Act and Section 17 of the Registration Act mandate registration of sale documents of immovable property, reliance for the same is placed on **Suraj Lamp & Industries (P) Ltd. (*supra*)**. So far as this submission is concerned, it is pertinent to note that the suit property which has been acquired by the respondents from the original plaintiff has categorically been held by two consecutive courts to be different from the property claimed to be owned and in possession of the appellants. The original suit as noted hereinabove, was for permanent injunction and was not for any declaratory rights *qua* any title. In fact, the relevant observations with respect to such documents in **Suraj Lamp & Industries (P) Ltd. (*supra*)** are as under: -

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"23. Therefore, an SA/GPA/will transaction does not convey any title nor creates any interest in an immovable property. The observations by the Delhi High Court in Asha M. Jain v. Canara Bank [(2001) 94 DLT 841] , that the "concept of power-of-attorney sales has been recognised as a mode of transaction" when dealing with transactions by way of SA/GPA/will are unwarranted and not justified, unintendedly misleading the general public into thinking that SA/GPA/will transactions are some kind of a recognised or accepted mode of transfer and that it can be a valid substitute for a sale deed. Such decisions to the extent they recognise or accept SA/GPA/will transactions as concluded transfers, as contrasted from an agreement to transfer, are not good law.

24. We therefore reiterate that immovable property can be legally and lawfully transferred/conveyed only by a registered deed of conveyance. Transactions of the nature of "GPA sales" or "SA/GPA/will transfers" do not convey title and do not amount to transfer, nor can they be recognised or valid mode of transfer of immovable property. The courts will not treat such transactions as completed or concluded transfers or as conveyances as they neither convey title nor create any interest in an immovable property. **They cannot be recognised as deeds of title, except to the limited extent of Section 53-A of the TP Act.** Such transactions cannot be relied upon or made the basis for mutations in municipal or revenue records. What is stated above will apply not only to deeds of conveyance in regard to freehold property but also to transfer of leasehold property. A lease can be validly transferred only under a registered assignment of lease. It is time that an end is put to the pernicious practice of SA/GPA/will transactions known as GPA sales.

*** *** ***

26. We have merely drawn attention to and reiterated the well-settled legal position that SA/GPA/will transactions are not "transfers" or "sales" and that such transactions cannot be treated as completed transfers or conveyances. They can continue to be treated as existing agreements of sale. Nothing prevents the affected parties from getting registered deeds of conveyance to complete their title. **The said "SA/GPA/will transactions" may also be used to obtain specific performance or to defend possession under Section 53-A of the TP Act. If they are entered before this day, they may be relied upon to apply for regularisation of allotments/leases by development authorities.** We make it clear that if the documents relating to "SA/GPA/will transactions" have been accepted/acted upon by DDA or other developmental authorities or by the municipal or Revenue

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Authorities to effect mutation, they need not be disturbed, merely on account of this decision."

*(emphasis supplied)*

**17.** In the aforesaid judgment, Hon'ble Supreme Court observed that such unregistered GPA/ agreement to sell, cannot be registered deed of titles except to the limit of Section 53A of the Transfer of Property Act. Thus, these documents can be used to obtain specific performance or to defend possession under Section 53A of the Transfer of Property Act. Section 53A of the Transfer of Property Act reads as under:

"53-A. Part performance- Where any person contracts to transfer for consideration any immoveable property by writing signed by him or on his behalf from which the terms necessary to constitute the transfer can be ascertained with reasonable certainty,

and the transferee has, in part performance of the contract, taken possession of the property or any part thereof, or the transferee, being already in possession, continues in possession in part performance of the contract and has done some act in furtherance of the contract,

and the transferee has performed or is willing to perform his part of the contract,

then, notwithstanding that (***), where there is an instrument of transfer, that the transfer has not been completed in the manner prescribed therefor by the law for the time being in force, the transferor or any person claiming under him shall be debarred from enforcing against the transferee and persons claiming under him any right in respect of the property of which the transferee has taken or continued in possession, other than a right expressly provided by the terms of the contract:

Provided that nothing in this section shall affect the rights of a transferee for consideration who has no notice of the contract or of the part performance thereof."

The words "*the contract, though required to be registered, has not been registered, or,*" were omitted by Act of 48 of 2001, w.e.f. 24.09.2001.

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**18.** Further, learned Single Judge of this Court in **Vikas Wadhwa v. Pardeep Kumar & Ors.** [30] noted that bar applicable from 24.09.2001, whereafter an amendment to Section 53A of the Transfer of Property Act was made, does not apply to the agreement to sell executed prior to the said date. Relevant paragraphs of the said judgment are as under: -

> "8. In my opinion, the trial court has clearly erred in dismissing the suit. Once the appellant/plaintiff led evidence and proved his rights in the suit property in terms of the Documentation dated 26.04.2001. This documentation in the entire chain was proved and exhibited before the trial court as Ex. PW1/1 (colly) and Ex. PW1/2 (colly). These documents include the entire set of original documents of allotment to the original allottee Sh. Lachoo Ram and thereafter further transfer to Smt. Vainkunthi Devi and then transfer by Smt. Vainkunthi Devi to the present appellant/plaintiff. The rent agreement in favor of Sh. Prabhu Dayal, the husband of Smt. Vainkunthi Devi, was proved as Ex. PW1/3. I may note that since the documentation in favour of the appellant/plaintiff are prior to 24.09.2001 whereafter an amendment to Section 53A of the Transfer of Property Act, 1882 was made whereby an agreement to sell could only be looked into if it was stamped and registered, therefore in this case, the bar applicable from 24.09.2001 will not apply to the Documents dated 26.04.2001 which have been executed in favour of the appellant/plaintiff. Even the judgment in the case of Suraj Lamps & Industries Pvt. Ltd. (supra) does not bar the case of the appellant/plaintiff, and in fact this judgment supports the case of the appellant/plaintiff and the trial court has erred in observing that the judgment in the case of Suraj Lamps & Industries Pvt. Ltd. (supra) prevents it looking into the Documentation dated 26.04.2001 executed in favour of the appellant/plaintiff…."

The instant agreement to sell dated 24.04.1995 was executed prior to 24.09.2001.

[30] 2018 SCC OnLine Del 13056

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**19.** Learned counsel for the appellant relies on **Correspondence, RBANMS Educational Institution v. B. Gunashekar and Another**[31] and in particular to the following paragraphs: -

> "15.1. Undoubtedly, a sale deed, which amounts to conveyance, has to be a registered document, as mandated under Section 17 of the Registration Act, 1908. On the other hand, an agreement for sale, which also requires to be registered, does not amount to a conveyance as it is merely a contractual document, by which one party, namely the vendor, agrees or assures or promises to convey the property described in the schedule of such agreement to the other party, namely the purchaser, upon the latter performing his part of the obligation under the agreement fully and in time. Section 54 of the Transfer of Property Act, 1882 explicitly lays down that a contract for sale will not confer any right or interest. Section 53-A of the Transfer of Property Act, 1882 offers protection only to a proposed transferee who has part performed his part of the promise and has been put into possession, against the actions of transferor, acting against the interest of the transferee. For the proposed transferee to seek any protection against the transferor, he must have either performed his part of obligation in full or in part. The applicability of Section 53-A of the Transfer of Property Act, 1882 is subject to certain conditions viz., (a) the agreement must be in writing with the owner of the property or in other words, the transferor must be either the owner or his authorised representative, (b) the transferee must have been put into possession or must have acted in furtherance of the agreement and made some developments, (c) the protection under Section 53-A is not an exemption to Section 52 of the Transfer of Property Act, 1882 or in other words, a transferee, put into possession with the knowledge of a pending lis, is not entitled to any protection, (d) the transferee must be in possession when the lis is initiated against his transferor and must be willing to perform the remaining part of his obligation, (e) the transferee must be entitled to seek specific performance or in other words, must not be barred by any of the provisions of the Specific Relief Act, 1963 from seeking such performance. The protection under Section 53-A is not available against a third party who may have an adversarial claim against the vendor. Therefore, unless and until the sale deed is executed, the purchaser is not vested with any right, title or interest in the property except to the limited extent of seeking specific performance from his vendor. An agreement for sale does not confer any right to the purchaser

[31] 2025 SCC OnLine SC 793

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to file a suit against a third party who is either the owner or in possession, or who claims to be the owner and to be in possession. In such cases, the vendor will have to approach the court and not the proposed transferee.

15.2. In the present case, juxtaposing the above legal principles to the facts of the case, we find that the respondents' claim suffers from multiple fatal defects that go to the root of the case, which are as follows:

15.2.1. First, there is no privity between the respondents and the appellant. The agreement to sell, is not between the parties to the suit. According to Section 7 of the Transfer of Property Act, 1882, only the owner, or any person authorised by him, can transfer the property. We have already held that an agreement to sell does not confer any right on the proposed purchaser under the agreement. Therefore, as a natural corollary, any right, until the sale deed is executed, will vest only with the owner, or in other words, the vendor to take necessary action to protect his interest in the property. According to the respondents, the property belongs to the vendors and according to the appellant, the property vests in them. Since the respondents are not divested any right by virtue of the agreement, they cannot sustain the suit as they would not have any locus. Consequently, they also cannot seek any declaration in respect of the title of the vendors. But when the title is under a cloud, it is necessary that a declaration be sought as laid down by this Court in the judgment in Anathula Sudhakar v. P. Buchi Reddy (Dead) by LRs27. Therefore, the suit at the instance of the respondents/plaintiffs is not maintainable and only the vendors could have approached the court for a relief of declaration. In the present case, strangely, the vendors are not arrayed as parties to even support any semblance of right sought by the respondents/plaintiffs, which we found not to be in existence. Further, the respondents/plaintiffs claim to have paid the entire consideration of Rs. 75,00,000/- in cash, despite the introduction of Section 269ST to the Income Tax Act in 2017 and the corresponding amendment to Section 271 DA. As held by us, the agreement can only create rights against the proposed vendors and not against third parties like the appellant herein. As the agreement to sell does not create any transferable interest or title in the property in favour of the respondents/plaintiffs, as per Section 54 of the Transfer of Property Act, 1882, we hold that the attempt of the plaintiffs to disclose the cause of action through clever drafting, based solely on an agreement to sell, must fail, as such disclosure cannot be restricted to mere statement of facts but must disclose a legal right to sue.

15.2.2. Secondly, and perhaps more fundamentally, as we have seen and held above, the respondents have no legal right that can be enforced

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against the appellant as their claim is impliedly barred by virtue of Section 54 of the Transfer of Property Act, 1882. Their remedy, if any, lies against their proposed vendors. The plaint averments remain silent regarding the execution of a registered sale deed in favour of the respondents, which alone can confer a valid right on them to file a suit against the appellant as held by us earlier. Another, remedy available to them is to institute a suit against the vendors for specific performance. This principle was clearly established in K. Basavarajappa (supra), wherein this Court held that an agreement holder lacks locus standi to maintain actions against third parties. The relevant paragraph of the said judgment is extracted below: "8. … By mere agreement to sell the appellant got no interest in the property put to auction to enable him to apply for setting aside such auction under Rule 60 and especially when his transaction was hit by Rule 16(1) read with Rules 51 and 48. Consequently he could not be said to be having any legal interest to entitle him to move such an application. Consequently no fault could be found with the decision of the Division Bench of the High Court rejecting the entitlement of the appellant to move such an application."

15.2.3. The contention of the learned counsel for the respondents that the judgments relied upon by the appellant are not applicable, cannot be accepted for the simple reason that the ratio laid down by this court, is applicable irrespective of the stage at which it is relied upon. What is relevant is the ratio and not the stage. Such contentions go against the spirit of Article 141 of the Constitution of India. Once a ratio is laid down, the courts have to apply the ratio, considering the facts of the case and once, found to be applicable, irrespective of the stage, the same has to be applied, to throw out frivolous suits. There is no gainsaying in contending that the other party must be put to undergo the ordeal of entire trial, when the plaintiff's claim is either barred by law or the plaint fails to disclose a cause of action, as it would amount to abuse of process of law, wasting the precious time of the courts. On the other hand, the judgments relied upon by the respondents do not come into their aid as the judgments referred to by them also lay down the proposition that the plaint can be rejected if on a meaningful reading of it, fails to disclose a cause of action or is barred by law. In the present case, from the facts, we also find this to be a case of champertous litigation, between the plaintiffs and the vendors, who are not parties to the suit. Though champertous litigations have been recognized in our country to some extent by way of amendment to CPC by certain states, considering the facts of the present case and the averments in the plaint, we only find the litigation to be inequitable, unconscionable or extortionate.

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15.2.4. Further, the respondents are not in possession of the property. Whereas, the appellant's possession since 1905 is admitted in the plaint itself. In such circumstances, where the plaintiffs are not in possession and the defendant is in settled possession for over a century, a suit for bare injunction by a proposed transferee is clearly not maintainable. Section 41(j) of the Specific Relief Act, 1963 prohibits grant of injunction when the plaintiff has no personal interest in the matter. In the present case, the respondents, being mere agreement holders, have no personal interest in the suit schedule property that can be enforced against third parties. The "personal interest" is to be understood in the context of a legally enforceable right, as when there is a bar in law, the mere existence of an interest in the outcome cannot give a right to sue. As held by us above, no declaratory relief has been sought as contemplated under Section 34 of the Specific Relief Act, 1963. This principle was clearly established in Jharkhand State Housing Board (supra), in which, this Court emphasized that where title is in dispute, a mere suit for injunction is not maintainable. The relevant portion of the said judgment is reproduced hereunder: — "11. It is well settled by catena of judgments of this Court that in each and every case where the defendant disputes the title of the plaintiff it is not necessary that in all those cases plaintiff has to seek the relief of declaration. A suit for mere injunction does not lie only when the defendant raises a genuine dispute with regard to title and when he raises a cloud over the title of the plaintiff, then necessarily in those circumstances, plaintiff cannot maintain a suit for bare injunction."

15.2.5. Yet another defect in the plaint is regarding the identity of the property. The respondents/plaintiffs, as seen above, have admitted to the possession of the appellant over the suit property. The plaint, on one hand, raises a dispute as to whether the property claimed by the respondents is the same as that possessed by the appellant, and on the other hand, seeks only a relief of permanent injunction restraining the appellant/defendant from alienating the property, without seeking a declaration affirming the title of their vendors. The entitlement of the plaintiffs to the possession rests on the title of their vendors and it is not an independent right. Without possession and without seeking a declaration of title, not only is the suit barred but the cause of action is also fictitious."

The aforesaid judgment is distinguishable on the facts of the present case inasmuch as the observation of the learned Supreme Court in the aforesaid

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paragraphs relates to a situation where protection under Section 53A of the Transfer of Property Act will not be available in a case where a purchaser by an unregistered agreement to sell files a suit against third party, who is either the owner or in possession, or who claims to be the owner and to be in possession of such property. In the present case, as noted hereinbefore, the subject matter of the agreement to sell, which was the suit property has been categorically held not to be the same property as owned by the appellants herein.

**20.** The next issue raised by the learned counsel for the appellant was with respect to *locus* of the respondent to file the execution petition. It was contended that injunction being personal does not run with the land, thus, the respondent had no right to file an execution of the decree of injunction obtained by his alleged predecessor-in-title.

**21.** Hon'ble Supreme Court in **Prabhakara Adiga (*Supra*)** had observed and held as under: -

> "11. It is crystal clear from a perusal of Section 50(2) CPC that a decree for permanent injunction can be executed against the judgment-debtor or his legal representatives. In *Muthukaruppa Pillai* v. *Ganesan* [*Muthukaruppa Pillai* v. *Ganesan*, 1995 Supp (3) SCC 69] , a question arose with respect to executability of the decree for injunction in the backdrop of facts that the plaintiff had filed a suit for restraining the appellant-defendant from interfering with her rights as Hakdar and Pujari. The suit was decreed and it was held that the said rights were heritable and partible. On aforesaid foundation, decree was passed. The successor-in-interest of the plaintiff decree-holder had put the decree for execution. It was contended that the decree for injunction was personal in nature and could have been enforced by the decree-holder only. **This Court held that there was nothing in the decree for permanent injunction to hold that it lapsed with the death of the plaintiff and it**

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**could be executed by heirs of decree-holder.** This Court has laid down thus : (SCC pp. 69-70, paras 1-2)

"*1*. This judgment-debtor's appeal is directed against judgment and order of the High Court of Madras. The appellant was a defendant in a suit filed by the predecessor-in-interest of the respondent for permanent injunction restraining the appellant from interfering with her right as Hakdar and Pujari of two temples in Kottarakurichi Village. The suit even though decreed by the trial court was dismissed by the first appellate court. But the decree of the trial court was restored by the High Court, which was to the following effect:

'[T]he defendants, their workmen, their agent, etc. be and are hereby restrained by an order of permanent injunction from interfering with the plaintiff's enjoyment of the plaint schedule property (described hereunder) till the end of 1965 Margali 30th (i.e. till 13-1-1965) and in every alternative years in future….'

The judgment of the High Court was delivered in 1969. The decree-holder died in June 1981. The respondent who claims to be adopted son of the plaintiff in the original suit and also her legatee filed an application for execution in 1981 under Section 146 and Order 21 Rule 16 of the Civil Procedure Code. It was resisted by the appellant on various grounds. The application was allowed against which the appellant filed revision. During pendency of the execution proceedings, the respondent filed an application before the Deputy Commissioner, Hindu Religious and Charitable Endowments, Tirunelveli, Tamil Nadu, claiming the rights to do puja and enjoy the share of income from the two temples. The application was allowed by the Deputy Commissioner, but the order was set aside by the Commissioner, Hindu Religious and Charitable Endowments, Madras in revision filed by the appellant. It was held that the respondent could not claim better and more rights than what were granted in favour of his predecessor-in-interest by the civil court. Against this order of the Commissioner, the respondent filed a writ petition. Both, the revision filed by the appellant and writ petition filed by the respondent were decided by a common order. The High Court maintained the order of the trial court in execution, except to certain extent. The writ petition filed by the respondent was dismissed.

*2*. The principal challenge to the order passed by the High Court is on the nature of the decree. It is claimed that the decree being personal, it could not have been executed by the respondent who claimed to be successor-in-interest of the plaintiff in the suit. The submission appears to be devoid of any merit. In the main suit, out of which these execution proceedings have arisen, it was clearly held by the High Court that the

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rights were heritable and partible. In view of this finding, it is not clear as to how can the appellant raise the argument of decree being personal in nature. Apart from that, the decree passed by the trial court, copy of which has been produced by the learned counsel for the respondent, the authenticity of which is not disputed by the appellant, and which has been extracted earlier, clearly indicates that the injunction granted did not impose any such restriction expressly nor could it be impliedly held that it lapsed with the death of the plaintiff."

**This Court has laid down that legal representatives of decree-holder can execute decree for permanent injunction relating to property or right which is heritable and partible. When such is the situation, in our opinion, it would be open to decree-holder to execute decree against successor-of-interest of judgment-debtor also.**

12. In Ramachandra v. Laxmana Rao [Ramachandra v. Laxmana Rao, 2000 SCC OnLine Kar 325 : AIR 2000 Kar 298] , a question arose with respect to executability of the decree for permanent injunction restraining the defendant from obstructing plaintiff's use and enjoyment of their right of way through the backyard of the defendant's house, and subsequently, the house was sold by the defendant-judgment-debtor. It was held that the decree could have been executed against the transferee judgment-debtor. **The rule that a decree for injunction cannot be enforced against a purchaser from a judgment-debtor since injunction does not run with the land for it is a remedy in personam is not applicable considering the nature of rights adjudicated upon. The Court held that enforcement of the decree against legal heirs of the deceased was saved by Section 50 CPC and as against the purchaser of the suit property pendente lite was saved by Section 52 of the Transfer of Property Act.** The High Court has relied upon the decisions of this Court in Muthukaruppa Pillai v. Ganesan [Muthukaruppa Pillai v. Ganesan, 1995 Supp (3) SCC 69] and in Kanhaiya Lal v. Babu Ram [Kanhaiya Lal v. Babu Ram, (1999) 8 SCC 529] . **The High Court has observed that if the remedy of injunction granted by a decree is in respect of any heritable and partible right, it does not get extinguished with the death of a party thereto, but enures to the benefit of the legal heirs of the decree-holder, as such a decree could be executed against the successor-in-interest of the deceased judgment-debtor as well.** Similar is the decision in G.M. Venkatappa v. Anjanappa [G.M. Venkatappa v. Anjanappa, 2006 SCC OnLine Kar 603 : ILR 2006 KAR 4456] , wherein also the question of executability of the decree for permanent injunction arose.

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13. Normally personal action dies with person but this principle has application to limited kinds of causes of actions. In Girijanandini Devi v. Bijendra Narain Choudhary [Girijanandini Devi v. Bijendra Narain Choudhary, AIR 1967 SC 1124] , this Court while considering the question whether the decree for account can be passed against the estates, also considered the maxim "actio personalis moritur cum persona" and observed that the postulation that personal action dies with the person, has a limited application. It operates in a limited class of actions, such as actions for damages, assault or other personal injuries not causing the death of the party and in other actions where after the death of the party the relief granted could not be enjoyed or granting it would be nugatory. Death of the person liable to render the account for property received by him does not therefore affect the liability of his estate. This Court has observed thus : (AIR p. 1131, para 14)

"14. Finally, it was urged that since defendants Mode Narain and Rajballav Narain had died during the pendency of the proceedings, the High Court was incompetent to pass a decree for account against their estates. Rajballav who was Defendant 6 died during the pendency of the suit before the trial court and Mode Narain who was Defendant 1 in the suit died during the pendency of the appeal in the High Court. But a claim for rendition of account is not a personal claim. It is not extinguished because the party who claims an account, or the party who is called upon to account dies. The maxim "actio personalis moritur cum persona" meaning a personal action dies with the person, has a limited application. It operates in a limited class of actions ex delicto such as actions for damages for defamation, assault or other personal injuries not causing the death of the party, and in other actions where after the death of the party the relief granted could not be enjoyed or granting it would be nugatory. An action for account is not an action for damages ex delicto, and does not fall within the enumerated classes. Nor is it such that the relief claimed being personal could not be enjoyed after death, or granting it would be nugatory. Death of the person liable to render an account for property received by him does not therefore affect the liability of his estate. It may be noticed that this question was not raised in the trial court and in the High Court. It was merely contended that because the plaintiff Bijendra Narain was receiving income of the lands of his share no decree for accounts could be made. The High Court rejected the contention that no account would be directed in favour of the plaintiff on that account. They pointed out that the mere fact that the plaintiff was in possession of some portion of properties of the joint family since 1941 cannot possibly absolve the defendants, who were in

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charge of their dealings with the management of the properties, from rendering accounts of the joint family estate. The plaintiff was since September 1941 severed from the joint family in estate and also in mess and residence, and he was entitled to claim an account from the defendants from September 1941, but not for past dealings. The fact that the plaintiff is in possession of some of the properties will, of course, have to be taken into account in finally adjusting the account."

**14. The views of the High Courts which are relied upon are by and large in favour of executability of decree. Of course it would depend on the right litigated, findings recorded and the nature of decree granted.** In D'Souza v. Joseph [D'Souza v. Joseph, 1992 SCC OnLine Kar 232 : AIR 1993 Kar 68] , a Single Bench of the Karnataka High Court held that when a decree for injunction against a person can be enforced even against his son, it is obvious that a similar logic should hold good even in the case of the death of the plaintiff who has obtained a decree. There should not be any legal impediment for an heir of a decree-holder to enforce the decree for injunction against the judgment-debtor. There is no such legal impediment on the principle that injunction does not run with the land. Yet another Division Bench of the Kerala High Court in Rajappan v. Sankaran Sudhakaran [Rajappan v. Sankaran Sudhakaran, 1997 SCC OnLine Ker 81: AIR 1997 Ker 315], also considered the question of violation of decree by the legal representatives of the judgment-debtor and has laid down that a decree for permanent injunction can be executed against them. It was observed that if a decree for injunction compels personal obedience, it in appropriate cases would not be enforced against the legal representatives. However, if subject-matter of the suit and the act complained of was on the basis of ownership of an adjacent property of the other side, then such a decree for injunction would be binding not only against the judgment-debtor personally but all those who claim through him. **A decree for perpetual injunction was passed restraining the judgment-debtors from trespassing into the decree schedule property destroying the boundaries thereof and from interfering with the rights of the decree-holder. The legal representatives of the judgment-debtor violated the injunction. The Court, in our opinion, rightly held that the executing court could execute the decree of perpetual injunction against the legal representatives of the judgment-debtor.**

15. In Krishnabai Pandurang Salagare v. Sawlaram Gangaram Kumtekar [Krishnabai Pandurang Salagare v. Sawlaram Gangaram Kumtekar, 1926 SCC OnLine Bom 6 : AIR 1927 Bom 93 : ILR (1927) 51 Bom 37

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: 100 IC 582] it was held that when a decree is passed against a judgment-debtor, it can on his death be enforced not only against the legal representatives, but also against the transferee from those representatives who take under an alienation pending the execution proceedings.

*** *** ***

**25. In our considered opinion the right which had been adjudicated in the suit in the present matter and the findings which have been recorded as basis for grant of injunction as to the disputed property which is heritable and partible would enure not only to the benefit of the legal heir of decree-holders but also would bind the legal representatives of the judgment-debtor.** It is apparent from Section 50 CPC that when a judgment-debtor dies before the decree has been satisfied, it can be executed against legal representatives. Section 50 is not confined to a particular kind of decree. Decree for injunction can also be executed against legal representatives of the deceased judgment-debtor. The maxim "actio personalis moritur cum persona" is limited to certain class of cases as indicated by this Court in Girijanandini Devi v. Bijendra Narain Choudhary [Girijanandini Devi v. Bijendra Narain Choudhary, AIR 1967 SC 1124] and when the right litigated upon is heritable, the decree would not normally abate and can be enforced by legal representatives of decree-holder and against the judgment-debtor or his legal representatives. It would be against the public policy to ask the decree-holder to litigate once over again against the legal representatives of the judgment-debtor when the cause and injunction survives. No doubt, it is true that a decree for injunction normally does not run with the land. In the absence of statutory provisions it cannot be enforced. However, in view of the specific provisions contained in Section 50 CPC, such a decree can be executed against legal representatives."

**(emphasis supplied)**

In the aforesaid judgment, Hon'ble Supreme Court was dealing with the issue- whether holder of a decree of permanent injunction can enforce the said decree against the legal heirs of the judgment debtor. In the said case, the original suit was decreed in favour of the plaintiff/ decree holder therein and it was found on the basis of a registered partition deed that the suit property was allotted to the plaintiff/ decree holder and he was in possession thereof. It was further held that the defendant had no right, title or interest in the disputed land.

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After passing of the said decree, the original judgment debtor had passed away and his legal heirs in violation of the decree of permanent injunction tried to forcibly dispossess the decree holder from the subject property. Subsequently, learned Executing Court held that the legal heirs of the judgment debtor were bound by the said decree. Aggrieved thereby, judgment debtor preferred a Writ Petition before the Hon'ble High Court of Bangalore, which was decided by holding that the decree of permanent injunction cannot be enforced against the legal heirs of judgment debtor as injunction did not travel with the land. Thereafter, Hon'ble Supreme Court after considering various judgments including that of various High Courts held that a decree can be executed against legal representatives of judgment debtor. It was further held that decree for injunction normally does not run with the land and it cannot be enforced in absence of any statutory provisions. However, in view of the specific provisions contained in Section 50 of the CPC, such a decree can be executed against a legal representative of the Judgment Debtor. From the aforesaid judgment, it also emerges that it has been held that a decree of injunction is executable at the instance of the legal heirs of the decree holder.

**22.** Further, learned Single Judge of Hon'ble Karnataka High Court in **G.M. Venkatappa (*Supra*)** had observed and held as under: -

> "After careful reading of the well settled principle laid down by the Apex Court in the case of Muthukaruppa Pillai v. Ganesan (Supra) referred to above, that if the remedy of injunction granted by the decree is in respect of any heritable and partible right, it does not get extinguished with the death of a party thereto, but in ensures to the benefit of the legal heirs of the decree-holder, as also such a decree could be executed against the successor-in-interest of the deceased judgment-debtor as well. The law so laid down is fortified by another recent decision of the Supreme Court in Kanchatyalal v. Baburam4.

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> Therefore, the Division Bench of this Court while dealing in a similar question in Ramachandra v. Laxmana Rao (Supra) while referring and adopting the observations made by the Supreme Court in the cases of Muthukaruppa Pillai v. Ganesan (Supra) and Kanhatyalal v. Babu Ram (Supra) and several other judgments has held thus:
>
> > "In the case in hand, the decree for permanent injunction being the one granted for protection of decree holder's statutory easementary right of way appurtenant to his dominant heritage and anexed with the servient tenement of judgment-debtors, it is enforceable in law against the transferee judgment-debtor, he being the successor-in-interest of the original judgment-debtor. In other words, the transferee judgment-debtor is bound by the terms and directions of the decree in question and, therefore, the decree is executable against him""

**23.** Learned counsel for the appellant in support of his submission with respect to *locus* of the respondent to file the execution petition relies on **Somnath Honnappa Bennalkar v. Bhimrao Subrao Patil**[32] and **Ashok Ohri & Ors. v. DDA & Ors.**[33].

**23.1** In **Somnath Honnappa Bennalkar (*supra*),** there was a compromise decree which was passed and the appellant therein was assignee of the compromise decree of injunction. It was held that compromise decree which was passed in original suit, the appellant was not a party. The said suit was for permanent injunction restraining the defendant from interfering with the plaintiff's possession and enjoying the property which ended in a compromise decree in favour of original plaintiff. In these circumstances, it was held that injunction, being personal, does not run with the land. It was held that compromise decree which was personal to the original plaintiff was not running

[32] 1971 SCC OnLine Kar 240
[33] MANU/DE/3906/2023

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with the land and the appellant, who was an assignee did not acquire the right to execute the decree by virtue of sale and assignment in his favour.

**23.2** In **Ashok Ohri (*Supra*)**, learned Single Judge of this Court observed as under: -

> "16. I have heard learned counsels for the parties and examined their respective contentions.
> 17. Two-fold questions that arise for consideration before this Court are : (a) whether decree of permanent injunction granted by the Trial Court can be executed by the Petitioners, who are subsequent purchasers of the suit land, being a decree in personam; and (b) whether the orders passed by the Executing Court, during the pendency of the execution, for appointment of Local Commissioner deserved to be recalled by the Executing Court.
> 18. Insofar as the Petitioners are concerned, they contend that being subsequent purchasers of the suit property by virtue of a sale deed dated 01.06.2007 all rights of ownership, title and interest were sold and conveyed to them and they are entitled to proceed under Section 146 read with Order XXI Rules 16 and 32 CPC for execution of the decree. DDA, on the other hand, adopts a position that being subsequent purchasers, Petitioners have no locus to execute the decree, as decree of permanent injunction is a decree in personam and does not run with the land. Moreover, a subsequent purchaser cannot claim a better title than the decree holder, whose relief for declaration of title and ownership was rejected.
> 19. The Supreme Court in Prabhakara Adiga (supra) was dealing with a case where holder of a decree of permanent injunction sought to enforce the decree against the legal heirs of the judgment debtors. Execution was resisted by the legal heirs on the ground that they were not bound by the decree since it was a personal in nature and did not run with the land. Judgment deals with rights of a decree holder for enforcement of a decree of permanent injunction against the legal heirs of the judgment debtor in a case where on the basis of a registered partition deed the suit property was allotted to the plaintiff and he was in possession. Defendant on partition in his own family was allotted 1.58 acres but he sold 1.68 acres of land. Plaintiff filed a suit seeking permanent injunction with respect to the property described in the plaint, which was in his possession and enjoyment. Defendant made

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an attempt to remove and destroy the fencing and to forcibly dispossess the Plaintiff. Decree of permanent injunction was passed against the Defendant on the ground that he had no right, title or interest in the disputed land. After suffering the decree, judgment debtor died and his legal heirs tried to forcibly dispossess the decree holder in violation of the decree, which led to the decree holder filing an execution petition. The question before the Supreme Court was whether the decree could be executed against the legal representatives of the Defendant. The Supreme Court held that a decree of injunction cannot be enforced against a subsequent purchaser from a Judgment Debtor, since injunction does not run with the land and is a remedy in personam. It was further held that this general rule is saved by Section 50 CPC with respect to legal heirs of the deceased Judgment Debtor and against the purchaser of the suit property pendent lite by Section 52 of the Transfer of Property Act. Where the remedy of injunction granted by the decree is in respect of any heritable and partible right, it does not get extinguished by the death of the party thereto but inures to the benefit of the legal heirs of the Decree Holder and can be executed against the successor-in-interest of the deceased Judgment Debtor as well. [Also Ref. Ramachandra v. Laxmana Rao, 2000 SCC OnLine Kar 325.]

20. In Girijanandini Devi v. Bijendra Narain Choudhary, (1967) 1 SCR 93, the Supreme Court held that normally, personal action dies with the person but this principle has application to limited kinds of causes of actions. While considering the question whether the decree for accounts can be passed against the estates, the Supreme Court also considered the maxim actio personalis moritur cum persona and observed that the postulation that personal action dies with the person has a limited application, such as in an action pertaining to damages, assault, personal injuries etc. where after the death of the party, relief granted cannot be enjoyed or if granted would be nugatory. Therefore, insofar as the legal heirs of the deceased Judgment Debtor are concerned, the decree of permanent injunction was held to be enforceable. From the judgments, it also emerges that the decree of injunction is executable at the instance of the legal heirs of the Decree Holder.

21. The question that arises here is with respect to the rights of the subsequent purchaser to execute a decree of permanent injunction qua a property which he purchased after the passing of the decree. The Supreme Court in Prabhakara Adiga (supra) referred to an observation of the Supreme Court in Girijanandini (supra) that when the rights

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litigated upon are heritable, the decree would not normally abate and can be enforced by the legal representatives of the Decree Holder against the Judgment Debtor or his legal representatives, as it would be against the public policy to ask the Decree Holder to litigate once over again against the legal representatives of the Judgment Debtor, when the cause of injunction survives though decree of injunction normally does not run with the land.

22. In Execution Proceedings, by Sh. Soonavala, 1958 Edn. on p. 386, it is stated that decree of injunction does not run with the land and cannot be enforced against the purchaser of the property from the Defendant but can be enforced against his legal representatives. Therefore, while law is settled qua the rights of legal heirs, Petitioners were unable to point out any judgment granting similar rights in favour of a purchaser of the suit property from a Decree Holder, to prosecute execution of a permanent injunction decree. Respondents, on the other hand, relied on two judgments viz : Somnath Honnappa Bennalkar (supra) and Jamsetji Manekji Kotval (supra) holding to the contrary, where it was held that an injunction being personal does not run with the land and thus the purchaser cannot step into the shoes of the deceased Decree Holder to execute the decree and the only remedy available to such a purchaser is to file a fresh suit. Trial Court has relied on these judgments and held that Petitioners cannot execute the original Decree and in the absence of any judgment to the contrary this Court is unable to hold in favour of the Petitioners on this aspect.

23. Even assuming for the sake of arguments, that Petitioners can resort to Section 146 CPC and that it cannot be laid down as a general proposition that a permanent injunction decree can be executed by a subsequent purchaser, as urged by them, there is yet another impediment in their way in seeking execution of the decree in the present case, which in my view is really the heart of the dispute. As noted above, the original Decree Holder had filed a suit being Suit No. 203/1989, seeking permanent injunction wherein interim injunction was granted on 12.09.1989 directing Defendants not to dispossess the Plaintiff. During the pendency of the suit, another suit for declaration and injunction qua the same suit property was instituted by the Decree Holder being CS No. 257/1989 on 13.12.1989. DDA which was the contesting party did not file a written statement and the suit was decreed under Order VIII Rule 10 CPC on 01.12.1990 in favour of the Decree Holder. Execution bearing No. 42/1990 was filed, in which directions were issued for removal of the barbed wire from the suit property as well as the Board of DDA with a further direction that

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there will be no interference in peaceful enjoyment and possession of the suit property."

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"25. From the judgment, it is evident that the Court was of the view that Decree Holder was seeking declaration of title on the basis of documents such as Agreement to sell, GPA etc. which did not entitle him to a relief of declaration as no title was created by these documents. This decree was never challenged by the original Decree Holder. Since the Trial Court did not grant a declaratory decree of title in favour of the Decree Holder, in my view, Executing Court rightly held that the Petitioners cannot seek execution premised on a sale deed between them and the Decree Holder and granted liberty to file a separate suit.

26. The matter involves another important facet. The whole dispute between the original Decree Holder and the DDA has its genesis in the action of DDA in attempting to fence the property with a barbed wire and which, according to DDA, is a plot falling in Khasra No. 3551/2635, allegedly acquired under an Award and distinct from the plot of the Decree Holder which falls in the Khasra No. 2364/01. Decree Holder had filed the suit for declaration and permanent injunction against the alleged illegal action of encroachment of his plot by DDA by fencing it and placing its own board, reflecting possession. This issue remained uncontested before the Trial Court during the pendency of the suit as DDA never filed its written statement and thus there was no adjudication on the identity of the suit property and demarcation etc. and even today this dispute remains unresolved and would require adjudication.

27. Thus seen holistically, the original Decree Holder failed to obtain a decree for declaration of ownership/title to the suit property and this was followed by a dispute with regard to the very identity of the suit property, in respect to which the execution is being sought by the Petitioners herein, as subsequent purchasers. In these facts, the Executing Court held and rightly so that Petitioners cannot step into the shoes of the Decree Holder and seek a title better than that of the original Decree Holder. However, having said that and conscious of the fact that the Petitioners have a sale deed transferring the suit property in their favour, the Executing Court has not shut their rights and has

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> granted liberty to file a fresh suit on the same cause of action, before the appropriate Forum, in accordance with law and subject to limitation. In my considered view, the Executing Court has followed the correct course of action and it is open to the Petitioners to file a suit as permitted by the Executing Court and establish their title to the suit property by placing whatever documents they may have in this regard, before the appropriate Forum."

In the aforesaid case the suit instituted was for both permanent injunction as well as declaration of title and since the title of the suit property therein was not confirmed, the learned Executing Court therein had held that the applicants therein cannot seek execution and directed them to file a separate suit. However, in the present case, a suit for permanent injunction was only filed and the title of the suit property herein was not in dispute. At the cost of repetition, it is again noted that the suit property for which permanent injunction was granted belonged to the original plaintiff/ predecessor-in-interest of the respondent, as held by the learned ADJ. Thus, the aforesaid judgment is distinguishable in the facts of the present case.

**24.** As noted hereinbefore, the Hon'ble Supreme Court in **Prabhakara Adiga (*Supra)*** had observed that as a normal rule, decree of injunction does not run with the land and in absence of any statutory provision, the said injunction cannot be enforced. In the aforesaid judgment, it was held that in view of provisions contained in Section 50 of the CPC, the decree of injunction can be executed against a legal representative. The said Section reads as under: -

> "50. Legal representative. —

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(1) Where a judgment-debtor dies before the decree has been fully satisfied, the holder of the decree may apply to the Court which passed it to execute the same against the legal representative of the deceased.
(2) Where the decree is executed against such legal representative, he shall be liable only to the extent of the property of the deceased which has come to his hands and has not been duly disposed of; and, for the purpose of ascertaining such liability, the Court executing the decree may, of its own motion or on the application of the decree-holder, compel such legal representative to produce such accounts as it thinks fit."

**24.1.** At this stage, it will be apposite to refer following provisions:

a) Section 146 of the CPC, which reads as under: -

"146. Proceedings by or against representatives. —
Save as otherwise provided by this Code or by any law for the time being in force, where any proceeding may be taken or application made by or against any person, then the proceeding may be taken or the application may be made by or against any person claiming under him."

b) Order XXI Rule 16 of CPC, which reads as under: -

"16. Application for execution by transferee of decree. —
Where a decree or, if a decree has been passed jointly in favour of two or more persons, the interest of any decree-holder in the decree is transferred by assignment in writing or by operation of law, the transferee may apply for execution of the decree to the Court which passed it; and the decree may be executed in the same manner and subject to the same conditions as if the application were made by such holder:

Provided that, where the decree, or such interest as aforesaid, has been transferred by assignment, notice of such application shall be given to the transferor and the judgment-debtor, and the decree shall not be executed until the Court has heard their objections (if any) to its execution:

Provided also that, where a decree for the payment of money against two or more persons has been transferred to one of them, it shall not be executed against the others.

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> **[Explanation. —Nothing in this rule shall affect the provisions of Section 146, and a transferee of rights in the property, which is the subject-matter of the suit, may apply for execution of the decree without a separate assignment of the decree as required by this rule.]**"
>
> **(emphasis supplied)**

**24.2.** Section 146 CPC provides that if where an application, which can be made by or against any person, it may be made by or against any person, claiming under him except otherwise provided under court. Further Order XXI, Rule 16 CPC deals with the execution of the decree by transferee.

**25.** While examining the explanation in Order XXI Rule 16 of the CPC, Hon'ble Supreme Court in **Vaishno Devi Construction v. UOI & Ors.**[34] observed and held as under: -

> "24. On analysis of the submissions there is little doubt that the impugned judgments would have been completely in accordance with law if the amendments were not made in 1976 and would have been fully covered by the judgment in Jugalkishore Saraf [Jugalkishore Saraf v. Raw Cotton Co. Ltd., AIR 1955 SC 376] . Thus, the only aspect which we have to consider is whether that amendment made any difference to the legal position as enunciated in the said judgment.
> 25. It is an admitted position that the Explanation was added to Order 21 Rule 16 which did not exist earlier, pursuant to the recommendations made by the Law Commission of India in its 54th Report on the Civil Procedure Code, 1908. The Explanation was so added due to conflicting High Courts' decisions on the question i.e. whether a person who does not have a written assignment of the decree, but who has succeeded to a decree-holders' right, is entitled to such decree under Section 146 CPC.
> 26. In Ponniah Pillai v. T. Natarajan Asari [Ponniah Pillai v. T. Natarajan Asari, 1965 SCC OnLine Mad 154 : AIR 1968 Mad 190] the Madras High Court decided this question in the affirmative. The

[34] (2022) 2 SCC 290

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High Court gave liberty to the transferees to avail of Section 146 if they did not fall within the provisions of Order 21 Rule 16 CPC and, thus, would cover transferees of a property after the decree was passed. In this behalf the learned Judge disagreed with an earlier judgment of the Madras High Court in K.N. Sampath Mudaliar v. Sakunthala Ammal [K.N. Sampath Mudaliar v. Sakunthala Ammal, 1963 SCC OnLine Mad 295 : (1964) 2 Mad LJ 563] opining that Section 146 CPC could not have the effect of overriding Order 21 Rule 16 CPC. The Law Commission agreed with the view taken in the former judgment (which was delivered at a later point of time) and further noted that this view was supported by the High Courts of Andhra Pradesh [Mallayya v. Talari Tippanna, 1954 SCC OnLine AP 105 : AIR 1955 AP 81] , Patna [Ram Nath Modi v. Anardei Devi, 1964 SCC OnLine Pat 5 : AIR 1964 Pat 311] and Kerala [Devasia v. Scaria, 1960 SCC OnLine Ker 249 : 1960 KLT 1077] as well. Thus, **the Law Commission recommended amending Order 21 Rule 16 to clarify that it does not affect the provisions of Section 146 and that a transferee of rights in the subject-matter of the suit can obtain execution of a decree without separate assignment of the decree. The objective appears to be to not have multifarious proceedings to determine the issue of assignment, but to determine the issue of assignment in the execution proceedings itself.**

**27. In the conspectus of the aforesaid we are of the view that the objective of amending Order 21 Rule 16 CPC by adding the Explanation was to deal with the scenario as exists in the present case, to avoid separate suit proceedings being filed therefrom and to that extent removing the distinction between an assignment pre the decree and an assignment post the decree.** Thus, what has been discussed even in the judgment in Jugalkishore Saraf [Jugalkishore Saraf v. Raw Cotton Co. Ltd., AIR 1955 SC 376] as a view based on the equitable principle was sought to be incorporated in Order 21 Rule 16 CPC by adding the Explanation, something which had not been done earlier. Once the legislative intent is clear, and the law is amended, then the earlier position of law cannot be said to prevail post the amendment and it is not in doubt that the present case is one post the amendment.

28. We may further add that while considering the divergent views of the High Courts, the Law Commission took note of the fact that two different interpretations of Jugalkishore Saraf [Jugalkishore Saraf v. Raw Cotton Co. Ltd., AIR 1955 SC 376] had been adopted.

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> Thus, the Law Commission really sought to clarify the legal position so that the conflicting interpretations of the Supreme Court judgment would not survive. The Explanation clearly stipulates that nothing in Order 21 Rule 16 CPC would affect the provisions of Section 146 and the transferee of the right in property which is subject-matter of a suit may apply for execution of the decree without separate assignment of the decree as required by law. No doubt the appellants are not parties in the suit proceedings but they claim as assignees of the decree-holder."
>
> **(emphasis supplied)**

**26.** Further, in **Prabhakara Adiga (*Supra)***, Hon'ble Supreme Court observed that the executability of decree would depend on the right litigated, findings recorded and the nature of decree granted. In the present case, learned Trial Court passed the decree of permanent injunction in favour of the original plaintiff after holding that the suit property for which the said suit was filed, was distinct from the property owned and in possession of the appellant/ original defendants. Learned ADJ confirmed the findings of the learned Trial Court by reiterating that the suit property was distinct and had nothing to do with the property owned and in possession of the appellant/original defendants. Thus, the nature of decree being such, the subsequent transferee/ assignee of the decree cannot be asked to file a fresh suit for the same relief against the original defendants. Such filing of execution by subsequent assignee /transferee is provided for under Order XXI Rule 16 of CPC.

**27.** In view of the aforesaid, present appeal is dismissed and disposed of. The learned Executing Court is requested to expedite the hearing of the Execution petition and conclude the same, preferably within the period of six months.

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**28.** Pending application(s), if any, is also disposed of.

**29.** Judgment be uploaded on the website of this Court, *forthwith.*

**AMIT SHARMA**
**(JUDGE)**

**NOVEMBER 20,2026/sg**

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