



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

SECOND APPEAL NO.396 OF 2022

Alka Shrirang Chavan & Anr. ...Appellants

Versus

Hemchandra Rajaram Bhonsale & Ors. ...Respondents

WITH

INTERIM APPLICATION NO.2936 OF 2022

IN

SECOND APPEAL NO.396 OF 2022

Alka Shrirang Chavan & Anr. ...Applicants

Versus

Hemchandra Rajaram Bhonsale & Ors. ...Respondents

WITH

SECOND APPEAL (ST) NO.22336 OF 2022

Jaymala Shriram Date ...Appellant

Versus

Hemchandra Rajaram Bhonsale & Ors. ...Respondents

WITH

INTERIM APPLICATION NO.1408 OF 2023

IN

SECOND APPEAL (ST) NO.22336 OF 2022

Jaymala Shriram Date ...Applicant

Versus

Hemchandra Rajaram Bhonsale & Ors. ...Respondents

Mr. Nikhil Sakhardande, Senior Advocate a/w Mr. Siddhesh Bhole, Mr. Ashish Venugopal, Mr. Ashwin Pimpale i/b SSB Legal and Advisory, for the Appellants in SA/396/2022.

Mr. Siddhesh Bhole a/w Mr. Ashwin Pimpale i/b SSB Legal And Advisory, for the Appellants in SA(ST)/22336/2022.

Mr. Rajanish Bhonsale, Advocate for the Respondent No.1.

Mr. Shriram S. Kulkarni, learned Advocate, *Amicus Curiae*.

CORAM: MADHAV J. JAMDAR, J.
DATED: DECEMBER 19, 2024

JUDGMENT:

1. Heard Mr. Nikhil Sakhardande, learned Senior Counsel for the Appellants in Second Appeal No.396 of 2022, Mr. Siddhesh Bhole, learned Counsel for the Appellant in Second Appeal (St) No.22336 of 2022, Mr. Rajanish Bhonsale, learned Counsel for the Respondent No.1 in both the Second Appeals and Mr. Shriram Kulkarni, learned *Amicus Curiae*.

I. Substantial Questions of Law raised in Second Appeals:

2. A learned Single Judge by Order dated 2nd May 2022 framed the following substantial questions of law in Second Appeal No.396 of 2022 :-

“1. Whether in the facts and circumstances of the case, the decree for Specific Performance passed in Regular Civil Suit No.910 of 1986 is executable, when the Decree Holder has not acquired title to the suit land by the Sale Deed dated 25/03/1993 executed by the Court Commissioner?

2. Whether the learned Courts below erred in law in not deciding the vital issue as to whether the Decree Holder is entitled to recover possession of the suit land in execution of decree for specific performance?”

3. Mr. Bhole, learned Counsel appearing for the Appellants in Second Appeal (St) No.22336 of 2022, submitted that above substantial questions of law are also involved in said Second Appeal.

II. Challenge:

4. The challenge in both these Second Appeals is to the legality and validity of the Judgment and Decree dated 29th February 2020 passed by the learned 26th Joint Civil Judge, Senior Division, Pune, District - Pune [**“Executing Court”**] in Application bearing Exhibit 238-A in Regular Darkhast No.205 of 1991. The said Application bearing Exhibit 238-A has been filed by the Original Plaintiff i.e. Respondent No.1 under Order XXI Rule 97 of the *Code of Civil Procedure, 1908* (**“CPC”**) for removal of obstructionists i.e. Appellants from the suit property and seeking prayer that vacant and peaceful possession of the suit property be handed over to the Respondent No.1. The obstructionists filed objection at Exhibit-250 and Exhibit-253. By said Order dated 29th February 2020, the learned Executing Court allowed the said Application at Exhibit 238-A and rejected the objection of the obstructionists at Exhibit-250 and Exhibit-253. The learned Executing Court issued possession warrant under Order XXI Rule 97 of CPC by directing removal of obstruction in execution of decree and further directed the obstructionists i.e. Appellants to vacate the premises within one month from the date of the order.

5. The said Judgment and Decree dated 29th February 2020 of the learned Executing Court has been challenged by the obstructionists by filing Regular Civil Appeal No.169 of 2020 (Appellants – Alka Shrirang

Chavan and Anr.) and Regular Civil Appeal No.68 of 2022 (Appellant – Jaymala Shriram Date). Both these Appeal were dismissed by the common Judgment and Decree dated 12th April 2022 passed by the learned District Judge-13, Pune [**“Appellate Court”**].

6. Being aggrieved by both these Judgment and Decrees of the learned Executing Court and the learned Appellate Court, the present Second Appeals have been filed. As noted herein above, a learned Single Judge has framed the substantial questions of law by above referred Order dated 2nd May 2022.

III. Submissions of Appellants:

7. Mr. Sakhardande, learned Senior Counsel for the Appellants raised the following submissions:-

(i) Learned Senior Counsel submitted that as per the settled legal position, the doctrine of *lis pendens* does not annul the conveyance or the transfer but only renders it ‘subservient’ i.e. subject to the rights of the parties to a litigation.

(ii) The Decree Holder - Respondent No.1 had notice that the suit property was transferred by the Judgment Debtor - Respondent No.2 in favour of various persons including the vendors of the Appellants, as the transfer of the suit property was by registered sale deeds executed way back in 1987 and the names of the subsequent purchasers including the vendors of the Appellants were mutated in the 7/12 extracts in 1987

itself and a bungalow was constructed on the same property in or about 1989. He therefore submitted that the Decree Holder - Respondent No.1 had notice of the transfer of the suit property by the Judgment Debtor and therefore they should have been impleaded as party to the Suit.

(iii) Learned Senior Counsel submitted that the proper form of decree in the Suit for specific performance was to direct the subsequent transferees to join in the conveyance so as to pass on the title which resides in them since 1987 to the Respondent No.1 - Decree Holder. Learned Senior Counsel relied on the decisions of the Supreme Court in *Lala Durga Prasad v. Lala Deep Chand* ¹, *Dwarka Prasad Singh v. Harikant Prasad Singh* ² and *Thomson Press (India) Ltd. v. Nanak Builders & Investors (P) Ltd.* ³.

(iv) Learned Senior Counsel submitted that despite knowledge that the suit property had changed hands and the subsequent purchasers had acquired the right, title and interest in the suit property, the Respondent No.1 - Decree Holder failed to take following actions:

- (a) Join the transferees *pendente lite* in the conveyance.
- (b) Not made subsequent purchasers as parties to the sale deed which was executed by the Court Commissioner on 25th March 1993.
- (c) To take steps available to him in law to elevate him to the status of an owner.

1 AIR 1954 SC 75

2 (1973) 1 SCC 179

3 (2013) 5 SCC 397

- (d) Not taken any steps in Darkhast Application No.205 of 1991.
- (v) Learned Senior Counsel submitted that the decree of specific performance is not sufficient to elevate the Decree Holder to the status of an owner, it merely recognizes a claim for specific performance of contract which is capable of being specifically enforced at the instance of a Decree Holder and no steps available in law has been taken to elevate the Respondent No.1 to the status of an owner. He submitted that in absence of these actions the Decree Holder will have no right, title and interest in the suit property.
- (vi) Learned Senior Counsel submitted that the Respondent No.1 - Decree Holder has not taken any steps despite knowledge of the fact that the property was being constructed upon, property taxes and bills were duly paid by the Appellants. He relied on the decision in the case of *Amol v. Deorao*⁴.
- (vii) Learned Senior Counsel submitted that the Respondent No.1 - Decree Holder initiated proceedings for delivery of possession only on 9th February 2018 i.e. 27 years after the Execution Petition was filed under Order XXI Rule 11 of CPC.
- (viii) Learned Senior Counsel submitted that as per the provisions of Order XXI Rule 97 r/w Rule 101 all questions including questions relating to right, title and interest in the property arising between the

4 2011 SCC OnLine Bom 11

parties to a proceeding on an Application under Order XXI Rule 97 and relevant to the adjudication of the Application shall be decided in the said proceeding. He therefore submitted that in a proceeding under Order XXI Rule 97 of CPC for removal of the obstruction, the right, title and interest of the Decree Holder in the suit property can also be considered. He relied on the decisions of the Supreme Court in *Anwarbi v. Pramod D.A. Joshi*⁵ and *Brahmdeo Chaudhary v. Rishikesh Prasad Jaiswal*⁶.

(ix) Learned Senior Counsel submitted that the Respondent No.1 - Decree Holder is not the owner of the suit property and therefore Respondent No.1 has no right, title and interest in the suit property and the same is a very significant factor while deciding Application under Order XXI Rule 97 of CPC. He therefore submitted that the proceedings under Order XXI Rule 97 taken out by Respondent No.1 should not have been allowed as the same would result in permitting the Decree Holder to get possession of the suit property under a decree which is not in conformity with the law laid down by the Supreme Court. He submitted that until the same is done in a manner known to law, the Decree Holder should not be given possession of the suit property.

(x) Learned Senior Counsel submitted that before the holder of a decree for possession can call upon a Court to hear his Application

5 (2000) 10 SCC 405

6 (1997) 3 SCC 694

under Order XXI Rule 97 of CPC to the obstruction to the execution of decree by a person who has no independent right to possession, has to qualify having the status of being holder of a valid decree for possession. It is for the Decree Holder to establish that the decree which he has put in execution is a valid decree and is capable of being executable. He submitted that Order XXI Rule 101 clearly gives right to obstructionist to raise contention that the decree is not liable to be executed. This contention could be raised by an obstructionist even if he fails to establish that he has an independent right to possession. He submitted that as the learned Executing Court had the power to decide the questions relating to right, title and interest in the property arising between the parties to an Application under Rule 97, question regarding a defect in title of the Decree Holder can also be considered and the Decree Holder could not have been directed to take possession. To substantiate this contention, he relied on the decision of the Supreme Court in **Anwarbi** (supra).

(xi) Learned Senior Counsel submitted that the questions raised by the Appellants are relevant for consideration and determination between the parties. The question which the Executing Court is obliged to determine under Rule 101 contemplates that such question should have legally arisen between the parties and that such question must be relevant for consideration and determination between the parties. He

submitted that any order passed by the Executing Court disposing of the Application under Rule 97 or under Rule 98 would be deemed to be a decree under Rule 103. He relied on the decisions of the Supreme Court in *Silverline Forum (P) Ltd. v. Rajiv Trust*⁷ and *N.S.S. Narayana Sarma v. Goldstone Exports (P) Ltd.*⁸. He therefore submitted that the Second Appeal be allowed as the substantial questions of law framed by Order dated 2nd May 2022 are required to be answered in favour of the Appellants.

8. Mr. Siddhesh Bhole, learned Counsel appearing for the Appellant in Second Appeal (St) No.22336 of 2022 adopted the submissions of Mr. Nikhil Sakhardande, learned Senior Counsel. He submitted that the impugned Judgments and Decrees be quashed and set aside and the objection raised by the obstructionists/Appellants be allowed.

IV. Submissions of the Respondent No.1:

9. Mr. Bhonsale, learned Counsel appearing for the Respondent No.1 supported the impugned Judgments and Decrees. He submitted that as the Appellants have purchased the portion of suit property during pendency of the Suit their purchase is governed by Section 52 of the TP Act and therefore the said transactions are *pendente lite*. Thus, the decree of specific performance is also binding on them. He therefore submitted that the Second Appeals be dismissed.

7 (1998) 3 SCC 723

8 (2002) 1 SCC 662

V. Submissions of Mr. Shriram Kulkarni, learned *Amicus Curiae*:

10. Mr. Shriram Kulkarni, learned *Amicus Curiae* submitted as follows:

(i) The Judgment Debtor has taken the same objections by filing Application at Exhibit-28 that the decree is not executable as he has divided the suit property and sold the plots and therefore decree is not executable. The said Application (Exhibit-28) has been rejected by the learned Executing Court by order dated 18th July 2013 and the said order is confirmed by this Court by dismissing CRA No.851 of 2013 by order dated 14th March 2016. He submitted that the obstructionists are transferees pending litigation and do not have any independent right, title and interest and further not entitled to claim anything over and above the Judgment Debtor and therefore the obstructionists are bound by the said decision.

(ii) Learned *Amicus Curiae* submitted that the Order passed by the learned Executing Court below Exhibit-28 and confirmation of the same upto this Court, shows that the obstructionists could not have filed Application and the same is barred by the principles of *res judicata*.

(iii) Learned *Amicus Curiae* submitted that, although the obstructionists/Appellants have raised the contention that the decree is not executable, the said contention is contrary to the Judgments of the Supreme Court. He submitted that the obstructionists have taken a

stand that unless they are joined in decree for specific performance and directed to be joined in the sale deed to be executed in favour of the Plaintiff (Decree Holder), the decree is not executable because the transfer pending the Suit is not void but valid and the title of defendant of the suit property was divested to transferees. Therefore title can be passed on to Plaintiff (Decree Holder) by such transferees alone. Hence decree is not executable. In support of said submission the obstructionists relied upon certain judgments of the Supreme Court. However those Judgment doesn't lay down a law that unless transferee *pendente lite* is joined in decree; decree is not executable. He relied on the decision of **Thomson Press** (supra) and more particularly on Paragraph No.39 wherein, it has been laid down that object of Section 52 of the *Transfer of Property Act, 1882* (“**TP Act**”) is to make such transferees subservient to the rights of Decree Holder i.e. transferees are bound by decree and the same is executable against persons claiming under Defendant i.e. Judgment Debtor. He also relied on the decisions of the Supreme Court in **Lala Durga Prasad** (supra) and **Guruswamy Nadar v. P. Lakshmi Ammal**⁹.

(iv) Learned *Amicus Curiae* submitted that if the contention of the Appellants is accepted, then the same will defeat the object of Section 52 of the TP Act and will amount to the learned Executing Court to go behind the decree which is not permissible. He submitted that the

9 (2008) 5 SCC 796

transferee is subservient to decree means that he is bound by the directions given to the Judgment Debtor / Court Commissioner to execute the sale deed in favour of the Plaintiff/Decree Holder and upon such execution the title will pass on to Plaintiff/Decree Holder. He submitted that combined reading of Section 52 of the TP Act r/w Section 19(b) of the *Specific Relief Act, 1963* (“**Specific Relief Act**”) and Section 47 and Order XXI Rules 97, 98 and 101 of CPC, shows that title cannot supersede the decree, it is subject to said decree and such transferee is bound by the decree. He submitted that the rights of the transferor i.e. Defendant are already adjudicated by the decree and therefore the purchasers are bound by the decree. He submits that once the objection/obstruction is adjudicated by the Court under Section 47 of CPC or under Order XXI Rule 97 of CPC and the Court is satisfied that such obstruction is caused by such transferees, then Order XXI Rule 98 of CPC creates a mandate of law to remove the obstructionists and deliver possession to Decree Holder. He submits that in view of provisions of Section 52 of the TP Act r/w Order XXI Rules 97 and 98 of CPC he cannot claim any right, title and interest in the suit property once sale deed is executed by the Court and his title is valid as per the decree of the Court. He pointed out the scheme of Order XXI Rule 97 to Rule 102 r/w Bombay Amendment.

(v) Mr. Kulkarni, learned *Amicus Curiae* in Paragraph No.9 of his

written submissions stated as follows :

“9. That in case of a civil suit broadly the proceedings are in two parts :-

1) In Civil Suit rights of parties to suit are adjudicated and crystallized by a decree of the court. The rights of third parties other than parties to suit can be adjudicated if he is impleaded in suit under Order 1 Rule 10 of CPC.

2) Once a decree is passed & such party was not joined in suit then his so called right can be adjudicated under section 47 of CPC or under order 21 rule 97 if he is in possession by obstructing the decree. However in execution proceedings scope of executing court is extremely limited i.e. if he is claiming independent rights and if it is so held then position is different. But if he is claiming through JD or he is a transferee pendente lite then his obstruction is not tenable in eyes of law and bound to be rejected. It means claim of such a transferee that he is having a title to suit land stands worked out moment his obstruction is rejected and only course available to executing court to remove him and hand over possession to Decree Holder.”

(vi) Learned *Amicus Curiae* submitted that acquisition of title pending suit is subject to directions contained in the decree and title of such transferee is bound by such decree for specific performance and subject to same.

(vii) As far as Order XXI Rule 97 to Rule 102 with Bombay Amendment is concerned, Mr. Kulkarni, learned *Amicus Curiae* submitted written note as follows:

“Order 21 Rule 102 contemplates that nothing in rule 98 and 100 shall apply to resistance or obstruction in execution of a

decree. On 1.10.1983 by Bombay amendment rule 102 is deleted. By the very amendment sub rule 2 was substituted to rule 98(2). The Bombay amendment contemplates that where upon determination of question referred in rule 101 (i.e. questions under rule 97 or 99) If the court is satisfied that obstruction is caused by transferee where such transfer was made during such pendency of the suit or execution proceedings then it shall direct that applicant (decree holder) shall be put in possession.” The word “shall” is used and it contemplates the mandate prescribed by law. Therefore, stringent provision is introduced by the Bombay amendment which is applicable to the fact of the present case. Therefore in the present case court is satisfied that the obstructionist is the transferee pendente lite and therefore there is the mandate of law that court should direct the obstructionist to hand over the possession or the obstructionist should be directed to hand over the possession. In view of this position the observation of the apex court in 2008 (7) SCC 144 Usha Sinha versus Dina Ram and others squarely applies to the fact of the present case.”

VI. Factual Matrix:

11. Before considering the rival contentions, it is necessary to set out certain factual aspects.

(i) Respondent No.1 - Decree Holder had entered into agreement for sale with Defendant - Rajaram Bajirao Pokale on 26th April 1973.

(ii) The Respondent No.1 - Plaintiff/Decree Holder filed Suit No.910 of 1986 on 28th April 1986 in the Court of learned Civil Judge Junior Division, Pune against the Respondent No.2 - Defendant/Judgment Debtor. Prayers in the said Suit No.910 of 1986 read as under:

“(a) The defendant be ordered to execute the sale deed in

favour of this plaintiff.

- (b) *In case, the defendant failed to execute the sale deed, the Hon. Court be pleased to pass the sale deed through its officers to the plaintiff.*
- (c) *The plaintiff be put in actual possession of the suit property.*
- (d) *The plaintiff be granted the costs of this suit from the defendant.*
- (e) *Any such other equitable & just relief that the plaintiff may be found to be entitled to be granted to him.”*

(Emphasis added)

(iii) On 2nd May 1986 the Respondent No.1 - Plaintiff registered *lis pendens*.

(iv) During the period from 7th May 1987 to 31st August 1987, the Respondent No.2 - Judgment Debtor by 8 registered sale deeds transferred the right, title and interest in various part of the suit properties to various persons. The Appellant in Second Appeal (St) No.22336 of 2022 is claiming right, title and interest on the basis of registered sale deed dated 7th July 1987.

(v) In the year 1989, Mr. Sarangdhar, one of the transferees *pendente lite* constructed a bungalow in the area admeasuring 5R.

(vi) On 30th November 1990, the learned IIIrd Joint Civil Judge, Junior Division, Pune decreed the said RCS No.910 of 1986. The operative part of the decree passed by the learned Trial Court dated 30th November 1990 reads as under:

“(1) *The suit is decreed ex parte.*

(2) *The plaintiff is directed to pay Rs.1775/- to the defendant and **defendant is directed to execute the document of sale-deed in respect of the suit land bearing Survey No. 155 Pot Hissa 3 admeasuring 38 gunthas situated at village Dhayari, Taluka Haveli, District Pune in favour of the plaintiff, within two months from this order.***

(3) *If the defendant fails to execute the sale-deed in favour of the plaintiff, then the plaintiff is at liberty to get the document of sale deed executed through Court Commissioner and the defendant is directed to bear its cost.*

(4) ***The defendant is also directed to hand over vacant possession of the suit land peacefully to the plaintiff.***

(5) *Defendant shall pay costs of this suit to the plaintiff and bear his own."*

(Emphasis added)

(vii) On 3rd July 1991, Darkhast No.205 of 1991 filed by the Respondent No.1 against Respondent No.2.

(viii) On 25th March 1993, the Court Commissioner on behalf of Respondent No.2 - Judgment Debtor executed the sale deed in favour of Respondent No.1 - Decree Holder.

(ix) On 9th August 1994, Respondent No.2 - Judgment Debtor filed an Application below Exhibit-28 in Darkhast No.205 of 1991 contending that Respondent No.2 had transferred the right, title and interest in the suit property to various purchasers in or about 1987 and therefore the sale deed executed by the Court Commissioner in favour of the Respondent No.1 - Decree Holder be cancelled.

(x) By registered Sale Deed dated 27th November 1995 and two separate registered Sale-Deeds dated 16th November 1996 the Appellants in Second Appeal No.396 of 2022 became owners of the land admeasuring 15 gunthas of the suit property including the land admeasuring 5R owned by Mr. Sarangdhar who had constructed a bungalow in the year 1989.

(xi) The learned Trial Court by Order dated 18th July 2013 rejected the Application bearing Exhibit-28 filed under Section 47 of CPC in Darkhast No.205 of 1991.

(xii) The Respondent No.2 - Judgment Debtor filed Civil Revision Application No.851 of 2013 challenging the said Order dated 18th July 2013 and the said Civil Revision Application was dismissed by Order dated 14th March 2016.

(xiii) On 9th February 2018, the learned Executing Court by passing Order below Exhibit-224 in R. D. No.205 of 1991 issued possession warrant under Order XXI Rule 35 of CPC on Application filed by Respondent No.1 - Decree Holder.

(xiv) The obstructionists i.e. present Appellants in both the Second Appeals raised objections below Exhibit-236 on 18th January 2019 for execution of decree concerning handing over possession on the ground that they are owners of the suit property and they are staying in the house constructed on the land.

(xv) In view of the said Application bearing Exhibit-236 filed by the present Appellants, the Respondent No.1 - Decree Holder on 11th February 2019 filed 2 Applications for removal of obstruction bearing Exhibit-238 and Exhibit 238-A. The present Appellants filed Reply to the said Applications.

(xvi) By Order dated 29th February 2020, the learned Executing Court allowed the Application filed by the Respondent No.1 - Decree Holder for removal of obstruction and issued possession warrant. The relevant part of said Order dated 29th February 2020 passed by the learned 26th Joint Civil Judge (Senior Division), Pune, District - Pune is found in Paragraph No.21, which reads as under :-

“21) It is well settled that the executing Court cannot go behind the decree. The decree in RCS No.910/1986 is already attained finality. Though the obstructionists filed documents list Exh.270 showing that since 1985 till date there were several execution of sale deeds, mutation entries, 7/12 extracts and other entries in revenue record, completion certificates, construction of buildings etc will not helpful to the obstructionists as they have purchased the suit land during the pendency of RCS No.910/1986. Moreover, the plaintiff/D.H. had already registered in notice of lis-pendens on 02/05/1986. The obstructionists have purchased the part of the suit land during pendency of the suit, therefore, the submission learned counsel for obstructionist that decree is not binding upon the obstructionist taken into consideration. The authorities relied by the obstructionists are not applicable in this case as the decree is executable and attained finality and the same is binding upon the obstructionists also, thus, I answer point Nos.1 and 2 in affirmative in result of point No.3 I pass following order.”

(Emphasis added)

(xvii) The Appellants - Alka Shrirang Chavan and Pradeep Shrirang Chavan filed Regular Civil Appeal No.169 of 2020 and Appellant – Jaymala Shriram Date filed Regular Civil Appeal No.68 of 2022 before the District Judge, Pune challenging legality and validity of the said Order dated 29th February 2020.

(xviii) The Appellants have filed stay Application in the said Regular Civil Appeal No.169 of 2020 and the same was rejected by Order dated 6th July 2020 passed by the learned Appellate Court.

(xix) Thereafter, the Appellants in Regular Civil Appeal No.169 of 2020 have filed Writ Petition No.3637 of 2021 challenging the said Order dated 6th July 2020 and the same was dismissed by the learned Single Judge by Judgment and Order dated 3rd August 2021. The relevant discussion of the learned Single Judge while rejecting the said Writ Petition No.3637 of 2021 is found in Paragraph Nos.16 to 21, which read as under :-

“16] Petitioners are purchasers of the Suit property after initiation of R.C.S. No. 910/1986 as it is claimed by the Petitioners that their predecessor-in-title purchased the Suit property from Judgment debtor-Defendant to the Suit sometime in 1987 and in 1995/1996, title vested in them by virtue of registered sale deed.

17] As such, claim by the Petitioners that they have purchased the property without notice cannot be accepted. Apart from above, it is quite apparent that all the efforts on the part of Judgment debtor including that of raising an

objection under Section 47 of the Code of Civil Procedure, 1908 is already rejected by this Court vide order dated 14/03/2016. That being so, Petitioners cannot claim better title than his predecessor viz. Judgment debtor as he has stepped into the shoes of Judgment debtor-Respondent no. 2.

18] *Apart from above, Petitioner though appears to have knowledge about Revision being preferred by the Judgment debtor being Revision (ST) No. 7769/2021 which was dismissed on 01/03/2021, same is not brought to the notice of this Court by placing appropriate documents on record but for only mention about the same in independent list of dates and events submitted before this Court. It appears that Decree passed in 1990 is not permitted to be executed for last 30 years even though sale deed pursuant to the Decree for specific performance was executed in favour of respondent no. 1 Decree holder on 25/03/1993.*

19] *Assistant Superintendent, Court of Senior Division, Pune in compliance with the Decree in execution proceedings on March 25, 1993 executed the sale deed of the Suit property in favour of Decree holder whereas Petitioners have ,purchased part of the Suit property on 27/11/1995 and 16/11/1996. As such, it cannot be inferred that Petitioners are purchasers of the Suit property without notice.*

20] *Considering the very conduct of the Petitioners-Objectors referred above, this Court is prompted to infer that they are equally responsible for prolonging the execution proceedings.*

21] *As such, petition fails, stands dismissed. Decree if not already executed as directed by the Executing Court, to be executed expeditiously.”*

(Emphasis added)

(xx) In the meantime, Respondent No.2 - Judgment Debtor had filed an Application bearing Exhibit-355 for dismissal of Darkhast No.205 of 1991. The learned Executing Court dismissed the said Application by

Order dated 1st March 2021.

(xxi) The said Order 1st March 2021 was challenged by filing Civil Revision Application (St) No.7769 of 2021 and the said Civil Revision Application (St) No.7769 of 2021 was dismissed by Order dated 15th April 2021 passed by a learned Single Judge. On 22nd September 2021, the learned Single Judge modified the earlier Order dated 15th April 2021 directing that the said Civil Appeal No.169 of 2020 shall be decided expeditiously within 3 months.

(xxii) The learned District Judge-13 by common Judgment and Decree dated 12th April 2022 dismissed with cost Regular Civil Appeal No.169 of 2020 and Regular Civil Appeal No.68 of 2022.

(xxiii) These Second Appeals have been filed challenging the legality and validity of the Judgment and Decree dated 29th February 2020 passed by the learned 26th Joint Civil Judge (Senior Division), Pune, District - Pune (Executing Court) in Application bearing Exhibit 238-A in Regular Darkhast No.205 of 1991 and the Judgment and Decree dated 12th April 2022 passed in Regular Civil Appeal No.169 of 2020 and Regular Civil Appeal No.68 of 2022. A learned Single Judge, as already set out herein above, by Order dated 2nd May 2022 framed the substantial questions of law and directed that the Executing Court shall not proceed further.

VII. Analysis and Reasoning:

12. For deciding the substantial questions of law raised in these Second Appeals, Section 52 of the TP Act is very relevant, which reads as under :-

“52. Transfer of property pending suit relating thereto.— During the [pendency] in any Court having authority [[within the limits of India excluding the State of Jammu and Kashmir] or established beyond such limits] by [the Central Government] of [any] suit or proceedings [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.

[Explanation.—For the purposes of this section, the pendency of a suit or proceeding shall be deemed to commence from the date of the presentation of the plaint or the institution of the proceeding in a Court of competent jurisdiction, and to continue until the suit or proceeding has been disposed of by a final decree or order and complete satisfaction or discharge of such decree or order has been obtained, or has become unobtainable by reason of the expiration of any period of limitation prescribed for the execution thereof by any law for the time being in force.]”

(Emphasis added)

Thus, Section 52 provides that in a suit or proceeding 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. Explanation to Section 52 clarifies that the pendency of a suit or proceeding shall be deemed to commence from the date of the presentation of the plaint and continues until the suit has been disposed of by a final decree or order and complete satisfaction or discharge of such decree or order, has been obtained.

13. Admittedly, Respondent No.1 - Decree Holder had entered into agreement for sale dated 26th April 1973 with Respondent No.2. The Suit has been filed for specific performance of the said agreement dated 26th April 1973 and *inter alia* seeking that the Plaintiff be put in actual possession of the suit property. It is also important to note that on 2nd May 1986, Respondent No.1 - Plaintiff registered *lis pendens*. Thereafter the Respondent No.2 - Judgment Debtor by 8 registered sale deeds executed from 7th May 1987 to 31st August 1987 transferred the right, title and interest in the suit property to various persons. The Appellants are the purchasers from such transferees. The suit property admeasures 38 gunthas. The Appellants in Second Appeal No.396 of 2022 - Alka Shrirang Chavan and Pradeep Shrirang Chavan purchased part of the suit property by registered sale deeds dated 27th November 1995, 16th November 1996 and 16th November 1996. The said Appellants purchased land totally admeasuring 15R by said 3 sale deeds. As far as

Second Appeal (St) No.22336 of 2022 filed by Jaymala Shriram Date is concerned, her father-in-law – Vasant Murlidhar Date purchased part of the suit property i.e. 6.5 R land by registered sale deed dated 7th July 1987. In any case, it is admitted that both the Appellants have purchased the suit properties after the institution of the Suit No.910 of 1986 on 28th April 1986 and after registration of the *lis pendens* on 2nd May 1986. Thus, it is clear that Section 52 of the TP Act applies to the transaction of sale made by both the Appellants. Therefore, the first issue which is required to be decided is what is the effect of Section 52 on the transactions which the Appellants have entered into and on the basis of which the Appellants are claiming rights in the suit property.

14. Mr. Sakhardande, learned Senior Counsel for the Appellants strongly relied on the decision of the Supreme Court in ***Thomson Press*** (supra) and more particularly on paragraph 26 of the same. The relevant portion of said Paragraph No.26 is reproduced herein below for ready reference :

*“It is well settled that the doctrine of lis pendens is a doctrine based on the ground that it is necessary for the administration of justice that the decision of a court in a suit should be binding not only on the litigating parties but on those who derive title pendente lite. **The provision of this Section does not indeed annul the conveyance or the transfer otherwise, but to render it subservient to the rights of the parties to a litigation.**”*

(Emphasis added)

15. At this stage, only it is required to note that Mr. Kulkarni, learned

Amicus Curiae has relied on Paragraph No.39 of the above-referred decision of **Thomson Press** (supra) which reads as under:

“As discussed above, a decree for specific performance of a contract may be enforced against a person claimed under the plaintiff (sic defendant), and title acquired subsequent to the contract. There is no dispute that such transfer made in favour of the subsequent purchaser is subject to the rider provided under Section 52 of the Transfer of Property Act and the restraint order passed by the Court.”

(Emphasis added)

16. Mr. Kulkarni, learned *Amicus Curiae* also relied on the decision of the Supreme Court in **Guruswamy Nadar** (supra) and more particularly on Paragraph Nos.6 to 10 of the same, which read as under :-

“6. We have heard learned counsel for the parties and perused the record. It will be relevant to mention here that the second purchase by the appellant was on 5-5-1975 i.e. two days after the filing of the suit for specific performance on 3-5-1975. Though the applicability of Section 52 of the Transfer of Property Act, 1882 was not considered by the trial court, however, the first appellate court i.e. the learned Single Judge while granting the decree for specific performance found that the subsequent purchase made by the appellant-defendant was also bona fide for value and without notice of the agreement to sell but the said sale was subordinate to the decree that could be made in the suit for specific performance which was instituted prior to the sale in favour of the second purchaser.

7. The main argument which was advanced before the learned Single Judge was that Section 19 of the Specific Relief Act, 1963 provides that a decree for specific performance against a subsequent purchaser for bona fide who has paid the money in good faith without notice of the original contract can be enforced as the same is binding on the vendor as well as against the whole world. As against this, it was contended by the respondents that Section 52 of the Transfer

of Property Act which lays down the principle of *lis pendens* that when a suit is pending and during the pendency of such suit if a sale is made in favour of other person, then the principle of *lis pendens* would be attracted. In support of this proposition a Full Bench decision of the Allahabad High Court in *Ram Peary v. Gauri* [AIR 1978 All 318] as well as a Division Bench judgment of the Madras High Court was pressed into service.

8. Therefore, the question before us in this case is what is the effect of the *lis pendens* on the subsequent sale of the same property by the owner to the second purchaser.

9. Section 19 of the Specific Relief Act clearly says subsequent sale can be enforced for good and sufficient reason but in the present case, there is no difficulty because the suit was filed on 3-5-1975 for specific performance of the agreement and the second sale took place on 5-5-1975. Therefore, it is the admitted position that the second sale was definitely after the filing of the suit in question. Had that not been the position then we would have evaluated the effect of Section 19 of the Specific Relief Act read with Section 52 of the Transfer of Property Act. But in the present case it is more than apparent that the suit was filed before the second sale of the property. Therefore, the principle of *lis pendens* will govern the present case and the second sale cannot have the overriding effect on the first sale.

10. The principle of *lis pendens* is still settled principle of law. In this connection, the Full Bench of the Allahabad High Court in *Ram Peary* [AIR 1978 All 318] has considered the scope of Section 52 of the Transfer of Property Act. The Full Bench has referred to a decision in *Bellamy v. Sabine* [(1857) 44 ER 842] (ER at p. 847) wherein it was observed as under : (*Ram Peary* case [AIR 1978 All 318] , AIR p. 319, para 4)

“4. ...‘It is scarcely correct to speak of *lis pendens* as affecting a purchaser through the doctrine of notice, though undoubtedly the language of the courts often so describes its operation. It affects him not because it amounts to notice, but because **the law does not allow litigant parties to give to others, pending the litigation, rights to the property in dispute, so as to prejudice the opposite party.”**

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 litigant 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, there could be no certainty that the litigation would ever come to an end.’ ”

(Emphasis added)

17. Thus, as per the settled legal position concerning the doctrine of *lis pendens* as provided by Section 52 of the TP Act, the decision of Court in a Suit in the cases covered by Section 52 are not only binding on the litigating parties but also those who derived the title *pendente lite*. It is also clear that Section 52 does not annul the conveyance in favour of the transferee *pendente lite* but to render it ‘subservient’ i.e. subject to the rights of the parties to a litigation. It is also clear that decree for specific performance of a contract can be enforced against the person who claims under the Defendant and title acquired subsequent to the contract. Thus, it is clear that as per the settled legal position even the decree of specific performance is binding on transferee *pendente lite* and the said decree does not annul the said transaction entered into during the pendency of the Suit but the same is subservient to the rights of the parties to a litigation.

18. The submissions of Mr. Sakhardande, learned Senior Counsel and Mr. Bhole, learned Counsel for the Appellants are required to be

appreciated in the light of the above settled legal position.

19. It is the submission of Mr. Sakhardande, learned Senior Counsel that a decree of specific performance is not sufficient to elevate the Decree Holder to the status of an owner. It merely recognizes a claim for specific performance of contract which is capable of being specifically enforced at the instance of a Decree Holder. It is his submission that proper form of decree in the suit for specific performance was to direct the subsequent transferees to join in the conveyance so as to pass on the title which resides in them since 1987 to the Decree Holder. It is his submission that to get the Decree Holder complete title, it is necessary that not only the vendor but also the subsequent transferees must join in the execution of the sale deed. He submits that this is the only mode and manner in which title could be properly passed. To substantiate the said contention, he relied on the decision of **Amol v. Deorao** (supra) and more particularly on Paragraph No.28 of the same, which reads as under:

“28. Thus, a decree for specific performance passed on the basis of an agreement to sale or a contract for sale, merely recognizes a claim for specific performance of contract, which is capable of being specifically enforced at the instance of a decree-holder. It does not elevate the status of a decree-holder, subsisting prior to passing of such a decree, to that of the owner of the property in question. It does not create any right, title, interest in or charge on the immovable property in favour of a decree-holder. Even in respect of such a decree, the sale would be complete only upon the execution of the sale-deed in favour of the decree-holder either by the vendor/judgment-debtor or through the process of the Court.

It is only upon the registration of such sale-deed upon payment of stamp duty under Item 20 of Schedule I of the Stamp Act, that any right, title and interest in such property shall validly pass on to the decree-holder, who is the purchaser of the suit property. Hence, mere passing a decree for specific performance of contract does not result in the transfer of property.”

20. Learned Senior Counsel also relied on the decision of the Supreme Court in **Lala Durga Prasad** (supra) and more particularly on Paragraph Nos.42 of the same, which reads as under :

“42. In our opinion, the proper form of decree is to direct specific performance of the contract between the vendor and the plaintiff and direct the subsequent transferee to join in the conveyance so as to pass on the title which resides in him to the plaintiff. He does not join in any special covenants made between the plaintiff and his vendor; all he does is to pass on his title to the plaintiff. This was the course followed by the Calcutta High Court in Kafiladdin v. Samiraddin [Kafiladdin v. Samiraddin, AIR 1931 Cal 67 : 1930 SCC OnLine Cal 46] and appears to be the English practice. See Fry on Specific Performance, 6th Edn., p. 90, Para 207; also Potter v. Sanders [Potter v. Sanders, (1846) 6 Hare 1 : 67 ER 1057] . We direct accordingly.

(Emphasis added)

21. Thus, what has been held by the learned Single Judge in the case of **Amol v. Deorao** (supra) is that a decree for specific performance merely recognizes a claim for specific performance of contract, which is capable of being specifically enforced at the instance of a Decree Holder. It does not elevate the status of a Decree Holder, subsisting prior to passing of such a decree, to that of the owner of the property in

question and in respect of such a decree, the sale would be complete only upon the execution of the sale-deed in favour of the Decree Holder either by the vendor/Judgment Debtor or through the process of the Court. It is only upon the registration of such sale-deed upon payment of stamp duty that any right, title and interest in such property shall validly pass on to the Decree Holder who is the purchaser of the suit property.

22. In this particular case, admittedly the decree has been passed in Suit No.910 of 1986 by the Judgment and Decree dated 30th November 1990. In execution proceedings the Court Commissioner has been appointed. The Court Commissioner had executed the sale deed in favour of the Respondent No.1 - Decree Holder on 25th March 1993. Thus, even applying the principles set out in Paragraph No.28 of the decision of *Amol v. Deorao* (supra) to the facts of this case, it is clear that the decree of specific performance passed in the present matter to the extent of execution of the sale deed has been complied with and accordingly sale deed has been executed by the Court Commissioner in favour of the Decree Holder.

23. In the light of law laid down by the Supreme Court in the case of *Thomson Press* (supra), it is clear that rights of the present Appellants are subservient to the rights of Decree Holder. Paragraph No.39 of the said decision of *Thomson Press* (supra) is also very clear where it has

been clearly held that a decree for specific performance of a contract may be enforced against a person who claims title, acquired subsequent to the contract through defendant and that such transfer made in favour of the subsequent purchaser is subject to the rider provided under Section 52 of the TP Act. Thus, it is clear that the rights, if any of the Appellants, are being claimed on the basis of transactions executed during the pendency of the Suit and are subject to the decree of specific performance. Thus, even applying the law laid down by the learned Single Judge in the case of *Amol v. Deorao* (supra) and in view of the law laid down by the Supreme Court in the case of *Thomson Press* (supra), it is clear that the rights of the Appellants are subservient to the rights of the Respondent No.1 - Decree Holder and as held in *Thomson Press* (supra), decree of specific performance of contract may be enforced against the person who claimed under the Defendant and under the title acquired subsequent to the contract. Thus, it is very clear that the sale deed executed by the Court Commissioner on 25th March 1993 in execution of the decree of the specific performance dated 30th November 1990 in Suit filed on 28th April 1986 being Suit No.910 of 1986 a valid title has passed in favour of the Respondent No.1 - Decree Holder.

24. Mr. Sakhardande, learned Senior Counsel relied on the decisions of *Lala Durga Prasad* (supra) and *Dwarka Prasad Singh* (supra) to

substantiate his contention that proper form of decree in the Suit for specific performance was to direct the subsequent transferees to join in the conveyance so as to pass on the title which resides in them since 1987 to Respondent No.1 - Decree Holder. He submits that despite knowledge that the suit property had changed hands and the subsequent purchasers have acquired right, title and interest in the suit property, the Respondent No.1 - Decree Holder had chosen not to get a direction in the decree to join the transferee *pendente lite* in the conveyance, take any steps in the Darkhast Application or make subsequent purchasers parties to the sale deed which was executed by the Court Commissioner on 25th March 1993. He submitted that thus, no steps are taken by the present Respondent No.1 to elevate him to the status of an owner. He submitted that this fatal flaw which goes to the root of the matter as the title of subsequent purchasers has not been transferred in favour of the Respondent No.1 - Decree Holder in order to clothe with the right, title and interest in the suit property.

25. Mr. Sakhardande, learned Senior Counsel has heavily relied on Paragraph No.42 of the decision of *Lala Durga Prasad* (supra), which reads as under :-

“42. In our opinion, the proper form of decree is to direct specific performance of the contract between the vendor and the plaintiff and direct the subsequent transferee to join in the conveyance so as to pass on the title which resides in him to the plaintiff. He does not join in any special covenants made

*between the plaintiff and his vendor; **all he does is to pass on his title to the plaintiff.** This was the course followed by the Calcutta High Court in *Kafiladdin v. Samiraddin* [*Kafiladdin v. Samiraddin*, AIR 1931 Cal 67 : 1930 SCC OnLine Cal 46] and appears to be the English practice. See *Fry on Specific Performance*, 6th Edn., p. 90, Para 207; also *Potter v. Sanders* [*Potter v. Sanders*, (1846) 6 Hare 1 : 67 ER 1057] . We direct accordingly.”*

(Emphasis added)

26. However, the factual position in said ***Lala Durga Prasad*** (supra) is totally different. The same is set out in Paragraph Nos.2 and 3. Further discussion in Paragraph No.36 is also relevant for appreciating the factual aspects involved in ***Lala Durga Prasad*** (supra). Said Paragraph Nos.2, 3 and 36 are reproduced herein below for ready reference :-

*“2. The only question which we are asked to decide here, except for certain subsidiary matters, is **whether the agreement of 7-2-1942, was a concluded one.** The plaintiff's case is that on that date the Nawab agreed to sell the plaintiff property to him for Rs 62,000 and accepted Rs 10,000 as earnest money the same day. Later, namely, on 4-4-1942, the Nawab sold the same property to the appellants for a sum of Rs 72,000. The plaintiff states that the appellants had notice of his prior agreement.*

*3. The appellants' case is that the plaintiff's so-called agreement of 7-2-1942, was not a concluded one as the parties never reached finality. They raised a number of other defences such as misrepresentation and fraud, an agreement with the Nawab prior to that of the plaintiff, lack of knowledge of the plaintiff's agreement and so forth. But all those positions were abandoned in this Court and the only point argued, aside from certain subsidiary ones with which we shall deal later, was **whether the parties reached finality on 7-2-1942.**”*

(Emphasis added)

“36. Now arises a question which touches the Custodian, Uttar Pradesh. The contract was for Rs 62,000. The plaintiff paid Rs 10,000 as earnest money but this was later returned, so Rs 62,000 is still due. But there is a conveyance outstanding in favour of the appellants for which they have paid, according to their case, Rs 58,000. If the Rs 62,000 due to the Nawab is paid to him, or to the Custodian, U.P. who represents his estate, it is evident that the Nawab, who is at fault, will be paid twice over for the same property and his estate will benefit accordingly while the appellants will be left to pursue their remedies against the Nawab or his estate. The question is whether we have the power to direct that the Rs 58,000 be paid to the appellants instead of to the Nawab and thus obviate further, and possibly fruitless, litigation. But before we decide that, we will consider another question which is bound up with it, namely, the proper form of decree in such cases.”

(Emphasis added)

27. Thus, it is clear that in the said case the issue involved is not a transaction *pendente lite* but the transaction is a subsequent transaction after the execution of agreement dated 7th February 1942 executed with the Plaintiff. However, the subsequent transaction executed on 4th April 1942 in favour of the Appellants in that case, has been executed prior to filing of the Suit and therefore the original vendor as well as the subsequent purchaser have been made parties to the Suit. Thus, the issue involved in the case of *Lala Durga Prasad* (supra) is totally different. In that case, the vendor executed agreement with the Plaintiff on 7th February 1942. Thereafter, with subsequent purchaser a transaction was executed on 4th April 1942 and the property has been sold. In view of the said factual position, the discussion in Paragraph

Nos.40 and 41 of *Lala Durga Prasad* (supra) is also relevant, which read as under :-

“40. First, we reach the position that the title to the property has validly passed from the vendor and resides in the subsequent transferee. The sale to him is not void but only voidable at the option of the earlier “contractor”. As the title no longer rests in the vendor it would be illogical from a conveyancing point of view to compel him to convey to the plaintiff unless steps are taken to re-vest the title in him either by cancellation of the subsequent sale or by reconveyance from the subsequent purchaser to him. We do not know of any case in which a reconveyance to the vendor was ordered but Sulaiman, C.J. adopted the other course in Kali Charan Singh v. Janak Deo Singh [Kali Charan Singh v. Janak Deo Singh, AIR 1932 All 694 : 1932 SCC OnLine All 154]. He directed cancellation of the subsequent sale and conveyance to the plaintiff by the vendor in accordance with the contract of sale of which the plaintiff sought specific performance. But though this sounds logical the objection to it is that it might bring in its train complications between the vendor and the subsequent purchaser. There may be covenants in the deed between them which it would be inequitable to disturb by cancellation of their deed. Accordingly, we do not think that is a desirable solution.

41. We are not enamoured of the next alternative either, namely, conveyance by the subsequent purchaser alone to the plaintiff. It is true that would have the effect of vesting the title to the property in the plaintiff but it might be inequitable to compel the subsequent transferee to enter into terms and covenants in the vendor's agreement with the plaintiff to which he would never have agreed had he been a free agent; and if the original contract is varied by altering or omitting such terms the court will be remaking the contract, a thing it has no power to do; and in any case it will no longer be specifically enforcing the original contract but another and different one.”

Thus, Paragraph No.42 of **Lala Durga Prasad** (supra) on which Mr. Sakhardande, learned Senior Counsel has relied, is required to be read in the context of discussion in Paragraph Nos.40 and 41.

28. Thus, it is clear that the factual position in said **Lala Durga Prasad** (supra) and Paragraph 40 and 41 in said **Lala Durga Prasad** (supra), clearly shows that in the said decision Section 52 of the TP Act and the parameters concerning the same are not under consideration and in fact in those cases Section 52 is not even applicable. In the said decision, admittedly the sale in favour of subsequent purchaser by the Defendant/Vendor is before filing of the Suit by the Plaintiff. Thus, the said decision of **Lala Durga Prasad** (supra) has no application to the facts of the present case.

29. Mr. Sakhardande, learned Senior Counsel also relied on the decision of **Dwarka Prasad Singh** (supra) and more particularly on Paragraph No.9 of the same, which reads as under :-

“9. Counsel for the appellants has relied on two points in support of the argument that the appeal cannot fail because of the non-impleadment of the legal representatives of Guha deceased. The first is that he was not a necessary party being the vendor and the second is that the case would be covered by the provisions of Order 41 Rule 4 of the Civil Procedure Code. There appears to be some divergence between the High Courts on the question whether in a suit for specific performance against a purchaser with notice of a prior agreement of sale the vendor is a necessary party or not. In other words the conflict has arisen on the question whether the decree in a suit for specific performance when the property in dispute has been sold to a third party should be to

only direct the subsequent purchaser to execute a conveyance or whether the subsequent purchaser and the vendor should both execute a conveyance in favour of the plaintiff: Gourishankar v. Ibrahim Ali [AIR 1929 Nag 298 : 116 IC 70] and Kafiladdin v. Samiraddin. [AIR 1931 Cal 67 : 34 CWN 698 : 129 IC 869] This Court has, however, held in Lala Durga Prasad v. Lala Deep Chand [(1953) 2 SCC 509 : AIR 1954 SC 75 : 1954 SCR 360 : 1954 SCJ 23] that in a suit instituted by a purchaser against the vendor and a subsequent purchaser for specific performance of the contract of sale the proper form of the decree is to direct specific performance of the contract between the vendor and the plaintiff and further direct the subsequent transferee to join in the conveyance so as to pass on the title which resides in him to the plaintiff. This was the course followed by the Calcutta High Court in the above case and it appears that the English practice was the same. Thus according to this decision, the conveyance has to be executed by the vendor in favour of the plaintiff who seeks specific performance of the contract in his favour and the subsequent transferee has to join in the conveyance only to pass his title which resides in him. It has been made quite clear that he does not join in any special covenants made between the plaintiff and his vendor. All that he does is to pass on his title to the plaintiff. In a recent decision of this Court in R.C. Chandiook v. Chuni Lal Sabharwal [(1970) 3 SCC 140 : (1971) 2 SCR 573] while passing a decree for specific performance of a contract a direction was made that the decree should be in the same form as in Lala Durga Prasad's case. It is thus difficult to sustain the argument that the vendor is not a necessary party when, according to the view accepted by this Court, the conveyance has to be executed by him although the subsequent purchaser has also to join so as to pass on the title which resides in him to the plaintiff. It must be remembered that if there are any special covenants and conditions agreed upon in the contract for sale between the original purchaser and the vendor those have to be incorporated in the sale deed although it is only the vendor who will enter into them and the subsequent purchaser will not join in those special covenants. But without the vendor joining in the execution of the sale deed special covenants, if any, between him and the original purchaser cannot be incorporated in the sale deed. The whole idea and the purpose underlying a decree for specific performance is that if a decree for such a relief is granted the person who has

agreed to purchase the property should be put in the same position which would have obtained in case the contracting parties, i.e., vendor and the purchaser had, pursuant to the agreement, executed a deed of sale and completed it in every way. Therefore it is essential that the vendor must join in the execution of the sale deed. If that be so, it is not possible to comprehend how he is not a necessary party. At any rate, in the presence of the relief for a decree for refund of the amount paid by way of part consideration the vendor would be a necessary party. No such relief could be granted in his absence nor can it be granted now even if the appeal succeeds and the decree for specific performance is set aside.”

(Emphasis added)

30. On the basis of Paragraph No.9 of ***Dwarka Prasad Singh*** (supra), it is the submission of Mr. Sakhardande, learned Senior Counsel that sale deed should be directed to be executed by the Defendant No.1 i.e. Decree Holder as well as by the subsequent purchasers i.e. Appellants in favour of the Respondent No.1 for the purpose of getting complete title. For appreciating the said submission of Mr. Sakhardande, learned Senior Counsel and the law laid down in the case of ***Dwarka Prasad Singh*** (supra), it is necessary to see the facts which are set out in the said in ***Dwarka Prasad Singh*** (supra) in Paragraph No.2. The said Paragraph No.2 reads as under :-

“2. The facts to the extent they are material may be stated. The suit which was filed by Babu Thakur Prasad Singh and others in 1943 was on the basis of a contract for sale made in 1931 by Saroda Charan Guha (deceased)—defendants first party in the suit and Babu Ambika Prasad Singh and others — defendants second party to whom defendant first party had actually sold the properties in dispute. It was alleged, inter alia, in the plaint that the total sale consideration was Rs 99,995. Out of that sum, Rs 23,000

*had already been paid to defendant first party. It was further stated that **defendant second party in spite of full knowledge of the agreement between the plaintiffs and the defendant first party purchased the suit properties for Rs 1,63,400 by means of a deed of sale, dated December 11, 1942.** Among the reliefs which were prayed for were for a decree for specific performance being passed in favour of the plaintiffs against the defendants on payment of a sum of Rs 55,306/25 paise or such other amount as the court might determine and if, for any reason, such a decree be not granted a decree for a sum of Rs 44,688 with interest at 6% from the date of the suit till the date of the realisation be passed against defendant first party.”*

31. Thus, it is clear that in **Dwarka Prasad Singh** (supra), in 1931, a contract for sale was made in favour of the Plaintiff by the Defendant – first party. Thereafter, Defendants – second party in spite of full knowledge of the agreement between the plaintiffs and the defendant – first party purchased the suit properties for Rs.1,63,400/- by means of a deed of sale dated 11th December 1942 and therefore both, Defendant No.1 i.e. vendor and Defendants i.e. have been made parties to the Suit. The Suit has been filed in the year 1943. In that context, the Supreme Court in Paragraph No.9 inter alia relying on the law laid down in **Lala Durga Prasad** (supra), held that vendor is also a necessary party as it was sought to be argued that in view of the subsequent transaction the subsequent purchaser has become absolute owner. In that context, the Supreme Court has held that the vendor must also join in the execution of the sale deed. Thus, it is clear that in the said decision of **Dwarka Prasad Singh** (supra) also case is not covered by Section 52 of the TP

Act as the transfer in view of subsequent purchaser is before filing of the Suit.

32. In this case, an admitted position is that the Suit has been filed on 28th April 1986 *inter alia* for specific performance of the agreement dated 26th April 1973 and the transactions *pendente lite* are of the year 1987. This is not a case where the transactions on the basis of which the Appellants are claiming right, title and interest, have been executed before filing of the Suit. In any case, admitted position is that the transactions on the basis of which the Appellants claim their right, title and interest are of the year 1987 and the part of the properties are sold to the Appellants on 27th November 1995, 16th November 1996 and 16th November 1996 and therefore their rights are subject to Section 52 of the TP Act. Thus, the submission of Mr. Sakhardande, learned Senior Counsel that no steps have been taken by Respondent No.1 - Decree Holder to elevate him to the status of an owner, has no substance. The said contentions would have been valid if the subsequent purchasers, after the execution of the contract, in favour of the Appellants are before the filing of the Suit.

33. Thus, as per the settled legal position, if the subsequent transferee / purchaser acquires right, title and interest with respect to the subject property before filing of the Suit then in such a case the law laid down by the Supreme Court in the decisions of ***Lala Durga Prasad***

(supra) and **Amol v. Deorao** (supra) is applicable. It is very clear that in those cases, Section 52 of the TP Act has no Application as the transfer in favour of the subsequent purchaser is not after the filing of the Suit but before the filing of the Suit. However, the present case is totally different. Admittedly, in the present case the transfer is *pendente lite*. Therefore, the law laid down in **Lala Durga Prasad** (supra) and **Amol v. Deorao** (supra) has no application to the present case.

34. Mr. Sakhardande, learned Senior Counsel also relied on the decision of this Court in **Devo Ambo Patil v. Hiren Venilal Sevak**¹⁰, more particularly on Paragraph Nos.61 and 62 of the same which read as under :-

“61. Thus, the first Appellate Court has directed Defendant Nos. 1 to 9 to execute Conveyance Deed in respect of suit lands in favour of the Plaintiff. It is an admitted position that as on the date of passing of decree by the first Appellate Court on 15 January 2022, Defendant Nos. 1 to 9 have no longer remained owners in respect of land bearing Survey No. 62/6, which was initially sold by them to Everest on 13 May 2009 and Everest sold the same to Harmony on 2 August 2012. Additionally, the area admeasuring 4 Gunthas was already sold by Defendant Nos. 1 to 9 in favour of M/s. Rajbir Constructions vide Agreement dated 3 April 1982. M/s. Rajbir Constructions was not impleaded as party defendant to the Suit though the Plaintiff had apparently acquired knowledge about the said transaction, which is reflected in paragraph 3 of the reply dated 17 December 1990. The net effect of the decree of the first Appellate Court is that in absence of M/s. Rajbir Constructions being impleaded in the suit/appeal, land admeasuring 4 Guntha owned by M/s. Rajbir Constructions since 3 April 1982 is directed to be conveyed by Defendant Nos. 1 to 9 in Plaintiff's favour. Thus, the decree passed by the

10 2024 SCC OnLine Bom 1084

first Appellate Court is clearly faulty qua land admeasuring 4 Guntha in Survey No. 62/6.

62. So far as the balance land in Survey No. 62/6 is concerned, the same was purchased by Harmony on 2 August 2012 and Defendant Nos. 1 to 9 were no longer owners in respect thereof. In such circumstances, could the first Appellate Court have directed Defendant Nos. 1 to 9 to convey Survey No. 62/6 to Plaintiff when they were no longer owners thereof ? The answer to the question, to my mind appears, to be in negative. The proper course of action for the Plaintiff was to implead Harmony to the Appeal so as to enable the first Appellate Court to pass appropriate decree. The guidance in this regard is to be found in the judgment of the Division Bench of this Court in Shree Kamal Constructions (supra). This Court has held in paragraphs 8 to 11 as under:

8. In Durga Prasad v. Deep Chand, (1953) 2 SCC 509 : AIR 1954 SC 75 a Bench of three learned Judges of the Supreme Court dealt with a case where the Plaintiff was a purchaser; the first Defendant the vendor while the second and third Defendants were the subsequent purchasers. The Supreme Court observed that though the practice of the Courts in India had not been uniform, there were three distinguishing lines of thought. According to one point of view, the proper form of decree is to declare the subsequent purchase void as against the Plaintiff and direct conveyance by the vendor alone. The second would consider that both the vendor and the vendee should join, while a third would limit the execution of the conveyance to the subsequent purchaser alone. The Supreme Court held after evaluating the three alternatives as follows:

“42. In our opinion, the proper form of decree is to direct specific performance of the contract between the vendor and the plaintiff and direct the subsequent transferee to join in the conveyance so as to pass on the title which resides in him to the plaintiff. He does not join in any special covenants made between the plaintiff and his vendor; all he does is to pass on his title to the plaintiff. This was the course followed by the Calcutta High Court in - Kafiladdin v. Samiraddin, AIR 1931 Cal 67 (C), and appears to be the English practice. See Fry on specific Performance, 6th Edn. Page 90, paragraph

207; also -‘Poter v. Sanders’, (1846) 67 ER 1057 (D). We direct accordingly.”

9. The judgment in *Durga Prasad* was considered by another Bench of three learned Judges of the Supreme Court in *Dwarka Prasad Singh v. Harikant Prasad Singh*, (1973) 1 SCC 179. The Supreme Court observed as follows:

“There appears to be some divergence between the High Courts on the question whether in a suit for specific performance against a purchaser with notice of a prior agreement of sale the vendor is a necessary party or not. In other words the conflict has arisen on the question whether the decree in a suit for specific performance when the property in dispute has been sold to a third party should be to only direct the subsequent purchaser to execute a conveyance or whether the subsequent purchaser and the vendor should both execute a conveyance in favour of the plaintiff : See *Gourishankar v. Ibrahim Ali* and *Kafiladdin v. Samiraddin*. This Court has, however, held in *Lala Durga Prasad v. Lala Deep Chand* that in a suit instituted by a purchaser against the vendor and a subsequent purchaser for specific performance of the contract of sale the proper form of the decree is to direct specific performance of the contract between the vendor and the plaintiff and further direct the subsequent transferee to join in the conveyance so as to pass on the title which resides in him to the plaintiff. This was the course followed by the Calcutta High Court in the above case and it appears that the English practice was the same. Thus according to this decision, the conveyance has to be executed by the vendor in favour of the plaintiff who seeks specific performance of the contract in his favour and the subsequent transferee has to join in the conveyance only to pass his title which resides in him. It has been made quite clear that he does not join in any special covenants made between the plaintiff and his vendor. All that he does is to pass on his title to the plaintiff. In a recent decision of this Court in *R.C. Chandiok v. Chunni Lal Sabharwal* while passing a decree for specific performance of a contract a direction was made that the decree should be in the same form as in *Lala Durga Prasad's* case (*supra*). It is thus difficult to sustain the

argument that the vendor is not a necessary party when, according to the view accepted by this Court, the conveyance has to be executed by him although the subsequent purchaser has also to join so as to pass on the title which resides in him to the plaintiff.”

Consequently, the Supreme Court was of the view that the vendor to an agreement to sell was a necessary party and the conveyance, if the Plaintiff was to succeed, was to be executed by him although the subsequent purchaser would also have to join so as to pass on the title which resided in him to the Plaintiff.

10. *In a judgment of three Learned Judges of the Supreme court in Kasturi v. Iyyamperumal, (2005) 6 SCC 733, it was held that under Order I Rule 10(2) of the Code of Civil Procedure, the parties to a contract for sale were necessary parties in a suit for specific performance as also a person who had purchased a contracted property from the vendor. However, a person who claims adversely to the claim of the vendor would not constitute a necessary party. A person who did not claim under the vendor but claimed a title adverse to the vendor was held not fall within any of the categories enumerated in Section 19 of the Specific Relief Act. If a person who claims independent of the vendor as distinct from the vendor was impleaded, the suit for specific performance shall be enlarged and practically converted into a suit on title. In that decision, the Supreme Court observed as follows:*

“7. In our view, a bare reading of this provision, namely, second part of Order 1 Rule 10 sub-rule (2) CPC would clearly show that the necessary parties in a suit for specific performance of a contract for sale are the parties to the contract or if they are dead, their legal representatives as also a person who had purchased the contracted property from the vendor. In equity as well as in law, the contract constitutes rights and also regulates the liabilities of the parties. A purchaser is a necessary party as he would be affected if he had purchased with or without notice of the contract, but a person who claims adversely to the claim of a vendor is, however, not a necessary party. From the above, it is now clear that two tests are to be satisfied for determining the question

who is a necessary party. Tests are - (1) there must be a right to some relief against such party in respect of the controversies involved in the proceedings; (2) no effective decree can be passed in the absence of such party.”

In the case before the Supreme Court, it was an admitted position that Respondents 1 and 4 to 11 did not seek their addition in the suit on the strength of the contract in respect of which the suit for specific performance had been filed but based their claim on an independent title and possession of the contracted property. Since the claim was not founded under the vendor of the Plaintiff but was a claim to an independent title, the Supreme Court was of the view that the addition of the suit parties would enlarge the suit for specific performance into a suit on title. The principles in the earlier judgments of the Supreme Court have been followed in a recent judgment of the Supreme Court in Thomson Press (India) Ltd. v. Nanak Builders & Investors P. Ltd., (2013) 3 Scale 26.

11. In the present case, the Appellants as the Plaintiffs have sought the addition of Respondents 29 to 55. The specific averment in the proposed paragraph 15A which is sought to be introduced into the plaint is that in all the conveyances subsequent to the agreement for sale in favour of the Appellants Defendants 29 to 34 are not bona fide purchasers but persons who were aware of the rights and claims of the Plaintiffs. The Appellants seek a declaration that the deeds of conveyance dated 1 December 2010, 15 December 2010 and 16 February 2010 would not bind them. The Appellants seek a decree to the effect that Defendants 29 to 34 be ordered and decreed to join Defendants 1 to 28 in conveying the suit property in favour of the Appellants. The relief as structured would clearly fall within the principle that was enunciated in the judgment of the Supreme Court in Durga Prasad's case as subsequently followed.”

(Emphasis supplied)”

35. However, Mr. Kulkarni, learned *Amicus Curiae* has pointed out Paragraph Nos.11 and 12 of the said decision of **Devoo Ambo Patil**

(supra), which read as under :-

“11. Aggrieved by the Judgment and Decree dated 15 January 2022, some of the original Defendants (Defendant Nos. 1, 3 to 5, 8 and 9) alongwith Everest have filed Second Appeal No. 350 of 2022. As observed above, during pendency of the appeal Defendant No. 10 (Everest) has sold the suit property bearing 62/6 to Harmony, who was never impleaded in the appeal. Though the decree does direct M/s. Harmony Lifestyle Structures Pvt. Ltd. to convey the suit property bearing Survey No. 62/6 to Plaintiff, it has filed Second Appeal No. 353 of 2022 challenging the impugned decree of the first Appellate Court dated 15 January 2022.

12. By order dated 20 October 2023 this Court admitted both the Second Appeals by formulating following substantial questions of law:—

- (a) Whether the suit filed by the plaintiff was barred by the Limitation Act, 1963.*
- (b) Whether the decree for specific performance could have been passed without considering the provisions of Section 20 of Specific Relief Act, 1963.*
- (c) Whether the Appellate Court could have passed unconditional decree in respect of an agricultural tenanted land.*
- (d) Whether the original suit filed by the plaintiff for decree of specific performance was maintainable without seeking declaratory relief with respect to termination of the agreement vide notice dated 03/12/1990, was maintainable.”*

36. Mr. Kulkarni, learned *Amicus Curiae* submitted that issue involved in the said decision in **Devoo Ambo Patil** (supra) is totally different. He submitted that in any case Section 52 of the TP Act and

the law laid down by the Supreme Court in the case of **Thomson Press** (supra) is not considered in the said decision. The relevant Paragraph is Paragraph No.63 which reads as under :-

“63. Thus, the proper course of action for the first Appellate Court was to either set aside the transactions of purchase between (i) Defendant Nos. 1 to 9 in favour of Everest and (ii) Everest and Harmony. To do so, it was necessary for the Plaintiff to implead Harmony as party to the Appeal and to incorporate a prayer for setting aside Sale Deed dated 2 August 2012. The second course of action for the first Appellate Court was to direct all three viz. Defendant Nos. 1 to 9, Everest and Harmony to execute conveyance in the Plaintiff's favour. The third course of action was to direct Harmony to execute conveyance in the Plaintiff's favour. All the three courses of actions would have required impleadment of Harmony as party to the Suit/Appeal. Thus, the first Appellate Court could not have directed Defendant Nos. 1 to 9 to convey land bearing Survey No. 62/6 to the Plaintiff. Thus, on both the counts of directing conveyance of land admeasuring 4 Guntha (owned by M/s. Rajbir Constructions) as well as directing Defendant Nos. 1 to 9 to convey balance land in Survey No. 62/6, decree passed by the first Appellate Court is clearly faulty.”

37. Perusal of the said decision of the learned Single Judge in the case of **Devoo Ambo Patil** (supra) and particularly Paragraph No.12 of the same shows that substantial question of law which the learned Single Judge was considering are totally different. In that case, the Suit of the Plaintiff seeking specific performance was dismissed and during the pendency of the Appeal before the first Appellate Court these transactions have taken place. In that context, the learned Single Judge

has made various observations in the light of factual position in that case. Thus, said decision will have no application to the present case.

38. In any case, as rightly pointed out by Mr. Kulkarni, learned *Amicus Curiae* in that case the learned Single Judge has not considered Section 52 of the TP Act and the effect of the same. Apart from this aspect the learned Single Judge has passed the said Judgment on the basis of the law laid down in the case of ***Lala Durga Prasad*** (supra) and ***Dwarka Prasad Singh*** (supra), which have been elaborately discussed herein above and it has been held that the said decisions are not applicable to the present case.

39. Mr. Sakhardande, learned Senior Counsel also relied on the decision of the learned Single Judge in the case of ***Shree Kamal Constructions v. Kamlakar Jiwan Patil***¹¹. In the said case, a Division Bench of this Court in Paragraph No.12 summarized the decision of the Supreme Court and held that consequently, the Supreme Court was of the view that the vendor to an agreement to sell was a necessary party and the conveyance, if the Plaintiff was, to succeed, was to be executed by him although the subsequent purchaser would also have to join so as to pass on the title which resided in him to the Plaintiff. Mr. Sakhardande, learned Senior Counsel relied on Paragraph Nos.8 to 13 of the said decision. In Paragraph Nos.8 to 13 of the said decision, reliance is placed on ***Lala Durga Prasad*** (supra), ***Dwarka Prasad Singh***

¹¹ 2013 SCC OnLine Bom 2000

(supra) and also on the decision of the Supreme Court in the case of *Kasturi v. Iyyamperumal*¹². It is necessary to consider the factual aspects in the said decision of *Shree Kamal Constructions* (supra). In that case, the Appellants instituted a Suit in July 2011 seeking specific performance of an agreement dated 7th December 1984 under which Respondent Nos.1 to 28 agreed to sale the suit property to the Appellants. It appears that before the filing of the Suit on 16th February 2010, on 1st December 2010 and on 15th December 2010, the Respondent Nos.1 to 28 have executed deeds of conveyance along with Respondent Nos.29 to 49 in favour of the Respondent Nos.50 to 55. The Appellants filed a Chamber Summons for impleading Respondent Nos.29 to 55 as Defendants to the Suit and for amendment of the plaint. The learned Single Judge by the impugned Order before the Division Bench in the said case of *Shree Kamal Constructions* (supra) came to the conclusion that by the amendment, the suit for specific performance would be converted to a suit on title in respect of the immovable property. Thus, it is clear that controversy involved in *Shree Kamal Constructions* (supra) is totally different. In that case, in July 2011 the Suit has been filed seeking specific performance of an agreement dated 7th December 1984 and before filing of the Suit, the suit property has been conveyed on 16th February 2010, 1st December 2010 and 15th December 2010 and therefore relying on the law laid

¹² (2005) 6 SCC 733

down by the Supreme Court in the case of **Lala Durga Prasad** (supra) and **Dwarka Prasad Singh** (supra), it has been held that the vendor to an agreement to sell was a necessary party and the conveyance, if the Plaintiff was to succeed, was to be executed by vendor although the subsequent purchaser would also have to join so as to pass on the title which resided in subsequent purchaser to the Plaintiff. Thus, the said decision of **Shree Kamal Constructions** (supra) is not applicable to the present case.

40. Thus, the legal position which emerges from the decisions of the Supreme Court in the case of **Thomson Press** (supra), **Lala Durga Prasad** (supra) and **Dwarka Prasad Singh** (supra) is as follows :-

(i) The doctrine of *lis pendens* is a doctrine based on the ground that it is necessary for the administration of justice that the decision of a court in a suit should be binding not only on the litigating parties but on those who derive title *pendente lite*. The provision of this Section does not indeed annul the conveyance or the transfer otherwise, but to render it subservient to the rights of the parties to a litigation [**Thomson Press** (supra)].

(ii) The proper form of decree is to direct specific performance of the contract between the vendor and the plaintiff and direct the subsequent transferee to join in the conveyance so as to pass on the title which resides in him to the plaintiff. He does not join in any special covenants

made between the plaintiff and his vendor; all he does is to pass on his title to the plaintiff [*Lala Durga Prasad* (supra)].

41. It is required to be noted that in *Dwarka Prasad Singh* (supra) and *Lala Durga Prasad* (supra), the statement of law is in a situation where there is an agreement of sale between the vendor and the Plaintiff and before filing of the Suit, vendor sales the property to the subsequent purchaser and therefore such subsequent purchaser also needs to join in execution of conveyance as due to the subsequent purchase transaction the vendor's title passes to the subsequent purchaser. However, the suit for specific performance is necessarily between the parties to the contract and therefore the vendor has to be made party to such a Suit and such Suit cannot be filed directly against the subsequent purchaser i.e. subsequent owner. In such type of Suit, subsequent purchaser to whom title has passed is required to be made party as in effect he is the owner of the property and he will pass the title to the Plaintiff. The cases which are covered by the issue in the case of *Lala Durga Prasad* (supra) and *Dwarka Prasad Singh* (supra) are where the vendor executes agreement for sale in favour of the Plaintiff and before filing of the Suit, the vendor transfers the property in question to some third person. However, those cases are totally different as the concerned transactions with third persons by which property is transferred in favour of the third persons before filing of the Suit and

therefore Section 52 of the TP Act will not apply to those cases.

42. In the present case, the transactions on the basis of which the Appellants are claiming right, title and interest, have been executed after filing of the Suit and therefore those transactions are covered by Section 52 of the TP Act. Thus, the legal position which is applicable to the present case is as held as in *Thomson Press* (supra). Thus, the transactions on the basis of which the Appellants are claiming right, title and interest are subservient to the rights of the parties to the litigation. Thus, the transactions on the basis of which the Appellants are claiming right, title and interest are subservient to the decree which has been passed on 30th November 1990. The said decree is very specific. By the said decree, the Defendant has been directed to execute the sale deed in favour of the Plaintiff. If the Defendant fails to execute the sale deed in favour of the Plaintiff, then it is further directed that Court Commissioner shall execute the sale deed in favour of the Plaintiff and further it is directed that the Defendant shall hand over the vacant possession of the suit property peacefully to the Plaintiff. Thus, the transactions on the basis of which the Appellants are claiming right, title and interest are subservient to the said decree. Thus, the contention of Mr. Sakhardande, learned Senior Counsel for the Appellants that the Respondent No.2 - Judgment Debtor is not the owner of the suit property in view of the execution of the Sale-Deeds in

favour of the Appellants and their vendors and therefore Respondent No.2 - Judgment Debtor had no right, title and interest and in view of lack of title of Respondent No.2 - Judgment Debtor no rights are passed in favour of the Respondent No.1-Plaintiff, is not correct position.

43. Mr. Sakhardande, learned Senior Counsel would have been right in contending the same if the transactions on the basis of which the Appellants are claiming right, title and interest would have been executed before filing of the Suit. However, it is an admitted position that the Suit has been filed on 28th April 1986 and Respondent No.2 - Judgment Debtor by 8 registered sale deeds transferred the right, title and interest in suit property to various persons which have been executed between 7th May 1987 to 31st August 1987. Thus, this is a case where it is not necessary to implead the purchaser *pendente lite* as parties as the rights of such parties are governed by Section 52 of the TP Act.

44. Mr. Kulkarni, learned *Amicus Curiae* has also relied on the decisions of *Lala Durga Prasad* (supra), *Guruswamy Nadar* (supra), *Sanjay Verma v. Manik Roy*¹³ and *Thomson Press* (supra). The decision in *Lala Durga Prasad* (supra) and *Thomson Press* (supra) are already discussed herein above. In *Guruswamy Nadar* (supra), the Supreme Court held as follows :-

“Where a litigation is pending between a plaintiff and a

13 (2006) 13 SCC 608 : AIR 2007 SC 1332

defendant as to the right to a particular estate, the necessities of mankind required that the decision of the Court in the suit shall be binding, not only on the litigant 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, there could be no certainty that the litigation would ever come to an end.”

The Supreme Court held that the decision of the Court in the Suit shall be binding not only on the litigating parties but also on those who derive the title under them by alienations made pending the Suit, whether such alienees had or had no notice of the pending proceedings. It has been further held by the Supreme Court if the same is not the position, then there could be no certainty that the litigation would ever come to an end.

45. Mr. Kulkarni, learned *Amicus Curiae* also relied on the decision of *Sanjay Verma* (supra) and more particularly on Paragraph No.12 of the same which reads as under :-

“12. The principles specified in Section 52 of the T.P. Act are in accordance with equity, good conscience or justice because they rest upon an equitable and just foundation that it will be impossible to bring an action or suit to a successful termination if alienations are permitted to prevail. A transferee pendente lite is bound by the decree just as much as he was a party to the suit. The principle of lis pendens embodied in Section 52 of the T.P. Act being a principle of public policy, no question of good faith or bona fide arises. The principle underlying Section 52 is that a litigating party is exempted from taking notice of a title acquired during the pendency of the litigation. The mere pendency of a suit does not prevent one of the parties from dealing with the property

*constituting the subject-matter of the suit. The section only postulates a condition that **the alienation will in no manner affect the rights of the other party under any decree which may be passed in the suit unless the property was alienated with the permission of the court.***”

46. Recently, the Supreme Court in the decision of ***Celir LLP v. Sumati Prasad Bafna***¹⁴ considered the entire law with respect to Section 52 of the TP Act.

47. The Arguments in this matter were heard on earlier occasion and thereafter, this Court noticed Judgment dated 13th December 2024 of the Supreme Court in the case of ***Ceril LLP*** (supra). Therefore both the parties were heard on the said Judgment also.

48. As far as the Judgment of the Supreme Court in the case of ***Ceril LLP*** (supra), it is the submission of Mr. Sakhardande, learned Senior Counsel for the Appellant and Mr. Bhole, learned Counsel for the Appellant that the factual matrix in that case are totally different. It is the submission of Mr. Bhonsale, learned Counsel for the Respondent No.1 that the said decision supports the case of the Respondent No.1.

49. Mr. Kulkarni, learned *Amicus Curiae* states that law with respect to Section 52 of the TP Act is extensively discussed in the said decision of the ***Ceril LLP*** (supra) and the same squarely applies to the present case.

50. The relevant Paragraphs in the said decision of ***Celir LLP*** (supra)

¹⁴ 2024 SCC OnLine SC 3727

are Paragraph Nos.158 to 161, 165 and 167. The same are reproduced herein below for ready reference :-

“158. The following conditions ought to be fulfilled for the doctrine of lis pendens to apply:—

- i. There must be a pending suit or proceeding;*
- ii. The suit or proceeding must be pending in a competent court;*
- iii. The suit or proceeding must not be collusive;*
- iv. The right to immovable property must be directly and specifically in question in the suit or proceeding;*
- v. The property must be transferred by a party to the litigation; and*
- vi. The alienation must affect the rights of any other party to the dispute.*

159. In short, the doctrine of lis pendens, which Section 52 of the TPA encapsulates, bars the transfer of a suit property during the pendency of litigation. The only exception to the principle is when it is transferred under the authority of the court and on terms imposed by it. Where one of the parties to the suit transfers the suit property (or a part of it) to a third-party, the latter is bound by the result of the proceedings even if he did not have notice of the suit or proceeding.

160. In the landmark decision of the English Court of Chancery in Bellamy v. Sabine, (157) 1 De G&J 566, Lord Turner underscored and explained the rationale of the principle underlying lis pendens and observed that if any alienation or material change to the subject matter during the pendency of a proceeding were permitted to prevail, it would defeat the very course of such proceedings before the courts. The relevant observations read as under:—

“It is, as I think, a doctrine common to the courts both of Law and Equity and rests, as I apprehend, upon this foundation that it would plainly be impossible that any

action or suit could be brought to a successful termination, if alienations pendente lite were permitted to prevail. The plaintiff would be liable in every case to be defeated by the defendants alienating before the judgment or decree, and would be driven to commence his proceedings de novo, subject again to be defeated by the same course of proceedings.”

(Emphasis supplied)

161. In *Jayaram Mudaliar v. Ayyaswami*, (1972) 2 SCC 200 : AIR 1973 SC 569 this Court explained that where any proceeding in respect of a property is pending, the doctrine of *lis pendens* vests the courts with the control or dominion over such subject-matter so that no party or person may remove the subject-matter outside of the power of the court to deal with it in accordance with law and thereby render the proceedings infructuous. The relevant observations read as under:—

“14. The background of the provision set out above was indicated by one of us (Beg, J.,) in *Jayaram Mudaliar v. Ayyaswami* [(1972) 2 SCC 200, 217 : AIR 1973 SC 569]. There, the following definition of the *lis pendens* from *Corpus Juris Secundum* (Vol. LIV, p. 570) was cited: “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.”

It was observed there: “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.”

(Emphasis supplied) ”

“165. Similarly in a recent decision of this Court in *Chander Bhan (D) through Lr. Sher Singh v. Mukhtiar Singh*, 2024 INSC 377 it was held that once the transaction in question is

found to be illegal due to the doctrine of *lis pendens*, any defence of the subsequent transferee that they are a bona-fide purchaser is liable to be rejected. The relevant observations read as under:—

“21. Once it has been held that the transactions executed by the respondents are illegal due to the doctrine of *lis pendens* the defence of the respondents 1-2 that they are bonafide purchasers for valuable consideration and thus, entitled to protection under Section 41 of the Act of 1882 is liable to be rejected.”

(Emphasis supplied) ”

“167. In Siddamsetty Infra Projects Pvt. Ltd. v. Katta Sujatha Reddy, 2024 INSC 861 this Court held that doctrine of *lis pendens* kicks in the moment a proceeding is instituted/filed irrespective of whether such filing is still defective or notice is yet to be issued by the court. It further held that any transfer made during the pendency of such proceeding would be subject to the final result of the litigation or in other words would be hit by *lis pendens* under Section 52 of the TPA. The relevant observations read as under:—

“49. The purpose of *lis pendens* is to ensure that the process of the court is not subverted and rendered infructuous. In the absence of the doctrine of *lis pendens*, a defendant could defeat the purpose of the suit by alienating the suit property. This purpose of the provision is clearly elucidated in the explanation clause to Section 52 which defines “pendency”. Amending Act 20 of 1929 substituted the word “pendency” in place of “active prosecution”. The Amending Act also included the Explanation defining the expression “pendency of suit or proceeding”. “Pendency” is defined to commence from the “date of institution” until the “disposal”. The argument of the respondents that the doctrine of *lis pendens* does not apply because the petition for review was lying in the registry in a defective state cannot be accepted. The review proceedings were “instituted” within the period of limitation of thirty days. The doctrine of *lis pendens* kicks in at the stage of “institution” and not at the stage when notice is issued by this Court. Thus, Section 52 of the Transfer of Property Act would apply to the third-party purchaser once the sale was executed after the review petition was instituted before this

Court. Any transfer that is made during the pendency is subject to the final result of the litigation.”

(Emphasis supplied) ”

[Emphasis added]

The above principles are squarely applicable to the present case. Thus, the transactions on the basis of which the Appellants are claiming right, title and interest are covered by the doctrine of *lis pendens* as per Section 52 of the TP Act. Consequently, said transactions are subservient to the decree which has been passed. The Appellants have failed to prove any independent right, title and interest and therefore not entitled to obstruct the decree.

51. It is also relevant to note the discussion in ***Celir LLP*** (supra) regarding Section 52 as amended by the Maharashtra amendment. The said discussion is in Paragraph Nos.169 to 173, which read as under :-

“169. It has been contended by the Subsequent Transferee that **Section 52 of the TPA has a modified application in Maharashtra** i.e., the area in which the said property is situated by virtue of the State Amendment made to Section 52 of the TPA by the Bombay Amendment Act, 1939 (Act XIV of 1939). The relevant provision as amended reads as under:—

“52. **Transfer of property pending suit relating thereto. —**

(1) *During the pendency in any court having authority within the limits of India excluding the State of Jammu and Kashmir established beyond such limits by the Central Government, of any suit or proceeding which is not collusive and in which any right to immovable property is directly and specifically in*

question, if a notice of the pendency of such suit or proceeding is registered under Section 18 of the Indian Registration Act, 1908, the property after the notice is so registered 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.

- (2) Every notice of pendency of a suit or proceeding referred to in sub-section (1) shall contain the following particular, namely:
- (a) the name and address of the owner of immovable property or other person whose right to the immovable property is in question;
 - (b) the description of the immovable property the right to which is in question;
 - (c) the Court in which the suit or proceeding is pending;
 - (d) the nature and title of the suit or proceeding; and
 - (e) the date on which the suit or proceeding was instituted.

Explanation. — For the purposes of this section, the pendency of a suit or proceeding shall be deemed to commence from the date of the presentation of the plaint or the institution of the proceedings in a Court of competent jurisdiction, and to continue until the suit or proceeding has been disposed of by a final decree or order and complete satisfaction or discharge of such decree or order has been obtained, or has become unobtainable by reason of the expiration of any period of limitation prescribed for the execution thereof by any law for the time being in force.”

(Emphasis supplied)

170. It was submitted on behalf of the Subsequent Transferee that in view of the aforesaid state amendment to Section 52 of the TPA, **in order to invoke lis pendens under the said provision it is mandatory as per sub-section (1) that a**

notice of pendency of a suit or proceeding is registered in respect of the property which is the subject-matter of such proceeding in the manner laid down in sub-section (2) and in the event no such notice of pendency is registered then lis pendens will not be applicable. It was further submitted that since in the present case admittedly there was no registration of notice of pendency by the petitioner in respect of the Secured Asset, the Assignment Agreement dated 28.08.2023 and the transfer of the said property in pursuance thereto is not hit by lis pendens.

171. We have carefully gone through the aforesaid state amendment made to Section 52 of the TPA. The amended Section 52 sub-section (1) of the TPA casts upon a party who is claiming any right to a property which is a subject-matter of any pending suit or proceeding an additional duty to register a notice of pendency in respect of such property so as to caution and put to notice any third-party who might otherwise be unaware of such proceeding or litigation despite the best of due diligence either due to inadvertence or deliberate misleading by one of the parties to the lis and as result might be genuinely considering to purchase or acquire any right in the subject-matter proceeding. The requirement of registration of notice of pendency is to prevent any undue or unwarranted hardship to such third-parties who even after a reasonable due diligence have bona-fidely purchased the property believing it to be free from the encumbrances of any pending proceeding only to later face the adverse consequence of losing their rights by a mechanical application of lis pendens.

172. This additional requirement of registration of notice of pendency is for the benefit of the party claiming any right in such subject-matter property and also for the benefit of any third-party interested in such subject-matter property by enabling the former to claim the benefit of lis pendens as an absolute right after having duly taken steps towards ensuring that the public is well-aware of the impending litigation in respect of such property by registering a notice of pendency and to enable the latter to ascertain the veracity of title of such property by exercise of its due diligence. Although, the said provision is for the benefit of the third-party, yet such subsequent purchasers cannot as a matter of absolute right

claim any title to such property solely on the ground of want of any notice of pendency being registered. To hold otherwise would undermine the object and purpose of the doctrine of lis pendens which is based on the principle of equity, good conscience, and public policy and discourage any thwarting or frustration of rights of the parties so litigating by unscrupulous and unanticipated transactions.

173. The vital essence of this additional duty imposed upon the party claiming a right to a property which is a subject matter of a pending proceeding, is only to aid a third-party to exercise its due diligence and obviate the possibility of any dishonesty, misrepresentation or fraud by a party in order to gain an undue advantage or benefit despite the pendency of proceedings. However, if the absence of notice registration were to render the doctrine entirely inapplicable, it would lead to exploitation of procedural gaps by parties who deliberately delay or avoid registering such notices to defeat substantive rights of the parties and undermine the very sanctity of judicial proceedings. Such an interpretation would lead to a very chilling effect whereby, third-parties despite being expected to verify the title and status of the property would simply abdicate their duty to conduct thorough due diligence in transactions involving immovable properties or that despite being fully aware of the pendency of such proceedings would be able to deviously claim absolute rights to such property or worse, mischievously execute back-dated agreements in collusion with a party to a lis prior to registration of such notice of pendency to circumventing the very proceedings and render them infructuous.”

(Emphasis added)

Thus, what has been held by the Supreme Court that the intention behind said Maharashtra amendment of Section 52 is only to aid a third-party to exercise its due diligence and obviate the possibility of any dishonesty, misrepresentation or fraud by a party in order to gain an undue advantage or benefit despite the pendency of proceedings. However, it has been further held that if the absence of notice

registration were to render the doctrine of *lis pendens* entirely inapplicable, it would lead to exploitation of procedural gaps by parties who deliberately delay or avoid registering such notices to defeat substantive rights of the parties and undermine the very sanctity of judicial proceedings. Such an interpretation would lead to a very chilling effect whereby, third-parties despite being expected to verify the title and status of the property would simply abdicate their duty to conduct thorough due diligence in transactions involving immovable properties or that despite being fully aware of the pendency of such proceedings would be able to deviously claim absolute rights to such property or worse, mischievously execute back-dated agreements in collusion with a party to a *lis* prior to registration of such notice of pendency to circumventing the very proceedings and render them infructuous.

52. In this particular case, the Suit was filed on 28th April 1986 and the *lis pendens* was registered immediately on 2nd May 1986. Thus, the Appellants were completely aware of the pendency of the Suit.

53. Mr. Sakhardande, learned Senior Counsel on the basis of the scheme under Order XXI Rules 97 to 106 of CPC submitted that the decree – holder has to satisfy the Court that the decree for possession has been validly passed. It is for the decree – holder to establish that the decree being executed is valid decree and capable of execution. He

submitted that Order XXI Rule 101 in this regard assumes importance as it provides that all questions relating to right, title or interest in the property are required to be determined in execution proceedings. He submitted this is apparent as Rule 101 specifically provides “all questions relating to right, title or interest” consequently, it follows that it will be open to an obstructionist to raise a contention that the decree is not liable to be executed. This contention could be raised by an obstructionist even if he fails to establish that he has an independent right to possession. As such, the Trial Court, as the Executing Court, had the power to decide questions relating to right, title and interest in the property arising between the parties to an application under Rule 97, including whether the Appellants had just cause to obstruct the execution of the decree and that the decree is not liable to be executed against them. Any question, therefore, regarding a defect in title of the Decree Holder had to be heard and adjudicated finally by the Trial Court and the Decree Holder could not have been directed to take possession. It was open to the Appellants to raise this question as it legally arose between the Appellant i.e. obstructionist and the Decree Holder and the same was relevant for consideration and determination between the parties. The question which the Executing Court is obliged to determine under Rule 101 should have legally arisen between the parties; and such question must be relevant for consideration and

determination between the parties. Thereafter, any order passed by the Executing Court disposing of the application under Rule 97, one way or the other under Rule 98, would be deemed to be a decree under Rule 103. To substantiate the said contentions, he relied on the following decisions :-

- (i) ***Mani Nariman Daruwala v. Phiroz N. Bhatena*** ¹⁵.
- (ii) ***Anwarbi*** (supra)
- (iii) ***Silverline Forum*** (supra)
- (iv) ***N.S.S. Narayana Sarma*** (supra)

54. It is the submission of Mr. Kulkarni, learned *Amicus Curiae* on the basis of provisions of Order XXI Rules 97 to 103 (Bombay Amendment) that on 1st October 1983 by Bombay Amendment, Rule 102 is deleted. By the very Amendment Sub-Rule 2 was substituted to Rule 98(2). It is his submission that in fact Bombay Amendment introduces stringent provisions. He submitted that as the Executing Court was satisfied that the obstructionist is the transferee *pendente lite* and therefore there is the mandate of law that Court should direct the obstructionist to hand over the possession. He relied on the decision of the Supreme Court in case of ***Usha Sinha v. Dina Ram*** ¹⁶.

55. Before consideration of the rival contentions with respect to Order XXI Rules 97 to 103, it is necessary to set out the said provisions as applicable to the State of Maharashtra.

15 1990 SCC OnLine Bom 275

16 (2008) 7 SCC 144

“ORDER XXI
EXECUTION OF DECREES AND ORDERS
Payment under decree

Rule 1 ...

to

Rule 96 ...

Resistance to delivery of possession to decree-holder
or purchaser

97. Resistance or obstruction to possession of immovable property.—1) Where the holder of a decree for the possession of immovable property or the purchaser of any such property sold in execution of a decree is resisted or obstructed by any person in obtaining possession of the property, he may make an application to the Court complaining of such resistance or obstruction.

[(2) Where any application is made under sub-rule (1), the Court shall proceed to adjudicate upon the application in accordance with the provisions herein contained.]

98. Orders after adjudication.—(1) Upon the determination of the questions referred to in rule 101, the Court shall, in accordance with such determination and subject to the provisions of sub-rule (2),—

- (a) make an order allowing the application and directing that the applicant be put into the possession of the property or dismissing the application; or**
- (b) pass such other order as, in the circumstances of the case, it may deem fit.**

(2) Where upon such determination, the Court is satisfied that the resistance or obstruction was occasioned without any just cause by the judgment-debtor or by some other person at his instigation or on his behalf, or by any transferee where such transfer was made during the pendency of the suit or execution proceeding, it shall direct that the applicant be put into possession of the property, and where the applicant is still resisted or obstructed in obtaining possession, the Court may also, at the instance of the applicant, order the judgment-

debtor, or any person acting at his instigation or on his behalf, to be detained in the civil prison for a term which may extend to thirty days. The Court may also order the person or persons whom it holds responsible for such resistance or obstruction to pay jointly to severally in addition to costs, reasonable compensation to the decree-holder or the purchaser, as the case may be for the delay and expenses caused to him in obtaining possession. **Any order made under this rule shall have the same force and be subject to the same conditions as to appeal or otherwise as if it were a decree.**

[Note:- Sub-rule (2) of Rule 98 is substituted by Bombay Amendment (w. e. f. 1-10-1983)].

99. Dispossession by decree-holder or purchaser.—(1) Where any person other than the judgment-debtor is dispossessed of immovable property by the holder of a decree for the possession of such property or, where such property has been sold in execution of a decree, by the purchaser thereof, he may make an application to the Court complaining of such dispossession.

(2) Where any such application is made, the Court shall proceed to adjudicate upon the application in accordance with the provisions herein contained.

100. Order to be passed upon application complaining of dispossession.—Upon the determination of the questions referred to in rule 101, the Court shall, in accordance with such determination,—

- (a) **make an order allowing the application and directing that the applicant be put into the possession of the property or dismissing the application; or**
- (b) **pass such other order as, in the circumstances of the case, it may deem fit.**

Where it is determined that the application is made by person to whom the judgment-debtor has transferred the

property after the institution of the suit in which the decree was passed, the Court shall dismiss the application under sub-rule (a) above.

[Note :- Proviso is added by Bombay Amendment (w. e. f. 1-10-1983)].

101. Question to be determined.—All questions (including questions relating to right, title or interest in the property) arising between the parties to a proceeding on an application under rule 97 or rule 99 or their representatives, and relevant to the adjudication of the application, shall be determined by the Court dealing with the application, and not by a separate suit and for this purpose, the Court shall, notwithstanding anything to the contrary contained in any other law for the time being in force, be deemed to have jurisdiction to decide such questions.

“Provided that when the Court is not competent to decide such question due to want of pecuniary jurisdiction the Court shall send the execution case to the Court of the District Judge to which the said Court is subordinate and thereupon the Court of the District Judge or any other competent Court to which it may be transferred by the District Judge, shall deal with it in the same manner as if the case had been originally instituted in that Court.

[Note:- Proviso is added by Bombay Amendment (w. e. f. 1-10-1983)].

Rule 102 (Omitted)

103. Orders to be treated as decrees.— Where any application has been adjudicated upon under rule 98 or rule 100, the order made thereon shall have the same force and be subject to the same conditions as to an appeal or otherwise as if it were a decree.”

(Emphasis added)

56. Mr. Sakhardande, learned Senior Counsel for the Appellants very

strongly relied on the decision of the learned Single Judge in the case of **Mani Nariman Daruwala** (supra) and more particularly on Paragraph Nos.12 and 13 of the same, which read as under :-

“12. In my view, the phrase “holder of a decree for possession” which is contemplated under the above Rule postulates that he has to be a holder of valid decree for possession. The said phrase cannot include a person who is a holder of a decree which is a nullity. Nullity is not a decree at all. Hence, before a decree holder can call upon a Court to hear his complaint in regard to the obstruction to the execution of his decree by a person who has no independent right to possession, he has first to qualify having the status of being the holder of a valid decree for possession. If he holds a decree which is a nullity in law, he cannot be termed as a holder of a valid decree for possession. If he holds a decree which is a nullity in law, he cannot be termed as a holder of a decree which is capable of being put in execution. It follows that an obstructionist can always contend that the decree under execution is a nullity and, therefore, the Courts are refrained from entertaining an application for removal of the obstruction. Once such a contention is raised, it will be for the decree holder to establish that the decree which he has put in execution is a valid decree and the same is capable of being executed. In my view, the above contention can be raised by an obstructionist even if he fails to establish that he has an independent right to possession. The holding of a valid decree is a sine qua non for initiation of proceedings under Rules 97 to 101 of Order XXI of the Code of Civil Procedure. If the decree under execution is a nullity, the decree holder will not be heard to say that the obstructionist is illegally resisting its execution.

13. Prior to the amendment of 1976 it was open to an obstructionist like the respondents Nos. 5 and 6 to file a separate suit and contend that the decree under execution is a nullity and is not liable to be executed as against him. After the said amendment, such a contention is no longer open by filing a separate suit but is required to be raised, entertained and decided in the execution proceedings and this is the purport of Rule 101 of the Code of Civil Procedure. Rule 101 provides as under:—

“All questions (including questions relating to right, title or interest in the property) arising between the parties to a proceeding on an application under Rule 97 or Rule 99 or their representatives, and relevant to the adjudication of the application, shall be determined by the Court dealing with the application and not by a separate suit and for this purpose, the Court shall, notwithstanding anything to, the contrary contained in any other law for the time being in force be deemed to have jurisdiction to decide such questions.”

The bracketed portion of the above Rule would show that the questions relating to right, title or interest in the property are some of the questions which are required to be determined in the execution proceedings. This is apparent from the words “all questions including”. Hence, what follows after the said phrase are merely illustrative and not exhaustive. Hence, the question whether the decree under execution is a valid decree or a nullity would fall under the phrase “all questions” arising between the parties to the proceeding of an application under Rule 97 and the said question would be required under the above rule to be decided by the executing Court. Hence, the provisions of Rules 97 to 101 of Order 21, if properly construed cannot be held to mean that once a decree is put in execution, it can only be resisted by an obstructionist who has an independent right to possess. Such a construction would do violence to the term “holder of a decree for possession”. Such a phrase in my view, cannot include a holder of an invalid decree for possession. If this be so, the decree holder has to first establish that the decree which he has put in execution is a valid decree for possession. Consequently, it follows that it will be open to an obstructionist to raise a contention that the said decree being a nullity is not liable to be executed and this is despite the fact that he cannot establish his independent right to possession.”

(Emphasis added)

57. The learned Single Judge in the case of **Mani Nariman Daruwala** (supra) has discussed the scope of Order XXI Rule 97 of CPC. In the said decision, the decree of eviction has been passed against licensees. The

contention raised by the Judgment Debtor was that Court had no jurisdiction under Section 41 of the *Presidency Small Cause Courts Act, 1882* to pass decree against licensee. Therefore, the decree is a nullity. The learned Executing Court held that Order under execution was a nullity and therefore obstructionist's notice was discharged. In that context of the matter, the learned Single Judge was considering the issue whether an obstructionist who fails to establish an independent right to possession, can resist execution on the ground that decree under execution is a nullity. The observations of the learned Single Judge in the decision of ***Mani Nariman Daruwala*** (supra) in Paragraph No.12 are required to be understood in the said background. Thus, what the learned Single Judge has held that if a decree is a nullity, then the Court can dismiss the execution application. It is settled legal position that the decree which is a nullity is not the decree in the eyes of law and therefore, there cannot be two opinions about what has been held by the learned Single Judge in the decision of ***Mani Nariman Daruwala*** (supra). However, the said decision will have not application to the facts of the present case. It is not the submission that the learned Trial Court who has passed the decree of specific performance has no jurisdiction to pass the decree. The only submission raised is that the Appellants are the subsequent purchasers and unless they are joined in the suit and decree is passed against them directing them to execute the

Conveyance Deed in favour of the Respondent No.1 - Decree Holder, valid title is not passed in favour of the Respondent No.1. Mr. Sakhardande, learned Senior Counsel submitted that unless the Appellants/obstructionists joined in decree for specific performance and directed to be joined in the sale deed to be executed in favour of the Plaintiff (Decree Holder), the decree is not executable because the transfer pending the Suit is not void but valid and the title of defendant of the suit property was divested to transferees. Therefore title can be passed on to Plaintiff (Decree Holder) by such transferees alone. Hence decree is not executable. In this behalf it is very important to note that the Appellants are the purchasers *pendente lite* and therefore are covered by Section 52 of the TP Act. The rights which they have acquired through Sale-Deeds executed in their favour are subservient to the decree of specific performance passed in the suit against the Respondent No.1. The said aspect is elaborately discussed in earlier part of this Judgment. Thus, by no stretch of imagination the decree of the specific performance can be held to be the nullity and/or non-executable. Reliance is placed on behalf of the Appellants on the decisions of ***Lala Durga Prasad*** (supra) and ***Dwarka Prasad Singh*** (supra). However, as already noted herein above, in those cases facts are totally different. In those cases, the sale in favour of the subsequent purchaser was before the filing of the Suit for specific performance.

Therefore before the filing of the Suit the title has been transferred to the subsequent purchaser and therefore it has been held that they should be required to be made parties to the Suit so as to ensure transfer of complete title in favour of the Plaintiff. However, in the present case, admittedly, the transaction is *pendente lite* and therefore the said transactions are subservient to the decree. Thus, the said decision in the case of **Mani Nariman Daruwala** (supra) has no application.

58. Mr. Sakhardande, learned Senior Counsel also relied on the decision of **Anwarbi** (supra) and more particularly on Paragraph No.4 of the same, which reads as under :-

“4. Learned counsel for the appellant has contended that the appellant is being repeatedly threatened with dispossession. We, therefore, make it clear that the possession of the appellant cannot be disturbed except in accordance with law; and that in view of the obstruction raised by her to the execution of the said decree, the rights of the obstructionist will have to be decided in appropriate proceedings, in accordance with law. Unless and until such proceedings terminate in favour of the decree-holder, the decree-holder cannot take possession and the appellant is entitled to retain possession.”

Thus, what has been observed by the Supreme Court is that the possession of the obstructionist cannot be disturbed except in accordance with law and that the rights of the obstructionist will have to be decided in appropriate proceedings in accordance with law and unless and until such proceedings terminate in favour of the decree –

holder, the decree -holder cannot take possession. It is required to be noted that the said observations in the case of **Anwarbi** (supra) are in the context of discussion in Paragraph Nos.2 and 3 of the said decision. Paragraph No.2 records that decree of eviction has been passed against Respondent No.6 and when the said decree was sought to be executed the Appellant - Anwarbi has obstructed the same. In that context, the Supreme Court observed that in view of the obstruction, it was for the Decree Holder to take appropriate steps under Order XXI Rule 97 for removal of the obstruction and to have the rights of the parties including the obstructionist adjudicated under the provisions of Order XXI Rule 101. In the present case, admittedly, Respondent - Decree Holder has filed such application and the same has been decided by the impugned judgment and decrees. Thus, the said judgment in the case of **Anwarbi** (supra) is not relevant for the present case.

59. Mr. Sakhardande, learned Senior Counsel for the Appellant also relied on the decision of **Silverline Forum** (supra) and more particularly on Paragraph Nos.9 to 14 of the same. The said Paragraph Nos.9 to 14 are reproduced herein below :-

“9. At the outset, we may observe that it is difficult to agree with the High Court that resistance or obstructions made by a third party to the decree of execution cannot be gone into under Order 21 Rule 97 of the Code. Rules 97 to 106 in Order 21 of the Code are subsumed under the caption “Resistance to delivery of possession to decree-holder or purchaser”. Those rules are intended to deal with every sort of

resistance or obstructions offered by any person. Rule 97 specifically provides that when the holder of a decree for possession of immovable property is resisted or obstructed by “any person” in obtaining possession of the property such decree-holder has to make an application complaining of the resistance or obstruction. Sub-rule (2) makes it incumbent on the court to proceed to adjudicate upon such complaint in accordance with the procedure laid down.

10. It is true that Rule 99 of Order 21 is not available to any person until he is dispossessed of immovable property by the decree-holder. Rule 101 stipulates that all questions “arising between the parties to a proceeding on an application under Rule 97 or Rule 99” shall be determined by the executing court, if such questions are “relevant to the adjudication of the application”. A third party to the decree who offers resistance would thus fall within the ambit of Rule 101 if an adjudication is warranted as a consequence of the resistance or obstruction made by him to the execution of the decree. No doubt if the resistance was made by a transferee pendente lite of the judgment-debtor, the scope of the adjudication would be shrunk to the limited question whether he is such a transferee and on a finding in the affirmative regarding that point the execution court has to hold that he has no right to resist in view of the clear language contained in Rule 102. Exclusion of such a transferee from raising further contentions is based on the salutary principle adumbrated in Section 52 of the Transfer of Property Act.

11. When a decree-holder complains of resistance to the execution of a decree it is incumbent on the execution court to adjudicate upon it. But while making adjudication, the court is obliged to determine only such question as may be arising between the parties to a proceeding on such complaint and that such questions must be relevant to the adjudication of the complaint.

12. The words “all questions arising between the parties to a proceeding on an application under Rule 97” would envelop only such questions as would legally arise for determination between those parties. In other words, the court is not obliged to determine a question merely because the resister raised it. The questions which the executing court is obliged to determine under Rule 101, must possess two adjuncts. First is

*that such questions should have legally arisen between the parties, and the second is, such questions must be relevant for consideration and determination between the parties, e.g., if the obstructor admits that he is a transferee pendente lite it is not necessary to determine a question raised by him that he was unaware of the litigation when he purchased the property. Similarly, a third party, who questions the validity of a transfer made by a decree-holder to an assignee, cannot claim that the question regarding its validity should be decided during execution proceedings. Hence, it is necessary that **the questions raised by the resister or the obstructor must legally arise between him and the decree-holder**. In the adjudication process envisaged in Order 21 Rule 97(2) of the Code, the execution court can decide whether the question raised by a resister or obstructor legally arises between the parties. An answer to the said question also would be the result of the adjudication contemplated in the sub-section.*

13. *In the above context we may refer to **Order 21 Rule 35(1)** which reads thus:*

*“35. (1) **Where a decree is for the delivery of any immovable property, possession thereof shall be delivered to the party to whom it has been adjudged, or to such person as he may appoint to receive delivery on his behalf, and, if necessary, by removing any person bound by the decree who refuses to vacate the property.**”*

14. *It is clear that **the executing court can decide whether the resister or obstructor is a person bound by the decree and he refuses to vacate the property. That question also squarely falls within the adjudicatory process contemplated in Order 21 Rule 97(2) of the Code.** The adjudication mentioned therein need not necessarily involve a detailed enquiry or collection of evidence. The court can make the adjudication on admitted facts or even on the averments made by the resister. Of course the court can direct the parties to adduce evidence for such determination if the court deems it necessary.”*

(Emphasis added)

Thus, as held in ***Silverline Forum*** (supra), the Executing Court can

decide whether the resister or obstructor is a person bound by the decree and if he refuses to vacate the property, then the question also squarely falls within the adjudicatory process contemplated in Order XXI Rule 97(2) of CPC. It is specifically observed by the Supreme Court that if the resistance is made by a transferee *pendente lite* of the Judgment Debtor, the scope of the adjudication would be shrunk to the limited question whether he is such a transferee and on a finding in the affirmative regarding that point the execution court has to hold that he has no right to resist in view of the clear language contained in Rule 102. Exclusion of such a transferee from raising further contentions is based on the salutary principle adumbrated in Section 52 of the Transfer of Property Act. It is true that Rule 102 is omitted by the “Bombay Amendment”, however, in Rule 100 proviso is added to the effect that where it is determined that the application is made by person to whom the Judgment Debtor has transferred the property after the institution of the Suit in which the decree was passed, the Court shall dismiss the application under sub-rule (a) above. It is clarified by the Supreme Court in Paragraph No.14 that the adjudication contemplated therein need not necessarily involve a detailed enquiry or collection of evidence. The court can make the adjudication on admitted facts or even on the averments made by the resister and in fact the Court can direct the parties to adduce evidence for such determination if the court

deems it necessary. In the present case, admittedly, the determination as contemplated in Paragraph No.14 of **Silverline Forum** (supra) has been made and the Appellants have in fact led the evidence, they have been cross-examined and both the Courts have concurrently held that the Appellants are purchasers *pendente lite* and therefore their transaction is subject to Section 52 of the TP Act.

60. Mr. Sakhardande, learned Senior Counsel relied on the decision of **N.S.S. Narayana Sarma** (supra) and more particularly on Paragraph No.19 of the same, which reads as under :-

*“19. From the principles laid down in the decisions noted above, the position is manifest that **when any person claiming title to the property in his possession obstructs the attempt by the decree-holder to dispossess him from the said property the executing court is competent to consider all questions raised by the persons offering obstruction against execution of the decree and pass appropriate order which under the provisions of Order 21 Rule 103 is to be treated as a decree.** From the averments made in the petition filed by the appellants before the executing court it is clear that they are claiming independent right to the property from which they are sought to be evicted in execution of the decree. **It is the further case of the appellants that the right in the property had vested in them much prior to filing of the present suit the decree of which is under execution.** It is to be kept in mind that the suit as initially filed was a suit for partition simpliciter. In such a suit the High Court in course of execution proceedings ordered delivery of possession. Whether such a direction given in the suit is valid or not is a separate matter. We need not say anything more on the question at present. As noted earlier, the learned Single Judge and the Division Bench dismissed the petition filed by the appellants as non-maintainable without entering into the merits of the case. The Division Bench appears to have taken the view that since the appellants are claiming the property through the Pygah Committee or the State Government, who are parties in the*

*suit, they are bound by the decree. The view taken by the Division Bench is unsustainable and does not at all stand scrutiny under law. It amounts to, if we may put it that way, begging the question raised in the petition filed by the appellants. At the cost of repetition, it may be stated here that **the appellants are claiming independent title to the property as the transferees from the pattadars whose land did not vest in the State Government under the provisions of the Andhra Pradesh (Telangana Area) Abolition of Jagirdar Regulation Act, 1958.** On a perusal of the orders passed by the Single Judge as well as Division Bench of the High Court, we are constrained to observe that the said orders are based on a complete misreading of the case of the appellants and misconception of the legal position relevant to the matter. Considering the facts and circumstances of the case, we are of the view that the matter should be remitted to the High Court for fresh consideration of the petitions filed by the appellants by a Single Judge at the first instance.”*

61. Thus, in the said decision of **N.S.S. Narayana Sarma** (supra) in Paragraph No.19, after considering various decisions of Supreme Court on the scheme of the CPC under Order XXI Rules 97 to 106, it has been held by the Supreme Court that when any person claiming title to the property in his possession obstructs the attempt by the Decree Holder to dispossess him from the said property the Executing Court is competent to consider all questions raised by the persons offering obstruction against execution of the decree and pass appropriate order which under the provisions of Order XXI Rule 103 is to be treated as a decree. In that case the Supreme Court was considering the claim of the obstructionist to the effect that the right in the property had vested in them much prior to filing of the suit and the decree of which was sought to be executed. In the present case, admittedly, the learned Executing Court

had adjudicated the rights of the Appellant and held that as the transaction on the basis of which the Appellants are claiming right are *pendente lite*, the Appellants are bound by the decree.

62. Mr. Sakhardande, learned Senior Counsel also raised certain submissions concerning Bombay Amendment of CPC. The relevant provisions of CPC with Bombay Amendment are already set out earlier.

63. Mr. Sakhardande, learned Senior Counsel for the Appellant has pointed out that Rule 102 of CPC which provides that 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, and the same has been omitted by the Bombay Amendment. He therefore submitted that the omission of said Order XXI Rule 102 by the Bombay Amendment clearly shows that the transferee *pendente lite* can also obstruct the execution of a decree and obstruction is required to be considered.

64. Mr. Kulkarni, learned *Amicus Curiae* has submitted that Sub-Rule (2) of Rule 98 of Order XXI has been amended by Notification dated 1st October 1983 and by the said Notification Rule Order XXI Rule 102 had been deleted. He submitted that in fact, Order XXI Rule 102 as applicable [without Bombay Amendment] only makes reference to Rule

98 and Rule 100. He submits that therefore the same is not applicable to Rule 97 of Order XXI. In any case, it is required to be noted that even under the Bombay Amendment, Sub-Rule (2) of Rule 98 Order XXI has been substituted and the substituted Sub-Rule(2) provides that upon the determination of the questions referred to in Rule 101, the Court is satisfied that the resistance or obstruction was occasioned without any just cause *inter alia* by any transferee where such transfer was made during the pendency of the Suit or execution proceeding, it shall direct that the applicant be put into possession of the property, and if in spite of such order, the applicant is still resisted or obstructed in obtaining possession, then such person can be detained in the civil prison and such person also can be directed to pay compensation. Thus, it is very clear that the determination which is contemplated under Sub-Rule (2) of Rule 98 of Order XXI as amended by the Bombay Amendment is only the limited determination in the context where it is the contention of the Decree Holder that the obstruction is by transferee whether such transfer was made during the pendency of the Suit or execution proceeding. Thus, it is very clear that the said limited determination is whether the transfer is *pendente lite* and therefore the same is covered by Section 52 of the TP Act. Omission of Rule 102 of Order XXI by Bombay Amendment will not render the provision under Section 52 of the TP Act irrelevant. The Bombay Amendment in Sub-Rule (2) of Rule

98 is required to be interpreted in view of the law laid down by the Supreme Court, under Section 52. Thus, once the Executing Court determines that the transfer is *pendente lite*, all consequences which are contemplated under Section 52 of the TP Act mandatorily follows.

65. In the present case the transactions on the basis of which the Appellants are claiming right in the subject property, have been admittedly executed after the filing of the Suit. Although the said transactions are not annulled by the decree of specific performance, the same are subservient to the rights of parties to a litigation and subservient to the decree which has been passed. As noted herein above in *Celir LLP* (supra), the observations of the Supreme Court in the case of *Jayaram Mudaliar v. Ayyaswami*¹⁷ have been quoted with approval. Thus, it is clear that the doctrine of *lis pendens* show that the need for it arises from the very nature of the jurisdiction of the 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.

66. It is settled legal position that the principle of *lis pendens* enshrined in Section 52 of the TP Act is the principle of public policy. Although the mere pendency of a Suit does not prevent parties dealing with the property constituting the subject matter of the suit, what is

¹⁷ (1972) 2 SCC 200

contemplated by Section 52 is that the alienation will in no manner affect the rights of the other party under any decree which may be passed in the Suit unless the property was alienated with the permission of the court and then in that case, the same will be subject to the conditions put up by the Court.

67. The purpose of *lis pendens* is to ensure that the process of the court is not subverted and rendered infructuous. In the absence of the doctrine of *lis pendens*, a defendant could defeat the purpose of the Suit by alienating the suit property. As held in **Sanjay Verma** (supra), the doctrine of *lis pendens* is in accordance with equity, good conscience or justice because they rest upon an equitable and just foundation that it will be impossible to bring an action or suit to a successful termination if alienations are permitted to prevail. A transferee pendente lite is bound by the decree just as much as he was a party to the suit. It has been held that the same is a principle of public policy without which it will be impossible to bring an action or suit to a successful termination if alienations are permitted to prevail thereby undermining the sanctity of judicial proceeding and rights of parties involved there in.

68. If the submissions of Mr. Sakhardande, learned Senior Counsel are accepted, then as a result of the same by accepting obstruction of the Appellants, the execution petition will have to be dismissed. The same will be completely contrary to Section 52 of the TP Act and the

settled legal position concerning the same. If the said submission is accepted, then what is laid down by the Supreme Court in ***Jayaram Mudaliar*** (supra) in the year 1972 that the same will have effect that the Courts have no control over the subject matter of litigation and party to Suit, particularly Defendant litigating before the Court can severally remove any part of the subject-matter outside the power of the court to deal with it and thus make the proceedings infructuous.

69. Accordingly, there is no substance in any of the substantial questions of law raised by the Appellants. Accordingly, these Second Appeals are dismissed, however, with no order as to costs.

70. In view of disposal of the Second Appeals, nothing survives in the Interim Applications and the same are also disposed of.

71. At this stage, Mr. Sakhardande, learned Senior Counsel for the Appellant and Mr. Bhole, learned Counsel appearing for the Appellant seek continuation of ad interim relief which has been granted in these Second Appeals. The Respondent No.1 opposes the said request.

72. However, in the interest of justice, ad interim relief granted by this Court is extended for a period of 3 months from the date of uploading of this Order.

73. This Court places on record its appreciation for the assistance rendered by Mr. Shriram S. Kulkarni, learned *Amicus Curiae*.

74. This order was dictated in Open Court on earlier dates and

completed today.

75. As I am conducting the Court at least for 2 - 2 & ½ hours almost every day after regular Court hours, leaving the Chamber after correcting/signing daily orders after 10:30 pm-11:30 pm on almost all the Court working days and reading the case papers at my residence up to 02:00 am, reading the case papers in the morning at least for one hour and also attending the Chamber on almost all Saturdays/Sundays/Holidays for completing pending work, uploading of this order is delayed.

[MADHAV J. JAMDAR, J.]