

IN THE HIGH COURT OF JHARKHAND AT RANCHI

S.A. No. 182 of 1991 (R)

1. Naresh Pathak, S/o Late Jugal Kishore, Substituted vide order dated 21.04.2022

1(a). Mahendra Pathak @ Ram Kinkar Pathak, aged about 58 years (already appellant no. 5), S/o Late Naresh Pathak, R/o Kokar Chowk, P.O. – Kokar, P.S. – Sadar, District – Ranchi, Jharkhand.

1(b). Sushma Devi, aged about 55 years, W/o Satrugan Mishra, D/o Naresh Pathak, R/o Village- Ramdhanpur, Narhan Kothi, P.O. – Railway Station, P.S. – Kotwali, District – Gaya, Bihar.

1(c). Krishna Kinkar Pathak, aged about 50 years, S/o Late Naresh Pathak, R/o Village- Karidih @ Mada, P.O. – Kuba, P.S. – Hunterganj, District- Chatra. **(Dead) Substituted vide order dated 29.09.2022**

1(c)(i) Upma Devi, W/o Late Krishna Kinkar Pathak, aged about 53 years.

1(c)(ii) Priyanka Mishra, W/o Manoj Mishra, D/o Late Krishna Kinkar Pathak.

1(c)(iii) Avinash Kumar Pathak, S/o Late Krishna Kinkar Pathak, aged about 26 years.

1(c)(iv) Abhishek Kumar Pathak, S/o Late Krishna Kinkar Pathak, aged about 24 years.

1(c)(v) Preeti Kumari Pathak, D/o Late Krishna Kinkar Pathak, aged about 22 years.

1(c)(vi) Ashish Kumar Pathak, S/o Late Krishna Kinkar Pathak, aged about 14 years, represented through its natural guardian mother Upma Devi, W/o Late Krishna Kinkar Pathak.

All R/o Karidih @ Mada P.O. – Kubba, P.S. – Hunterganj, Chatra, Jharkhand 825401.

1(d). Hari Kinkar Pathak, aged about 46 years, S/o Late Naresh Pathak, R/o Karidih @Mada P.O. – Kubba, P.S. – Hunterganj, District- Chatra.

- 1(e). Ravi Kinkar Pathak, aged about 44 years, S/o Late Naresh Pathak, R/o Kokar Chowk, P.O. – Kokar, P.S. – Sadar, District – Ranchi, Jharkhand.
2. Smt. Suraj Kumari Devi, D/o Late Jugal Kishore Pathak. **Substituted vide order dated 21.04.2022.**
- 2(a). Niraj Kumar Pathak, S/o Late Dharendra Pathak and grandson of Late Bindeshsari Pathak.
- 2(b). Suraj Kumar Pathak, S/o Late Dharendra Pathak and grandson of Late Bindeshsari Pathak, S/o Late Dharendra Pathak and grandson of Late Bindeshsari Pathak.
- 2(c). Sanjay Kumar Pathak, S/o Late Dharendra Pathak and grandson of Late Bindeshsari Pathak.
- 2(d). Mirtunjay Kumar Pathak, S/o Late Dharendra Pathak and grandson of Late Bindeshsari Pathak.
- R/o Karidih @ Mada, P. O. Kuba, P.S. – Hunterganj, Chatra.
- 2(e). Sachi Devi, W/o Late Prakash Mishra, D/o Late Bindeshwari Pathak, R/o Village- Augila, P.O. – Lakhna, District- Patna, Bihar.
- 2(f). Sushila Devi, W/o Shri Uday Nath Pathak, D/o Late Bindeshwari Pathak, R/o Village- Boga Sadam, P. O. – Domal Ichak, District- Chatra.
- 2(g). Nirmala Devi, W/o Shri Sudhir Pathak and D/o Late Bindeshwari Pathak, R/o Village- Sriyama, P.O.- Mohanpur, District Gaya, Bihar.
3. Smt. Bhanu Devi @ Bhanu Mati Devi, D/o Late Jugal Kishore Pathak, R/o Quarter No. DT 2121, Dhurwa, H.E.C., P.S. – Jagarnathpur, District- Ranchi. (Wife of Shri Dineshwar Pathak.) **(Deleted vide order dated 16.08.2018)**
4. Denesh Pathak, S/o Late Chandrama Pathak, R/o Quarter No. 2121, Dhurwa, P.S. – Jagarnathpur, Ranchi. **(Deleted and substituted vide order dated 16/ 04/ 1996)**
- 4(a). Debendra Kumar Pathak
- 4(b). Birendra Kumar Pathak

4(c). Sheo Kumar Pathak

4(d). Arun Kumar Pathak

All Sons of Denesh Pathak, at present resident of Mohalla of Ranchi town P.S. District Ranchi

4(e). Smt. Usha Pathak, W/o Shree Hirdyanand Pandey, resident of Qr. No. B-II 325 Dhurwa, P.S. Jagarnnathpur, District Ranchi

5. Ram Kishore Pathak, S/o Shri Naresh Pathak, R/o Village- Karidih @ Made, P.S. – Hatarganj, District- Hazaribagh

.... **Defendants / Appellants / Appellants**

-Versus-

1. Shri Narayan Prasad Sharma, S/o Late Murlidhar Sharma, R/o Village- Kokar, P.S. – Sadar, District- Ranchi. **(Dead) Substituted vide order dated 17/ 03/ 1998**

1(a). Urmila Devi, W/o Shree Gopal Prasad Sharma, D/o Late Narayan Prasad Sharma.

1(b). Nirmala Devi, W/o Shree Bijoy Sharma, D/o Late Narayan Prasad Sharma. **(Dead) Substituted vide order dated 14/ 11/ 2022**

1(b)(i) Narendra Joshi, Husband of Late Nirmal Joshi

1(b)(ii) Ashish Joshi, S/o Late Nirmala Joshi

1(b)(iii) Uma Vyas

1(b)(iv) Jaya Dadhich

1(b)(v) Neha Sharma

1(b)(vi) Shital Sharma

1(b)(vii) Swati Mehra

1(b) (iii) to 1(b) (vii) D/o Late Nirmala Joshi,

All are R/o 5 Raj Ballabh Shah Lane, Howrah, Kolkata, W.B – 711101.

1(c). Renu Sharma, W/o Dilip Kumar Sharma, D/o Late Narayan Prasad Sharma.

Resp. Nos. 1(a) to 1(c) are residents of C/o Late Narayan Prasad Sharma of village Kokar, H.B. Road, P.S. Sadar, District Ranchi

.....**Plaintiffs/ Respondents/ Respondents**

2. Smt. Prabha Devi, D/o Late Jugal Kishore Pathak and W/o Shri Naresh Pathak, R/o Village- Bansbigaha, P.S.- Kabiganj, District- Aurangabad.

.... Defendant/ Appellant/ Proforma Respondent

CORAM: HON'BLE MRS. JUSTICE ANUBHA RAWAT CHOUDHARY

For the Appellants	: Mr. Rajeev Kumar, Advocate Mr. Bhaiya V. Kumar, Advocate
For the Respondents	: Mr. Vishal Kumar Tiwary, Advocate Mr. Manjeet Kumar Choudhary, Advocate Mr. Imran Beig, Advocate

Reserved On: 04.02.2026

Pronounced On:01.06.2026

1. This second appeal has been filed against judgment 09.07.1991 (decree signed on 29.07.1919) in Title Appeal No. 79 of 1988, T. R. No. 15 of 1989 passed by the learned Additional Judicial Commissioner, Ranchi confirming the judgment and decree dated 02.08.1988 passed by the learned Sub- Judge – II, Ranchi in Title Suit No. 297 of 1982.

2. The defendants lost in both the courts and consequently they are the appellants before this Court.

3. This second appeal was *admitted* vide order dated 04.09.1992 by framing substantial question of law No.(i) and thereafter, an additional substantial question of law was framed on 03.9.2015 i.e. substantial question of law No.(ii), and thereafter on 16.08.2018 substantial question of law No. (iii) was framed. Further, vide order dated 23.12.2025, I.A. No. 12912 of 2025 was filed for rectification of the substantial question of law No. (i) and considering the submission, the substantial question of law No. (i) framed vide order dated 04.09.1992 was modified. Thus, following are the three substantial questions of law to be answered in this case: -

(i) Whether the concurrent finding recorded by both the courts that the plaintiff was ready and willing to

perform his part of the contract suffers from any perversity?

(ii) Whether the agreement dated 18.09.1982 (Exhibit-2) executed by defendant No.1 in favour of plaintiff or agreement dated 20.08.1982 (Exhibit-B) executed by defendant No.3 in favour of defendant No.2 shall prevail and given effect to?

(iii) Whether the receipt cum extension of time of the agreement for specific performance of contract marked as Exhibit 2/1 was inadmissible in evidence for the same being not duly stamped?

4. Case of Plaintiffs: -

- (a) Title Suit No. 297 of 1982 was instituted on 11.12.1982.
- (b) The sole plaintiff was Sri Narayan Prasad Sharma against the sole defendant Jugal Kishor Pathak. However, vide order dated 25.03.1983, other defendants, namely, Dinesh Pathak and Ram Kinkar Pathak were added as defendant nos. 2 and 3 respectively.
- (c) The suit was filed for specific performance of contract with respect to Schedule-B property which was a part of Schedule-A property.
- (d) The defendant no. 2 was added on account of the fact that after the filing of the suit, the grandson of the sole defendant, namely, Ram Kinkar Pathak executed sale deed in favour of Dinesh Pathak, defendant no. 2, who was the own son-in-law of the sole defendant and it was alleged that the transaction was a sham transaction.
- (e) The suit was for a direction upon the defendants by a decree of specific performance to execute and register a deed of sale in respect of the suit property described in Schedule-B to the plaint in pursuant to the agreement dated 18.09.1982 and a further prayer was made that the defendants be perpetually restrained from making any dealing or agreement in respect of the suit property with any person other than the plaintiff.

- (f) Schedule-A and Schedule-B of the plaint are quoted as under: -

Schedule 'A'

The land with house Kuchha and Pucca situated in village Kokar P.S. Sadar District Ranchi bearing Khata no. 239 Plot No. 652 Municipal Holding No. 873 an area of 10 decimals.

Schedule 'B'

All that the land with Kuchha and Pucca house situated in Mohalla Kokar, P.S. Sadar, District Ranchi bearing Khata no. 239, Plot no. 652 Municipal Holding No. 873 (which is the part of the land of Schedule 'A') which is 15 ft east to west in the southern side and northern side and 50 ft (approx.) north to south in the eastern and western side comprising with three rooms one verandah one court yard (in the middle) and a gali (north to south in the western side and a latrine. And which is bounded and butted as follows: -

North :- Jatru Oraon

South: - Hazaribagh Road

East: - Part of the same house of the Vendor

West: - Dineshar Pathak's house.

Address of the plaintiff: -

At & village Kokar, Hazaribagh Road, Ranchi, Police Station Sadar, District & Sub-Judge-Ranchi

- (g) It was the specific case of the plaintiff that Schedule-A property was the self-acquired property of the defendant no. 1 who was a school teacher and the defendant no. 1 had let out different portions of Schedule-A property to the tenants and the plaintiff was a month-to-month tenant with respect to portion of the property and used to pay rent regularly. The portion in occupation

of the plaintiff as tenant has been described in Schedule-B to the plaint.

- (h) The defendant no. 1 resided at Hazaribagh at the address given in the plaint and used to regularly visit Ranchi to collect rent and to do other works relating to management of his properties. All this was causing inconvenience to defendant no. 1 and therefore he approached the plaintiff in the month of September 1982 and represented that he was in urgent need of money and offered to sell the property to the plaintiff at a consideration amount of Rs. 10,000/- and the plaintiff accepted the offer. The parties decided to reduce the terms of agreement in writing by executing a formal agreement and therefore they engaged the services of Sri Kashi Prasad Sahu, Advocate, who on 18.09.1982, prepared an agreement in his writing on a proper stamp paper. The agreement was explained and read over to the parties in presence of the witnesses where both the parties and witnesses signed the agreement and a sum of Rs. 2,000/- only was paid by the plaintiff to the defendant as advance against the agreed consideration amount. A copy of the agreement was annexed to the plaint.
- (i) It was the case of the plaintiff that as per the agreement, the sale was to be completed within one month. Before expiry of the stipulated period of one month, the defendant no. 1 came to the plaintiff and asked for further sum of Rs. 1,000/- as advance against consideration money and that the period of completion of sale be extended till 17.11.1982. The plaintiff and the defendant again went to Sri Kashi Prasad Sahu, Advocate on 11.10.1982 and on their instruction, the payment of further advance and extension of time on the back of agreement dated 18.09.1982 was made and Rs. 1,000/- was paid by the plaintiff to the defendant.
- (j) It was the case of the plaintiff that he made it known to the defendant no. 1 that he was ready and willing to perform his part

of the agreement by paying the balance consideration amount, but the defendant avoided to execute the sale deed on one pretext or the other pretext. On plaintiff's insistence that the sale deed should be executed immediately, the defendant started pressing that period for execution of sale deed be extended up to 30.11.1982 and ultimately both the plaintiff and the defendant again went to Sri Kashi Prasad Sahu, Advocate on 16.11.1982 and in his presence, the parties agreed to extend the period for execution of the sale deed till 30.11.1982 and a memorandum to that effect was prepared and signed on 16.11.1982. A photocopy of the memorandum was annexed to the plaint.

- (k) However, the plaintiff on 27.11.1982 received a registered letter from an Advocate, namely, M. L. Pathak acting on behalf of one Ram Kinkar Pathak claiming to be the grandson of the defendant no. 1, whereby Ram Kinkar Pathak sought to enquire whether any agreement has been entered into between the plaintiff and the defendant regarding the suit property. In response to such letter, the plaintiff claimed that a reply was sent through his lawyer on 30.11.1982 and a copy of the same was also served on the defendant no. 1 on 30.11.1982 itself. However, in spite of receipt of the said letter, whereby it was categorically made known that the plaintiff was always and still ready and willing to pay the consideration balance amount and get the sale deed in respect of the suit property executed and registered and will wait up to 10.12.1982 and then initiate appropriate legal proceeding if the defendant no. 1 did not execute the sale deed.
- (l) Ultimately, the plaintiff filed the suit seeking specific performance of agreement dated 18.09.1982 which was the first agreement entered into between the defendant no. 1 and the plaintiff. However, the plaintiff came to know that with full knowledge about filing of the present suit, one Ram Kinkar Pathak, who was

the grandson of the sole defendant, executed a deed of sale with respect to the suit property in favour of Dinesh Pathak, who was the own son-in-law of the defendant no. 1 and therefore it was alleged that the sale deed executed in favour of Dinesh Pathak was a sham transaction.

- (m) Since the suit property was sold in favour of Dinesh Pathak during the pendency of the suit and with full knowledge about the pendency of the suit, the plaintiff sought to amend the plaint which was allowed vide order dated 25.03.1983 and Dinesh Pathak and Ram Kinkar Pathak were added as defendant nos. 2 and 3 respectively.

5. It appears from the records of this case that defendant no. 1 did not file any written statement and as such the case was fixed ex-parte against the defendant no. 1 on 23.06.84. However, the suit was contested by the defendant no. 2, namely, Dinesh Pathak, Son of Chandramani Pathak and also by defendant no. 3, namely, Ram Kinkar Pathak.

6. Case of the Defendant No. 2.

- (i) The defendant no. 2, in the written statement, took a plea that the plaintiff was only a tenant, but payment of monthly rent was denied. He asserted that he had purchased the property by registered deed upon payment of consideration amount of Rs. 15,000/-. He also stated that the defendant no 3 Ram Kinkar Pathak was the grandson of the defendant no. 1 and the defendant no. 1 way back in the year 1977 had executed a power of attorney in favour of defendant no. 3, which was registered on 13.07.1977 and the said power of attorney was valid. A photocopy of the power of attorney was annexed along with the written statement.
- (ii) The defendant no. 2 further asserted that on the strength of power of attorney, the defendant no. 2 and 3 on 20.08.1982 entered into an agreement with respect to the suit property and the property was purchased by defendant no. 2 on 20.12.1982 and the remaining

consideration amount was paid. It was asserted that the defendant no. 3 had got his name mutated in the municipality and after hearing the defendant no. 2, the property was mutated in the name of defendant no. 2. The defendants asserted that they were the valid owner of the property by virtue of purchase through registered deed and they have been wrongly made party in the proceedings.

- (iii) The defendant no. 2 gave the description of the purchased property which contained holding no. 873 old and holding no. 868 new.

7. Case of the Defendant No. 3.

- I. So far as defendant no. 3 Ram Kinkar Pathak is concerned, he has also filed a separate written statement stating that the suit was barred by limitation and other preliminary objections were taken. The defendant no. 3 admitted that the plaintiff is a tenant in Schedule-B property and it was defendant no. 3, who was managing all the tenants and collecting rent by virtue of the registered general power of attorney. The defendant no. 1 was his own paternal grandfather, who had solely entrusted the management and transferred all his legal responsibilities regarding Schedule-A and Schedule-B property by executing a registered power of attorney in the year 1977 in favour of defendant no. 3 keeping in view of his old age, mental condition and other factors. It was asserted that if there was any agreement in the year 1982, said to have been made by defendant no. 1 in favour of plaintiff, the same is illegal, void, without consideration, inoperative and sham transaction. It was asserted that the defendant no. 1 had no right, title or any power to enter into any such agreement without revoking the registered power of attorney of 1977 and the said power of attorney was still valid. The said agreement was tainted with fraud undue influence and coercion. The defendant no. 1 had no mental capacity and had no legal right to enter into any such

agreement in the year 1982. It was asserted that the question of agreement of sale was false and the consideration amount of Rs. 10,000/- was also too less.

- II. It was asserted that the defendant no. 1 never entered into any such agreement and the plaintiff prevailed over defendant no. 1, took advantage of his weak state of mind and health and if there be any signature in any agreement, it has been obtained by the plaintiff by practicing fraud, coercion and undue influence and by suppressing materials facts and documents. It was asserted that the defendant no. 1 had *neither* any legal right to enter into any such agreement *nor* had the right to accept such money. It was also asserted that the plaintiff had full knowledge of the registered power of attorney of the year 1977 executed by defendant no. 1 in favour of defendant no. 3. It was asserted that the plaintiff by introducing Kashi Prasad Sahu, Advocate had tried to collect evidence from apprehending to guard his knowledge or ignorance regarding existence of general power of attorney of the year 1977.
- III. The specific case of the defendant no. 3 was that the general power of attorney of the year 1977 shall prevail and the same having not been revoked, the alleged agreement of the plaintiff, if any, was illegal, tainted with fraud and hit by the principles of Indian Contract Act and the question of part performance of the plaintiff did not arise and the agreement had no force in the eyes of law.
- IV. It was also asserted that the plaintiff had played a trick to gamble with the money to gain a stake knowing fully well about the registered general power of attorney of the year 1977 and about the sale by defendant no. 3 to defendant no. 2 and about the Ranchi Municipal Mutation in the name of defendant no. 2 and all other facts of dealing and management of the Schedule-A and B property of the plaint. The defendant no. 3 reiterated that the defendant no. 1 had no right, no interest, no status to enter into any

such agreement on the face of general power of attorney and the plaintiff had full knowledge of this fact.

- V. The defendant no. 3 asserted that the agreement of sale dated 18.09.1982, if any, is void, inoperative and has no force in the eyes of law. The defendant no. 3 has asserted that he had no knowledge about the filing of this suit at the time when he sold the property to defendant no. 2. The plaintiff had full knowledge of the fact that defendant no. 1 had no right to enter into any agreement for sale in view of registered general power of attorney and about the sale by the defendant no. 3 to defendant no. 2. It has been asserted that the sale by defendant no. 3 to defendant no. 2 is real and legal sale for consideration and it was not a sham transaction.
- VI. Upon perusal of the entire written statement of defendant no. 3, it is apparent that no statement has been made with respect to any agreement of sale entered into between the defendant no. 3 and defendant no.2, though the defendant no.2 had made a specific reference to an agreement of sale entered into between the defendant no. 2 and defendant no. 3 on 20.08.1982 and has asserted that this agreement of sale was ultimately translated into the sale deed dated 20.12.1982 executed by defendant no. 3 in favour of defendant no. 2.

8. The learned Trial Court decreed the suit.

9. Being aggrieved by the judgement and decree dated 02.08.88 passed by the Learned Sub- Judge II in Title Suit No. 297 of 1982 filed by the plaintiff - respondent, the appellants filed Title Appeal No. 79 of 1988. The learned 1st appellate court gave concurrent findings and dismissed the appeal.

10. Arguments on behalf of the appellants representing the heirs of original defendant no. 1

- I. Issue no. 3 relating to cause of action was *neither* decided by the trial court *nor* by the learned 1st appellate court.

- II. P.W. 1 was examined, but his examination was expunged and P.W. 2 had exhibited the agreement for sale dated 18.09.1982 (Exhibit-2) which was marked with objection as is apparent from paragraph 4 of his examination-in-chief and as per his evidence the agreement of sale (exhibit-2) had two witnesses, one was Ram Singh Pandey and other was Raj Kumar Kavya, but P.W. 2 is not the witness to the agreement of sale.
- III. The learned counsel for the appellants has submitted that as per Order 13 Rule 3 and 4 of C.P.C, if a document is marked with objection, then the admissibility of the document if objected, is to be decided by the Presiding officer, but the Presiding officer did not decide on the admissibility of exhibit-2. He has further submitted that since P.W. 2 is not a witness to exhibit-2, therefore he could not have exhibited the exhibit-2.
- IV. The learned counsel has further referred to the finding of the learned trial court with respect to exhibit-2 at paragraph 10 and has submitted that the onus of proof has been wrongly cast upon the defendants. He submits that once the contesting defendants asserted that the agreement of sale was obtained by fraud and misrepresentation, it was for the plaintiff to prove that the agreement of sale was valid. He submits that the person who propounds the document has to prove it. He has referred to the judgment passed by the Hon'ble Supreme Court reported in *(2008) 4 SCC 530 (Thiruvengadam Pillai vs. Navaneethammal & Ors.) paragraph 19* on this point.
- V. The plaintiff pleaded from paragraph 6 to 9 and 13 about his readiness and willingness to perform his part of the contract but no particular dates have been mentioned. The learned counsel has then referred to section 16(c) of the Specific Relief Act to submit that in case of suit seeking specific performance of contract, readiness and willingness to perform the agreement has to be

shown, right from the date of execution of the agreement till the date of decree.

- VI.** He has then referred to Sections 37, 38 and 48 of the Contract Act and submits that the provision has to be read into the Specific Relief Act and for this purpose, he has referred to Section 9 of the Specific Relief Act. He has submitted that as per Section 38(2), the offer to perform the contract has to be made at proper place and proper time. He submits that paragraph 7 of the plaint does not provide any specific date and place where the plaintiff offered to perform his part of the contract. He submits that the defendant was residing at Hazaribag and therefore the proper place where the plaintiff could have offered for performance of his part of the contract was at Hazaribagh only. He submits that there is no averment in the plaint that the plaintiff went to Hazaribagh to offer performance of his part of the contract. *However, during the course of argument, it transpired that the property is located at Ranchi and the plaintiff was the tenant under defendant no. 1 and the plaintiff has stated that defendant no.1 used to come to Ranchi to collect rent.*
- VII.** He has further submitted that P.W. 3 in paragraph 14 has stated that Jugal Kishore Pathak (defendant no.1) resides in Durga Mandir. He submits that the plaintiff in order to show his bonafide should have shown that he had visited Hazaribagh or had sent a letter to Hazaribagh.
- VIII.** He had then referred to exhibit-3 to submit that at the end it does not contain the address of defendant no. 1, however, a receipt of exhibit-3 has been exhibited on the 1st page of Exhibit-3. He has referred to the findings recorded by the learned Trial Court in paragraph 11 of its judgment and by the learned 1st Appellate Court in paragraphs 9 to 11 thereof on the point of the plaintiff's readiness and willingness to perform his part of the contract.

- IX.** He has also submitted that exhibit 2/2 also shows that address mentioned is only of Hazaribagh and no address of the defendant no. 1 has been mentioned at Ranchi. There is no evidence to show that the plaintiff ever visited Hazaribagh to show his readiness and willingness to perform his part of the contract.
- X.** The learned counsel has submitted that no issue was framed by the learned trial court on the point of readiness and willingness.
- XI.** The learned counsel has submitted that the learned 1st appellate court has relied upon the judgment reported in *AIR 1970 SC 1238* which is equivalent to *(1970) 3 SCC 140* and has submitted that this judgment was subsequently considered by the Hon'ble Supreme Court in judgment reported in *(2003) 10 SCC 390 (Manjunath Anandappa vs. Tamannasa & Others)* paragraph 17 to 21. He has submitted that paragraph 13 to 21 would be relevant for the purposes of the present case.
- XII.** He has also referred to the judgment with respect to Section 16 of the Specific Relief Act reported in *(1995) 5 SCC 115* and has submitted that factum of readiness and willingness to perform the part of the contract by the plaintiff was to be considered under the facts and circumstances of the case. The court may infer from the facts and circumstances as to whether the plaintiff was ready and always willing to perform his part of the contract. He submits that the term used in Section 16(c) is 'always willing' and this always willing has to be demonstrated right from the date of the agreement till the date of passing of the decree.
- XIII.** *On the point of unstamped exhibit 2/1*, he submits that the same was the receipt and being unstamped was not admissible in evidence. He has referred to the judgement passed by the Hon'ble Supreme Court reported in *(2009) 2 SCC 532 (Avinash kumar Chauhan vs. Vijay Krishna Mishra)* paragraph 14,17 and 32 and also judgment reported in *(2024) 7 SCC 719 (G.M. Shahul*

Hameed vs. Jayanthi R. Hegde) paragraph 21 to submit that the admissibility of unstamped document has to be necessarily examined by the court. The learned counsel has also submitted that the judgment has also been passed on the point of admission by the defendant. He has referred to paragraph 10 of the trial court's judgment. He then referred to the judgment reported in *(2015) 12 SCC 403 (Gujrat Maritime Board vs. G. C. Pandya)* paragraph 13 and 14 to submit that even if there is admission, it is for the plaintiff to prove his case. The learned counsel has also submitted that P.W. 4, who is the plaintiff himself, at paragraph 8 of his examination has stated that he stopped paying rent to the defendant after agreement and the defendant also gave up the demand the rent. He submits that the status of the plaintiff was that of a tenant and his conduct is not bonafide as he was under an obligation to pay rent till the sale deed is executed.

Apart from the aforesaid, a written notes of arguments have also been filed by the appellant no. 1 wherein following points have been mentioned.

Short Summary of arguments

- XIV.** The learned trial court has held that the plaintiff has proved that he was always ready and willing to perform his part of the contract by relying upon Ext.2, 2/1, 2/2, 3 and 3/1, and in para 6 to 9 and 13 of plaint, the plaintiff has made averment about his readiness and willingness to perform his part of the agreement and refusal of Defendant No. 1, which has led to the cause of action. Compliance of Section 16 (c) has been mentioned in Para-11 of Trial Court's Judgment, and in Para 9 to 11 of 1st Appellate Court's Judgement.
- XV.** So far as Ext. 2 is concerned, it was introduced by P.W. 2 in para 4 with objection, but no such endorsement of objection was made on Ext. 2. There is *neither* any such endorsement in the Ext. 2,

nor the order sheet dated 03/09/1986 mentions this fact. This is contrary to Order 13 Rule 3 & 4 of C.P.C. In the entire judgment of the learned Trial Court, there is no discussion about this aspect of the matter. The trial court has discussed about exhibit-2 while recording that P.W. 3, Kashi Prasad Sahu, Advocate “Who prepared the deed of Agreement dated 18.09.1982 Marked Ext-2 in this suit” [*in para 8 page 5 in last two lines only*] and the other line is in the same para at page 6 just six lines ahead of para 9 ‘P.W. 2 Baleshwar Prasad had also supported the plaintiff’s case in his evidence’.

XVI. P.W. 2, in para 23 of the deposition, has agreed that he had not received any summons to depose and he had come on call of plaintiff. In para 5 of the plaint, there was a mention of plaintiff/defendant no. 1, his lawyer Kashi Prasad Sahu and witnesses, who have signed the agreement (Raj Kumar Kabra and Ramashish Pandey) only those who have signed. There is no mention about it in the judgment. It was most crucial document the very basis of the suit suffers with perversity and the finding based upon it is para 11 of the Trial Court judgment and that of First Appellate Court approving finding of Trial Court in para 16 was also perverse due to non-consideration of the evidence in relation to Ext. 2.

XVII. *So far as Ext. 2/1* is concerned, that is an unstamped receipt defined u/s 2(23) of the Stamp Act which cannot be looked into in evidence in view of Section 36 of Stamp Act as held mandatory in the decision of **(2024) 7 SCC 719, para 21 and 30.**

XVIII. *Ext. 2/2* is a document which shows that the address of the defendant no. 1 was of Hazaribagh only. Thus, document read with para 4 of the plaint shows that the Defendant no. 1 resided at Hazaribagh. So, there should have been averments and proof that offer to perform was made at Hazaribagh address, but there

is nothing in para 6-9 & 13 of the plaint and there is not even a whisper in the deposition.

XIX. In the plaint, the plaintiff has stated that Defendant No. 1 resided at Hazaribagh, at the address mentioned in cause title. Therefore, in terms of Section 38(2) r/w section 48 of Indian Contract Act, a pleading should have been there in relation to offer of performance, *either orally or in writing*, at Hazaribagh, which is clearly absent in para 6-9 and 13 of the plaint and there is no whisper in any of the depositions. Thus, the suit for specific performance ought to have failed on account of non-compliance of aforementioned law and non-compliance of Appendix A-Form 47 and 48.

XX. The learned 1st Appellate Court relied upon the judgement reported in *AIR 1971 SC 1238*, though this decision was per incuriam of earlier decision in *Ouseph Varghese v. Joseph Aley (1969) 2 SCC 539*, para 17 & 18, where the Hon'ble Apex Court held that it is mandatory requirement to comply with Form 47 & 48 of the schedule-A to the CPC as held in *Manjunath Anandappa case. Manjunath Anandappa Versus Tammanasa and Others (2003) 10 SCC 390*, para 13-21, 23, 27.

XXI. In nutshell, there is no finding that Ext. 2 was proved and brought on record, though it was most crucial document. The very basis of the suit suffers with perversity and the finding based upon it is para 11 of the Trial Court's judgment and that of First Appellate Court approving finding of Trial Court in para 16 is also perverse due to non-consideration of the evidence in relation to Ext.2.

XXII. Thus, reliance upon Ext. 2/1 & Ext.2/2 is against the mandate of law and consequently perverse.

XXIII. In para-11 of the judgement, the learned 1st Appellate Court referred to the evidence of P.W.4, para-18, but failed to

discuss that this statement was dehors the pleadings in the plaint as also this was an abrupt statement bereft of the factual details, and also hit to order VI Rule-2 of CPC.

XXIV. A point to note would be that 1st witness was examined on 02/09/1986 who proved a half page document. The statement of this witness was expunged. So, there is *neither* any whisper/mention about this witness *nor* any mention about Ext.1.

XXV. In the decision reported in *(2024) 11 SCC 351 para to 36, Ramakant Ambalal Choksi v. Harish Ambalal Choksi & Ors.*, any order made in conscious violation of pleading and law is a perverse order.

XXVI. A finding which stems out on a complete misreading of evidence is also perverse. It was further held that safest approach on perversity is the classic approach on the reasonable man's inference on the facts. To him, if the conclusions on the facts in evidence made by the court is possible, there is no perversity. If not, the finding is perverse. Inadequacy of evidence or a different reading of evidence is not perversity the word "perversity" has been elaborately dealt with. One of it is not arrive at such conclusion by as arrived out by court. **Firstly-** Any order made in conscious violation of pleading and law is a perverse order **Secondly-** Showing deliberate determination to behave in a way that most people think is wrong, unacceptable or unreasonable. The finding was thus in violation of pleading because judge found, which were not in pleading/assertion not as per law. Moreover, though an issue were framed on cause of action but no finding was given on it. Since the cause of action mentioned in para 13 specifically mentions that it in 13/09/1982 and on such subsequent dates when the plaintiff requested for execution of deed, which was neglected/refused by the Defendant.

XXVII. It is true that a hyper-technical view of pleadings should not be taken; however, it is equally well settled that pleadings must not be in tautological symmetry with statutory provisions or consist of mere repetition of legal phrases. Pleadings must disclose the necessary factual matrix, which is a sine qua non for establishing continuous readiness and willingness from the execution of the agreement up to the stage of decree, as mandated in (1995) 5 SCC 115.

11. The arguments of appellant no. 4 (defendant no.2), the purchaser of the property during the pendency of the case by virtue of registered sale deed dated 20.12.1982

A. The appellant no. 4 is claiming the property by virtue of prior agreement of sale i.e. agreement dated 20.08.1982 (exhibit-B) executed by defendant no. 3 (power of attorney of defendant no. 1) in favour of defendant no. 2. The agreement of sale of the plaintiff was dated 18.09.1982 (exhibit-2) and the agreement of sale of the appellant no. 4 was dated 20.08.1982 (exhibit-B) and the sale deed was registered on 20.12.1982 (Exhibit-G). The learned counsel has submitted that P.W. 4, the plaintiff in paragraph 18 of his evidence, has stated that the defendant no. 1 came to registry office and fled away after getting the deed drafted on stamp paper and ultimately the stamp paper was returned. He submits that the sale deed so drafted has not been exhibited. He has further submitted that from perusal of paragraph 18 of the evidence, it appears that it was the defendant no. 1 who had purchased the stamp paper and therefore there was no occasion for the plaintiff to return the stamp paper and therefore the story of the plaintiff that he returned the stamp paper cannot be believed. He has then submitted that the suit was filed with a court fee of One Rs. fifty paise which was deficient

and ultimately the court fees were filed in the year 1983. The learned counsel submits that the mutation was done in favour of the appellant no. 4 after purchase and possession was also handed over. He has submitted that the plaintiff had left the property and the defendant no. 2 came in possession of the same. However, he could not substantiate this fact from any of the materials placed on record.

- B.** At this, the learned counsel for the appellant no. 4 has submitted that primarily it has to be seen as to whose agreement would prevail, whether the agreement of the plaintiff dated 18.09.1982 (exhibit-2) or the agreement of the defendant no. 2 i.e. dated 20.08.1982 (exhibit-B).

12. Apart from the oral arguments, a written notes of arguments have also been filed on behalf of appellant no. 4 series/defendant no. 2 and following points have been mentioned: -

- C.** The case of the defendant No. 2 is that he is a bona fide purchaser of suit property by virtue of registered sale deed dated 20.12.1982 (Ext. G). He has stated in paragraph 8 & 9 of the written statement that after going through the contents of power of attorney (Ext. A) in favour of defendant No. 3, he entered into an agreement for sale (Ext. B) with respect to the suit property on 20.08.1982 and after payment of balance consideration purchased the same by registered sale deed dated 20.12.1982 (Ext. G). After said purchase, the defendant No. 2 has got his name mutated in the office of Ranchi Municipal Corporation (Ext. F) and has been paying the rent on proper receipt (Ext. D & E).

First Substantial Question of Law: -

Whether concurrent finding recorded by both the courts that the plaintiff was ready and willing to

perform his part of the contract suffers from any perversity?

- D. In this connection it is pertinent to point out and refer the evidence of the plaintiff who deposed as P.W. 4 in the suit. This witness at paragraph 18 of his deposition has stated, “**जुगल किशोर रजिस्ट्री कार्यालय में आया। उसने स्टाम्प कागज़ खरीदा, बिक्रीनामा लिखवाया। इसके बाद वह कहीं चला गया।**”

He further stated “**मैंने वह स्टाम्प पेपर वापस कर दिया और उसकी राशि मुझे प्राप्त हो गई थी। मुकदमा दायर होने के पश्चात मैंने उस स्टाम्प पेपर को ट्रेजरी में जमा कर दिया था।**”

- E. In his entire deposition, P.W-4 has not uttered a word that at the time of getting the sale deed registered he was having the entire consideration amount to be paid to the defendant No. 1 before the District Sub Registrar. Further when the plaintiff has stated that the stamp paper was purchased by the defendant No. 1, then as to why and under what circumstances the plaintiff got it deposited in treasury and received the amount of the stamp paper. It is quite unbelievable and impossible that if the stamp paper was purchased by the defendant No. 1, the authority of treasury will refund the value of a stamp paper to the plaintiff. Since the plaintiff has failed to bring on record, by exhibiting the said written stamp paper in the shape of sale deed, the court ought to have taken adverse inference against the plaintiff.

- F. In this connection, it is submitted that actually the stamp paper was purchased by the plaintiff himself and the sale deed was got prepared by the plaintiff himself who might have got written in the sale deed that entire consideration amount has already been paid and looking to such endorsement the defendant No.1 smelling something fishy, went back from the Registry Office.

- G. Had the stamp paper for the contemplated sale deed had not been purchased by the plaintiff in his name, it could not be taken back by treasury from the plaintiff and the treasury could have not refunded the amount of the stamp paper to the plaintiff.
- H. *Readiness and willingness* are not one but two separate elements. Continuous readiness and willingness on the part of buyer from the date of execution of the agreement to sell till the date of decree is a condition precedent for grant of relief of specific performance.
- I. The suit was filed on 11.12.1982 and with certainty it can be said that the plaintiff had not even the court fee amount to be paid on the value of the suit and the plaintiff had not even rupees two therefore at the time of filing of the suit, he has paid stamp of Rs. 1.50 on the plaint against the court fee and after long interval after arranging the amount he filed the deficit court fee on 17.02.1983.
- J. The plaintiff was examined in the suit as PW4 on 30.07.1987 wherein on his examination in chief in the last line of paragraph-6 he has stated that “मैं उसके लिए मुनासिब पैसा देने के लिए तैयार हूँ।”, which shows that the plaintiff was not willing to pay the rest of the consideration amount. Even on the date of his deposition, he showed his intention that he was ready to pay the appropriate amount to get the sale deed registered.
- K. This proves that plaintiff had no sufficient fund even to pay the court fee on 11.12.1982 when the suit was filed and the contention is that at the time of alleged sale deed at the Registry Office, the plaintiff had no fund what to speak of entire consideration amount.

Second Substantial Question of Law: -

Whether the agreement dated 18.09.1982 (Exhibit-2) executed by defendant No.1 in favour of plaintiff or

agreement dated 20.08.1982 (Exhibit-B) executed by defendant No.3 in favour of defendant No.2 shall prevail and given effect to?

- L.** The case of defendant No. 3 is that the defendant No. 3 was having valid power of attorney (Ext. A) duly executed by defendant No.1 in favour of defendant No. 3 to deal with the suit property and the defendant No.3 being the constituted power of attorney holder by virtue of registered power of attorney dated 13.07.1977 entered into agreement for sale (Ext. B) with defendant No. 2 on 20.08.1982 and accordingly the sale deed was executed on 20.12.1982 (Ext. G) in favour of defendant No. 2 by the defendant No. 3.
- M.** Now the question arose as to which agreement will prevail and to meet the above substantial question of law in view of the reported judgment of Hon'ble Andhra Pradesh High Court reported in *AIR 2004 AP 110* it has been held that the earlier agreement has to be preferred.

Third Substantial Question of Law

Whether the receipt cum extension of time of the agreement for specific performance of contract marked as Exhibit 2/1 was inadmissible in evidence for the same being not duly stamped?

- N.** The plaintiff in his plaint has not made any averment as per Appendix -A, Form 47 & 48 appended to the First Schedule Forms. In paragraph-7 of the plaint, it is stated “that the plaintiff categorically made it known to defendant that he is ready and willing to perform his part of agreement by paying the balance amount of consideration money. The defendant however went on avoiding execution of sale deed in respect of the suit property on one pretext or other. On plaintiff's insistence that sale deed should be executed immediately, the defendant started pressing

that period for execution of sale deed be extended up to 30.11.1982 and ultimately both the plaintiff and defendant again went to Shri Kashi Prasad Sahu, Advocate on 16.11.1982 and in his presence and on his mediation, the parties agreed to extend the period for execution of sale deed till 30.11.1982 and a memorandum to that effect was prepared and signed on 16.11.1982”.

- O. However, this fact was not proved by any legal evidence. Thus, the alleged document dated 16.11.1982 extending the time of the agreement (Ext.-2), marked as Ext.-2/1, being inadmissible in evidence and having not been duly proved, cannot be looked into in support of the plaintiff's contention.

13. Arguments on behalf of the plaintiff/respondent

I. Important dates of SA/182/1991

- a. *Suit being Title Suit No. 297/1982 filed on 11.12.1982.*
- b. *Exhibit 2- Agreement by Defendant No. 1 in favour of Plaintiff -18.09.1982.*
- c. *Exhibit -B- So called Agreement by Defendant No.3 in favour of Defendant No.2-20.08.1982.*
- d. *Exhibit C- Sale deed in favour of Defendant No. 2- 20.12.1982.*
- e. *The Defendant No. 2 and Defendant No. 3 added as party vide order dated 25.03.1983.*
- f. *Exhibit 5- Partition Suit No. 278/1982-filed by Defendant No. 3 against Defendant No. 1 (his own grandfather) on 25.11.1982*
- g. *Exhibit 6- Partition Suit withdrawn by Defendant No. 3 on 02.08.1983.*

II. Substantial question of Law No. 1

Whether the concurrent finding recorded by both the Courts that the Plaintiff was ready and willing to perform his part of contract suffers from and perversity?

- a. In paragraph Nos. 10, 11 and 16 of the Appellate Court's Judgement, there is discussion of readiness and willingness and the Appellate Court has opined that the Plaintiff was ready and willing to perform his contract.
- b. That there is specific pleading in the plaint in paragraph Nos. 7, 9 and 11 about readiness and willingness of the Plaintiff.
- c. In reply to notice dated 30.11.1982 which is Exhibit 3, the same has been reiterated by the plaintiff in para7.
- d. In the deposition of plaintiff (P.W. 4), he has stated about his readiness and willingness in several paragraphs including 3 to 6.
- e. There was no pleading by the Defendants that the plaintiff was financially incapable.
- f. The plea of payment of Rs. 1000 is supported by P.W. 2 and P.W. 3 as well in Exhibit 2/1 where the signature of defendant no. 1 is not disputed.
- g. The defendant No. 1, who is the land owner as well as executor of Exhibit -2 i.e. the agreement of sale dated 18.09.1982 in favour of the plaintiff, has *neither* appeared in the suit, did not file Written Statement *nor* opposed the plaintiff by giving his deposition in the Trial Court.
- h. P.W. 2, who is the witness of the execution of the agreement, has also supported the plaintiff in paragraph No. 5 of his deposition.
- i. P.W. 3, who is an Advocate Kashi Prasad Sahu, and this agreement was drafted by him, paragraph No. 5 of his deposition is relevant.

- j. The plaintiff was in occupation of the premises in part performance of the contract which goes to show that he is always ready and willing to perform his part of contract.
- k. From the entire written statement, deposition of Defendant witness and the Exhibits as a whole, it is very much evident that defendant Nos. 2 and 3 specially defendant No. 3 never wanted that his grandfather Jugal Kishore Pathak may sell his property to the original plaintiff.
- l. In view of above, the concurrent finding of the fact by both the courts that the plaintiff was always ready and willing to perform his part of the contract and as such no interference by the Hon'ble Court is required as the judgements of both the Courts are perfectly legal and valid in the eyes of law.

Judgement: (2019) 3 SCC 520 paragraphs No. 20 & 21.

III. Substantial Question of law No. 2

Whether the agreement dated 20.08.1982 (Exhibit. B) executed by Defendant No. 3 as constituted attorney of Defendant No. 1 shall prevail upon the subsequent agreement dated 18.09.1982 (Exhibit-2) by defendant No.1 himself.

- i. The Exhibit-B which is agreement dated 20.08.1982 is doubtful and same never existed and has been created by Defendant No. 2 and defendant No. 3 only to defeat the claim of the plaintiff and to mislead the Court by giving wrongful facts.
- ii. The defendant No. 3 in his written statement has not taken any plea regarding the existence of any agreement dated 20.08.1982 which is absolutely fatal as no amount of evidence can be looked into in absence of pleading which is as settled principle of law.
- iii. No such issue was framed by the Trial Court and moreover this is not a substantial question of law rather it is an issue which is

required to be framed by the Trial Court at the instance of the parties.

- iv. The issue could have been decided by the facts of the case by the Trial Court and Appellate Court and the issue could have been re-casted even at the Appellate stage but the same was not done by the Defendants and therefore, when the issue was not framed, the same was not decided and the same is also hit by abandonment of issue.
- v. For the first time, this plea has been raised in the 2nd Appellate stage which is impermissible in the eyes of law.
- vi. Exhibit 3/1 is the notice by defendant No. 3 dated 20.11.1982, there is no such mention of the agreement. Rather, Defendant No.3 says in para 3 that “*there is no any urgent need or any necessities of the family at present for money*”. Therefore, when there was no need for money, how he entered into agreement with defendant No. 2 on 20.08.1982 which goes to show that Exhibit-B is a forged and fabricated document created only to the purpose of suit.
- vii. Exhibit-5 which is a partition suit filed by defendant No. 3 and plaint of partition suit No. 278/1983 has been exhibited and the same has been filed on 25.11.1982 also doesn't mention about the agreement to sale Exhibit-B dated 20.08.1982.
- viii. In Paragraph 5 of exhibit-5, which is the plaint of partition suit, it is stated by defendant No. 3 that there is no any urgent need of any necessity of the family for money.
- ix. Even in the memo of appeal in the appellate court, no such ground has been taken about the prior agreement that is exhibit-B.
- x. Exhibit-3/2 is a notice issued by Defendant-2 to the Plaintiff on 20.07.1983, but in this notice also, there is no mention of

prior agreement dated 20.08.1982 and it only speaks about the sale deed dated 20.12.1982.

- xi. In the entire deposition of plaintiff there is no suggestion put by defendant No. 2 to the plaintiff on the point of previous agreement by defendant no. 3 in favour of defendant No. 2.
- xii. That in view of entire facts mentioned here in above goes to show that there was no previous agreement dated 20.08.1982 (Exhibit-B) which was executed in favour of defendant No. 2 by defendant No. 3 and as such which the defendants have tried to mislead the court by bringing on record forged, fabricated and non-existing document to mislead the court, this substantial question of law is required to be answered in favour of plaintiff/respondent.

IV. Substantial Question of law No. 3

Whether the receipt cum extension of time of the agreement for specific performance of contract marked as Exhibit 2/1 was in admissible in evidence for the same being not duly stamped.

- (i) To answer this, the respondent has relied upon the judgement of Hon'ble Supreme Court of India reported in **(2006) 11 SCC 331** paragraphs No. 16 & 19.
- (ii) The signature of the defendant No. 1 on the agreement (Exhibit-2) has not been disputed by the other defendants, neither the defendant No. 1 filed his written statement, nor he has deposed in the court against the Plaintiff.
- (iii) The conduct of defendant No. 1 goes to show that he had executed the agreement for sale on his own free will which is also supported by Naresh Pathak who has deposed as D.W. 2 and happens to be father of defendant No. 1 Jugal Kishor Pathak and in paragraph No. 6 he has specifically stated about the physical and mental status of his father who is Defendant No.1 and how he moves from one place to another and that too

on local bus. This goes to show that defendant No. 1 was fully fit mentally and physically.

(iv) Defendant No. 3 has tried to depose falsely in his deposition in paragraph 3 that his grandfather was more than 100 years although he retired in 1962 and the age comes to 85 years from the date of deposition that is 04.08.1987.

(v) Defendant No. 3 has specifically stated that he never consulted his grandfather for filing the written statement.

(vi) On the above background, it is very much evident that there was a valid agreement and the entire agreement doesn't get vitiated because the same is not duly stamped rather the deed of agreement is itself on a revenue paper which is evident from exhibit-2 and the same has not been objected by the defendants and the revenue paper of Rs. 3 and Rs. 2 was purchased for reducing the agreement in writing and it is evident that there is no objection over exhibit-2 which is an agreement and even if exhibit-2/1 is not taken into consideration, the same will have no bearing in the outcome of the case and as such this substantial question of law is required to be decided in favour of the plaintiff/respondent.

14. The Defendants' case is a classic attempt of "double – selling" "Defendant No.1 took money from a tenant, and then the family (via Defendant No.3) attempted to sell the same property to another family member (*Defendant No. 2- fufa of Defendant No.3*) for a higher price, using a 5-years-old POA as a convenient legal excuse.

15. Equity follows the law, the plaintiff has acted in good faith, paid a substantial advance, and followed every legal avenue. Therefore, the Plaintiff is entitled to a decree for Specific Performance. The appeal be dismissed.

Findings of this Court.

16. The suit was filed on 11.12.1982 for specific performance of contract for sale of Schedule-B property (part of Schedule-A property) dated 18.09.1982 (exhibit-2) for total consideration amount of Rs.10,000/- entered into between the plaintiff and the defendant no.1 in which the plaintiff was the tenant and defendant no.1 was the landlord. Initially there was only one plaintiff and one defendant. However, by virtue of amendment in the suit, further two defendants were also added. The defendant no.2 had purchased the schedule B property during the pendency of the suit vide registered sale deed dated 20.12.1982 (exhibit-G) from defendant no.3 (registered power of attorney of the defendant no.1 executed in the year 1977).

17. *It was the case of the defendant no.2* that the sale deed executed in his favour was preceded by an agreement of sale dated 20.08.1982 (exhibit-B) executed by the defendant no.3 (power of attorney of the defendant no.1) in favour of defendant no.2 and for total consideration amount of Rs.15,000/- and part payment was made at the time of agreement of sale dated 20.08.1982 (exhibit-B) and upon payment of balance consideration, the sale deed was executed on 20.12.1982 (exhibit-G). *However, the defendant no.3* did not refer to any agreement of sale entered into between the defendant no. 3 and defendant no.2, much less any agreement of sale dated 20.08.1982 (exhibit-B), but asserted that the defendant no.1 having executed the power of attorney in his favour had no right to enter into any agreement with the plaintiff and further asserted that the defendant no. 1 was not fit mentally and physically to enter into an agreement of sale with the plaintiff and hence the agreement of sale dated 18.09.1982 (exhibit-2), if any, was obtained by fraud, coercion, misrepresentation etc. It was also asserted that the consideration of Rs. 10,000/- was on a much lower side. Defendant no.3 asserted that he has rightly executed the sale deed in favour of the defendant no.2 in the capacity of power of attorney of the defendant no.1 for a consideration money of Rs. 15,000/-. *It is important to note* that the defendant no.1 did not file written statement and the proceedings were set *ex-parte* against the defendant no.1. *It is also important to note* that the defendant nos. 2 and 3, who filed separate written

statements, *neither* they questioned the capacity of the plaintiff to pay the balance consideration amount *nor* they challenged the readiness and willingness on the part of the plaintiff to pay the balance consideration amount to the defendant no.1. The plaintiff has made specific statement in the plaint that the plaintiff was throughout ready and willing to perform his part of the agreement of sale, but the defendant no.1 , on account of one reason or the other, got the extension of time for execution of sale deed executed and lastly it was extended till 30.11.1982 and inspite of requests, the defendant no.1 did not execute the sale deed in favour of the plaintiff which lead to filing of the suit on 11.12.1982.

18. Some of the relevant facts/dates as pleaded by the plaintiff and as pleaded by the defendant nos. 2 and/or 3 are as under: -

Plaintiff	Defendant Nos. 2 and/or defendant no.3
Defendant no. 1 is the owner of schedule A property and the suit property is schedule B property which is a part of schedule A property. Defendant no.1 was a school teacher. The plaintiff was a tenant in the schedule B property.	Defendant no. 1 is the owner of schedule A property and the suit property is schedule B property which is a part of schedule A property. Defendant no.1 was a school teacher.
18.09.1982 (Ext.-2): - agreement of sale was entered into between the plaintiff and defendant no. 1 for a total consideration amount of Rs. 10,000/- and Rs. 2,000/- was paid as advance as per the agreement. The sale was required to be completed within one month, that is by 17.10.1982.	1977 (exhibit-A) - defendant no.1 executed a power of attorney in favour of the defendant no.3. The defendant no. 1 is the grandfather of defendant no. 3 and defendant no.2 is the son-in-law of defendant no.1.
11.10.1982 -At the instance of defendant no. 1, the plaintiff further paid Rs. 1,000/- against consideration and period to execute the sale deed was extended up to 17.11.1982 . The defendant no. 1 and the plaintiff got noted the payment of Rs. 1,000/- by Sri Kashi Prasad Sahu, Advocate on their instructions at the back side of the agreement	20.08.1982 (exhibit-B)- defendant no. 3, being the power of attorney of the defendant no. 1, entered into an agreement of sale with defendant no.2 with respect to schedule B property for a consideration amount of Rs. 15,000/- and Rs. 500/- was shown to have been paid at the time of the agreement. <i>This was stated by the defendant no.2 in his W.S and</i>

dated 18.09.1982 and the defendant no. 1 signed the same. The noting was marked as <i>exhibit- 2/1</i>.	<i>not by the defendant no.3 in his W.S.</i>
16.11.1982 - The plaintiff made the defendant no. 1 known that the plaintiff was ready and willing to perform his part of the agreement by paying balance consideration amount, but the defendant further asked the plaintiff to extent the period of sale up to 30.11.1982. Thus, on 16.11.1982, both the plaintiff and defendant no. 1 went to Sri Kashi Prasad Sahu, Advocate, who wrote a note extending the period of sale till 30.11.1982 and the same was signed by defendant no. 1 on the same day. This noting was marked <i>exhibit- 2/2</i>	20.12.1982 (exhibit-G) - defendant no. 3, being the power of attorney of the defendant no.1, executed sale deed in favour of the defendant no. 2 for a consideration amount of Rs. 15,000/- and the consideration amount was shown to have been paid in cash before the registrar. The sale deed mentions about the agreement of sale dated 20.08.1982 (exhibit- B)
On 27.11.1982 (exhibit-3/1) the plaintiff received a Pleader notice on behalf of defendant no. 3 enquiring from the plaintiff as to whether any agreement of sale was entered into between the plaintiff and defendant no. 1 or not. It was also stated that the defendant no.1 was medically and mentally incapable of executing any agreement for sale and was also legally incompetent to execute any agreement of sale and if such an agreement has been entered, the same is illegal and void. Defendant no. 3 also called upon the plaintiff to settle the matter amicably.	The defendant no. 2 referred to agreement of sale dated 20.08.1982 entered into between defendant no. 2 on the one hand and defendant no. 3, being the power of attorney holder of defendant no.2, on the other hand. Defendant no. 2 claimed to be the bonafide purchaser of the suit property by virtue of registered deed of sale dated 20.12.1982. The defendant no. 3 in his written statement has referred to the registered power of attorney of 1977, but has not referred to the agreement of sale dated 20.08.1982. The specific case was that once the power of attorney was executed by the defendant no. 1 in favour of defendant no.3, defendant no. 1 had no right to enter into any agreement of sale and therefore the agreement of sale entered into between the plaintiff and defendant no. 1, if any, is void and non-est. It was asserted that the defendant no. 1 <i>neither</i> had the mental capacity <i>nor</i> had the legal right to enter into any

	agreement once the power of attorney was executed in the year 1977 in favour of defendant no. 3.
On 30.11.1982 , the plaintiff sent a reply (exhibit-3) with a copy to defendant no. 1 and in the reply, the plaintiff narrated the entire fact about his agreement with defendant no.1 and the payments made and extension of time to execute the sale deed and also stated that he was still ready and willing to pay rest of the consideration money and to get the sale deed executed in his favour. It was also stated that if no reply is received by 10 th of December 1982, appropriate steps will be taken. A copy of the reply served upon the defendant no.1 showing the receipt of the defendant no.1 has been marked exhibit- 1/1 .	
11.12.1982 -suit was filed against the defendant no.1 seeking specific performance of contract of sale asserting that the plaintiff was still ready and willing to perform his part of the contract.	
1983- suit was amended to make defendant no. 2 and 3 as party and an allegation was made that the sale deed was a sham transaction made for the purpose of adversely affecting the plaintiff's decree in the suit.	

19. The followings issues were framed by the learned trial court: -

- 1. Is the suit as framed maintainable?*
- 2. Is the suit barred by limitation, waiver, estoppel and acquiescence?*
- 3. Whether the plaintiff has got valid cause of action for the suit?*
- 4. Whether there is valid agreement for sale between the plaintiff and the defendant no. 1?*

5. Whether the plaintiff is entitled to a decree of specific performance of contract?

6. To what relief or reliefs, if any, is the plaintiff entitled?

20. Issue nos. 1 and 2 were not pressed and issue nos. 4,5 and 6 were taken up together and decided in favour of the plaintiff and it was also held in paragraph no. 12 of the judgement that the plaintiff had a valid cause of action and the plaintiff was entitled to the relief as prayed for and it was also held that the sale deed executed by the defendant no.3 in favour of the defendant no.2 was hit by the doctrine of *lis-pendens* as provided under Section 52 of the Transfer of Property Act, 1882.

21. The learned trial court after considering the materials gave a clear finding that agreement of sale was entered into between the plaintiff and defendant no. 1 with respect to the suit property, in which the plaintiff was a tenant, for consideration amount of Rs. 10,000/- and Rs. 2,000/- was immediately paid as mentioned in the agreement itself and further amount of Rs. 1,000/- was paid by the plaintiff to the defendant no. 1 on 11.10.1982 and subsequently endorsement to that effect along with extension of time was made at the backside of Exhibit-2 itself and the said endorsement was marked Exhibit-2/1. The defendant no. 1 again asked for further extension of time till 30.11.1982 and this time again, the endorsement was made at the backside of the agreement marked Exhibit-2/2 and the defendant no. 1 signed the same. Thus, the agreement of sale dated 18.09.1982 remained valid till 30.11.1982.

22. The suit seeking specific performance of contract was filed on 11.12.1982 and the suit property was sold by registered deed by defendant no. 3 (power of attorney of defendant no.1) in favour of defendant no. 2 on 20.12.1982 immediately after institution of the suit. The defendant no. 3 had executed the agreement of sale on 20.08.1982 (Ext.-B) in favour of defendant no. 2 and thereafter the registered sale deed dated 20.12.1982 (Ext.-G) was executed by the defendant no. 3 in favour of defendant no. 2.

23. The plaintiff was examined as P.W.-4 and the learned trial court has thoroughly discussed his evidence in the judgement. The learned trial court

further recorded that the plaintiff has been cross-examined at length, but the court did not find any material contradiction to disbelieve his testimony.

24. The learned trial Court recorded that P.W.-3 is Sri Kashi Prasad Sahu, Advocate, who had prepared the deed of agreement dated 18.09.1982 marked Exhibit-2 in the suit and he has thoroughly supported the plaintiff's case in his evidence and he had written the agreement in presence of both the parties. The agreement was read over and explained to them and both of them signed the agreement and the consideration amount was fixed at Rs. 10,000/- and the plaintiff paid Rs. 2,000/- as advance at the time of execution of agreement. He has also stated that the defendant no. 1 was quite fit and healthy at the time of execution of agreement. He has also supported the case of the plaintiff that the defendant no. 1 and the plaintiff had come to him seeking extension of time of agreement of sale twice and endorsement was made twice in his writing and on 11.10.1982, an amount of Rs. 1,000/- was paid and the agreement of sale was extended for one month and thereafter again on 16.11.1982, the agreement of sale was extended till 30.11.1982 and endorsement with respect to that was also made.

25. The learned trial court thereafter referred to the evidence of the defendants, who had examined altogether six witnesses and in particular referred to power of attorney of the year 1977 executed in favour of defendant no. 3 by the defendant no. 1; agreement of sale dated 20.08.1982 between defendant no. 3 and defendant no. 2 (Exhibit-B) followed by the registered sale deed dated 20.12.1982 (Exhibit-G).

26. The plea of the defendants taken in the written statement that the plaintiff got the agreement of sale dated 18.09.1982 (Exhibit-2) executed in his favour by practicing fraud, coercion and misrepresentation on defendant no. 1 was rejected by the learned court and the learned court observed that the defendants had not produced any evidence in support of this fact and no written statement was filed on behalf of defendant no. 1 and the proceeding was set *ex-parte* against defendant no. 1. The learned court observed that failure on the part of the defendant no. 1 to file written statement clearly goes

to show that the defendant no. 1 admitted the assertions made in the plaint and further the execution for agreement for sale dated 18.09.1982 was not denied by the defendant no. 1 and under such circumstances, the plea of practicing fraud, coercion and misrepresentation was not maintainable at all.

27. The plea of the defendants that the plaintiff had not paid Rs. 1,000/- on 11.10.1982 was also rejected taking into consideration that the defendant no. 1, to whom the money was paid, has *neither* denied this fact *nor* filed any written statement *nor* he had come before the Court to depose. The learned court observed that the contesting defendants was not at all competent to say that no payment was made on 11.10.1982 particularly when they did not make any such statement in their evidence as D.Ws. 1 and 3. On being specifically asked, these defendants during cross-examination in paragraph 11 denied having any talk with defendant no. 1 with respect to receipt of money and in addition to the aforesaid, the learned court also relied upon Exhibit-2/1 and was of the view that no adverse inference could be drawn on account of non-production of the receipt with regard to payment of Rs. 1,000/-.

28. The learned court also recorded that the plaint of the Partition Suit No. 278/1982 against defendant no. 1 filed by defendant no. 3 was also exhibited and marked Exhibit-5, which was subsequently withdrawn on 02.08.1983 and the plaint goes to show that the defendant no. 3 came to know on 20.09.1982 that the defendant no. 1 had executed agreement for sale in favour of plaintiff on 18.09.1982 and in paragraph 13 of the plaint, it has been mentioned that the agreement had taken effect on 18.09.1982. The plea of the contesting defendants that they had no knowledge about the agreement was falsified by Exhibit-5 and 6. Exhibit-6 was the order of withdrawal of Partition Suit No. 278/1982. The learned court, upon appreciation of the materials, also recorded that admittedly the defendant no.3 had knowledge of the agreement of sale much prior to the filing of the suit and the plea of the defendants that they had no knowledge of the agreement of sale dated 18.09.1982 was rejected.

29. The learned trial court ultimately recorded that the agreement for sale dated 18.09.1982 executed by defendant no. 1 in favour of the plaintiff was a

valid and genuine document and the plaintiff had paid consideration amount of Rs. 2,000/- on 18.09.1982 on which day the agreement of sale was executed and further payment was made on 11.10.1982 to the extent of Rs. 1,000/-. Further findings of the learned trial court in paragraph 11 and 12 of the judgment based on the evidences brought on record are quoted as under: -

“11. After consideration of entire oral and documentary evidence brought on record I find that the plaintiff has paid Rs. 2000/- on 18.9.82 on which date the agreement for sale was executed by defendant no. 1 in favour of plaintiff and again Rs. 1000/- was paid on 11.10.82 vide Ext. 2/1, Exts. 2/1, Exts. 2/2 and 3 and 3/1 clearly show that the plaintiff was always ready and willing to perform his part of contract. The agreement for sale dated 18.9.82 executed by defendant no.1 in favour of the plaintiff is quite valid and genuine document and the plaintiff is entitled to a decree for specific performance of contract with respect to the suit properties fully described in Schedule B of the plaint. Thus, these issues are accordingly disposed of in favour of the plaintiff.

12. Issue no. 6: It has been contended on behalf of the Defendant no. 2 and 3 that the plaintiff has not sought for any relief against defendant no. 2 and 3 in the plaint. From record I find that defendant no. 2 has purchased the suit property from defendant no. 3 during the pendency of the suit vide Ext. C dated 20.12.82. The suit was filed on 11.12.82. The aforesaid sale is clearly hit by doctrine of lis pendence as provided in Section 52 of the T.P. Act. The sale is bad in law and cannot have any legal effect. Under the circumstances no declaration is necessary for cancellation of the sale deed dated 20.12.82. Thus, the plaintiff has got valid cause of action for the suit and he is entitled to the reliefs prayed for against the defendant no. 1.”

The suit was decreed.

30. The defendants filed 1st appeal. The learned 1st appellate Court considered the issues framed by the learned Trial Court and dismissed the 1st appeal.

31. Before the learned 1st appellate court, the defendants raised only the following three points: -

- (a) the plaintiff has not pleaded and proved readiness and willingness.

(b) the plaintiff did not produce receipt showing payment of Rs. 1,000/- on 11.10.1982 and therefore adverse inference has to be drawn.

(c) failure of defendant no. 1 to file written statement does not mean admission of the assertions in the plaint.

32. The learned 1st appellate court recorded in paragraph 10 that it was incorrect to say that the plaintiff had not pleaded readiness and willingness and was of the view that readiness and willingness cannot be treated as a strait jacket formula and it has to be determined on the entirety of the facts and circumstances of a case.

33. The learned court referred to paragraph 9 and 11 of the plaint and observed that the plaintiff had made necessary amendments about his readiness and willingness. Further recorded that in paragraph 7 of exhibit-3 (notice to Ram Kinkar Pathak and Jugal Kishor Pathak), it has been mentioned that the plaintiff was still ready and willing to complete the sale deed. Further the learned court recorded that the plaintiff examined as PW-4 and in paragraph 6 of his evidence stated that he was ready and willing to pay the reasonable money due from him. The learned court further referred to the timeline which also demonstrated the conduct of the plaintiff showing his readiness and willingness: -

(i) 18.09.1982 – Agreement executed and sale was to be completed within one month i.e. by 17.10.1982 **Ext. 2.**

(ii) 11.10.1982 – Period extended up to 17.11.1982 at the request of defendant no. 1. **Ext. 2/1**

(iii) 16.11.1982 – period extended up to 30.11.1982 at the request of defendant no. 1. **Ext. 2/2.**

(iv) 27.11.1982 – plaintiff received letter from Ram Kinkar's lawyer M. L. Pathak, Advocate. **Ext. 3/1.**

(v) 30.11.1982 – plaintiff gives reply to Ext. 3 and copy of notice served on defendant **Ext. 1/1**

(vi) 11.12.1982 – suit filed.

34. The learned court then referred to the judgment of the Hon'ble Supreme Court wherein it has been held that for specific performance, the plaintiff has to prove that throughout he was prepared to do his part of the contract and the preparedness may not be mere verbal. The learned court also recorded that there was no pleading or evidence by the defendants that the plaintiff was financially incapable. The evidence of PW-5 paragraph 18, revealed that a sale deed was prepared in stamp paper and after coming to registration office, the defendant no. 1 flew away. The learned court recorded that this intendment made in cross-examination does not mean that the defendant no. 1 went away because the plaintiff had no money. The learned court recorded that no suggestion was given to the effect in cross-examination of P.W.-4 and there is no pleading to that effect in the written statement. The learned court recorded that the plaintiff's readiness and willingness averred in paragraph 11 of the plaint has been dealt with in written statement in paragraph 15 of the defendant no. 3 and paragraph 4 of the defendant no. 2 and there is no denial whatsoever, either expressly or impliedly, that the plaintiff was not ready and willing to perform his part of the contract.

35. After having observed as aforesaid, the learned 1st appellate court dealt with plea regarding payment of Rs. 1,000/- on 11.10.1982 dealing with failure to produce the money receipt and further with respect to endorsement Exhibit-2/1. The learned court observed that a party is required to produce the best evidence and that the payment of Rs. 2,000/- on 18.09.1982 was proved by Exhibit-2 and further payment of Rs. 1,000/- was proved by Exhibit-2/1 and that both the parties had agreed for extension of time till 30.11.1982 on 16.11.1982.

36. The evidence of PWs were discussed by the learned 1st appellate court. The learned court recorded that even after receipt of notice dated 30.11.1982, the payment was not denied. Further DWs. 1, 2 and 3 admitted that they did not ever talk with defendant no. 1, therefore, the plea that further Rs. 1,000/- was not paid is only surmise. The learned court also recorded that DW-1 Ram Kinkar Pathak had clearly stated that he will examine defendant no. 1 on

commission, but even after that *neither* the defendant no. 1 was examined nor any steps were taken for his examination. Hence, adverse inference could not be drawn for non-produce of the receipt. The learned court further recorded that non-production of money receipt regarding payment of Rs. 1,000/- on 11.10.1982 was explained as the receipt was lost by the plaintiff who was examined as P.W.-4. The learned court upon appreciation of evidence recorded that it could not be said that the plea of payment of Rs. 1,000/- was false.

37. Apart from the aforesaid findings, some of further findings of the learned 1st appellate court are quoted as under: -

13. the receipt granted for payment of Rs. 1000/- on 11.10.1982 was not filed in court because the same got lost. (PW-4 para 3 end, para 14, para 16). The factum of payment of Rs. 1000 has been proved by the evidence i.e. Ext.-2/1 and by evidence of eye witness PW-2 and PW-3. Therefore, it cannot be said that the plea of payment of Rs. 1000/- can be said to be false.

No adverse inference can be drawn for non-filing of separate receipt as the same is not in possession of the plaintiff. I am of the opinion that the learned court below has rightly recorded that there is written document (Ext.-2/1) showing payment of Rs. 1000/- by the plaintiff to the defendant no. 1. The defendant no. 1 has signed the same making endorsement. The decision reported in AIR 1968 SC 1413 does not apply. For drawing adverse inference, it has to be on record that the document is in custody of the person and he deliberately failed to produce it. In the decision reported in AIR 1961 SC 1277, it has been held “non-production of important document-presumption-document not in possession or power of party – No adverse inference. Where in the course of trial, the court is satisfied that a document having an important bearing as the dispute which is pending trial is withheld by a party, an inference adverse to the party with holding the document that if produced, the document would not support that party’s case, may properly arise. But where there is no evidence on the record to show that the document was with the plaintiff or within their power and that it was withheld from the court, the court would refuse to raise an adverse inference against the plaintiff.

14. The plaintiff/respondent has proved that he paid Rs. 2000/- on 18.09.1982 and Rs. 1000/- on 11.10.1982. Above all, plaintiff has stated in his evidence that he is ready to pay reasonable money (PW 4 para 6 end). Under the circumstances, no adverse inference can be drawn for non-production of the receipt.

15. The defendants have taken a plea in the written statement that the plaintiff got agreement for sale dated 18.09.1982 (Ext.-2) executed in his favour by practicing fraud, coercion and misrepresentation on defendant no. 1.

The plea about the agreement of sale dated 18.09.1982 between plaintiff and defendant no. 1 (Ext.-2) being a sham and collusive document was not supported by defendant no. 3 (as DW-1) and defendant no. 2 (as DW-3) in their evidence in court.

The defendant no. 3 did not give any detail as to how, when and under what circumstances, fraud, undue influence or coercion was practiced. In para 4 of his deposition as DW-1, defendant no. 3 stated that he came to know later on that plaintiff got executed some rent properties. There is no evidence about fraud, undue influence etc. and the plea raised in written statement of defendant no. 3 is to be ignored. According to defendant no. 3 himself, it was on 20.09.1982 that he came to know about agreement for sale dated 18.09.1982 between plaintiff and defendant no. 1.

Exhibit-3/1 (notice dated 20.11.1982) para 2.

Exhibit-5 (plaint in partition suit) para 5

The material witnesses examined by defendants are DW1 (Ram Kinkar Pathak) DW (Ram Kinkar's father Naresh) and DW-3 (Jugal's son-in-law Dineshwar). All of them stated that they did not talk to Jugal Kishor Pathak about his agreement with plaintiff.

16. In written statement of defendant no. 3, it has been pleaded that (i) because of old age and ill health, Jugal Kishor Pathak was not mentally competent to enter into contract; (ii) because of having executed power of attorney in 1977 in favour of defendant no. 3, Jugal Kishor Pathak was not legally competent to enter into any contract without revoking the power. The defendant no. 3 as DW-1 stated in paragraph 3 of his evidence that being about 100 years in age, Jugal Kishor Pathak cannot walk and hence he cannot come to court and his eye sight is also poor. This claim is falsified by admission in paragraph 18 that Jugal Kishor Pathak can talk, move around in his house and can be examined as a witness on commission. DW-3 has stated in paragraph 8 that in April 1982

Jugal Kishor Pathak was mentally fit. DW-2 stated in his evidence that Jugal Kishor Pathak moves around between Chatra and Gaya by bus. Hence, plea of mental incompetence has no basis. As regards legal incompetence, in memo of appeal and in the submissions during arguments in the appeal, this court is not perused. The plea of legal incompetence as raised in the written statement is restrict to the effect of power of attorney in 1977 and non-revocation thereof. By merely executing power of attorney, defendant no. 1 did not divest himself of his right to deal with his property. In a Full Bench decision reported in AIR 1981 (NOC) All, it has been held that while delegating power, a person does not divest himself of his powers but only creates a concurrent authority with himself for the exercise of power.

16. On consideration of oral and documentary evidence discussed above, I find that the plaintiff has paid Rs. 2,000/- on 18.09.1982 on which date the agreement for sale was executed by defendant no. 1 in favour of plaintiff and again Rs. 1000/- was paid on 11.10.1982 vide Ext.-2/1. Exts. 2/1, 2/2 and 3 and 3/1 clearly show that the plaintiff was always ready and willing to perform his part of contract. Hence, I fully agree with the issue expressed by the learned court below that the agreement for sale dated 18.09.1982 executed by defendant no. 1 in favour of the plaintiff is valid and genuine document. I also find that the learned court below rightly hold that the plaintiff is entitled to a decree for specific performance of contract with respect to the suit properties fully described in Schedule-B of the plaint.

17. Issue no. 6. It has been contended on behalf of defendant nos. 2 and 3 that the plaintiff has not sought for any relief against defendant nos. 2 and 3 in the plaint. The plaint was amended after the defendant no. 3 sold the suit property to defendant no. 2 during the pendency of the suit. The suit was filed on 11.12.1982 and the sale was made on 20.12.1982 (Ext.-G). This sale is hit by the doctrine of lis-pendens as provided in Section 52 of the Transfer of Property Act. This position of law will appear from the decision reported in AIR 1964 Mysore (Full Bench). The sale is bad in law and cannot have any legal effect. The plaintiff has amended the plaint and prayed in the relief that all the defendants be directed to specifically perform the agreement dated 18.09.1982 (Ext.-2). It cannot therefore be said that no relief has been sought against defendant nos. 2 and 3. The plaintiff has in paragraph 17 and 18 in

the amended plaint clearly mentioned as to how defendant nos. 2 and 3 have got involved in the suit. Therefore, it cannot be said that there is no cause of action against defendant nos. 2 and 3. So, the learned court below rightly held that the plaintiff has got valid cause of action for the suit and he is entitled to the reliefs prayed for against defendant no. 1.

18. In the light of the discussions made above, I find that the learned court below has rightly decreed the suit ex-parte against defendant no. 1 and decided in presence of and on contest against defendant nos. 2 and 3 with cost and directed defendant no. 1 to execute the sale deed in favour of the plaintiff with respect to the suit property fully described in Schedule-B of the plaint within two months, failing which the plaintiff is at liberty to get the same executed by the process of the court. Accordingly, I find no merit in the appeal and it fails. In the result, this appeal is dismissed with cost.”

1st substantial question of law

Whether the concurrent finding recorded by both the courts that the plaintiff was ready and willing to perform his part of the contract suffers from any perversity?

38. The learned counsels for the appellants have argued that the agreement of sale dated 18.09.1982 (Ext.-2) has not been properly proved. This Court is of the view that such plea is not available to the appellants considering the scope of the substantial question of law to be decided in the appeal. Otherwise also, the learned courts have discussed the pleadings and evidences in details with respect to Exhibit-2 entered into between the plaintiff and the defendant no. 1 and has recorded concurrent findings that there was an agreement of sale dated 18.09.1982 (Exhibit-2) entered into between the plaintiff and defendant no. 1 with respect to Schedule-B property for consideration of Rs. 10,000/- and Rs. 2,000/- was shown to have been paid as per the agreement of sale itself. This is over and above the fact that *neither* the defendant no. 1 filed written statement *nor* contested the suit *nor* was examined as a witness. The records reveal that the defendant nos. 2 and 3, who are the close relatives of the defendant no.1, were to get defendant no. 1 examined through appointment of commissioner, but for that no steps were taken by the contesting

defendants. The contesting defendants asserted that the agreement of sale was forged and fabricated and was obtained by coercion and misrepresentation as defendant no. 1 was not mentally and physically fit, but no evidence was led by the contesting defendants, who were close relative of defendant no. 1 to substantiate such allegation. The plaintiff through oral and documentary evidences has proved Exhibit-2 and exhibit-2 has been accepted to have been duly proved by both the courts. All arguments relating to legality, validity and proof of Exhibit-2 are beyond the substantial question of law and hence cannot be entertained.

39. The learned counsels for the appellants have also submitted that necessary pleadings with respect to specific performance of contract in terms of Form 47 and 48 of Appendix A of CPC have not been made and such omission is fatal to the case of the plaintiff. For this, reliance has been placed on the judgment passed by the Hon'ble Supreme Court reported in **(2003) 10 SCC 390 (supra)**. In the said judgment reported in **(2003) 10 SCC 390 (supra)**, Section 16(c) of Specific Relief Act has been quoted in paragraph 13 and it has been observed that in terms of Section 16(c), it is incumbent upon the plaintiff both to aver and prove that he had all along been ready and willing to perform the essential terms of the contract which was required to be performed by him. It has been observed in paragraph 15 of the judgment that Form 47 and 48 of Appendix-A of CPC prescribes the manner in which such averments are required to be made by the plaintiff and in the facts of the said case, it was not disputed that the plaintiff had not made the necessary averments as required by law. The Hon'ble Supreme Court referred to the earlier judgment reported in **(1969) 2 SCC 539 (Ouseph Varghese vs. Joseph Aley)** in paragraph 17 of the aforesaid judgment, which is quoted as under: -

“17. The requirement to comply with the mandatory provisions of Section 16(c) of the Specific Relief Act came up for consideration of this Court in Ouseph Varghese vs. Joseph Aley & Ors. [(1969) 2 SCC 539] wherein it was held:

"The plaintiff did not plead either in the plaint or at any subsequent stage that he was ready and willing to perform the

agreement pleaded in the written statement of defendant. A suit for specific performance has to conform to the requirements prescribed in Forms 47 and 48 of the 1st Schedule in the Civil Procedure Code. In a suit for specific performance it is incumbent on the plaintiff not only to set out agreement on the basis of which he sues in all its details, he must go further and plead that he has applied to the defendant specifically to perform the agreement pleaded by him but the defendant has not done so. He must further plead that he has been and is still ready and willing to specifically perform his part of the agreement. Neither in the plaint nor at any subsequent stage of the suit the plaintiff has taken those pleas. As observed by this Court in Pt. Prem Raj v. D.L.F. Housing and Construction (P) Ltd [AIR 1968 SC 1355] it is well settled that in a suit for specific performance the plaintiff should allege that he is ready and willing to perform his part of the contract and in the absence of such an allegation the suit is not maintainable.”(emphasis supplied)

40. So far as the present case is concerned, this Court, upon perusal of the plaint right from paragraph 5 to paragraph 11, finds that it has been clearly averred that agreement of sale dated 18.09.1982 was entered into between the plaintiff and the defendant no. 1 for consideration amount of Rs. 10,000/- out of which Rs. 2000/- was paid and sale was to be executed within one month, but it was extended twice at the instance of the defendant no. 1, **firstly** on 11.10.1982 upon payment of Rs. 1000/- it was extended till 17.11.1982 and **secondly** on 16.11.1982 the agreement of sale was extended till 30.11.1982. It has been asserted that prior to 30.11.1982, on 27.11.1982, the plaintiff received a Pleader notice from defendant no. 3, grandson of defendant no.1, who sought to enquire whether any agreement has been entered into between the plaintiff and the defendant no. 1 and in response, the plaintiff, on 30.11.1982 itself, sent reply through advocate referring to the agreement of sale and it was categorically made known that the plaintiff was always and still ready and willing to pay the balance consideration amount and get the sale deed executed and that he would wait up to 10.12.1982 for a response failing which legal action will be initiated. It has been asserted that the reply

was also served upon the defendant no. 1 on 30.11.1982 itself and having no response, the suit was immediately filed on 11.12.1982. All the events till 30.11.1982 happened during the subsistence of the agreement as the time period of agreement dated 18.09.1982 was extended till 30.11.1982 vide Exhibit-2/2.

41. This Court is of the considered view that the required averments for seeking specific performance of agreement of sale dated 18.09.1982 (Ext.-2) was duly pleaded in the plaint and the same was in consonance with the law laid down by the Hon'ble Supreme Court in the judgment reported in **(2003) 10 SCC 390 (supra)** which in turn had relied upon earlier judgment reported in **(1969) 2 SCC 539 (supra)**.

42. *The argument of the learned counsel for the appellants that, necessary averments to seek specific performance of contract have not been made when seen in the light of Forms 47 and 48 of Appendix-A of CPC, is devoid of any merits, hence rejected.*

43. The plaintiff has pleaded **readiness and willingness** to perform his part of the contract including **readiness and willingness** even on the last date of the agreement on 30.11.1982 by way of reply dated 30.11.1982 (exhibit-3) to legal notice dated 20.11.1982 served on 27.11.1982 (exhibit-3/1) and it was also personally served upon the defendant no. 1 on 30.11.1982 which was within the subsistence of the agreement dated 18.09.1982 (exhibit-2) read with exhibit 2/2. The plaintiff has also proved that the agreement of sale was extended at the instance of the defendant no. 1 twice. The defendant no. 1 did not even file his written statement to refute the averments of the plaintiff and did not participate in the trial to refute or question the averments and evidences of the plaintiff.

44. This Court finds that the evidences placed on record and as discussed by the learned courts reveal that the learned courts have appreciated the materials on record and have duly come to a finding that the plaintiff was throughout ready and willing to perform his part of the contract and the offer to perform was made even in writing vide exhibit- 3 which was personally

served upon the defendant no.1 who duly received and signed exhibit-3 and his signature was marked as exhibit- 1/C . This happened when the agreement was subsisting on the last day that is on 30.11.1982 (exhibit-3), to which the plaintiff did not receive any response and filed the suit on 11.12.1982. The argument of the learned counsel for the appellants that the offer to perform was not made by the plaintiff at proper place and time at Hazaribagh has no relevance as the offer to perform and get the sale deed executed was made in writing by the plaintiff to the defendant no.1 and personally served during the subsistence of the agreement, but the defendant no. 1 did not respond.

45. This Court is of the considered view that the readiness and willingness to perform his part of the contract throughout was duly pleaded and duly proved by the plaintiff who was examined as P.W-4 and also by the other witnesses examined by the plaintiff. This is over and above the fact that the defendant no.1, with whom the plaintiff had entered into agreement for sale and who was the owner of the suit property, never filed written statement and never appeared as witness in the suit and never participated in the suit proceedings and the suit was set *ex-parte* against him. The power of attorney, defendant no.3, contested the suit in his individual capacity as he had entered into another agreement of sale with defendant no.2 and ultimately sold the suit property to the defendant no.2. The defendant nos. 2 and 3 filed their separate written statement and *neither* the financial capacity of the plaintiff was in dispute *nor* the plea of readiness and willingness on the part of the plaintiff to perform his part of the contract was in dispute. This Court is of the considered view that the learned courts have considered the pleadings and materials on record to come to finding that the plaintiff was ready and willing to perform his part of the contract throughout and this court does not find any perversity in the matter of such findings arrived at by the learned courts in favour of the plaintiff. The totality of the evidence reveal that the plaintiff was ready and willing to perform his part of the contract throughout.

46. *The 1st substantial question of law is accordingly decided in favour of the plaintiff and against the appellants (defendants) and it is held that the*

concurrent findings recorded by both the courts that the plaintiff was ready and willing to perform his part of the contract does not suffer from any perversity.

3rd substantial question of law.

Whether the receipt cum extension of time of the agreement for specific performance of contract marked as Exhibit 2/1 was inadmissible in evidence for the same being not duly stamped.

47. Considering the arguments of the respective parties, this Court finds that exhibit-2/1 is the endorsement regarding extension of time by one month and also endorses receipt of Rs.1000/- and was made at the back side of the exhibit-2 (the agreement of sale dated 18.09.1982). In view of the judgement relied upon by the learned counsel for the appellants, the same was required to be stamped and in the absence of being stamped the same could not be taken into evidence. However, as per both the courts, the agreement as contained in exhibit-2 was duly proved and the 2nd extension by which the period of the agreement was extended till 30.11.1982 (exhibit-2/2) was also duly proved which has *neither* been disputed by the other defendants *nor* the defendant No. 1 filed his written statement, *nor* he has deposed in the court against the plaintiff. Moreover, the evidence on record show that a separate money receipt was prepared with respect to payment of Rs.1000/- but the plaintiff failed to produce the same as he had stated in his evidence that the same was lost. Defendant No. 3 has specifically stated that he never consulted his grandfather (defendant no.1) for filing the written statement. This Court finds that from the materials on record it is very much evident that there was a valid agreement and the entire agreement doesn't get vitiated because the exhibit-2/1 (1st extension) is not duly stamped. The deed of agreement is itself on a revenue paper which is evident from exhibit-2 and the same has not been objected by the defendants and the revenue paper of Rs. 3 and Rs. 2 was purchased for reducing the agreement in writing and it is evident that there is no objection

over exhibit-2 which is an agreement and even if exhibit-2/1 is not taken into consideration the same will have no bearing in the outcome of the case.

48. *Thus, while answering the 3rd substantial question of law it is held that the receipt cum extension of time of the agreement for specific performance of contract marked as Exhibit 2/1 was inadmissible in evidence for the same being not duly stamped. However, as discussed above, the agreement of sale and its validity till 30.11.1982 was duly proved on the basis of other materials on record and hence the answer to 3rd substantial question of law, though decided in favour of the appellants (defendants), has no bearing the matter and does not help the appellants in any manner.*

2nd substantial question of law

Whether the agreement dated 18.09.1982 (Exhibit-2) executed by defendant No.1 in favour of plaintiff or agreement dated 20.08.1982 (Exhibit-B) executed by defendant No.3 in favour of defendant No.2 shall prevail and given effect to?

49. So far as the **2nd substantial question of law** is concerned, it is not in dispute that the agreement of sale dated 20.08.1982 (Ext.-B) executed by defendant no. 3, as constituted attorney of defendant no. 1, was prior in point of time as compared to the agreement of sale dated 18.09.1982 (exhibit-2) executed by defendant no. 1 in favour of the plaintiff. It is further not in dispute that no such issue was framed *either* before the learned trial court *or* before the learned 1st appellate court as to whether the agreement of sale dated 20.08.1982 (Ext.-B) would prevail upon the agreement of sale dated 18.09.1982 (Ext.-2). However, both the parties were thoroughly cross-examined in connection with their respective agreement of sale. It is important to note that Exhibit-2 as well as Exhibit-B both were duly proved before the learned court and no substantial question of law has been framed with respect to proof of Exhibit-2 and/or proof of Exhibit-B. There can be no doubt that even if no specific issue was framed as to which of the two agreements of sale would prevail but there was appropriate materials before the courts which led to a finding about existence of both the agreements of sale, that is, exhibit-2 and exhibit-B and the substantial question of law no.2 is essentially relating

to impact of existence of two agreements of sale and which one would prevail. Thus, there is no legal impediment to decide the substantial question of law no.2 even if no specific issue in this connection was ever framed by the learned trial court or by the learned 1st appellate court but the existence of two agreements of sale, that is exhibit- 2 and exhibit-B, were duly pleaded and proved by the concerned parties.

50. The fact remains that the title suit was filed by the plaintiff on 11.12.1982 seeking specific performance of contract with respect to agreement of sale dated 18.09.1982 (Exhibit-2) making the defendant no. 1 as the sole defendant and subsequently when the sale deed was executed by defendant no. 3 (power of attorney of defendant no.1) in favour of defendant no. 2 on 20.12.1982 (exhibit-G) the plaintiff filed petition seeking amendment of the plaint. The registered sale deed dated 20.12.1982 (exhibit-G) also referred to the agreement of sale between the defendant no. 3 and defendant no. 2 dated 20.08.1982 (exhibit-B). The plaintiff filed petition seeking amendment in the suit to make the defendant nos. 2 and 3 as a party in the suit and also to introduce certain averments with respect to execution of sale deed dated 20.12.1982 (exhibit-G) by the defendant no. 3 in favour of defendant no. 2. The amendment was allowed vide order dated 25.03.1983 and the defendant nos. 2 and 3 were added as party and following averments were inserted from the side of the plaintiff as paragraph 16, 17 and 18: -

“16. That the plaintiff has filed the present suit for specific performance of agreement dated 18.09.1982 executed by and between the plaintiff and the defendant. The suit was filed on 11.12.1982.

17. That with full knowledge about the filing of the present suit one Ram Kinkar Pathak who is the grandson of the defendant executed a deed of sale as respect to suit property in favour of Dinesh Pathak, S/o not known, resident of Qr. No. DT 2121, near Pani Tanki, (Water Tower), Dhurwa, Ranchi-4.

18. That Dinesh Pathak is the own son-in-law of the defendant and therefore the sale deed executed in his favour is a sham transaction

made for the purpose of adversely affecting the plaintiff's decree in suit.

51. The prayer in the suit was also adequately amended to include relief against all the defendants.

52. It is important to note that though the plaint was amended after execution of the sale deed dated 20.12.1982 and the sale deed itself referred to the previous agreement of sale between defendant nos. 2 and 3 dated 20.08.1982, but there was no assertion introduced in the plaint through amendment making any allegation of wrongfully preparing the agreement of sale dated 20.08.1982 for the purpose to defeat the relief of the plaintiff based on subsequent agreement of sale dated 18.09.1982 (exhibit-2) . It is equally important to note that the defendant no. 2 while filing the written statement had specifically referred to the agreement of sale dated 20.08.1982 entered into between defendant nos. 2 and 3 followed by the execution of registered sale deed dated 20.12.1982. Still the plaintiff did not take any steps to amendment to plaint so as to assail the agreement of sale dated 20.08.1982.

53. It is further important to note that so far as the defendant no. 3 is concerned, he did not refer to the agreement of sale dated 20.08.1982 in his written statement, but certainly this agreement of sale was referred to in the registered sale deed dated 20.12.1982 executed by defendant no. 3 in favour of defendant no. 2. The defendant no. 3 in his written statement took a specific plea that once the power of attorney was given to the defendant no. 3 way back in the year 1977 by the defendant no. 1, the defendant no. 1 had no legal right to enter into any agreement of sale with anybody whomsoever including the plaintiff. This was in furtherance to the assertion that the agreement of sale entered into between the plaintiff and the defendant no. 1 was fraudulently obtained through misrepresentation by the plaintiff and therefore such agreement, if any, was void.

54. The learned courts by concurrent finding have held that the defendant no. 1 had entered into agreement of sale with the plaintiff dated 18.09.1982 and the agreement of sale dated 18.09.1982 was a valid agreement between

the plaintiff and the defendant no. 1. The learned courts have rejected the plea of the defendant no. 3 that once the power of attorney was executed by defendant no. 1 in favour of defendant no. 3, the defendant no. 1 completely lost his right to deal with the property. The learned court have taken note of the fact that the defendant no. 2 had proved the agreement of sale entered into between the defendant no. 3 and defendant no. 2 dated 20.08.1982 which was prior in point of time as compared to the agreement of sale entered into between the plaintiff and the defendant no. 1 dated 18.09.1982, but have not considered the impact of such a prior agreement entered into between the defendant no. 2 and defendant no. 3 (power of attorney of defendant no.1). The records of the case reveal that there is no substantial cross-examination with respect to the agreement of sale dated 20.08.1982 except the fact that stamp paper with respect to the agreement of sale dated 20.08.1982 was purchased in the month of March 1982 and the agreement was entered on 20.08.1982, to which the defendant no. 2 in his cross-examination had tried to explain that though the negotiations were on, but the necessary finances were not available with the defendant no. 2 and the agreement of sale was entered only on 20.08.1982 upon payment of part consideration of Rs. 500/-.

55. The learned counsel for the plaintiff has tried to allege by referring to the evidences on record that the agreement of sale dated 20.08.1982 (Exhibit-B) was itself doubtful and it never existed and the same was created by defendant nos. 2 and 3 only to defeat the claim of the plaintiff and to mislead the court by giving wrongful facts and for that they have also pointed out that the defendant no. 3 in his written statement had not taken any such plea regarding the existence of agreement of sale dated 20.08.1982 and such omission was absolutely fatal as no amount of evidence could be looked into in absence of pleading which was as settled principle of law. It has also been sought to be argued that in the notice issued by the defendant no. 3 dated 20.11.1982, there was no such mention of the agreement of sale dated 20.08.1982. Rather in the notice, the defendant no. 3 had stated that there was no any urgent or any necessity of the family for money at that time. A

reference has also been made to Exhibit-5, which is a plaint of partition suit filed by the defendant no. 3 on 25.11.1982 and the same also does not mention the agreement of sale dated 20.08.1982 (Ext.-B).

56. The learned counsel for the plaintiff has tried to suggest that the agreement of sale dated 20.08.1982 (Ext.-B) was a forged and fabricated document. However, this court is of the considered view that such plea cannot be entertained in view of the fact that in spite of the defendant no. 2 having taken specific plea with regard to existence of agreement of sale dated 20.08.1982 (Ext.-B), no attempt was made by the plaintiff to amend the plaint so as to challenge/assail that the agreement of sale dated 20.08.1982 (Ext.-B) to be a forged and fabricated document or was created by collusion of defendant nos. 2 and 3 only to defeat the claim of specific performance of contract by the plaintiff. It is also important to note that no such substantial question of law has been framed even by this Court as to whether the agreement of sale dated 20.08.1982 (Ext.-B) was a forged and fabricated document.

57. The argument of the plaintiff that the agreement of sale dated 20.08.1982 (Ext.-B) was a forged and fabricated document is not only beyond the pleadings of the parties, but is also beyond the substantial question of law as framed by this Court and therefore such a plea is not tenable. This Court has to only examine the impact of a prior agreement of sale dated 20.08.1982 (Ext.-B) entered into between defendant no. 3 *[in the capacity of power of attorney holder of defendant no. 1]* and defendant no. 2 vis-à-vis the agreement of sale entered into directly between defendant no. 1 and the plaintiff on 18.09.1982 (exhibit-2).

58. The perusal of Exhibit-B reveals that no specific timeline has been mentioned for the purposes of execution of the sale deed. However, the sale deed was executed on 20.12.1982 within a span of four months from the date of agreement of sale dated 20.08.1982.

59. In the aforesaid factual scenario, this Court is of the considered view that once there was already an agreement of sale entered into by the power of

attorney holder (defendant no. 3) in favour of defendant no. 2 on 20.08.1982, such agreement of sale was certainly binding upon the defendant no. 1, who had executed the registered power of attorney in favour of defendant no. 3 way back in the year 1977 which was still subsisting and under such circumstances, the subsequent agreement of sale, entered into by the defendant no. 1 directly in favour of the plaintiff on 18.09.1982, has to give way to the prior agreement of sale dated 20.08.1982 and it was this agreement of sale dated 20.08.1982 which ultimately culminated in execution of registered sale deed by defendant no. 3 in favour of defendant no. 2 on 20.12.1982 (Ext.-G).

60. In view of the aforesaid facts and circumstances, *the 2nd substantial question of law is hereby decided in favour of the appellants* and this Court is of the considered view that the agreement of sale dated 20.08.1982 (Ext.-B) executed by defendant no. 3, as constituted attorney of defendant no. 1, shall prevail upon the subsequent agreement of sale dated 18.09.1982 (Ext.-2) executed by the defendant no. 1 himself in favour of the plaintiff. This crucial aspect of the matter, that is, impact of exhibit- B, was not taken care of by both the learned courts, although both the learned courts have taken note of the fact that there was previous agreement of sale dated 20.08.1982, but did not record any finding that the same was a collusive or a fraudulent document and rightly so, in view of the fact that no such plea was raised by the plaintiff with respect to agreement of sale dated 20.08.1982. Merely taking a plea that the sale deed executed in favour of defendant no. 2 was a sham transaction made for the purposes of adversely affecting the plaintiff's decree in the *suit* does not amount to taking a plea that the agreement of sale dated 20.08.1982 was collusive or a fraudulent document.

61. Accordingly, it is held that the agreement of sale dated 20.08.1982 (Ext.-B) executed by defendant no. 3 [*as constituted attorney of defendant no. 1*] in favour of the defendant no.2, shall prevail upon the subsequent agreement of sale dated 18.09.1982 (Ext.-2) executed by the defendant no. 1 himself in favour of the plaintiff. Thus, the learned courts were not justified

in decreeing the suit on the strength of agreement of sale dated 18.09.1982 (Ext.-2) executed by the defendant no.1 in favour of the plaintiff once it was brought on record that there was a previous agreement of sale dated 20.08.1982 (Ext.-B) executed by defendant no. 3 *[as constituted attorney of defendant no. 1]* in favour of the defendant no.2 and it was this agreement of sale dated 20.08.1982 which culminated into sale deed dated 20.12.1982 (exhibit- G) executed by the defendant no.3 (power of attorney of defendant no.1) in favour of the defendant no.2 and thus , the sale deed dated 20.12.1982 (exhibit- G) was not hit by *lis pendens*.

62. Consequently, the decree for specific performance of agreement of sale dated 18.09.1982 (Ext.-2) granted by the learned trial court and upheld by the learned 1st appellate court cannot be sustained in law and are accordingly set-aside.

63. Summary: -

Substantial question of law	Answer/findings of this court
(i) <i>Whether the concurrent finding recorded by both the courts that the plaintiff was ready and willing to perform his part of the contract suffers from any perversity?</i>	The concurrent findings recorded by both the courts that the plaintiff (respondent) was ready and willing to perform his part of the contract does not suffer from any perversity.
(ii) <i>Whether the agreement dated 18.09.1982 (Exhibit-2) executed by defendant No.1 in favour of plaintiff or agreement dated 20.08.1982 (Exhibit-B) executed by defendant No.3 in favour of defendant No.2 shall prevail and given effect to?</i>	The agreement of sale dated 20.08.1982 (Ext.-B) executed by defendant no. 3 <i>[as constituted attorney of defendant no. 1]</i> in favour of the defendant no.2, shall prevail upon the subsequent agreement of sale dated 18.09.1982 (Ext.-2) executed by the defendant no. 1 himself in favour of the plaintiff. Consequently, the decree for specific performance of

	subsequent agreement of sale <i>dated</i> 18.09.1982 (Ext.-2) granted by the learned trial court and upheld by the learned 1st appellate court cannot be sustained in law and are accordingly set-aside. <i>As a result,</i> the suit seeking specific performance of agreement <i>dated</i> 18.09.1982 (Ext.-2), being subsequent in point of time as compared to the agreement of sale dated 20.08.1982 (exhibit-B), is dismissed. <i>It is important to note</i> that registered sale deed dated 20.12.1982 (exhibit-G) as a sequel to agreement of sale dated 20.08.1982 (exhibit-B) has been executed.
<i>(iii) Whether the receipt cum extension of time of the agreement for specific performance of contract marked as Exhibit 2/1 was inadmissible in evidence for the same being not duly stamped?</i>	The receipt cum extension of time of the agreement for specific performance of contract marked as Exhibit 2/1 was inadmissible in evidence for the same being not duly stamped. However, the agreement of sale and its validity till 30.11.1982 was duly proved on the basis of other materials on record and hence the answer to 3rd substantial question of law, though in favour of the appellants (defendants) has no bearing the matter and does not help the appellants in any manner.

64. In view of the answer to the 2nd substantial question of law against the plaintiff (respondent) and in favour of the defendants (appellants), this 2nd appeal is allowed and the suit seeking specific performance of the agreement dated 18.09.1982 (Ext.-2) is dismissed.

65. Pending interlocutory application, if any, is closed.

66. Let the records be immediately sent back to the court concerned.
67. Let a copy of this order be communicated to the court concerned through 'e-mail/FAX'.

(Anubha Rawat Choudhary, J.)

Dated: 01.06.2026

Uploaded On: 02.06.2026

Mukul/-