

**(2022) 7 Supreme Court Cases 384 : (2022) 3 Supreme Court  
Cases (Civ) 732 : 2022 SCC OnLine SC 435**

**In the Supreme Court of India**

(BEFORE M.R. SHAH AND B.V. NAGARATHNA, JJ.)

P. RAMASUBBAMMA . . Appellant;

*Versus*

V. VIJAYALAKSHMI AND OTHERS . . Respondents.


Civil Appeal No. 2095 of 2022<sup>±</sup>, decided on April 11, 2022

**A. Contract and Specific Relief – Specific Relief Act, 1963 – Ss. 19(b), 10 and 20 – Specific performance of agreement to sell immovable property when property is sold to subsequent transferee with notice of the prior agreement to sell – Proper form of relief in such cases – Reiterated – Cancellation of sale deed executed in favour of a subsequent purchaser – Held, it is not necessary for the prior buyer-agreement-holder to seek cancellation of sale deed executed in favour of a subsequent purchaser – It is sufficient to implead subsequent purchaser in suit and seek relief of specific performance against original owner and also seek direction to subsequent purchaser to join in execution of sale deed in order to completely convey title to the prior buyer-agreement-holder – Trusts and Trustees – Trusts Act, 1882 – S. 91 – Property Law – Transfer of Property Act, 1882, S. 40 Pt. II**

**B. Contract and Specific Relief – Specific Relief Act, 1963 – Ss. 10, 19(b) and 20 – Specific performance of agreement to sell – Decree for – Entitlement – Vendor original owner admitted execution of agreement to sell and even admitted receipt of substantial advance sale consideration – However, GPA of vendor executed sale deeds in favour of other purchasers in respect of same suit property – Once execution of agreement to sell and payment/receipt of advance substantial sale consideration was admitted by vendor, thereafter nothing further was required to be proved by plaintiff vendee – Therefore, trial court rightly decreed suit for specific performance of agreement to sell – High Court was not required to go into aspect of execution of agreement to sell and payment/receipt of substantial advance sale consideration**

**C. Contract and Specific Relief – Specific Relief Act, 1963 – Ss. 10, 20 and 19(b) – Specific performance of agreement to sell – Despite paying substantial sale consideration, GPA of vendor executed sale deeds in respect of same property in favour of third parties – Trial court declaring that sale deeds are not binding on vendor original owner and plaintiff – Validity**

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**– Issues in respect of sale deeds executed by GPA of vendor in favour of third parties had been framed by trial court – In that view of matter, High Court erred in setting aside decree passed by trial court by recording finding that as there was no specific relief/prayer of cancellation of sale deeds in question therefore, trial court could not have passed decree that said sale deeds are not binding on vendor original owner and plaintiff**  
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**D. Contract and Specific Relief – Specific Relief Act, 1963 – Ss. 20 and 34 – Applicability of S. 34 – Specific performance of agreement to sell – Despite paying substantial sale consideration, GPA of vendor executed sale deeds in respect of same property in favour of third parties – Trial court after appreciation of evidence declared above sale deed as nominal sale deed – Validity**

**– Specific issues were framed with respect to sale deeds executed by GPA of vendor in favour of third parties and parties led evidence also on aforesaid issues – Thereafter, trial court gave findings on said issues and thereafter, granted declaration that sale deeds executed by GPA of vendor in favour of third parties are not binding on vendor original owner and plaintiff and those sale deeds are nominal sale deeds – Trial court has further recorded finding that third parties have failed to prove that agreement to sell is a created document and by virtue of same no consideration has been paid – In that view of matter S. 34 upon which reliance has been placed by High Court for setting aside decree of trial court will have no application**

*Held :*

In a suit for specific performance it is not necessary for the buyer under a prior agreement to sell (“the agreement-holder”) to seek cancellation of sale deed executed in favour of a subsequent purchaser. Rather, it is sufficient to implead the subsequent purchaser in the suit and seek relief of specific performance against the original owner and also seek direction to the subsequent purchaser to join in the execution of the sale deed in order to completely convey title to the agreement-holder.

(Paras 5.3 and 16)

*Durga Parsad v. Deep Chand*, 1954 SCR 360 : AIR 1954 SC 75; *Rathnavathi v. Kavita Ganashamdas*, (2015) 5 SCC 223 : (2015) 2 SCC (Civ) 736, followed

*Potter v. Sanders*, (1846) 6 Hare 1 : 67 ER 1057, relied on

*Kafiladdin v. Samiraddin*, 1930 SCC OnLine Cal 46 : AIR 1931 Cal 67, held, approved

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*Soni Lalji Jetha v. Soni Kalidas Devchand*, (1967) 1 SCR 873 : AIR 1967 SC 978;  
*R.C. Chandiok v. Chuni Lal Sabharwal*, (1970) 3 SCC 140; *Dwarka Prasad Singh v. Harikant Prasad Singh*, (1973) 1 SCC 179, *cited*

*Fry on Specific Performance*, 6th Edn., at p. 90, Para 207, *referred to*

Original Defendant 1—vendor original owner admitted the execution of agreement to sell and even admitted the receipt of substantial advance sale consideration, the trial court decreed the suit for specific performance of agreement to sell. Once the execution of agreement to sell and the payment/receipt of advance substantial sale consideration was admitted by the vendor, thereafter nothing further was required to be proved by the plaintiff vendee. Therefore, as such the trial court rightly decreed the suit for specific performance of agreement to sell. The High Court was not required to go into the aspect of the execution of the agreement to sell and the payment/receipt of substantial advance sale consideration, once the vendor had specifically admitted the execution of the agreement to sell and receipt of the advance sale consideration; thereafter no further evidence and/or proof was required.

(Para 9)

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Now, so far as the sale deeds executed by original Defendant 2 in favour of Defendants 3 and 4 and the decree passed by the trial court that the sale deeds executed by original Defendant 2 in favour of Defendants 3 and 4 are not binding on Defendant 1 as well as on the plaintiff is concerned, Issues (iv) and (v) framed by the trial court, were in respect of the sale deeds executed by original Defendant 2 in favour of Defendants 3 and 4 dated 3-5-2010.

(Para 10)

The High Court has not noted the specific Issues (iv) and (v) framed by the trial court, which were with respect to sale deeds dated 3-5-2010. Therefore, as such, there was a lis between the parties in respect to sale deeds dated 3-5-2005 executed by original Defendant 2 in favour of Defendants 3 and 4 and even specific issues were framed, which on appreciation of evidence were held against Defendants 2 to 4. Therefore, the High Court is not justified in quashing and setting aside the judgment and decree passed by the trial court declaring that sale deeds dated 3-5-2010 are not binding on Defendant 1 and the plaintiff.

(Para 12)

The trial court has specifically given the finding that the alleged sale consideration paid by Defendants 3 and 4 to original Defendant 2 for executing sale deeds dated 3-5-2010 have not been established and proved by Defendants 2 to 4. Therefore, there was a specific finding given by the trial court on appreciation of evidence that

sale deeds dated 3-5-2010 were nominal sale deeds. The High Court has brushed aside the same on the ground that even in agreement to sell dated 12-4-2005, the amount was alleged to have been paid by cash.

(Paras 5.6, 13, 18 and 19)

In the present case the High Court has heavily relied upon Section 34 of the 1963 Act. However, considering the fact that specific issues were framed with respect to sale deeds dated 3-5-2010 executed by original Defendant 2 in favour of Defendants 3 and 4 and the parties led the evidence also on the aforesaid issues and thereafter, when the trial court had given findings on the said issues and thereafter, had granted the declaration that the sale deeds executed by original Defendant 2 in favour of Defendants 3 and 4 are not binding on Defendant 1 and the plaintiff and those sale deeds are nominal sale deeds and that Defendants 2 to 4 have failed to prove that agreement to sell dated 12-4-2005 is a created document and by virtue of the same no consideration has been paid, Section 34 of the 1963 Act, upon which reliance has been placed by the High Court will have no application.

(Para 17)

*P. Mamatha v. P. Ramasubbamma*, 2021 SCC OnLine Kar 14104, *reversed*

*Vasantha Viswanathan v. V.K. Elayalwar*, (2001) 8 SCC 133, *cited*

RM-D/68802/CV

Advocates who appeared in this case :

S.N. Bhat, Senior Advocate [Ms Anuradha Mutatkar (Advocate-on-Record), Advocate], for the Appellant;

Arpit Rai and Aviral Kashyap (Advocate-on-Record), Advocates, for the Respondents.

***Chronological list of cases cited***

***on page(s)***

1. 2021 SCC OnLine Kar 14104, *P. Mamatha v. P387b*, 389a, 389b-c, 390d, *Ramasubbamma (reversed)* 390e
2. (2015) 5 SCC 223 : (2015) 2 SCC (Civ) 736, *Rathnavathi v. Kavita Ganashamdas* 390a, 390c-d, 392g
3. (2001) 8 SCC 133, *Vasantha Viswanathan v. V.K. Elayalwar* 390c-d

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4. (1973) 1 SCC 179, *Dwarka Prasad Singh v. Harikant Prasad Singh* 390a
  5. (1970) 3 SCC 140, *R.C. Chandiook v. Chuni Lal Sabharwal* 390a
  6. (1967) 1 SCR 873 : AIR 1967 SC 978, *Soni Lalji Jetha v. Soni Kalidas Devchand* 389g-h
  7. 1954 SCR 360 : AIR 1954 SC 75, *Durga Parsad v. Deep Chand* 389g-h, 392e
  8. 1930 SCC OnLine Cal 46 : AIR 1931 Cal 67, *Kafiladdin v. Samiraddin* 392f-g
  9. (1846) 6 Hare 1 : 67 ER 1057, *Potter v. Sanders* 392g

The Judgment of the Court was delivered by

**M.R. Shah, J.**— Feeling aggrieved and dissatisfied with impugned judgment and order dated 20-7-2021<sup>1</sup> passed by the High Court of Karnataka in Regular First Appeal No. 100200 of 2015, by which the High Court has allowed the said appeal preferred by Respondents 3 and 4 herein-original Defendants 3 and 4 (hereinafter referred to as Defendants 3 and 4) and has set aside the judgment and decree passed by the learned trial court granting decree for specific performance of agreement to sell dated 12-4-2005, the appellant herein-original plaintiff has preferred the present appeal.

**2.** The facts leading to the present appeal in a nutshell are as under:

**2.1.** That the appellant herein-original plaintiff filed the suit for specific performance of agreement to sell dated 12-4-2005. It was the case on behalf of the plaintiff that she had entered into an agreement with Respondent 1 herein-original Defendant 1 to purchase the suit schedule property for a sale consideration of Rs 29 lakhs. An advance amount of Rs 20 lakhs was paid under the said agreement. Defendant 1 had earlier executed a general power of attorney in favour of Respondent 2 herein-original Defendant 2. However, Defendant 2 was present when the plaintiff entered into an agreement to sell with Defendant 1.

**2.2.** It was the case on behalf of the plaintiff that thereafter, on 25-3-2008, Defendants 1 and 2 approached the plaintiff and her husband and sought payment of Rs 6 lakhs. On 25-3-2008, the plaintiff made further payment of Rs 6 lakhs towards sale consideration and an endorsement was made by Defendant 1 on the agreement, acknowledging the receipt of Rs 6 lakhs.

**2.3.** According to the plaintiff, thereafter, despite repeated requests and demands, Defendant 1 did not execute the sale deed in favour of the plaintiff. They learnt that Defendant 2 by misusing the power of attorney executed by Defendant 1 in favour of Defendant 2, clandestinely executed two sale deeds in favour of Defendants 3 and 4 only to defraud the plaintiff.

**2.4.** The plaintiff got served a legal notice to the defendants on 17-6-2010 calling upon Defendant 1 to execute the sale deed in her favour by receiving balance sale consideration of Rs 3 lakhs. Further, thereafter Defendant 1 did not execute the sale deed, the plaintiff filed the present suit for specific performance of the contract/agreement to sell dated 12-4-2005.

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**2.5.** That original Defendant 1 filed written statement and admitted the execution of agreement to sell and specifically stated that she is ready and willing to perform her part of contract. However, Defendants 2 to 4 filed separate written statements and took a common defence that agreement to sell dated 12-4-2005 is a created document. It was contended that power of attorney executed by Defendant 1 in favour of Defendant 2 is a registered document and without cancelling the registered power of attorney and without the knowledge of Defendant 2, Defendant 1 in collusion with the plaintiff had created the agreement to sell. It was also contended by Defendants 2 to 4 that agreement to sell dated 12-4-2005 is a bogus document and no sale consideration is paid by the plaintiff.

**3.** The learned trial court framed the following issues:

*(i)* Whether the plaintiff proves that on 12-4-2005 Defendant 1 has executed an agreement of sale agreeing to sell the suit property for a total consideration of Rs 29 lakhs?

*(ii)* Whether the plaintiff proves that part sale consideration of Rs 26 lakhs has been paid to Defendant 1?

*(iii)* Whether the plaintiff proves that she was always ready and willing to perform her part of duty towards the contract?

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(iv) Whether the plaintiff further proves that with mala fide intention and to defeat her right accrued through the sale agreement dated 12-4-2005 Defendant 2 had executed sale deeds dated 3-5-2010 in favour of Defendants 3 and 4 and those sale deeds are nominal sale deeds?

(v) Whether Defendants 2 to 4 prove that sale agreement dated 12-4-2005 is a created document and by virtue of the same no consideration had been passed?

(vi) Whether the plaintiff is entitled for a decree of specific performance of contract?

(vii) What order or decree?"

**3.1.** On behalf of the plaintiff, her husband was examined as PW 1 and two more witnesses were examined on behalf of the plaintiff. The plaintiff produced nine documents as documentary evidence as Exts. P-1 to P-9. Defendant 1 was examined as DW 1 and Defendant 2 was examined as DW 2.

**3.2.** On appreciation of evidence on record, the learned trial court decreed the suit and passed a decree of specific performance. The learned trial court found that Defendant 1 being the absolute owner of the suit schedule property has admitted the execution of agreement to sell in favour of the plaintiff and has also admitted receipt of substantial amount as part of the sale consideration. The learned trial court also proceeded to hold that the sale deed executed by Defendant 2 in favour of Defendants 3 and 4 are not binding on Defendant 1 as well as the plaintiff and therefore, the plaintiff was entitled to the relief of specific performance of contract and to get the vacant possession of the suit schedule property.

**4.** Feeling aggrieved and dissatisfied with the judgment and decree passed by the learned trial court, the original Defendants 3 and 4 only preferred an appeal before the High Court. By the impugned judgment and order<sup>1</sup>, the High Court has allowed the said appeal and has quashed and set aside the decree passed by the learned trial court mainly relying upon and considering Section 20 of the Specific Relief Act. The High Court has also observed that as there was no prayer or a particular relief to declare that the sale deed in favour of Defendants 3 and 4 is null and void and not binding on the plaintiff and Defendant 1, such a relief could not have been granted by the learned trial court.

Feeling aggrieved and dissatisfied with the impugned judgment and order<sup>1</sup> passed by the High Court, the plaintiff preferred the present appeal.

**5.** Shri S.N. Bhat, learned Senior Advocate appearing on behalf of the original plaintiff has vehemently submitted that in the facts and circumstances of the case, the High Court has committed a grave error in quashing and setting aside the decree passed by the learned trial court for specific performance of agreement to sell dated 12-4-2005.

**5.1.** It is further submitted that when the original Defendant 1 original owner admitted the execution of the agreement and even admitted the payment of substantial amount under the agreement, the learned trial court rightly passed the decree of the specific performance of the said agreement.

**5.2.** It is further submitted that even the High Court ought to have appreciated that apart from the fact that original Defendant 1 admitted the execution of the agreement and receipt of payment of substantial advance amount, original Defendants 3 and 4 did not even enter into the witness box. It is further submitted that the High Court has not properly appreciated and considered the fact that the original of power of attorney dated 28-1-1997 executed by Defendant 1 in favour of Defendant 2, was handed over to the plaintiff at the time of execution of agreement to sell, which was produced by the plaintiff in the present suit as Ext. P-6.

**5.3.** It is further submitted that the High Court has also erred in holding that it was necessary for the plaintiff to seek cancellation of sale deeds dated 3-5-2010 executed by Defendant 2 in favour of Defendants 3 and 4, respectively. It is submitted that in a suit for specific performance it is not necessary for the agreement-holder to seek cancellation of sale deed executed in favour of a subsequent purchaser and it is sufficient to implead the subsequent purchaser in the suit and seek relief of specific performance against the original owner and also seek direction to the subsequent purchaser to join in the execution of the sale deed in order to completely convey title to the agreement-holder. Reliance is placed upon the decisions of this Court in *Durga Parsad v. Deep Chand*<sup>2</sup>, *Soni Lalji Jetha v. Soni Kalidas Devchand*<sup>3</sup>, *R.C. Chandiok v.*

*Chuni Lal Sabharwal*<sup>4</sup>, *Dwarka Prasad Singh v. Harikant Prasad Singh*<sup>5</sup> and *Rathnavathi v. Kavita Ganashamdas*<sup>6</sup>.

**5.4.** It is further submitted that the High Court has also not properly



appreciated the fact that the transactions between Defendant 2 and Defendants 3 to 4 were sham transactions, which were by Defendant 2 in favour of his own sisters-in-law. It is submitted that even the sale consideration in the transaction between Defendant 2 and Defendants 3 to 4 was alleged to have been paid by cash and that too, a huge sum of Rs 26 lakhs was alleged to have been paid by cash. It is submitted that in any case Defendants 3 and 4 never stepped into the witness box.

**5.5.** It is submitted that therefore when the sale deed executed in favour of Defendants 3 and 4 by Defendant 2 was sham in order to defeat the right of the plaintiff pursuant to agreement to sell dated 12-4-2005 and the same was executed after the agreement to sell in favour of the plaintiff and the plaintiff had paid a substantial advance amount, the High Court has erred in applying Section 20 of the Specific Relief Act.

**5.6.** Making the above submissions and also relying upon the decisions of this Court in *Vasantha Viswanathan v. V.K. Elayalwar*<sup>2</sup> and in *Rathnavathi*<sup>6</sup>, it is prayed to allow the present appeal and quash and set aside the impugned judgment and order<sup>1</sup> passed by the High Court and consequently to restore the decree passed by the learned trial court.

**6.** Though served nobody has entered appearance on behalf of Defendants 2 to 4. Even Respondent 3-Defendant 3 is served by substituted service, namely, by way of publication in two daily newspapers. In that view of the matter, this Court has no other alternative but to proceed further with the appeal ex parte.

**7.** We have gone through the judgment and decree and the findings recorded by the learned trial court as well as the judgment and order<sup>1</sup> passed by the High Court.

**8.** The learned trial court framed the following issues:

“(i) Whether the plaintiff proves that on 12-4-2005 Defendant 1 has executed an agreement of sale agreeing to sell the suit property for a total consideration of Rs 29 lakhs?

(ii) Whether the plaintiff proves that part sale consideration of Rs 26 lakhs has been paid to Defendant 1?

(iii) Whether the plaintiff proves that she was always ready and willing to perform her part of duty towards the contract?

(iv) Whether the plaintiff further proves that with mala fide intention and to defeat her right accrued through the sale agreement dated 12-4-2005

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Defendant 2 had executed sale deeds dated 3-5-2010 in favour of Defendants 3 and 4 and those sale deeds are nominal sale deeds?

(v) Whether Defendants 2 to 4 prove that sale agreement dated 12-4-2005 is a created document and by virtue of the same no consideration had been passed?

(vi) Whether the plaintiff is entitled for a decree of specific performance of contract?

(vii) What order or decree?"

**9.** Considering the fact that original Defendant 1—vendor original owner admitted the execution of agreement to sell dated 12-4-2005 and even admitted the receipt of substantial advance sale consideration, the learned trial court decreed the suit for specific performance of agreement to sell dated 12-4-2005. Once the execution of agreement to sell and the payment/receipt of advance substantial sale consideration was admitted by the vendor, thereafter nothing further was required to be proved by the plaintiff vendee. Therefore, as such the learned trial court rightly decreed the suit for specific performance of agreement to sell. The High Court was not required to go into the aspect of the execution of the agreement to sell and the payment/receipt of substantial advance sale consideration, once the vendor had specifically admitted the execution of the agreement to sell and receipt of the advance sale consideration; thereafter no further evidence and/or proof was required.

**10.** Now, so far as the sale deeds executed by original Defendant 2 in favour of Defendants 3 and 4 and the decree passed by the learned trial court that the sale deeds executed by original Defendant 2 in favour of Defendants 3 and 4 are not binding on Defendant 1 as well as on the plaintiff is concerned, at the outset, it is required to be noted that Issues (iv) and (v), reproduced hereinabove, were in respect of the sale deeds executed by original Defendant 2 in favour of Defendants 3 and 4 dated 3-5-2010.

**11.** Therefore, specific issues were framed on sale deeds dated 3-5-2010 executed by original Defendant 2 in favour of Defendants 3 and 4. In that view of the matter, the High Court has erred in setting aside the decree passed by the learned trial court by observing that as there was no specific relief/prayer of cancellation of sale deeds dated 3-5-2010 executed by original Defendant 2 in favour of Defendants 3 and 4, therefore, the learned trial court could not have passed the decree that the said sale deeds are not binding on Defendant 1 and the plaintiff.

**12.** The High Court has not noted the specific Issues (iv) and (v) framed by the learned trial court, which were with respect to sale deeds dated 3-5-2010. Therefore, as such, there was a lis between the parties in respect to sale deeds dated 3-5-2005 executed by original Defendant

2 in favour of Defendants 3 and 4 and even specific issues were framed, which on appreciation of evidence were held against Defendants 2 to 4. Therefore, the High Court is not justified in quashing and setting aside the judgment and decree passed by the learned trial court declaring that sale deeds dated 3-5-2010 are not binding on Defendant 1 and the plaintiff.

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**13.** It is also required to be noted that on appreciation of evidence, the learned trial court has specifically given the finding that the alleged sale consideration paid by Defendants 3 and 4 to original Defendant 2 for executing sale deeds dated 3-5-2010 have not been established and proved by Defendants 2 to 4. Therefore, there was a specific finding given by the learned trial court on appreciation of evidence that sale deeds dated 3-5-2010 were nominal sale deeds. The High Court has brushed aside the same on the ground that even in agreement to sell dated 12-4-2005, the amount was alleged to have been paid by cash.

**14.** However, it is required to be noted that so far as receipt of substantial advance sale consideration mentioned in the agreement to sell dated 12-4-2005 has been specifically admitted by Defendant 1. Therefore, when it was specifically alleged that Defendant 2 executed sale deeds in favour of Defendants 3 and 4, who are his sisters-in-law, with a view to defeat the rights of the plaintiff and Defendant 1 and when it was alleged that they were nominal sale deeds, thereafter, Defendant 2 was required to prove the receipt of sale consideration mentioned in the sale deeds dated 3-5-2010, which Defendants 2 to 4 have failed to do so.

**15.** It is also required to be noted that on appreciation of evidence, the learned trial court has specifically found that the stamp papers of agreement to sell dated 12-4-2005 were purchased in the name of Defendant 2 and therefore Defendant 2 was aware and in the knowledge of agreement to sell dated 12-4-2005. It is also required to be noted that even the defendants did not reply to the legal notice served by the plaintiff, which was issued before filing the suit.

**16.** In light of the aforesaid factual aspects and the findings recorded by the learned trial court, the decision of this Court in *Durga Prasad*<sup>2</sup> is required to be referred to. In para 42, it is observed and held as under: (AIR p. 81)

"42. In our opinion, the proper form of decree is to direct specific performance of the contract between the vendor and the plaintiff and

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direct the subsequent transferee to join in the conveyance so as to pass on the title which resides in him to the plaintiff. He does not join in any special covenants made between the plaintiff and his vendor; all he does is to pass on his title to the plaintiff. This was the course followed by the Calcutta High Court in *Kafiladdin v. Samiraddin*<sup>8</sup> and appears to be the English practice. See *Fry on Specific Performance*, 6th Edn., p. 90, Para 207; also *Potter v. Sanders*<sup>9</sup>. We direct accordingly.”

The aforesaid decision has been subsequently referred to and followed by this Court in the subsequent decision in *Rathnavathi*<sup>6</sup>.

**17.** From the impugned judgment and order passed by the High Court, it appears that the High Court has heavily relied upon Section 34 of the Specific Relief Act. However, considering the fact that specific issues were framed with respect to sale deeds dated 3-5-2010 executed by original Defendant 2 in favour of Defendants 3 and 4 and the parties led the evidence also on the aforesaid issues and thereafter, when the learned trial court had given findings on the said issues and thereafter, had granted the declaration that the sale deeds executed by original Defendant 2 in favour of Defendants 3 and 4 are not binding on Defendant 1 and the plaintiff and those sale deeds are nominal sale deeds and that Defendants 2 to 4 have failed to prove that agreement to sell dated 12-4-2005 is a created document and by virtue of the same no consideration has been paid, Section 34 of the Specific Relief Act, upon which reliance has been placed by the High Court will have no application.

**18.** The High Court has set aside the judgment and decree passed by the learned trial court on the ground that the relief under Section 20 of the Specific Relief Act, is a discretionary relief and therefore, in view of the fact that original Defendant 2 had executed sale deeds in favour of Defendants 3 and 4, the learned trial court ought not to have exercised discretion in favour of the plaintiff for passing the decree for specific performance.

**19.** However, in the facts and circumstances of the case narrated hereinabove and when the learned trial court specifically gave the findings that Defendant 1—vendor specifically admitted the execution of agreement to sell dated 12-4-2005 in favour of the plaintiff by accepting a substantial advance consideration and that Defendant 2 was in the knowledge of the agreement to sell and despite the same,

he sold the same in favour of Defendants 3 and 4, who are his sisters-in-law and that too the sale deeds found to be nominal sale deeds, the learned trial court as such rightly decreed the suit for specific performance and also rightly declared that sale deeds dated 3-5-2010 executed by original Defendant 2 in favour of Defendants 3 and 4 are not binding upon the plaintiff and Defendant 1. The High Court has committed a grave error in reversing the judgment and decree passed by the learned trial court by ignoring the vital facts of the case which are either admitted or proved in the instant case.

**20.** In view of the above and for the reasons stated above, the present appeal succeeds. The impugned judgment and order passed by the High Court is hereby quashed and set aside and the judgment and decree passed by the learned trial court is restored. In the facts and circumstances of the case, there shall be no order as to costs.

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<sup>1</sup> Arising from the Judgment and Order in *P. Mamatha v. P. Ramasubamma*, 2021 SCC OnLine Kar 14104 (Karnataka High Court, RFA No. 100200 of 2015, dt. 20-7-2021) [**Reversed**]

<sup>1</sup> *P. Mamatha v. P. Ramasubamma*, 2021 SCC OnLine Kar 14104

<sup>2</sup> *Durga Parsad v. Deep Chand*, 1954 SCR 360 : AIR 1954 SC 75

<sup>3</sup> *Soni Lalji Jetha v. Soni Kalidas Devchand*, (1967) 1 SCR 873 : AIR 1967 SC 978

<sup>4</sup> *R.C. Chandiok v. Chuni Lal Sabharwal*, (1970) 3 SCC 140

<sup>5</sup> *Dwarka Prasad Singh v. Harikant Prasad Singh*, (1973) 1 SCC 179

<sup>6</sup> *Rathnavathi v. Kavita Ganashamdas*, (2015) 5 SCC 223 : (2015) 2 SCC (Civ) 736

<sup>7</sup> *Vasantha Viswanathan v. V.K. Elayalwar*, (2001) 8 SCC 133, para 13

<sup>8</sup> *Kafiladdin v. Samiraddin*, 1930 SCC OnLine Cal 46 : AIR 1931 Cal 67

<sup>9</sup> *Potter v. Sanders*, (1846) 6 Hare 1 : 67 ER 1057

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