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MA-7145-2025

IN THE HIGH COURT OF MADHYA PRADESH  
AT INDORE

BEFORE

HON'BLE SHRI JUSTICE PAVAN KUMAR DWIVEDI

ON THE 28<sup>th</sup> OF NOVEMBER, 2025MISC. APPEAL No. 7145 of 2025

*SARTHAK LANDCON PVT. LTD. THROUGH AUTHORISED  
SIGNATORY BALRAM MATHUR*

*Versus*

*AKILA BI THROUGH POWER OF ATTORNEY MOHABBAT AND  
OTHERS*

.....  
Appearance:

*Shri Amit Agrawal, learned Senior Advocate with Shri Arjun Agrawal  
- Advocate for the petitioner.*

*Shri Vishwajit Joshi - Advocate for respondent No.1.*  
.....

ORDER

The appellant/defendant No.5 has filed this appeal under Order 43 Rule 1 read with Section 151 of the Civil Procedure Code challenging the order dated 10.07.2025 passed by the learned trial Court in RCS No. 1359-A/2023 whereby the application filed by respondent No.1/plaintiff under Order 39, Rule 1 and 2 CPC was allowed.

2. The facts in brief are that the respondent No.1/plaintiff filed a civil suit for declaration of title, declaring the registered sale deed dated 07.10.2021 (executed in favour of appellant/defendant No.5) null and void and for permanent injunction against appellant/defendant No.5 with respect to the land situated in Survey No. 123/1, 124, 125/1 and 129/1 admeasuring total 1.191 hec. in village Mayakhedi, Tehsil and District Indore. The



respondent No.1/plaintiff averred in her plaint that an agreement to sale was executed on 22.09.1992 between her husband Mohabbat Ali and Mangu Singh (who was father of respondents No. 2, 3 and 4) with respect to aforesaid suit land. It was also averred that the entire sale consideration was paid by Mohabbat Ali to Mangu Singh and said Mangu Singh delivered possession of the entire suit property to Mohabbat Ali. As there was very good relation between the said two persons, the registered sale deed was not executed. However, Mangu Singh and after him, the defendants No. 1 to 3 and 4 never disturbed the peaceful possession of Mohabbat Ali (husband of plaintiff). Even after the death of those two persons, there was no dispute. It has further been stated in the plaint that the suit was claimed to be filed for the reason that one Girish Jain came along with some goons for taking forcible possession of the suit property and when complaint about the same was presented in the Police Station Lasudia, he produced sale deed dated 07.10.2021 with respect to sale of a part of the suit land. Thus, the plaintiff came to know about execution of a sale deed, hence the suit was filed.

3. The plaintiff, with respect to this sale deed dated 07.10.2021, averred that the same was executed without receiving sale consideration and respondent No.1-Bane Singh's name is not mentioned in the same i.e. he is not one of the executant of the sale deed as the Bane Singh was also having his share in the property as one of the legal heirs of Late Mangu Singh thus the same is not valid. It has further been averred that the sale deed has been executed by delivering paper possession as the possession of the property is with the plaintiff and for all these reasons, it was pleaded that the sale deed is



null and void and for the reason that all the ingredients of a sale are satisfied in the case of plaintiff i.e. possession has been delivered, entire sale consideration has been paid and thus, plaintiff is the title holder of the suit property as such, the relief of declaration of title on the suit property, declaration of sale deed dated 07.10.2021 as null and void and for permanent injunction against the defendant No. 1 with respect of alienation and construction on the property was prayed for. Significantly, the specific performance of the agreement to sale was not sought. It may be profitable to point out here that the so-called agreement to sale dated 22.09.1992 is an unregistered document.

4. Along with plaint, an application under Order 39 Rule 1 and 2 was also filed by respondent No.1/plaintiff thereby praying for temporary injunction. The appellant/defendant No.5 filed its reply to the application for temporary injunction in which it raised doubts about the genuineness of the purported agreement to sale and even on the receipt of possession. It was pointed out in the reply that the alleged agreement was typed on a stamp paper obtained on 12.06.1990 in which Mangu Singh is shown as seller and Mohabbat Ali is shown as purchaser. Thus the agreement is dated 12.06.1990 as apparent on page No. 2. The agreement was notarized. However, the third page of the agreement would show that the date of agreement is 17.08.1992. The stamp of notary would show that it was notarised on 18.08.2002 by one notary Chandra Singh Patel. It is thus clear that this agreement to sale has different dates on its different pages which are totally out of line with each other.



5. The appellant also stated in its reply that in the agreement, the name of executants are mentioned as Mangu Singh, Bane Singh, Meherban Singh and Dilip Singh, however it contains signatures of Mangu Singh and Dilip Singh only. Thus, it was stated that the document is not a genuine document and the same has been presented to the Court after 31 years of its purported execution. Thus, there is complete absence of any *prima facie* case. It was further stated in the reply that on 23.11.2005, another sale deed was executed by deceased defendant No.4 (wife of Mangu Singh) and defendant Nos. 2 and 3 (sons of Mangu Singh) in favour of Mohabbat Ali - the husband of plaintiff for a part of Survey No. 123/1 admeasuring 1.28 hec. This piece of land was subsequently sold by plaintiff and 08 other members of her family by registered sale deed dated 22.02.2025 to M/s Omax Ltd. for which no dispute has been raised by any of the parties. As such, the entire suit property which also contains the aforesaid parcel of land of Survey No. 123/1 was sold by the family of the plaintiff herself and no dispute has been raised about the same. In fact, the Survey No. 123/1 was admeasuring in total 2.493 hec. out of which an area of 1.282 hec. was sold by the plaintiff and her family to Omax Ltd. which is the holding company of the appellant and some portion of Survey No. 123/1 admeasuring 0.809 hec. was sold by the defendant No. 2 to 4 to one Anil Patidar vide sale deed dated 25.11.2005. The remaining portion of Survey No. 123/1 i.e. 0.402 hec. has been sold to the appellant by the original defendants No. 2 to 4 which has been put to challenge. As such, the same defendants No. 2 to 4 sold some part of the property to one Anil Patidar of Survey No. 123/1 and some



property to appellant. However, plaintiff has put to challenge the sale deed which has been executed in favour of appellant and the sale deed executed in favour of Anil Patidar has not been disputed whereas, as per her story she is the title holder of the entire property contained in Survey No. 123/1, thus, the appellant tried to show the malefic intent of the plaintiff / respondent No.1.

6. Significantly, even the land of Survey No. 129/1 admeasuring 0.024 hec. has also been sold by original defendants No. 2 to 4 to one Dr. Shefali Jain way back on 08.02.2010. It has also not been challenged by the plaintiff till date. As such, the entire story of plaint is not only concocted but a complete fabrication of lies.

7. The trial Court after considering the rival submissions allowed application filed by plaintiff under Order 39 Rule 1 and 2 and restrained the appellant defendant No. 5 from alienating the suit property in any manner till the pendency of the suit vide order dated 10.07.2025. Being aggrieved by this, the defendant No.5 has filed this appeal.

8. Learned Senior Counsel for the appellant would contend that the consideration which found favour with the learned trial Court was that Bane Singh who is one of the legal heirs of Mangu Singh is not one of the executants of the sale deed and for absence of his signatures the validity of the sale deed was found doubtful. He also submits that in the possession receipt and in agreement to sale dated 22.09.1992, there is a mention of delivery of possession and for this reason possession of the plaintiff was found proved and consequently the application was allowed. Learned Senior Counsel submits that the learned trial Court has gone to the extent that it by



its own, explained in para 7 that in the plaint the agreement dated 17.08.1992 has wrongly been mentioned as 22.09.1992 which shows the pre-disposition of mind of the trial Court. Learned Senior Counsel further submits that appellant has purchased the suit property vide a valid instrument i.e. a registered sale deed and there is a presumption in law in favour of the contents of the sale deed which cannot be dispelled even *prima facie* based on an instrument (agreement to sale) purportedly executed 31 years ago and which has not been registered and which has three different dates at three different places and even all the executants of the purported agreement has not put their signatures on the same. He submits that in view of different dates and as it is unregistered instrument, the same is completely unreliable. His submission is that in view of the fact that for the portion of land in same survey number, same persons i.e. defendants No. 2 to 4 executed the sale deed to some other persons and which has not been challenged by the plaintiff/respondent no.1, the entire story created in the present matter fades into insignificance. He submits that *prima facie* the suit for declaration of title based on an agreement to sale in absence of relief for specific performance of agreement is not maintainable and in view of the settled position of law, once the suit itself is not maintainable, there is no *prima facie* case and if there is no *prima facie* case, then other two ingredients for grant of temporary injunction i.e. irreparable loss and balance of convenience are not required to be seen.

9. In support of his submissions, learned Senior Counsel places reliance on the judgment of the Hon'ble Apex Court rendered in the cases of



*Bajesingh & Another vs. Leelabai & Another, 2023 SCC OnLine MP 753; Maya Devi vs. Lalta Prasad, (2015) 5 SCC 588; Kashi Math Samsthan & Anr. vs. Shrimad Sudhindra Thirtha Swamy & Anr., (2010) 1 SCC 689* as well as a recent judgment of the Hon'ble Apex Court in case of *Ramesh Chand vs. Suresh Chand & Anr. in Civil Appeal No. 6377 of 2012*.

10. Replying to the submissions of learned Senior Counsel for the appellant, the counsel for respondent no.1 submits that defendants No. 2 to 4 - Bane Singh etc. remained *ex-parte* before the trial Court who were the persons who could have defended the valid execution of the sale deed. In their absence, the *prima facie* case of respondent No.1 cannot be denied as the fact of execution of agreement to sale cannot be disputed by the appellant defendant No. 5.

11. Learned counsel for respondent No.1 further submits that the agreement to sale dated 22.02.1992 contains all the ingredients of a valid sale i.e. entire sale consideration has been paid, possession was delivered, the agreement is in writing and it is duly notarized. As such, the respondent No.1 plaintiff has established its *prima facie* case of having her title in the suit property and in absence of any contrary document to show that the plaintiff is not in possession of the suit property, she deserves to be protected till the pendency of the suit. He further points out that in the statement recorded in the Police Station Lasudia, it has come on record that the plaintiff is in possession of the suit property. He further points out that the appellant/defendant No. 5 had earlier filed an application under Order 7 Rule 11 of the Code of Civil Procedure that was rejected by the learned trial Court



vide order dated 18.12.2024. He thus submits that the rejection of application filed under Order 7 Rule 11 would show the existence of *prima facie* case of the plaintiffs and all these points which are being raised here were in the consideration in that application also, hence the present appeal deserves to be dismissed as *prima facie* case has already been proved in Order 7 Rule 11 proceedings. He submits that complicated issues about enforceability of rights pursuant to agreement to sale and the validity of agreement itself are to be decided at the appropriate stage after recording of evidence. He further points out that the sale deed in favour of the appellant was executed without delivering actual possession. He thus submits that the order passed by the trial Court is in accordance with law which does not deserve to be interfered with, hence prays for dismissal of the appeal.

*Heard learned counsel for the parties. Perused the record.*

12. The entire case of the respondent no.1/plaintiff is based on an unregistered agreement supposedly executed on 12.06.1990 as is evident from first two pages of the agreement which would show that the stamp paper was obtained at No. 4753 on 12.06.1990. The second page of the said agreement would show at the bottom the date of execution as 12.06.1990 and then a stamp is affixed on the left side margin which would again show the date as 12.06.1990. However, the third page of the agreement would then show the date of 17.08.1992 and then it was shown to be notarized on 18.08.2002 as would be evident from page 3 of the agreement. Then the possession receipt (*kabja raseed*) would show that the possession was delivered on 20.08.1992 however, contrary to possession receipt, the





agreement would show in para 4 that the possession is delivered on the date of execution of agreement, as already stated, the agreement on page 2 shows the date of execution as 12.06.1990 and on page 3 as 17.08.1992. As such, there are three different dates i.e. 12.06.1990, 17.08.1992 and 20.08.1992. This entire conundrum of different dates creates a complete hazy picture of the agreement to sale and consequently raises serious doubts on the genuineness of instrument. Significantly this is an unregistered document.

13. The learned trial Court while granting temporary injunction has heavily placed reliance on the fact that in the registered sale deed dated 07.10.2021 executed in favour of appellant/respondent No. 5, the name of respondent No.2 / defendant No. 1 Bane Singh is not present. Thus, it raised doubts on the validity of the sale deed. However, the said person Bane Singh is not the plaintiff nor his representative or legal heir has come to this Court but the suit has been filed by a third person claiming the title based on an unregistered agreement to sale executed 31 years ago claiming title only on the basis of the said document. As such, whether Bane Singh was having share in the property which was sold to the appellant/defendant No. 5 and whether any of his rights were violated, could have been considered on a plea instituted by the said person i.e. Bane Singh. This cannot be a ground for granting any relief to the plaintiff who is not claiming her title through Bane Singh.

14. The entire case of the plaintiff is based on an unregistered agreement to sale. The fulcrum of the entire plaint of respondent No. 1 is that



all the ingredients of sale are present in the transaction. As such, in order to examine this issue we need to consider the question that what will constitute a valid sale of an immovable property.

15. The 'Transfer of Property' is defined under Section 5 of the Transfer of Property Act, 1882 which reads as under :

*5. “Transfer of property” defined.—In the following sections “transfer of property” means an act by which a living person conveys property, in present or in future, to one or more other living persons, or to himself, [or to himself] and one or more other living persons; and “to transfer property” is to perform such act.*

*[In this section “living person” includes a company or association or body of individuals, whether incorporated or not, but nothing herein contained shall affect any law for the time being in force relating to transfer of property to or by companies, associations or bodies of individuals.]”*

16. The 'Sale' has been defined in Section 54 of the Transfer of Property Act, 1882 which provides as under :

*'54. “Sale” defined.—“Sale” is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised.*

*Sale how made.—Such transfer, in the case of tangible immoveable property of the value of one hundred rupees and upwards, or in the case of a reversion or other intangible thing, can be made only by a registered instrument.*

*In the case of tangible immoveable property of a value less than one hundred rupees, such transfer may be made either by a registered instrument or by delivery of the property.*

*Delivery of tangible immoveable property takes place when the seller places the buyer, or such person as he directs, in possession of the property.*

*Contract for sale.—A contract for the sale of immoveable property*



*is a contract that a sale of such property shall take place on terms settled between the parties.*

*It does not, of itself, create any interest in or charge on such property.'*

17. It is thus clear that for a tangible immoveable property of the value of Rs. 100 upwards, instrument of conveying the title/ownership registration is essential. As such, the necessary ingredients, on conjoint reading of Sections 5 and 54, for a valid sale would be conveying property by one living person to another and that conveyance must be in exchange for a price and the conveyance must be by a registered instrument. In the present case, the registration of instrument is completely absent.

18. The Hon'ble Apex Court in the case of *Bajesingh (supra)* in para 9, 10 and 11 has held as under :

*"09. Admittedly plaintiff is the recorded owner of the suit land. Though defendant No.1 contends that an agreement to sale was executed in his favour by plaintiff on 15.08.1990 but no claim for specific performance of contract on its strength was instituted by him. Even the claim which was instituted by him before Civil Judge Class-II, Narisinggarh, District Rajgarh was dismissed by judgment and decree dated 13.08.2015. Thus, possession of defendant No.1 over the suit land is without any legal title, though may not be by way of encroachment but is instead under an agreement to sale. Since no steps have ever been taken by defendant No.1 for specific performance of contract dated 15.08.1990 and the suit instituted by him has already been dismissed in the year 2015, he is not entitled for the protection available under Section 53-A of the Transfer of Property Act. Plaintiff being owner of the suit land is entitled to recover possession from defendants 1 and 2 provided her claim for the same is within time.*

*10. The claim would be governed by Article 65 of the Limitation Act which provides for period of limitation for a suit for possession of immovable property based on title. The period prescribed therein is 12 years which begins to run when possession of the defendant becomes adverse to the plaintiff. In the present case possession of defendant No.1 to begin with was under an agreement to sale which can only be permissive possession and cannot be treated to be hostile or adverse. There is no specific plea by defendants 1 and 2 in their written statement as to when and in what manner their permissive possession became hostile or adverse to the plaintiff. On the contrary defendants 1 and 2 have claimed to be the owner of the suit land under the agreement dated 15.08.1990. The period of limitation for plaintiff to institute the suit did not begin to run merely for the reason of defendant No.1 having come in possession on 15.08.1990. The same began to run only on*



14.08.2015 when as per plaintiff she was forcibly dispossessed by defendants 1 and 2.

11. *It is well settled that mere agreement to sale is wholly incapable of conveying or transferring title even if the entire sale consideration is paid thereunder. The Courts below have hence not committed any error in dismissing the counter claim of defendants 1 and 2 for declaration of title on the basis of agreement to sale. They having claimed title under an agreement to sale could not have been held to be the owners of the suit land by virtue of adverse possession and their claim in that regard has rightly been dismissed."*

19. Recently, the Hon'ble Apex Court in case of ***Ramesh Chand (supra)*** in para 15, 16 and 17 has held as under :

*"15. There is a difference between a sale deed and an agreement for sale, or a contract for sale. A contract for sale of immovable property is a contract that a sale of such property shall take place on terms settled between the parties. While a sale is a transfer of ownership; a contract for sale is merely a document creating a right to obtain another document, namely a registered sale deed to complete the transaction of sale of an immovable property. Section 54 in its definition of sale does not include an agreement of sale and neither confers any proprietary rights in favour of the transferee nor by itself create any interest or charge in the property. If after entering into a contract for sale of property, the seller without any reasonable excuse avoids executing a sale deed, the buyer can proceed to file a suit for specific performance of the contract.*

*16. The scope of an agreement for sale has been highlighted by this court in the case of Suraj Lamp and Industries Private Limited (2) through Director v. State of Haryana and Another, (2012) 1 SCC 656, wherein this Court observed that*

*"16. Section 54 of the TPAct makes it clear that a contract of sale, that is, an agreement of sale does not, of itself, create any interest in or charge on such property. This Court in Narandas Karsondas v. S.A. Kamtam [(1977) 3 SCC 247] observed:*

*32. A contract of sale does not of itself create any interest in, or charge on, the property. This is expressly declared in Section 54 of the Transfer of Property Act. (See Ram Baran Prasad v. Ram Mohit Hazra [AIR 1967 SC 744]). The fiduciary character of the personal obligation created by a contract for sale is recognised in Section 3 of the Specific Relief Act, 1963, and in Section 91 of the Trusts Act. The personal obligation created by a contract of sale is described in Section 40 of the Transfer of Property Act as an obligation arising out of contract and annexed to the 3 (2012) 1 SCC 656 ownership of property, but not amounting to an interest or easement therein.*



33. *In India, the word ‘transfer’ is defined with reference to the word ‘convey’. ... The word ‘conveys’ in Section 5 of the Transfer of Property Act is used in the wider sense of conveying ownership.*

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37. *... that only on execution of conveyance, ownership passes from one party to another....”*

17. *In Rambhau Namdeo Gajre v. Narayan Bapuji Dhotra [(2004) 8 SCC 614] this Court held:*

*“10. Protection provided under Section 53-A of the Act to the proposed transferee is a shield only against the transferor. It disentitles the transferor from disturbing the possession of the proposed transferee who is put in possession in pursuance to such an agreement. It has nothing to do with the ownership of the proposed transferor who remains full owner of the property till it is legally conveyed by executing a registered sale deed in favour of the transferee. Such a right to protect possession against the proposed vendor cannot be pressed into service against a third party.”*

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

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

17. *In the instant matter undisputedly, plaintiff claims that there is only an agreement to sale and there is no sale deed executed in his favour by the father. As per the settled position of law, this document does not confer a valid title on the plaintiff as it is not a deed of conveyance as per Section 54 of the TP Act. At best, it only enables the plaintiff to seek for specific performance for the execution of a sale deed and does not create an interest or charge on the suit property.”*

20. As such, the agreement to sale would not confer a valid title on the plaintiff. It is not a deed of conveyance at all. The provisions of Section 54 stares on the claim of title of the plaintiff in its full vigour. In fact, this instrument even if considered to be a validly executed agreement provides an



actionable claim to the plaintiff so as to seek specific performance of the agreement.

21. In view of the above analysis of law and the facts of the present case, this Court is of the considered view that there is no existence of *prima facie* case of the respondent No.1/plaintiff.

22. Further, in para 4 of the sale deed executed and registered in favour of the appellant/defendant no. 5, it has been recorded that the possession has been delivered to it. Now considering this recital of the sale deed in juxtaposition to the statement in the unregistered agreement to sale purportedly executed 31 years' ago, the ratio of law as laid down by the Hon'ble Apex Court in the case of *Maya Devi (supra)* has to be kept in mind. The Hon'ble Apex Court in para 16 (Justice Vikramajit Sen while concurring) has held as under :

*"16. There can be no gainsaying that when the probative value of documents is to be assessed, specially those dealing with the creation of any interest in property or its transfer, of a value exceeding Rs.100/-, obviously documents which have been duly registered regardless of whether or not that was legally mandatory, would score over others."*

23. As such, if keeping in mind for the sake of argument that the agreement to sale of plaintiff was a valid document and placing it in juxtaposition to the sale deed executed in favour of appellant/defendant No.5, then the sale deed being a registered document and agreement to sale being an unregistered document, sale deed would score over the agreement to sale. For this reason also, this Court does not find *prima facie* case in favour for respondent No.1.

24. A close scrutiny of the impugned order would show, that even the Trial Court was not sure about the dates of the purported agreement to



sale as such it presumed in para 7 of the order that in the plaint, the agreement dated 17.08.1992 has wrongly been mentioned as 22.09.1992 this is clearly a perverse finding which is not supported even by the averments in the plaint.

25. As regards the submission of the learned counsel of the respondent regarding dismissal of the application filed under order 7 rule 11 of the CPC, it would suffice to mention that the two applications, i.e one under Order 7 Rule 11 and the other under Order 39 Rules 1 & 2 have a completely different criteria of consideration, while in the application in earlier case is to be considered strictly based on the plaint averments, the later application has a larger scope of consideration material beyond plaint averments. Thus, the dismissal of application under Order 7 Rule 11 of CPC has no bearing in the present case.

26. With respect to balance of convenience and irreparable loss, the Hon'ble Apex Court in the case of *Kashi Math (supra)* while considering this aspect has held in para 16 as under :

*"16. It is well settled that in order to obtain an order of injunction, the party who seeks for grant of such injunction has to prove that he has made out a prima facie case to go for trial, the balance of convenience is also in his favour and he will suffer irreparable loss and injury if injunction is not granted. But it is equally well settled that when a party fails to prove prima facie case to go for trial, question of considering the balance of convenience or irreparable loss and injury to the party concerned would not be material at all, that is to say, if that party fails to prove prima facie case to go for trial, it is not open to the Court to grant injunction in his favour even if, he has made out a case of balance of convenience being in his favour and would suffer irreparable loss and injury if no injunction order is granted. Therefore, keeping this principle in mind, let us now see, whether the appellant has been able to prove prima facie case to get an order of injunction during the pendency of the two appeals in the High Court."*

27. It is thus clear that in absence of *prima facie* case, the Court is



not required to consider balance of convenience and irreparable loss. As has already been observed herein above in the opinion of this Court, there is no *prima facie* case in existence in favour of respondent No.1 and for this reason, the other two tests are not required to be considered.

28. In view of the above findings, the order passed by the trial Court on 10.07.2025 granting temporary injunction to the respondent No.1 / plaintiff by allowing her application under Order 39 Rule 1 and 2 fails the scrutiny of this court in view of the settled position of law. Consequently, it is hereby set aside. As a corollary, the application filed by the plaintiff under Order 39 Rule 1 and 2 is rejected.

29. The findings recorded in this order are only for the purpose of deciding the issue regarding application under Order 39 Rule 1 and 2 of CPC which are only *prima facie* in nature and shall have no impact on the merits of the case.

The appeal stands allowed in above terms and disposed of.

(PAVAN KUMAR DWIVEDI)  
JUDGE

*vidya*