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

% ***Judgment reserved on: 09.09.2026***
Judgment pronounced on: 27.11.2026

\# **CNR No. DLHC010000752026**

\+ EX.F.A. 1/2026 & CM APPL. 587/2026 (Stay)

ASHISH DABAS .....Appellant
Through: Mr. Prateek Singh Kundu, Advocate.

versus

AJAY KUMAR & ORS. .....Respondents
Through:

CORAM:
HON'BLE MR. JUSTICE HARISH VAIDYANATHAN SHANKAR

J U D G M E N T

HARISH VAIDYANATHAN SHANKAR, J.

1. The present Execution First Appeal under Section 96 read with Order XLI of the **Code of Civil Procedure, 1908**[1] has been preferred by the Appellant, assailing the **Judgment/Order dated 14.11.2025**[2] passed by the **learned District Judge-02, North-West District, Rohini Courts, Delhi**[3], whereby the Application being Misc. Ex. 29/2025 filed on 28.03.2025, by the Appellant under Order XXI Rule 101 read with Section 151 CPC, in Execution Petition No. 90/2025, was dismissed.

BRIEF FACTS:

2. The dispute emanates from a suit for specific performance, damages, permanent injunction and declaration, instituted by

[1] CPC
[2] Impugned Order
[3] Learned District Judge

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Respondent Nos. 1 to 3 against Late Sh. Sadhu Ram, predecessor-in-interest of Respondent No. 4, in respect of two properties situated in Village Kanjhawala, Delhi, namely, a residential plot bearing Khasra No. 142/783, measuring 1 bigha and 1 biswa, and an industrial plot bearing Khasra No. 143/679, measuring 6 biswa and 300 square yards. The suit was instituted on 20.09.2006, being CS(OS) No. 1816/2006, on the basis of an Agreement to Sell dated 08.07.2006, executed between the plaintiffs and Late Sh. Sadhu Ram.

3. During the pendency of the aforesaid suit, this Court, *vide* Order dated 21.09.2006, issued notice in the application seeking interim injunction and restrained Late Sh. Sadhu Ram from creating any third-party interest in the suit properties. It is the case of the Appellant that Late Sh. Sadhu Ram had, prior thereto, executed an irrevocable GPA dated 17.07.2006 in favour of his son, Sh. Tej Pal, in respect of the aforesaid properties, and that a further GPA dated 07.08.2006 was executed in favour of Sh. Abhishek Sharma, who subsequently transferred the residential property in favour of the Appellant.

4. The Appellant claims to have purchased the residential property bearing Khasra No. 142/783 from Sh. Abhishek Sharma on 06.11.2012, by way of an Agreement to Sell, **General Power of Attorney**[4] and Will, for valuable consideration. Claiming to have acquired rights in the said property and to be in its physical possession, the Appellant moved an Application bearing I.A. No. 23166/2015 under Order I Rule 10 CPC, seeking impleadment in the aforesaid suit. The said application was allowed *vide* Order dated 18.08.2017, and the Appellant was impleaded as Defendant No. 3.

[4] GPA

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Thereafter, the Appellant filed his Written Statement on 30.07.2018, reiterating his claim of purchase and possession of the residential property.

5. The original suit ultimately culminated in a Judgment and Decree dated 11.12.2024, whereby the learned Trial Court decreed the suit for specific performance in favour of the plaintiffs and against Late Sh. Sadhu Ram, through his legal representatives, in respect of the Agreement to Sell dated 08.07.2006, subject to payment of the balance sale consideration of Rs. 68,43,000/- within a period of three (03) months. The aforesaid Decree further directed the subsequent purchasers to join the legal representatives of Late Sh. Sadhu Ram in execution of the final sale deed in favour of the plaintiffs. The learned Trial Court also observed that such subsequent purchasers would be at liberty to recover the amount paid by them towards the sale consideration from the legal representatives of Late Sh. Sadhu Ram through appropriate legal proceedings.

6. Pursuant to the aforesaid Judgment and Decree, Respondent Nos. 1 to 3 instituted Execution Petition No. 90/2025 on 05.03.2025, seeking enforcement of the Decree dated 11.12.2024. In the said execution proceedings, the Appellant filed an Application dated 28.03.2025 under Order XXI Rule 101 read with Section 151 CPC, claiming entitlement to a proportionate share of the decretal amount attributable to the residential property allegedly purchased by him. The Appellant asserted that, in terms of the Judgment and Decree dated 11.12.2024, he was entitled to receive a sum of Rs. 53,21,400/- from the legal representatives of Late Sh. Sadhu Ram, calculated on the basis of the proportionate area of the residential property.

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7. The learned Executing Court, *vide* the Impugned Order dated 14.11.2025, dismissed the aforesaid Application. Aggrieved thereby, the Appellant has preferred the present Appeal, seeking setting aside of the Impugned Order and appropriate directions for payment of the proportionate amount claimed by him in terms of the Judgment and Decree dated 11.12.2024.

SUBMISSIONS ADVANCED ON BEHALF OF THE APPELLANT:

8. The Appellant has assailed the Impugned Order primarily on the ground that he had acquired rights in the residential property bearing Khasra No. 142/783, measuring 1 bigha and 1 biswa, by way of an Agreement to Sell, GPA and Will dated 06.11.2012, executed by Sh. Abhishek Sharma for valuable consideration. It is his case that he has been in actual physical possession of the said property and has also raised construction thereon. The Appellant contends that the learned Executing Court failed to appreciate the documents relied upon by him and the nature of the rights claimed in respect of the property, while dismissing his Application.

9. The Appellant has further contended that, irrespective of the direction for execution of the Sale Deed in favour of the decree-holders, his entitlement to recover the proportionate sale consideration stands expressly recognised under the Judgment and Decree dated 11.12.2024. It is submitted that, since the total decretal sale consideration in respect of both properties was fixed at Rs. 68,43,000/-, the Appellant is entitled to a proportionate amount of Rs. 53,21,400/- in respect of the residential property measuring 1 bigha and 1 biswa. According to the Appellant, the learned Executing Court failed to adjudicate this claim despite the same arising directly from

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the terms of the Decree and erroneously relegated him to pursue separate legal proceedings for recovery of the amount.

10. No other submissions were advanced on behalf of the Appellant.

ANALYSIS:

11. This Court has considered the grounds urged on behalf of the Appellant, the Impugned Order, the Judgment and Decree dated 11.12.2024, as well as the material placed on record.

12. For proper appreciation of the controversy involved in the present appeal, it would be apposite to reproduce the relevant portion of the Impugned Order dated 14.11.2025:

> "**14.11.2025**
> This case is at the stage of order and pertains to the Court of District Judge-02, North West, Rohini, Delhi. However, as per transfer/posting order the Judge who had reserved the order has to pronounce the same in the new court.
> **Present:** None.
> **1.** Arguments have already been heard.
> **2.** It appears that a case was filed in the year 2006 and ultimately it resulted into a decree pronounced vide judgment dated 11.12.2024. The decree was pressed for execution through execution petition no. 90/2025. However, immediately certain defendants who were ex-parte during the course of suit proceeding, intervened through objection/application. The contesting defendant also moved an application for deposit of amount.
> **3.** The case is simple that one Sadhu Ram had agreed to sell some properties but deliberately failed to do so which invited one specific suit against him. During the proceedings he was restrained from selling the property but despite the same, he sold the property. Later he expired. His LRs was brought on record.
> **4.** Now, two propositions are pressed herein. Firstly, that some portion of the amount should also be given to one subsequent purchaser. This claim is being made by the subsequent purchaser Ashish Dabas who is shown as defendant no. 3 in the amended memo of parties of the suit. He is claiming that he is in actual possession of residential plot after purchasing the same from one Abhishek Sharma on 06.11.2012. I am of the considered view that no such claim can be made. Firstly, Sadhu Ram was restrained from selling the property to anyone and therefore, no chain of subsequent sale purchase can be treated as genuine. Secondly,

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Ashish Dabas has purchased the property from Abhishek Sharma by way of unregistered agreement to sell/GPA documents which have no values in the eyes of law. Therefore, Ashish Dabas cannot have any right. If he has any grievance against Abhishek Sharma, he can avail appropriate remedy including recovery of money against him. **As such, application filed u/s Order 21 Rule 101 is dismissed and accordingly, the Misc Ex/ 2029/ 2025 is disposed off.**

5. The other claim which has been pressed is that three defendants i.e. Reema, Sunita and Sheela were never impleaded in the case and therefore, the decree cannot bind them. It seems that impleadment application was filed by plaintiff and these persons appeared in the court on several occasions. However, no formal order for impleadment was passed by the Ld. Predecessor. However, since amended memo of parties was filed by the plaintiff, the case continued.

6. Even if the claim is accepted, the situation will not change. These three persons are basically claiming to be subsequent purchasers on the basis of GPA documents. Such documents cannot confer any title on them and therefore, they cannot become the owner of the property in any manner (see **Shakeel Ahmed Vs. Syed Akhlaq Hussain** 2023 INSC 1016 and **Amit Jain & Ors. Vs Anila Jain & Ors.** 2025 (3) CLJ 442 (Del). Once they are not the owner/property they cannot file objection to the execution petition. Secondly, there was an interim injunction against defendant Sadhu Ram and therefore, no amount of subsequent sale purchase can be recognised in law.

7. The judgment dated 11.12.2024 specifically notes that the subsequent purchaser shall be at liberty to recover their amount if paid to the Sadhu Ram. Clearly, any person who has entered into subsequent transactions, was protected.

8. Though the judgment dated 11.12.2024 notes that such subsequent purchaser shall join the LRs of Sadhu Ram in executing the sale deed in favour of plaintiffs, it is clear that their role is simply confined to giving no objection for registration of sale deed as they have not become the actual owners.

9. In the aforesaid circumstances the objection filed on behalf of Reema, Sunita and Sheela are dismissed.

10. It is however clarified that even if a sale deed is executed in consequence of specific performance decree, the possession of industrial plot shall not be disturbed until a direction is issued by the Hon'ble High Court in RFA no. 525/2025.

11. However, one application has come from LRs of Sadhu Ram who are requesting that decree holder should deposit the amount. It is therefore directed that if the DH has not deposited the decretal amount he shall deposit it in a month with interest up to date. Accordingly, the application moved u/s 151 CPC in this regard is disposed off and Misc DJ 461/2025 is closed.

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> **12.** Both the Misc files i.e. Misc DJ 461/2025 and Misc Ex/ 2029/ 2025 are disposed off and are directed to be tagged with main execution file.
> **13.** The main execution file no. 90/2025 is directed to be placed before the Ld. District Judge-2, North-West Rohini on **28.11.2025** for further consideration."

13. The controversy arising in the present Appeal essentially concerns the nature of rights, if any, acquired by the Appellant in the residential property bearing Khasra No. 142/783, on the basis of the documents dated 06.11.2012, and the consequential claim raised by him for recovery of a proportionate amount out of the decretal sale consideration. These two claims, though arising from the same set of transactions, require separate examination.

14. At the outset, it is necessary to notice that the Appellant's claim is founded upon an alleged purchase of the residential property from Sh. Abhishek Sharma on 06.11.2012, by way of an Agreement to Sell, GPA and Will. The said transaction is admittedly subsequent to the institution of the Suit for specific performance on 20.09.2006 and the Interim Order dated 21.09.2006, whereby Late Sh. Sadhu Ram was restrained from creating any third-party interest in the suit properties. Thus, the rights claimed by the Appellant cannot be examined in isolation from the proceedings which were already pending in respect of the very same property. The relevant portion of the Interim Order dated 21.09.2006 is reproduced hereinbelow:

> "
> *****
> In view of what has been noticed above, I am prima facie of the view that the plaintiff is entitled to ex-parte ad interim injunction against the defendant. Accordingly, I restrain the defendant from parting with the possession or in any manner or creating any third party interest in the suit property till the next date of hearing…"

15. The first aspect which requires consideration is whether the documents dated 06.11.2012, relied upon by the Appellant, confer

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upon him any right, title or interest in the residential property so as to enable him to resist or otherwise impede the enforcement of the Decree dated 11.12.2024. In this regard, it is pertinent to note that the Appellant does not claim to have acquired any rights in the property prior to institution of the original suit. His entire claim emanates from the alleged transaction with Sh. Abhishek Sharma dated 06.11.2012, which took place more than six (06) years after institution of the Suit and after the interim injunction dated 21.09.2006 had been passed by the learned Trial Court.

16. Section 52 of the **Transfer of Property Act, 1882**[5] embodies the doctrine of *lis pendens*, which is founded upon the principle that during the pendency of litigation concerning rights in an immovable property, a party to the proceedings cannot transfer or otherwise deal with such property so as to affect the rights of any other party under the decree which may ultimately be passed. The doctrine also binds persons who derive their interest in the property through a party to the proceedings. Its object is to ensure that the subject matter of litigation remains within the control of the Court and that the adjudication is not rendered ineffective by subsequent transactions. A transfer pendente lite is not, merely for that reason, void *ab initio*; it remains subject to and is governed by the result of the pending proceedings. The doctrine does not depend upon proof that the subsequent purchaser had actual notice of the litigation.

17. The Hon'ble Supreme Court in ***Jayaram Mudaliar v. Ayyaswami***[6], explained the underlying principle of Section 52 of the TPA and held that the doctrine of *lis pendens* is intended to prevent

[5] TPA
[6] (1972) 2 SCC 200

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parties from defeating the jurisdiction of the Court by transferring the property during the pendency of proceedings. The Court recognised that a transferee *pendente lite* is bound by the result of the litigation, notwithstanding that such transferee may not have been arrayed as a party to the original proceedings. The principle that a transfer *pendente lite* remains subject to the outcome of the pending proceedings has also been reiterated by the Hon'ble Supreme Court in ***Vinod Seth v. Devinder Bajaj***[7], and ***Thomson Press (India) Ltd. v. Nanak Builders & Investors (P) Ltd.***[8]. The relevant portion of ***Jayaram Mudaliar*** (supra) is reproduced hereinbelow:

> "**43.** It has been pointed out, in Bennet "On Lis Pendens", that, even before Sir Francis Bacon framed his ordinances in 1816 "for the better and more regular administration of justice in the chancery, to be daily observed" stating the doctrine of lis pendens in the 12th ordinance, the doctrine was already recognised and enforced by Common Law Courts. Bacon's ordinance on the subject said:
>
> > "No decree bindeth any that commeth in bona fide, by conveyance from the defendant before the bill exhibited, and is made no party, neither by bill, nor the order; but, where he comes in pendente lite, and, while the suit is in full prosecution, and without any color of allowance or privity of the court, there regularly the decree bindeth; but, if there were any intermissions of suit, or the court made acquainted with the conveyance, the court is to give order upon the special matter according to justice."
>
> The doctrine, however, as would be evident from Bennett's work mentioned above, is derived from the rules of jus gentium which became embodied in the Roman Law where we find the maxim: "Ram (*sic*) de qua controversia probibemur (*sic*) in acrum dedicare" (a thing concerning which there is a controversy is prohibited, during the suit from being alienated). Bell, in his commentaries on the **Laws of Scotland** [2 Bell's Com. on Laws of Scotland, 144] said that it was grounded on the maxim: "Pendente lite nibil innovandum". He observed:
>
> > "It is a general rule which seems to have been recognised in all regular systems of jurisprudence, that during the

[7] (2010) 8 SCC 1
[8] (2013) 5 SCC 397

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> pendence of an action, of which the object is to vest the property or obtain the possession of real estate, a purchaser shall be held to take that estate as it stands in the person of the seller, and to be bound by the claims which shall ultimately be pronounced."

44. In the Corpus Juris Secundum (Vol. 54, p. 570), we find the following definition:

> "Lis pendens literally means a pending suit; and the doctrine of lis pendens has been defined as the jurisdiction, power, or control which a court acquires over property involved in a suit pending the continuance of the action, and until final judgment therein."

45. Expositions of the doctrine indicate that the need for it arises from the very nature of the jurisdiction of Courts and their control over the subject-matter of litigation so that parties litigating before it may not remove any part of the subject-matter outside the power of the court to deal with it and thus make the proceedings infructuous.

46. It is useful to remember this background of Section 52 of our Transfer of Property Act which lays down:

> "During the pendency in any Court ... of any suit or proceeding which is not collusive and in which any right to immovable property is directly and specifically in question, the property cannot be transferred or otherwise dealt with by any party to the suit or proceeding so as to affect the rights of any other party thereto under any decree or order which may be made therein, except under the authority of the Court and on such terms as it may impose."

47. It is evident that the doctrine, as stated in Section 52, applies not merely to actual transfers or rights which are subject-matter of litigation but to other dealings with it "by any party to the suit or proceeding, so as to affect the right of any other party thereto". Hence, it could be urged that where it is not a party to the litigation but an outside agency, such as the tax collecting authorities of the Government, which proceeds against the subject-matter of litigation, without anything done by a litigating party, the resulting transaction will not be hit by Section 52. Again, where all the parties which could be affected by a pending litigation are themselves parties to a transfer or dealings with property in such a way that they cannot resile from or disown the transaction impugned before the Court dealing with the litigation, the Court may bind them to their own acts. All these are matters which the Court could have properly considered. The purpose of Section 52 of the Transfer of Property Act is not to defeat any just and equitable claim but only to subject them to the authority of the Court which is dealing with the property to which claims are put forward."

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18. The aforesaid principle assumes particular significance in the facts of the present case. As per the Appellant's own case, Late Sh. Sadhu Ram executed a GPA dated 17.07.2006 in favour of his son, Sh. Tej Pal, and a further GPA dated 07.08.2006 was executed in favour of Sh. Abhishek Sharma, through whom the Appellant claims. Though these instruments are stated to pre-date the institution of the Suit, the Appellant's own alleged purchase from Sh. Abhishek Sharma took place only on 06.11.2012, during the pendency of the Suit and after the interim injunction dated 21.09.2006.

19. The Appellant thus claims through persons whose asserted rights are traced to Late Sh. Sadhu Ram, and his own alleged acquisition took place while the rights in the very same property were directly in issue before the Court. The transfer in favour of the Appellant is, therefore, subject to the outcome of the pending proceedings and cannot confer upon him a right independent of or superior to the rights ultimately determined under the Decree dated 11.12.2024. Even assuming, for the sake of argument, that the Appellant paid consideration to Sh. Abhishek Sharma and was put in possession of the residential property, such circumstances would not enable him to defeat or dilute the rights crystallised under the said Decree.

20. Apart from the doctrine of *lis pendens*, another significant aspect which warrants consideration is the effect of a transaction entered into in breach of an interim order restraining alienation of the suit property. The Order dated 21.09.2006 did not merely record the pendency of the proceedings but expressly restrained Late Sh. Sadhu Ram from parting with possession of, or creating any third-party interest in, the suit property. The effect of the aforesaid Interim Order

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cannot be viewed as a mere procedural matter. Once the Court had directed that the possession of the suit property be preserved and that no third-party interest be created therein, the parties to the proceedings were under an obligation to maintain the state of affairs as directed by the Court. The restraint was intended to ensure that the property, which formed the subject matter of the Suit, remained unaffected by any unilateral act of the party against whom the injunction had been granted, until the rights of the parties were adjudicated. Any alienation undertaken in disregard of such a restraint would not only undermine the protection afforded by the Interim Order but would also introduce third-party claims into the very property which the Court had sought to preserve. Permitting a party to derive an advantage from such a transaction would effectively allow the very act restrained by the Court to achieve its intended consequence, thereby frustrating the purpose of the judicial order.

21. The Hon'ble Supreme Court in ***Surjit Singh v. Harbans Singh***[9], while considering an assignment made in defiance of an order restraining alienation of the property, held that the Court is entitled to treat such alienation as having not taken place for the purposes of the proceedings before it. The Court emphasised that an order intended to preserve a particular state of affairs must be respected until it is varied or vacated, and a transaction in breach thereof cannot be permitted to defeat the ends of justice. The relevant portion of ***Surjit Singh*** (supra) is reproduced hereinbelow:

> "**4.** As said before, the assignment is by means of a registered deed. The assignment had taken place after the passing of the preliminary decree in which Pritam Singh has been allotted 1/3rd share. His right to property to that extent stood established. A

[9] (1995) 6 SCC 50

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> decree relating to immovable property worth more than hundred rupees, if being assigned, was required to be registered. That has instantly been done. It is per se property, for it relates to the immovable property involved in the suit. It clearly and squarely fell within the ambit of the restraint order. In sum, it did not make any appreciable difference whether property per se had been alienated or a decree pertaining to that property. In defiance of the restraint order, the alienation/assignment was made. If we were to let it go as such, it would defeat the ends of justice and the prevalent public policy. When the Court intends a particular state of affairs to exist while it is in seisin of a lis, that state of affairs is not only required to be maintained, but it is presumed to exist till the Court orders otherwise. The Court, in these circumstances has the duty, as also the right, to treat the alienation/assignment as having not taken place at all for its purposes. Once that is so, Pritam Singh and his assignees, respondents herein, cannot claim to be impleaded as parties on the basis of assignment. Therefore, the assignees-respondents could not have been impleaded by the trial court as parties to the suit, in disobedience of its orders. The principles of lis pendens are altogether on a different footing. We do not propose to examine their involvement presently. All what is emphasised is that the assignees in the present facts and circumstances had no cause to be impleaded as parties to the suit. On that basis, there was no cause for going into the question of interpretation of paragraphs 13 and 14 of the settlement deed. The path treaded by the courts below was, in our view, out of their bounds. Unhesitatingly, we upset all the three orders of the courts below and reject the application of the assignees for impleadment under Order 22 Rule 10 CPC."

22. The aforesaid principle was reiterated in ***Vidur Impex and Traders Pvt. Ltd. v. Tosh Apartments Pvt. Ltd.***[10], wherein the Hon'ble Supreme Court declined to recognise transactions entered into in clear violation of an injunction restraining alienation of the suit property, observing that such transactions could not confer a legally enforceable advantage upon the transferees in the pending proceedings. The relevant portion of ***Vidur Impex*** (supra) is reproduced hereinbelow:

> "**42.** In the light of the above, we shall now consider whether the learned Single Judge and the Division Bench of the High Court committed an error by dismissing the appellants' application for impleadment as parties to Suit No. 425 of 1993. At the cost of

[10] (2012) 8 SCC 384

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repetition, we consider it necessary to mention that Respondent 1 had filed suit for specific performance of agreement dated 13-9-1988 executed by Respondent 2. The appellants and Bhagwati Developers are total strangers to that agreement. They came into the picture only when Respondent 2 entered into a clandestine transaction with the appellants for sale of the suit property and executed the agreements for sale, which were followed by registered sale deeds and the appellants executed agreement for sale in favour of Bhagwati Developers. These transactions were in clear violation of the order of injunction passed by the Delhi High Court which had restrained Respondent 2 from alienating the suit property or creating third-party interest. To put it differently, the agreements for sale and the sale deeds executed by Respondent 2 in favour of the appellants did not have any legal sanctity. The status of the agreement for sale executed by the appellants in favour of Bhagwati Developers was no different. These transactions did not confer any right upon the appellants or Bhagwati Developers. Therefore, their presence is not at all necessary for adjudication of the question whether Respondents 1 and 2 had entered into a binding agreement and whether Respondent 1 is entitled to a decree of specific performance of the said agreement. That apart, after executing the agreement for sale dated 18-3-1997 in favour of Bhagwati Developers, the appellants cannot claim to have any subsisting legal or commercial interest in the suit property and they cannot take benefit of the order passed by the Calcutta High Court for appointment of an arbitrator which was followed by an order for appointment of Receiver because the parties to the proceedings instituted before that Court deliberately suppressed the facts relating to Suit No. 425 of 1993 pending before the Delhi High Court and the orders of injunction passed in that suit.

43. We are in complete agreement with the Delhi High Court that the application for impleadment filed by the appellants was highly belated. Although, the appellants have pleaded that at the time of execution of the agreements for sale by Respondent 2 in their favour in February 1997, they did not know about the suit filed by Respondent 1, it is difficult, if not impossible, to accept their statement because the smallness of time-gap between the agreements for sale and the sale deeds executed by Respondent 2 in favour of the appellants and the execution of agreement for sale by the appellants in favour of Bhagwati Developers would make any person of ordinary prudence to believe that Respondent 2, the appellants and Bhagwati Developers had entered into these transactions with the sole object of frustrating the agreement for sale dated 13-9-1988 executed in favour of Respondent 1 and the suit pending before the Delhi High Court. In any case, the appellants will be deemed to have become aware of the same on receipt of summons in Suit No. 161 of 1999 filed by Respondent 2 for annulment of the agreements for sale and the sale deeds in

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> which Respondent 2 had clearly made a mention of Suit No. 425 of 1993 filed by Respondent 1 for specific performance of the agreement for sale dated 13-12-1988 and injunction or at least when the learned Single Judge of the Delhi High Court entertained IA No. 625 of 2001 filed by Respondent 1 and restrained Respondents 2 and 4 from transferring possession of the suit property to the appellants. However, in the application for impleadment filed by them, the appellants did not offer any tangible explanation as to why the application for impleadment was filed only on 4-2-2008 i.e. after 7 years of the passing of injunction order dated 22-1-2001 and, in our considered view, this constituted a valid ground for declining their prayer for impleadment as parties to Suit No. 425 of 1993.
>
> **44.** The ratio of the judgment in ***Kasturi* v. *Iyyamperumal*** [*Kasturi* v. *Iyyamperumal*, (2005) 6 SCC 733] on which heavy reliance has been placed by the learned Senior Counsel for the appellants, does not help his clients. In the present case, the agreements for sale and the sale deeds were executed by Respondent 2 in favour of the appellants in a clandestine manner and in violation of the injunction granted by the High Court. Therefore, it cannot be said that any valid title or interest has been acquired by the appellants in the suit property and the ratio of the judgment in ***Surjit Singh* v. *Harbans Singh*** [*Surjit Singh* v. *Harbans Singh*, (1995) 6 SCC 50] would squarely apply to the appellants' case because they are claiming right on the basis of transactions made in defiance of the restraint order passed by the High Court. The suppression of material facts by Bhagwati Developers and the appellants from the Calcutta High Court, which was persuaded to pass orders in their favour, takes the appellants out of the category of bona fide purchaser. Therefore, their presence is neither required to decide the controversy involved in the suit filed by Respondent 1 nor required to pass an effective decree."

23. Applying the aforesaid principle to the facts of the present case, the Appellant's claim cannot be examined merely by looking at the documents dated 06.11.2012 in isolation. The alleged transfer in his favour forms part of a chain of transactions originating from Late Sh. Sadhu Ram, who was himself the defendant against whom the restraint order had been passed. The Appellant claims through Sh. Abhishek Sharma, whose asserted interest is traced to the GPAs executed by Late Sh. Sadhu Ram and his son. Thus, the subsequent

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transactions cannot be viewed as independent of the restraint imposed upon the original defendant. If the transfer in favour of the Appellant was effected through a chain of dealings in respect of the very property which Late Sh. Sadhu Ram had been restrained from alienating or creating third-party interests in, such dealings cannot be relied upon to defeat the rights of the decree-holders or to undermine the protection afforded by the interim order. The Appellant, claiming through such transactions, cannot be placed in a position better than that of the persons through whom he claims.

24. It is, therefore, not merely the pendency of the Suit which assumes significance in the present case, but also the specific restraint imposed by the Court against creation of third-party interests in the suit property. The distinction between a transfer *pendente lite* and a transfer effected in breach of an express judicial restraint is material. While the former remains subject to the final adjudication under Section 52 of the TPA, the latter additionally attracts the consequences flowing from disobedience of the Court's order. The Division Bench of this Court in ***Sonu Bhati v. Archana Jain***[11], has also considered this distinction and the effect of alienation in violation of an express order of the Court. Consequently, the Appellant cannot seek to rely upon the alleged subsequent transaction as a ground to obstruct or dilute the enforcement of the decree passed in the original proceedings. The relevant portion of ***Sonu Bhati*** (supra) is reproduced hereinbelow:

> "12. There is no cavil that respondent no.2 had executed the sale deeds in violation of an express order passed by this court to maintain status quo as to the possession and title of the property in question. Thus, the key question to be addressed is whether sale of

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immovable property in violation of the orders passed by the court, is void.

13. In our view, the said issue is no longer res integra and is covered by the various decision rendered by the courts including the Apex Court.

14. In ***Surjit Singh & Ors. v. Harbans Singh & Ors. [(1995) 6 SCC 50]***, the Supreme Court had considered the question whether a Deed of Assignment is required to be treated as *non est* because it was in clear violation of the order passed by the trial court restraining the parties from alienating or transferring the property involved in the suit. The Supreme Court had concluded that the transaction, in violation of a restraint order, is required to be presumed to not exist at all. Thus, the Supreme Court had also set aside the order impleading the purchasers (who are similarly placed as the appellants in the present case) to the suit.

15. The question whether transfer of immovable property in contravention of an injunction order is legal or void fell for consideration of the Bombay High Court in ***Keshrimal Jivji Shah & Anr. v. Bank of Maharashtra & Ors. (2004 SCC OnLine Bom 368)***. It is material to note that in the said case, it was contended on behalf of the petitioners that right, title and interest in immovable property does not extinguish merely because the Court had restrained alienation of the said immovable property. It was contended that whilst the parties acting in violation of the orders passed by the court may be required to be inflicted with serious penalties but the transaction itself would not be rendered void. However, this contention was rejected by the Bombay High Court. In that case, the Recovery Officer had proceeded to direct auction of the property of the debtor. However, prior to that, leasehold rights in respect of the said property were transferred in violation of an injunction order. The Recovery Officer declined to permit the purchasers to intervene in the proceedings. The appeal preferred against the order of the Recovery Officer was also rejected. The Debt Recovery Appellate Tribunal took a view to the effect that transfer of leasehold rights in violation of an injunction order passed by the court was void. The relevant extract of the said decision setting out the relevant question and the submissions advanced on behalf of the petitioners are set out below:

> "3. The questions are : (i) Is transfer of an immovable property in contravention of a prohibitory or injunction order of a court illegal or void ?
>
> *** *** ***
>
> 12. Being aggrieved by this order, the petitioners have approached this court invoking its jurisdiction under article 226 of the Constitution of India. The courts below were of the view that the sub-lease in favour of the petitioners being in contravention of the order of injunction passed by this court on March 6, 1998, is void and confers no right, title and interest in favour of the

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petitioners herein. Besides this, the courts below have observed that the petitioners have failed to substantiate their pleas that they are bona fide purchasers for value without notice. This conclusion arrived at by the courts below is seriously challenged on the ground that it is vitiated by errors apparent on the face of record and is wholly perverse. It is contended that the Recovery Officer and the DRT had no jurisdiction to declare the transfer in favour of the petitioners as void.

13. Shri Naphade, learned senior counsel appearing for the petitioners contended before us that the courts below erred in holding that the transfer during the pendency of the restraint/prohibitory/injunction order is void. He contended that there is no provision either in the Civil Procedure Code or elsewhere which makes transfer of immovable property in violation of an injunction order/prohibitory order null and void. After inviting our attention to Order 39, rules 1, 2, 2(a) of the Civil Procedure Code and the Bombay Amendment, i.e., rule 11 it is contended by Shri Naphade that the law visits parties acting in violation of orders of court with serious penalties but does not render the transaction itself null and void or of no legal effect. Once the law does not make such provision, then it is not permissible for the courts below to hold that transfer in favour of the petitioners is void.

14. The next contention of Shri Naphade is that the right, title and interest in the immovable property does not come to an end merely because a restraint is placed by a court of law on its alienation or disposal. If this being the legal position, then there was no impediment in respondent No. 2 transferring the said property in favour of the petitioners. He contends that admittedly, the said property belongs to CIDCO and what is granted in favour of respondent No. 2 is a leasehold right. Such leasehold rights have been duly assigned by respondent No. 2 in favour of the petitioners with prior concurrence and transfer of CIDCO. That being the case, it cannot by any stretch of imagination be said that respondent No. 2 had no right in law to effect the transfer. That apart, contends Shri Naphade, pendency of proceedings either before this court or the DRT was not known to the petitioners herein. They are neither parties to these proceedings nor are they aware of the injunction order dated March 6, 1998. They are bona fide purchasers for value without notice. Therefore, the transaction in their favour could not have been nullified by the courts below in the manner done in the instant case.

*** *** ***

18. On the other hand, Shri Kulkarni, learned counsel appearing for respondent No. 1 submits that the courts

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below have concurrently held that the petitioners have purchased the said property from respondent No. 2 in violation of the order of injunction passed by this court on March 6, 1998. He submits that the said transaction was wholly illegal. A transaction which is entered into either to defeat the order of a court of law or to violate it, confers no right, title or interest in favour of the transferee. The legal effect, according to Shri Kulkarni is that the sub-lease is not a transfer in the eyes of law. Once this principle is accepted, then nothing further needs to be considered in this matter. He submits that if parties are allowed to claim an advantage from a transaction which is in violation of an order of a court of law, then drastic consequences will follow. Entire respect for rule of law and administration of justice is gone, if despite prohibitory orders, immovable properties are alienated or disposed of with impunity. Such an approach is contrary to public policy. He submits that courts below have held that the petitioners have registered a sub-lease in their favour by colluding with respondent No. 2 and this finding of fact cannot be disturbed by us in our jurisdiction under article 226 of the Constitution of India."

16. The Bombay High Court answered the question posed in the negative. The relevant extract of the said decision is set out below:

"23. To enable us to answer question No. 1, it is necessary to refer to the decision of the Supreme Court in the case of Surjit Singh v. Harbans Singh [1995] 6 SCC 50 to which our attention has been invited by Shri Kulkarni, learned counsel for respondent No. 1. In this decision, the Supreme Court has observed thus (page 52) :

"As said before, the assignment is by means of a registered deed. The assignment had taken place after the passing of the preliminary decree in which Pritam Singh has been allotted 1/3rd share. His right to property to that extent stood established. A decree relating to immovable property worth more than hundred rupees, if being assigned, was required to be registered. That has instantly been done. It is per se property, for it relates to the immovable property involved in the suit. It clearly and squarely fell within the ambit of the restraint order. In sum, it did not make any appreciable difference whether property per se had been alienated or a decree pertaining to that property. In defiance of the restraint order, the alienation/assignment was made. If we were to let it go as such, it would defeat the ends of justice and the prevalent public policy. When

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> the court intends a particular state of affairs to exist while it is in seisin of a lis, that state of affairs is not only required to be maintained, but it is presumed to exist till the court orders otherwise. The court, in these circumstances, has the duty, as also the right, to treat the alienation/assignment as having not taken place at all for its purposes. Once that is so, Pritam Singh and his assignees, respondents herein, cannot claim to be impleaded as parties on the basis of assignment. Therefore, the assignees-respondents could not have been impleaded by the trial court as parties to the suit, in disobedience of its orders. The principles of lis pendens are altogether on a different footing. We do not propose to examine their involvement presently. All what is emphasised is that the assignees in the present facts and circumstances had no cause to be impleaded as parties to the suit. On that basis, there was no cause for going into the question of interpretation of paragraphs 13 and 14 of the settlement deed. The path treaded by the courts below was, in our view, out of their bounds. Unhesitatingly, we upset all the three orders of the courts below and reject the application of the assignees for impleadment under Order 22, rule 10 of the Civil Procedure Code."

24. We cannot be unmindful and ignorant of the importance of this aspect, which has been repeatedly emphasised by the Supreme Court. We would be failing in our duty if we do not abide by the ratio laid down in the aforesaid decisions. That apart, in the case of Ramchandra Ganpat Shinde v. State of Maharashtra, AIR 1994 SC 1673 ; [1995] 82 Comp Cas 276, the Supreme Court in paras. 12 and 13 has observed as under (page 285) :

> "Mr. Justice Arthur T. Vanderbilt in his The Change of Law Reforms 1955 at pages 4 and 5, stated that: '. .. it is the courts and not in the Legislature that our citizens primarily feel the keen, the cutting edge of the law. If they have respect for the work of their courts, their respect for law will survive the short comings of every other branch of the Government ; but if they lost their respect for the work of the courts, their respect for the law and order will vanish with it to the great detriment of society.' Respect for law is one of the cardinal

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> principles for an effective operation of the Constitution, law and the popular Government. The faith of the people is the source and succour to invigorate justice intertwined with the efficacy of law. The principle of justice is ingrained in our conscience and though ours is a nascent democracy which has now taken deep roots in our ethos of adjudication—be it judicial, quasijudicial or administrative as hallmark, the faith of the people in the efficacy of judicial process would be disillusioned, if the parties are permitted to abuse its process and allowed to go scot free. It is but the primary duty and highest responsibility of the court to correct such orders at the earliest and restore the confidence of the litigant public, in the purity of fountain of justice ; remove stains on the efficacy of judicial adjudication and respect for rule of law, lest people would lose faith in the courts and take recourse to extra-constitutional remedies which is a deathknell to the rule of law."

25. In the case of Satyabrata Biswas v. Kalyan Kumar Kisku, AIR 1994 SC 1837, while outlining the importance of rule of law, administration of justice and the role of courts, the Supreme Court has observed (page 1843) :

> "Apart from the fact whether A. K. Ghosh had a legal authority to sub-lease or not it was not open to him to grant a sub-lease in violation of the order. It is no use contending as Mr. Chidambaram, learned counsel for the respondents does, that there was a bar to such a sub-lease under the terms of the status quo order. It has the effect of violating the preservation of status of the property. This will all the more be so when this was done without the leave of the court to disturb the state of things as they then stood. It would amount to violation of the order. The principle contained in the maxim : 'actus curiae neminem gravabit' has no application at all to the facts of this case when in violation of status quo order a sub-tenancy has been created. Equally, the contention that even a trespasser cannot be evicted without recourse to law is without merit, because the state of affairs in relation to property as on September 15, 1988, is what the court is concerned with. Such an order cannot be circumvented by parties with impunity and

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> expect the court to confer its blessings. It does not matter that to the contempt proceedings Somani Builders was not a party. It cannot gain an advantage in derogation of the rights of the parties, who were litigating originally. If the right of subtenancy is recognised, how is status quo as of September 15, 1988, maintained ? Hence, the grant of sub-lease is contrary to the order of status quo. Any act done on the teeth of the order of status quo is clearly illegal. All actions including the grant of sub-lease are clearly illegal."

26. In our view, therefore, if the facts in the present case are appreciated in the light of the decisions of the Supreme Court (supra), it is clear that during the pendency of the order of injunction issued by this court on March 6, 1998, respondent No. 2 has created a sub-lease in favour of the petitioners herein. It is of considerable significance that respondents Nos. 2 to 4 did not appear either to oppose the O.A. or during the proceedings, initiated by the petitioners herein. Their silence on the material aspect of violation of injunction order is eloquent enough. We cannot hold that the conclusion of the courts below to the effect that power to transfer the said property was subject to the injunction order issued by this court, is in any way vitiated by error of law or is in any way perverse. In the light of the decision of the Supreme Court, the transfer was clearly illegal, if not void.

27. We cannot accept Shri Naphade's contention that the observations of the Supreme Court in the case of Surjit Singh v. Harbans Singh [1995] 6 SCC 50 should be read as restricted to proceedings under Order 22, rule 10 of the Civil Procedure Code and the same cannot be extended to defiance of injunction order issued under Order 39, rule 1 of the Civil Procedure Code. Once the issue is placed on the pedestal of public policy and the very faith of litigants in rule of law and administration of justice, then it is not possible to make the distinction or bifurcation suggested by Shri Naphade. It would mean that consequences of nullifying such transaction not being provided by the statute, it would not lose its legal efficacy even if it is in utter disregard or in violation of or breach of a prohibitory order or order of injunction issued by a court of law. It would mean that parties can breach and violate court orders openly and with impunity and neither they nor the beneficiaries suffer any consequences. It is time that we recognise the principle that transfer of immovable property in violation of an order of injunction or prohibition issued by court of law, confers no right, title or

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interest in the transferee, as it is no transfer at all. The transferee cannot be allowed to reap advantage or benefit from such transfer merely because he is not a party to the proceedings in which the order of injunction or other prohibitory direction or restraint came to be issued. It is enough that the transferor is a party and the order was in force. These two conditions being satisfied, the transfer must not be upheld. If this course is not adopted then the tendency to flout orders of courts which is increasing day-by-day can never be curbed. The court exercises its powers on the foundation of respect and regard for its authority by the litigating public. People would lose faith and respect completely if the court does not curb and prevent this tendency. The note of caution of the Supreme Court must be consistently at the back of everybody's mind. Therefore, Shri Naphade is not right in the distinction which he is trying to make.

28. Equally untenable is the contention of Shri Naphade that an order of injunction will bind only the transferor in this case. It is his submission that the said order does not bind the world at large. He submits that ownership rights are neither taken away nor restricted in any manner by orders of injunction or other preventive directions. He submits that the transfer in favour of his client was thus neither invalid nor illegal, leave alone null and void. For the reasons already recorded above, we find it difficult to accept this contention of Shri Naphade. The decision of the Supreme Court in the case of Krishan Kumar Narula v. State of Jammu and Kashmir, AIR 1967 SC 1368 has no application. There, the Supreme Court was distinguishing an order of stay from an order of injunction. The distinction was made in the context of consequences upon breach and violation of such orders. It is in that context that the Supreme Court observed that the order of stay is qua a court, whereas an order of injunction reaches and touches a party to the lis. These observations cannot be applied when it is noticed that during the pendency of an order of injunction, immovable property, which is the subject matter of restraint or injunction, is transferred. When this course is admittedly adopted, then there is no choice but to declare the transaction illegal. There is no question of then deciding the nature and effect of the order of injunction.

29. Mr. Naphade's submissions overlook the effect of an order of injunction. An order issuing interlocutory injunction is issued with a view to preserve and protect status quo during the pendency of the suit or litigation. The true effect of such an order is, therefore, preservation of status quo prevailing as on the date of issuance of the

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order. Any alteration in the status quo as prevailing and directed to be maintained by the court of law is not permissible except with leave or sanction of the court. It is well settled that if courts are not to honour and implement their own orders and encourage party litigants, be they public authorities, to invent methods of their own to short circuit and give a go by to the obligations and liabilities incurred by them under orders of courts, the rule of law will become a casualty in the process—a consequence to be zealously averted by all and at any rate by the highest courts in the State. (See Salkia Businessmen's Association v. Howrah Municipal Corporation, AIR 2001 SC 2790, at page 2792).

30. The courts below have observed that there is no substance in the contention of the petitioners that they had no knowledge of injunction. The courts below have observed that the petitioners cannot be allowed to go scot free by trying to plead a case that they were bona fide purchasers for value without notice. According to the courts below, the petitioners have not taken any steps to verify whether the title of transferor was clear and valid. They have not pleaded anywhere as to what steps were taken by them, as a prudent transferee, to ascertain the facts about pendency of proceedings or encumbrance on the said property. Admittedly, the land belongs to CIDCO and it is the subject matter of lease in favour of respondent No. 2. On the date when respondent No. 2 entered into a lease deed with CIDCO and on the date when the lease deed was registered by it, the injunction order was in force. Yet, respondent No. 2 obtained permission from CIDCO to transfer the right, title and interest in favour of petitioner No. 2. Admittedly, respondent No. 2 was aware of the pendency of proceedings as well as the injunction order. Therefore, it cannot be said that the conclusion of the courts below is based on no material or is perverse. A prohibitory order has the effect of placing a restriction on powers of disposition and respondent No. 2 could not have legally created a sublease in favour of the petitioners. That apart, the learned chairperson of the DRAT has observed that the petitioners produced no evidence in support of their claim or objection to show that on the date when the property was attached, they had some interest in or they were possessed of the property in question. They did not tender any evidence to support the claim or objection. Therefore, it is clear that the transfer had no legal effect. In view of our conclusion that the transfer was illegal, strictly speaking it is not necessary to go into other aspects and deal with the contentions of Shri Naphade. In the light of the aforesaid discussion, the answer to question No. 1 is

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that the transfer is illegal and cannot be recognised. Consequently, the transferee gets no valid title nor does he acquire any right or interest in the immovable property.

31. Mr. Naphade's reliance upon the decision of the Lahore High Court, subsequently followed, according to him, is misplaced. Considering the view of the Supreme Court in matters of this nature, it will not be possible for us to accept the pleas raised by Shri Naphade. The court cannot allow a party to get away with violation of its prohibitory orders and uphold the transactions contrary to and in violation of its directions on the specious plea that the only way in which the court can regulate such acts is to visit the guilty party with penalties. It is time that the courts reach the transaction itself and put an end to purported rights created thereby. Failing which, it will become possible for parties to retain the fruits or benefits of such acts by suffering penalties. It is well-settled that no person can take advantage of his own wrong. In the instant case, respondent No. 2 in violation of the order of this court, transferred the property by creating a sublease in favour of the petitioner. The approach suggested by Shri Naphade, if accepted, will allow respondent No. 2 to retain the benefits under the sub-lease. It will also allow the petitioners to get away easily when the courts below have found that they have not acted bona fide."

[emphasis added]

17. In ***Krishna Kumar Khemka v. Grindlays Bank P.L:C. and Ors. [(1990) 3 SCC 669]***, the Supreme Court had held that the tenant, pursuant to the tenancy created in its favour, in violation of the orders of the Court, could not claim any right in the property. The relevant observations made by the Court in the said decision is set out below:

"16. Similarly as observed in Arumugha Gounder case [AIR 1975 Mad 231 : (1975) 1 MLJ 385] any such act of the receiver done on behalf of the court pendent lite and anyone who gets possession through such an act could only do so subject to the directions and orders of the court. If we apply the above principles to the case of Tatas the tenancy created in their favour by the receiver is in violation and contrary to the injunction order and such an act is subject to the directions and orders of the court appointing the receiver. Therefore the tenancy created in favour of the Tatas was in breach of the order of the court and consequently the Tatas cannot claim any protection under the provisions of the Act and they are liable to be evicted. In the counter-affidavit filed on their behalf, it is no doubt stated that they were inducted into possession and even sending the cheques. The case of the appellant is that cheques were never encashed. In any event as

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observed above, the new tenancy created in their favour contrary to the orders of the court does not create a right and is liable to be cancelled. Consequently the provisions of the Act cannot be invoked by them. The appeal is therefore dismissed as against respondent 1 Grindlays and allowed as against respondent 2 Tatas. In the circumstances of the case, parties are directed to bear their own costs."

18. In ***Smt. Savitri Devi v. Civil Judge (Senior Division), Gorakhpur & Ors. (AIR 2003 All 321)***, the Allahabad High Court had taken a similar view and held that sale deeds executed in disobedience of the interim orders passed by the court were a nullity.

19. The issue involved is squarely covered by the authoritative decision of the Supreme Court in ***Balwantbhai Somabhai Bhandari v. Hiralal Somabhai Contractor (Deceased) rep. By Lrs. and Others*** (2023 SCC OnLine SC 1139). In this case, the Supreme Court had upheld the decision of the High Court in cancelling the sale deeds and restoring the status quo ante as prevailing on the date of the order passed by the High Court. The relevant extract of the said decision is set out below:

"79. We now proceed to answer the third question formulated by us as regards the power of the contempt court to declare any contemptuous transaction non est or void.

80. A Three-Judge Bench of this Court in the case of State Bank of India v. Dr. Vijay Mallya, 2022 SCC OnLine SC 826, in clear terms said that apart from punishing the contemnor for his contumacious conduct, the majesty of law may demand that appropriate directions be issued by the Court so that any advantage secured as a result of such contumacious conduct is completely nullified. The approach may require the Court to issue directions either for reversal of the transactions in question by declaring said transactions to be void or passing appropriate directions to the concerned authorities to see that the contumacious conduct on the part of the contemnor does not continue to enure to the advantage of the contemnor or anyone claiming under him.

81. It would be pertinent, in this context, to refer to the decision of the Chancery Division in Clarke v. Chadburn, [1985] 1 All ER 211, wherein it was held that an act done in wilful disobedience of an injunction or court order is not only a contempt of court, but also an illegal and invalid act which could not, therefore, effect any change in the rights and liabilities of others. Similar view was expressed by this Court in Satyabrata Biswas v. Kalyan Kumar Kisku, (1994) 2 SCC 266, wherein the contempt jurisdiction was invoked by the respondents against the

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appellants, and during the contempt proceedings, it transpired that a sub tenancy was created while the status quo order was in operation. This Court held that creation of sub-tenancy was in violation of the status quo order and parties were relegated to the position as existed on the date of the status quo order. This Court, inter alia, observed thus:

> ""23. … Such an order cannot be circumvented by parties with impunity and expect the court to confer its blessings. It does not matter that to contempt proceedings Somani Builders was not a party. It cannot gain advantage in derogation of the rights of the parties, who were litigating originally. If the right of sub-tenancy is recognised, how is status quo as of 15.9.1988 maintained? Hence, the grant of sublease is contrary to the order of status quo. Any act done in the teeth of the order of status quo is clearly illegal. All actions including the grant of sub-lease are clearly illegal.""
>
> (Emphasis supplied)

** ** ** ** **

85. This Court in Delhi Development Authority v. Skipper Construction Co. (P) Ltd., (1996) 4 SCC 622, held that the legal consequences of what has been done in breach of or in violation of the order of stay or injunction should be undone and the parties could be put back to the same position as they stood immediately prior to such order of stay or injunction to not let the defaulting party enjoy any undue advantage. This Court while relying upon cases decided by various High Courts held as under:

> "The contemner should not be allowed to enjoy or retain the fruits of his contempt
>
> Xxx xxx xxx
>
> 18. The above principle has been applied even in the case of violation of orders of injunction issued by civil courts. In Clarke v. Chadburn [[1985] 1 All ER 211] Sir Robert Megarry V-C observed:
>
> "I need not cite authority for the proposition that it is of high importance that orders of the court should be obeyed. Wilful disobedience to an order of the court is punishable as a contempt of court, and I feel no doubt that such disobedience may properly be described as being illegal. If by such disobedience the persons enjoined claim that they have validly effected some charge in the rights and

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liabilities of others, I cannot see why it should be said that although they are liable to penalties for contempt of court for doing what they did, nevertheless those acts were validly done. Of course, if an act is done, it is not undone merely by pointing out that it was done in breach of the law. If a meeting is held in breach of an injunction, it cannot be said that the meeting has not been held. But the legal consequences of what has been done in breach of the law may plainly be very much affected by the illegality. It seems to me on principle that those who defy a prohibition ought not to be able to claim that the fruits of their defiance are good, and not tainted by the illegality that produced them."

19. To the same effect are the decisions of the Madras and Calcutta High Courts in Century Flour Mills Ltd. v. S. Suppiah [AIR 1975 Mad 270 : (1975) 2 Mad LJ 54] and Sujit Pal v. Prabir Kumar Sun [AIR 1986 Cal 220 : (1986) 90 CWN 342]. In Century Flour Mills Ltd. [AIR 1975 Mad 270 : (1975) 2 Mad LJ 54] it was held by a Full Bench of the Madras High Court that where an act is done in violation of an order of stay or injunction, it is the duty of the court, as a policy, to set the wrong right and not allow the perpetuation of the wrongdoing. The inherent power of the court, it was held, is not only available in such a case, but it is bound to exercise it to undo the wrong in the interest of justice. That was a case where a meeting was held contrary to an order of injunction. The Court refused to recognise that the holding of the meeting is a legal one. It put back the parties in the same position as they stood immediately prior to the service of the interim order.

20. In Sujit Pal [AIR 1986 Cal 220 : (1986) 90 CWN 342] a Division Bench of the Calcutta High Court has taken the same view. There, the defendant forcibly dispossessed the plaintiff in violation of the order of injunction and took possession of the property. The Court directed the restoration of possession to the plaintiff with the aid of police. The Court observed that no technicality can prevent the court from doing justice in exercise of its inherent powers. It held that the object of Rule

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> 2-A of Order 39 will be fulfilled only where such mandatory direction is given for restoration of possession to the aggrieved party. This was necessary, it observed, to prevent the abuse of process of law.
>
> 21. There is no doubt that this salutary rule has to be applied and given effect to by this Court, if necessary, by overruling any procedural or other technical objections. Article 129 is a constitutional power and when exercised in tandem with Article 142, all such objections should give way. The court must ensure full justice between the parties before it."
>
> (Emphasis supplied)

86. This Court in *Vidur Impex and Traders Private Limited v. Tosh Apartments Private Limited*, (2012) 8 SCC 384, while deciding on a similar factual scenario held that the sale transactions conducted in teeth of the injunction passed by the Delhi High Court did not have any legal basis. This Court held as under:

> "42. … At the cost of repetition, we consider it necessary to mention that Respondent 1 had filed suit for specific performance of agreement dated 13-9-1988 executed by Respondent 2. The appellants and Bhagwati Developers are total strangers to that agreement. They came into the picture only when Respondent 2 entered into a clandestine transaction with the appellants for sale of the suit property and executed the agreements for sale, which were followed by registered sale deeds and the appellants executed agreement for sale in favour of Bhagwati Developers. These transactions were in clear violation of the order of injunction passed by the Delhi High Court which had restrained Respondent 2 from alienating the suit property or creating third-party interest. To put it differently, the agreements for sale and the sale deeds executed by Respondent 2 in favour of the appellants did not have any legal sanctity. The status of the agreement for sale executed by the appellants in favour of Bhagwati Developers was no different. These transactions did not confer any right upon the appellants or Bhagwati Developers. Therefore, their presence is not at all necessary for adjudication of the question whether Respondents 1 and 2 had entered into a

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> binding agreement and whether Respondent 1 is entitled to a decree of specific performance of the said agreement.…"
>
> (Emphasis supplied)
>
> 88. Thus, although Section 52 of the Act, 1882 does not render a transfer pendente lite void yet the court while exercising contempt jurisdiction may be justified to pass directions either for reversal of the transactions in question by declaring the said transactions to be void or proceed to pass appropriate directions to the concerned authorities to ensure that the contumacious conduct on the part of the contemnor does not continue to enure to the advantage of the contemnor or anyone claiming under him.
>
> 89. The High Court declared all the sale deeds executed by the contemnors in favour of the purchasers as non est. The High Court ordered that the sale deeds stand cancelled and set aside. The contemnors were directed to restore the position which was prevailing at the time of the order dated 14.10.2015 passed by the High Court. In our opinion, the High Court was fully justified in declaring the sale deeds as non est or void."

20. The observations made by the Supreme Court in ***Thomson Press (India) Ltd. v. Nanak Builders & Investors (P) Ltd. [(2013) 5 SCC 397]*** would be of little assistance to the appellants in the present case. First of all, the said decision was rendered in the context of the pendente lite transfers. The principal question that fell for consideration of the Supreme Court was validity of transfers during the pendency of litigation and not transfers that were executed in teeth of the orders passed by the court. In ***Balwantbhai Somabhai Bhandari v. Hiralal Somabhai Contractor (Deceased) rep. By Lrs. and Others (2023 SCC OnLine SC 1139)***, the Supreme Court had also noted the decision in the case of ***Thomson Press (India) Ltd. v. Nanak Builders & Investors (P) Ltd. [(2013) 5 SCC 397]*** but had found that the High Court was justified in declaring the sale deeds that were executed in violation of its orders as "non est and void".

21. The substratal principle which supports the view that such transactions are required to treated as non est and void is that the court must presume the transactions that have been consummated in violation of its order as non-existent. This is the principle on the basis of which the Supreme Court had in ***Surjit Singh & Ors. v. Harbans Singh & Ors. [(1995) 6 SCC 50]*** rejected the plea of the assignees of a property assigned in violation of the orders to be impleaded in the proceedings. The Supreme Court had declined to recognize the said transaction as it was in violation of the orders of the court. It would be debilitating to the judicial proceedings, and the rule of law, if any sanctity is accorded to any transaction, which was interdicted by the court. The efficacy of orders passed by the courts would be seriously diluted if any transfer of property

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> or action in defiance of the orders are recognized to accrue any rights in favour of the transferees.
> 22. In view of the above, we find no infirmity with the decision of the learned Single Judge in declaring the sale deeds, in question, as void. Once it is accepted that the sale deeds in question have been executed in violation of the orders passed by the court directing status quo to be maintained regarding title and possession of the suit property, the appellants also would have no locus to challenge any orders, which restore the title and possession of the property as obtaining on the date when the interim orders were passed. The sale deeds having been executed in violation of the orders of the court must be treated as nonexistent. Thus, we find no ground to interfere with the impugned order declaring the same to be void."

25. The next aspect which warrants examination is the legal efficacy of the documents relied upon by the Appellant to substantiate his claim of ownership. The Appellant admittedly relies upon an Agreement to Sell, GPA and Will, all dated 06.11.2012, and not upon any registered Sale Deed executed in his favour. In this regard, Section 54 of the TPA provides that a sale of tangible immovable property of the prescribed value can be made only by a registered instrument. The provision further clarifies that a contract for sale does not, of itself, create any interest in or charge on such property.

26. The legal position in this regard stands authoritatively settled by the Hon'ble Supreme Court in ***Suraj Lamp & Industries Pvt. Ltd. v. State of Haryana & Anr.***[12], wherein it has been held that transactions comprising an Agreement to Sell, General Power of Attorney and Will do not constitute a valid mode of transfer of ownership of immovable property. Such documents, individually or collectively, do not convey title or create any interest in the property in the nature of ownership, in the absence of a duly stamped and registered conveyance deed. The Court, however, clarified that such documents may have legal significance for limited purposes, including enforcement of a

[12] (2012) 1 SCC 656

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contractual right or protection of possession in accordance with Section 53A of the Transfer of Property Act. The aforesaid position has also been reiterated by the Hon'ble Supreme Court in ***Ramesh Chand (D) through LRs v. Suresh Chand & Anr.***[13]. The relevant portion of ***Suraj Lamp & Industries Pvt. Ltd.*** (supra) is reproduced hereinbelow:

> "***Scope of an agreement of sale***
> **16.** Section 54 of the TP Act makes it clear that a contract of sale, that is, an agreement of sale does not, of itself, create any interest in or charge on such property. This Court in ***Narandas Karsondas* v. *S.A. Kamtam*** [(1977) 3 SCC 247] observed: (SCC pp. 254-55, paras 32-33 & 37)
>
> > "*32.* A contract of sale does not of itself create any interest in, or charge on, the property. This is expressly declared in Section 54 of the Transfer of Property Act. (See ***Ram Baran Prasad* v. *Ram Mohit Hazra*** [AIR 1967 SC 744 : (1967) 1 SCR 293] .) The fiduciary character of the personal obligation created by a contract for sale is recognised in Section 3 of the Specific Relief Act, 1963, and in Section 91 of the Trusts Act. The personal obligation created by a contract of sale is described in Section 40 of the Transfer of Property Act as an obligation arising out of contract and annexed to the ownership of property, but not amounting to an interest or easement therein.
> >
> > *33.* In India, the word 'transfer' is defined with reference to the word 'convey'. … The word 'conveys' in Section 5 of the Transfer of Property Act is used in the wider sense of conveying ownership.
> >
> > ***
> >
> > *37.* … that only on execution of conveyance, ownership passes from one party to another…."
>
> **17.** In ***Rambhau Namdeo Gajre* v. *Narayan Bapuji Dhotra*** [(2004) 8 SCC 614] this Court held: (SCC p. 619, para 10)
>
> > "*10.* Protection provided under Section 53-A of the Act to the proposed transferee is a shield only against the transferor. It disentitles the transferor from disturbing the possession of the proposed transferee who is put in possession in pursuance to such an agreement. It has nothing to do with the ownership of the proposed transferor who remains full owner of the property till it is

[13] 2025 SCC OnLine SC 1879

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> legally conveyed by executing a registered sale deed in favour of the transferee. Such a right to protect possession against the proposed vendor cannot be pressed into service against a third party."

18. It is thus clear that a transfer of immovable property by way of sale can only be by a deed of conveyance (sale deed). In the absence of a deed of conveyance (duly stamped and registered as required by law), no right, title or interest in an immovable property can be transferred.

19. Any contract of sale (agreement to sell) which is not a registered deed of conveyance (deed of sale) would fall short of the requirements of Sections 54 and 55 of the TP Act and will not confer any title nor transfer any interest in an immovable property (except to the limited right granted under Section 53-A of the TP Act). According to the TP Act, an agreement of sale, whether with possession or without possession, is not a conveyance. Section 54 of the TP Act enacts that sale of immovable property can be made only by a registered instrument and an agreement of sale does not create any interest or charge on its subject-matter.

Scope of power of attorney

20. A power of attorney is not an instrument of transfer in regard to any right, title or interest in an immovable property. The power of attorney is creation of an agency whereby the grantor authorises the grantee to do the acts specified therein, on behalf of grantor, which when executed will be binding on the grantor as if done by him (see Section 1-A and Section 2 of the Powers of Attorney Act, 1882). It is revocable or terminable at any time unless it is made irrevocable in a manner known to law. Even an irrevocable attorney does not have the effect of transferring title to the grantee.

21. In ***State of Rajasthan* v. *Basant Nahata*** [(2005) 12 SCC 77] this Court held: (SCC pp. 90 & 101, paras 13 & 52)

> "*13.* A grant of power of attorney is essentially governed by Chapter X of the Contract Act. By reason of a deed of power of attorney, an agent is formally appointed to act for the principal in one transaction or a series of transactions or to manage the affairs of the principal generally conferring necessary authority upon another person. A deed of power of attorney is executed by the principal in favour of the agent. The agent derives a right to use his name and all acts, deeds and things done by him and subject to the limitations contained in the said deed, the same shall be read as if done by the donor. A power of attorney is, as is well known, a document of convenience.
>
> ***
>
> *52.* Execution of a power of attorney in terms of the provisions of the Contract Act as also the Powers of Attorney Act is valid. A power of attorney, we have noticed hereinbefore, is executed by the donor so as to enable the donee to act on his behalf. Except in cases

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> where power of attorney is coupled with interest, it is revocable. The donee in exercise of his power under such power of attorney only acts in place of the donor subject of course to the powers granted to him by reason thereof. He cannot use the power of attorney for his own benefit. He acts in a fiduciary capacity. Any act of infidelity or breach of trust is a matter between the donor and the donee."

An attorney-holder may however execute a deed of conveyance in exercise of the power granted under the power of attorney and convey title on behalf of the grantor.

Scope of will

22. A will is the testament of the testator. It is a posthumous disposition of the estate of the testator directing distribution of his estate upon his death. It is not a transfer inter vivos. The two essential characteristics of a will are that it is intended to come into effect only after the death of the testator and is revocable at any time during the lifetime of the testator. It is said that so long as the testator is alive, a will is not worth the paper on which it is written, as the testator can at any time revoke it. If the testator, who is not married, marries after making the will, by operation of law, the will stands revoked. (See Sections 69 and 70 of the Succession Act, 1925.) Registration of a will does not make it any more effective.

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

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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.

25. It has been submitted that making declaration that GPA sales and SA/GPA/will transfers are not legally valid modes of transfer is likely to create hardship to a large number of persons who have entered into such transactions and they should be given sufficient time to regularise the transactions by obtaining deeds of conveyance. It is also submitted that this decision should be made applicable prospectively to avoid hardship.

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

27. We make it clear that our observations are not intended to in any way affect the validity of sale agreements and powers of attorney executed in genuine transactions. For example, a person may give a power of attorney to his spouse, son, daughter, brother, sister or a relative to manage his affairs or to execute a deed of conveyance. A person may enter into a development agreement with a land developer or builder for developing the land either by forming plots or by constructing apartment buildings and in that behalf execute an agreement of sale and grant a power of attorney empowering the developer to execute agreements of sale or conveyances in regard to individual plots of land or undivided shares in the land relating to apartments in favour of prospective purchasers. In several States, the execution of such development agreements and powers of attorney are already regulated by law and subjected to specific stamp duty. Our observations regarding "SA/GPA/will transactions" are not intended to apply to such bona fide/genuine transactions."

27. Applying the aforesaid principles to the present case, the documents dated 06.11.2012, relied upon by the Appellant, cannot be

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treated as a conveyance of ownership in his favour. The execution of a GPA does not transfer ownership, an Agreement to Sell does not by itself create any proprietary interest in the property, and a Will operates only in accordance with the law governing testamentary succession. The Appellant has not placed reliance upon any registered conveyance deed executed in his favour. Consequently, the assertion that the residential property stood transferred in his name on 06.11.2012 cannot be accepted as a legally sustainable claim of ownership merely on the basis of the aforesaid documents.

28. It is also necessary to distinguish between a claim of ownership and a claim founded upon possessory rights. Even assuming that the Appellant was put in possession of the residential property pursuant to the alleged transaction, such possession, by itself, would not confer ownership upon him. Any protection sought under Section 53A of the TPA would have to satisfy the statutory requirements of that provision, including the requirement of a duly registered contract in terms of Section 17(1A) of the Registration Act, 1908, where the contract is executed after the commencement of the 2001 Amendment. The Appellant's Agreement to Sell dated 06.11.2012 is admittedly unregistered. In view of the statutory mandate, the said document cannot be relied upon for claiming the protection of part performance under Section 53A of the TPA. The Appellant's alleged possession, therefore, cannot be equated with acquisition of title so as to defeat the rights flowing from the Decree dated 11.12.2024.

29. Having examined the nature of the documents relied upon by the Appellant, it is now necessary to consider the statutory framework governing adjudication of claims raised in execution proceedings. Order XXI Rule 101 CPC provides for determination of all questions,

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including questions relating to right, title or interest in the property, arising between the parties to proceedings under Rules 97 or 99, which are relevant to adjudication of such applications. The object of the provision is to ensure that disputes concerning resistance to execution or dispossession are adjudicated by the Executing Court itself, rather than being relegated to independent proceedings.

30. However, the provision cannot be construed as conferring an unrestricted jurisdiction upon the Executing Court to create or recognise substantive rights which do not flow from the decree under execution. The adjudicatory jurisdiction under Order XXI Rule 101 CPC is confined to questions arising in the context of the proceedings contemplated under Rules 97 and 99 and must be exercised within the framework of the decree sought to be enforced. The provision cannot be invoked as an independent mechanism for seeking a monetary relief which has neither been decreed nor made payable to the applicant under the decree.

31. In this context, the judgment of the Hon'ble Supreme Court in ***Tahir V. Isani v. Madan Waman Chodankar***[14], assumes relevance. The Hon'ble Supreme Court, while examining the interplay between Order XXI Rules 97, 101 and 102 CPC and Section 52 of the Transfer of Property Act, clarified that the bar under Rule 102 is attracted where there exists a decree for possession of immovable property and the resistance or obstruction is offered by a transferee of the judgment-debtor during the pendency of the suit. The Court also emphasised that the statutory conditions for invoking Rule 102 must be satisfied and cannot be presumed merely because a transfer has

[14] 2025 SCC OnLine SC 1962

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taken place during the pendency of litigation. The relevant portion of ***Tahir V. Isani*** (supra) is reproduced hereinbelow:

> "**9.** The whole scheme of Rule 102 of Order XXI intends to preserve the idea of achieving finality of the judicial decisions. The provision imbibes the principle of "*interest reipublicae ut sit finis litium*" i.e., it is in the interest of the State that there should be an end to litigation. In a suit pending between a plaintiff and a defendant as to the right to a particular estate, the decision of the court in that case shall be binding not only on the litigating parties, but also on those who derive title under them by alienations (transfer) made while the suit was pending, whether such alienees, i.e. transferees, had or had not notice of the pending proceedings. In this regard, we are benefitted by the decision of this Court in ***Usha Sinha* v. *Dina Ram***[15], where this Court had the occasion to deal with the scheme of Rule 102 of Order XXI, and held that:—
>
> > **"17.** Rule 102 clarifies that Rules 98 and 100 of Order 21 of the Code do not apply to transferee pendente lite. That Rule is relevant and material and may be quoted in extenso:
> > "102. *Rules not applicable to transferee pendente lite*.— Nothing in Rules 98 and 100 shall apply to resistance or obstruction in execution of a decree for the possession of immovable property by a person to whom the judgment-debtor has transferred the property after the institution of the suit in which the decree was passed or to the dispossession of any such person."
> > **Bare reading of the Rule makes it clear that it is based on justice, equity and good conscience. A transferee from a judgment-debtor is presumed to be aware of the proceedings before a court of law. He should be careful before he purchases the property which is the subject-matter of litigation**. It recognises the doctrine of *lis pendens* recognised by Section 52 of the Transfer of Property Act, 1882. Rule 102 of Order 21 of the Code thus takes into account the ground reality and refuses to extend helping hand to purchasers of property in respect of which litigation is pending. **If unfair, inequitable or undeserved protection is afforded to a transferee pendente lite, a decree-holder will never be able to realise the fruits of his decree. Every time the decree-holder seeks a direction from a court to execute the decree, the judgment-debtor or his transferee will transfer the property and the new transferee will offer**

[15] (2008) 7 SCC 144

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> **resistance or cause obstruction. To avoid such a situation, the Rule has been enacted.”**
>
> **(emphasis supplied)**

Therefore, Rule 102 of Order XXI intends to protect the interests of the decree-holder against the attempts of unscrupulous judgment-debtors and their subsequent transferees who indulge in activities and leave no stone unturned to deprive the decree-holders from reaping the benefits of the decree granted in their favour. The Rule being equitable in nature, therefore, estops further creation of rights as it explicitly states that nothing in Rules 98 and 100 shall apply to the resistance or obstruction being made by the transferee *pendente lite* of judgment-debtor.

11. While it is important to protect the interests of decree-holders, who hold an enforceable decree in their favour, it cannot be gainsaid that such interests cannot be blanketly protected. Rule 102 of Order XXI expressly lays down the ingredients as to when it can be applied. For a case to fall under Rule 102, it is condition precedent that there exists a decree for the possession of immovable property. Secondly, there must be a resistance or an obstruction in the execution of the said decree. Thirdly, such obstruction or resistance must be made by a person to whom the judgment-debtor has transferred the property. Fourthly, such transfer must have occurred after the institution of the original suit, i.e. the one in which the decree was passed. If the aforesaid ingredients are made out, Rule 102 prohibits the protection of Rules 98 and 101 to such errant transferee of judgment-debtor.

12. In ***Usha Sinha*** (supra), the Court also had the occasion to deal with the mischief of such transferees who engage in conveyance *pendente lite*. The Court quoted with approval the *locus classicus* from English law on the doctrine of *lis pendens* ***Bellamy* v. *Sabine***, [(1857) 1 De G & J 566], wherein the English Court recognised that the intent behind such provision is to stop the vicious cycle of introducing subsequent new buyers (alienees) while a suit is already pending. If such principle is not applied, the Court held that there would be no certainty that the litigation would ever come to an end. This Court noted with disapproval the mischief being created by such transferees and their vendors, being the judgment-debtor, who transfer the immovable property at any time after the institution of the suit and held as follows:—

> **“18.** Before one and a half century, in ***Bellamy* v. *Sabine*** [(1857) 1 De G & J 566 : 44 ER 842], Lord Cranworth, L.C. proclaimed that **where a litigation is pending between a plaintiff and a defendant as to the right to a particular estate, the necessities of mankind require that the decision of the court in the suit shall be binding not only on the litigating parties, but also on those who derive title under them by alienations made pending the suit, whether such alienees had or had not notice of the pending proceedings. If this were not so,**

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> **there could be no certainty that the litigation would ever come to an end**.
>
> …
>
> 23. It is thus settled law that a purchaser of suit property during the pendency of litigation has no right to resist or obstruct execution of decree passed by a competent court. The doctrine of "*lis pendens*" prohibits a party from dealing with the property which is the subject-matter of suit. "*Lis pendens*" itself is treated as constructive notice to a purchaser that he is bound by a decree to be entered in the pending suit. **Rule 102, therefore, clarifies that there should not be resistance or obstruction by a transferee *pendente lite*. It declares that if the resistance is caused or obstruction is offered by a transferee *pendente lite* of the judgment-debtor, he cannot seek benefit of Rules 98 or 100 of Order 21**.
>
> …
>
> **26. For invoking Rule 102, it is enough for the decree-holder to show that the person resisting the possession or offering obstruction is claiming his title to the property after the institution of the suit in which decree was passed and sought to be executed against the judgment-debtor**. If the said condition is fulfilled, the case falls within the mischief of Rule 102 and such applicant cannot place reliance either on Rule 98 or Rule 100 of Order 21."

(emphasis supplied)

Therefore, it is absolutely clear, that the transferee of a judgment-debtor who traces his title to the immovable property, that is the subject matter of a pending suit, is not entitled to seek the remedy available under Rules 97 to 102 of Order XXI. At the cost of repetition, we state that the whole scheme of Rule 102 of Order XXI read with Section 52, Transfer of Property Act, 1882 is to protect the interest of a decree-holder who has successfully attained a decree of possession of an immovable property.

13. However, Rule 102 of Order XXI applies only to a person to whom the judgment-debtor has transferred the immovable property which was subject matter of that suit *pendente lite*. If the person who is resisting or obstructing the execution of the decree for possession of such property, is not the transferee of judgment-debtor, i.e. he does not trace his title from judgment-debtor, bar of Rule 102 does not apply to him. That is to say that if the person who is resisting or obstructing the decree for possession has received the property from person other than the judgment-debtor, such person is competent to gain the benefit of Rules 97 to 101 of Order XXI. In fact, he is entitled to such benefit even if he had been transferred the immovable property *pendente lite*, i.e. during the pendency of the suit, in which the decree was passed."

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32. In the present case, the Decree dated 11.12.2024 is essentially a decree for specific performance directing execution of the sale deed in favour of the original plaintiffs. It does not contain an independent decree for delivery of possession of the residential property. Therefore, the applicability of Order XXI Rule 102 CPC cannot be presumed in the present proceedings merely on the ground that the Appellant claims through a subsequent transaction. Nevertheless, the absence of a decree for possession does not, in any manner, dilute the applicability of Section 52 of the TPA or confer upon the Appellant any ownership rights which were never acquired through a legally recognised conveyance.

33. The distinction is material. While the Appellant's claim to ownership must be tested against the legal effect of the documents relied upon by him and the doctrine of *lis pendens*, his application under Order XXI Rule 101 CPC cannot be treated as a substantive proceeding for recovery of consideration allegedly paid by him to his transferor. The latter claim, if otherwise maintainable, would have to be pursued in accordance with law and in the manner expressly contemplated by the Judgment and Decree dated 11.12.2024.

34. This brings the Court to the second limb of the Appellant's challenge, namely, his claim to receive a sum of Rs.53,21,400/- as proportionate sale consideration in respect of the residential property. In order to appreciate this contention, it would be necessary to examine the relevant findings recorded by the learned Trial Court in the Judgment and Decree dated 11.12.2024. The relevant findings recorded by the learned Trial Court in the aforesaid Decree, having a bearing on the aforesaid issue, are reproduced hereinbelow:

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> "21. Issue no. 6 relates to relief to which the plaintiff is entitled. It is clear that agreement to sell entered into between plaintiffs and defendant Sadhu Ram is a valid agreement in respect of the properties mentioned therein. Upon payment of balance consideration, the plaintiffs will have right to get a proper sale deed executed in respect of those properties. The balance sale consideration has been accepted as Rs. 41,97,500/- plus Rs. 10,35,000/-. The suit has remained pending since 2006 till date and it cannot be said that only the defendant is at fault for such delay. Sometimes plaintiff was at fault and sometime the system has been at fault. However, in this time period there has been depreciation of money value and also appreciation of property value. A balanced approach is required. Therefore, 20% amount of total balance sale consideration is also allowed. All the amount to be paid by the plaintiff to the Sadhu Ram, through LRs. Upon payment of entire sale consideration within a period of three months, the plaintiff shall be entitled to obtain a registered sale deed. At the same time however, it seems that property has purportedly been sold to different persons but they have not contested the suit which itself shows that they are not bonafide purchasers. The Hon'ble Supreme Court in *Maharaj Singh Vs. Karan Singh* dated 09.07.2024 has clarified that in such type of situations, a direction should be issued to subsequent purchasers to join in the execution of sale deed. As such, the subsequent purchasers shall join the LRs of Sadhu Ram in executing the sale deed in favor of the plaintiffs. They shall however, be at liberty to recover their amount if paid to Sadhu Ram or his LRs in respect of their sale consideration, through appropriate legal remedy.
>
> 22. In view of the aforesaid, the suit is decreed in favor of plaintiffs and against Sadhu Ram through LRs by passing a decree of specific performance in respect of Agreement to Sell dated 08.07.2006 subject to payment of an amount of Rs. 68,43,000/- within a period of three months. The subsequent purchasers are also directed to join the LRs of Sadhu Ram in executing the final sale deed in favor of plaintiffs. All necessary formalities shall be completed. Decree be prepared accordingly."

35. A perusal of Paragraph 21 of the said Judgment reveals that the learned Trial Court specifically considered the position of subsequent purchasers of the suit properties. It was observed that upon payment of the balance sale consideration, the plaintiffs would be entitled to obtain a registered Sale Deed in respect of the properties. The subsequent purchasers were directed to join the legal representatives of Late Sh. Sadhu Ram in execution of the Sale Deed in favour of the

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plaintiffs. The learned Trial Court further clarified that such purchasers would be at liberty to recover their amount, if paid to Late Sh. Sadhu Ram or his legal representatives towards sale consideration, through appropriate legal proceedings.

36. Thus, the Judgment and Decree dated 11.12.2024 draws a clear distinction between the obligation of subsequent purchasers to join in execution of the sale deed in favour of the original plaintiffs and their right, if any, to seek recovery of the consideration paid by them. The latter right has been expressly preserved, but the learned Trial Court has not passed any direction requiring the legal representatives of Late Sh. Sadhu Ram to pay any specified amount to the Appellant. Nor has any particular sum been quantified or decreed in his favour under the operative Decree.

37. The Appellant, however, seeks to have the amount of Rs.53,21,400/- determined and directed to be paid to him in the course of the present execution proceedings, by applying a proportionate calculation based upon the area of the residential property. Such a claim cannot be treated as an amount already adjudicated or awarded under the Decree. The mere observation that subsequent purchasers shall be at liberty to recover the consideration paid by them through appropriate legal proceedings does not, by itself, convert such liberty into an executable money decree in their favour. The actual consideration paid by the Appellant, the legal liability of the person from whom recovery is sought and the amount, if any, recoverable by him are matters which would require adjudication in appropriate proceedings.

38. The distinction between a right expressly preserved by a Decree and a relief actually granted under the decree cannot be lost sight of.

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The Executing Court is required to enforce the Decree in accordance with its terms and cannot travel beyond the same so as to grant an independent monetary relief which was not the subject matter of adjudication or decree. In this regard, the settled principle that an Executing Court cannot go behind the decree assumes significance. The Appellant's claim for recovery of consideration, therefore, cannot be converted into a claim for payment out of the decretal sale consideration merely by invoking Order XXI Rule 101 CPC.

39. It is also pertinent that the Appellant's alleged transaction is with Sh. Abhishek Sharma and not directly with Late Sh. Sadhu Ram or his legal representatives. The liberty preserved in Paragraph 21 of the Judgment is specifically in respect of amounts paid by subsequent purchasers to Late Sh. Sadhu Ram or his legal representatives. The mere assertion that consideration was paid by the Appellant to Sh. Abhishek Sharma does not, without further adjudication, establish that the condition contemplated in the said paragraph is satisfied or create an executable monetary liability against the legal representatives of Late Sh. Sadhu Ram. The express liberty granted by the learned Trial Court cannot be understood as a determination of such liability or as dispensing with the requirement of establishing the same in accordance with law.

40. The learned Executing Court, while dealing with the Appellant's Application, also examined the nature of the documents relied upon by him and observed that the Agreement to Sell and GPA, being unregistered, did not confer any right of ownership upon him. It further noticed that the Appellant's alleged purchase was subsequent to the institution of the Suit and that the Decree dated 11.12.2024 had already determined the manner in which the rights of the decree-

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holders and subsequent purchasers were to be dealt with. The learned Executing Court also observed that even if the Appellant's claim were to be accepted, the same would not alter the position in execution, since the documents relied upon by him did not confer title and the decree itself preserved the liberty of subsequent purchasers to pursue appropriate remedies for recovery of consideration.

41. The learned Executing Court further noticed that the Appellant's alleged purchase was from Sh. Abhishek Sharma and not from Late Sh. Sadhu Ram. In these circumstances, it held that the Appellant's grievance, if any, in respect of the consideration allegedly paid by him would lie against his transferor, for which he could avail of the appropriate legal remedy. This Court finds that the aforesaid approach is consistent with the terms of the aforesaid Decree and the legal position governing the effect of an Agreement to Sell and GPA upon title to immovable property.

42. It is also relevant that the Appellant was not a stranger to the original proceedings. Having acquired the alleged interest in the residential property in 2012, he himself approached the learned Trial Court by filing an Application under Order I Rule 10 CPC on 20.10.2015, seeking impleadment in the suit. The said Application was allowed *vide* Order dated 18.08.2017, and the Appellant was impleaded as Defendant No. 3. He thereafter participated in the proceedings and filed his Written Statement, reiterating his claim of purchase and possession of the residential property. The Judgment and Decree dated 11.12.2024 was thus passed in proceedings in which the Appellant was himself a party.

43. The Appellant, having been impleaded as a party to the original proceedings and having participated therein, is bound by the

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adjudication and the directions contained in the Decree. In particular, the Decree directs the subsequent purchasers to join the legal representatives of Late Sh. Sadhu Ram in execution of the Sale Deed in favour of the original plaintiffs. The Appellant cannot, in the course of execution, seek to obstruct enforcement of that direction by relying upon the very transaction which took place during the pendency of the Suit and which, in law, did not convey ownership in his favour.

44. In view of the foregoing discussion, this Court finds that the Appellant has failed to establish any legally enforceable right of ownership in the residential property bearing Khasra No. 142/783, on the basis of the Agreement to Sell, GPA and Will dated 06.11.2012. The Appellant's alleged acquisition took place during the pendency of the specific performance Suit and remains subject to the rights determined under the Judgment and Decree dated 11.12.2024. Having been a party to the original proceedings, the Appellant is bound by the adjudication and directions contained in the said Decree and cannot rely upon the alleged transaction to obstruct its enforcement.

45. As regards the claim for payment of Rs.53,21,400/-, the same does not constitute an amount decreed in favour of the Appellant under the Judgment and Decree dated 11.12.2024. The liberty granted therein is confined to recovery of the amount paid by subsequent purchasers to Late Sh. Sadhu Ram or his legal representatives, through appropriate legal proceedings. It neither quantifies any amount in favour of the Appellant nor directs payment of any such amount in the present execution proceedings. In particular, the Appellant asserts that he paid consideration to Sh. Abhishek Sharma. His entitlement to recover any amount, and the person against whom such recovery may be claimed, would therefore require independent

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adjudication and cannot be determined merely on the basis of a proportionate calculation in the present execution proceedings.

46. This Court is, therefore, of the considered view that the learned Executing Court committed no infirmity in dismissing the Application filed by the Appellant under Order XXI Rule 101 read with Section 151 CPC. The Impugned Order correctly declines to travel beyond the terms of the Decree or to convert the execution proceedings into an independent forum for adjudication of the Appellant's monetary claim. No ground for interference in the present Appeal is, accordingly, made out.

CONCLUSION:

47. Accordingly, the present Execution First Appeal is dismissed. The Order dated 14.11.2025 passed by the learned District Judge-02, North-West District, Rohini Courts, Delhi, is upheld.

48. It is clarified that the dismissal of the present Appeal shall not preclude the Appellant from pursuing such independent remedy for recovery of the amount allegedly paid by him as may be available to him in accordance with law. No opinion is expressed on the merits or maintainability of any such proceedings.

49. In view thereof, the present Appeal, along with pending Application(s), if any, stands disposed of in the above terms.

HARISH VAIDYANATHAN SHANKAR, J.

NOVEMBER 27, 2026/ma

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