

HPA INTERNATIONAL

A

v.

BHAGWANDAS FATEH CHAND DASWANI AND ORS.

JULY 13, 2004

[SHIVARAJ V. PATIL AND D.M. DHARMADHIKARI, JJ.]

B

Contract Act, 1872 :

Ss. 31 and 32—Contingent contract—Enforcement of—Contract for conveyance of entire life interest of vendor and reversionary interest of remaindermen though latter not a party to the contract—Conveyance contingent on obtaining sanction of Court as to conveyance of interest of remainder men—Specific performance—Permissibility of—Held, when sanction could not be obtained for reasons beyond the control of the parties, contract cannot be directed to be specifically enforced—Specific Relief Act, 1963—Ss. 10 and 20.

C

D

Ss. 73, 53, 56 and 32—Fundamental or repudiatory breach—Test for ascertaining—Consequences if contract rendered unenforceable due to reasons beyond the control of the parties—Frustration of contract—Question of facts to be decided in each case. On facts, held, vendor cannot be held to be guilty of breach so as to entitle vendor to seek specific performance of transfer of life interest of vendor—Specific Relief Act, 1963—Section 10 and 20.

E

Section 43—Applicability of—Discussed.

Specific Relief Act, 1963—S. 12(3)—Nature of power under—Explained.

F

Trusts Act, 1982—Ss. 90, 91 and 92—Property acquired with notice of existing contract—Constructive trust arising thereby—Parties that are bound—Discussed.

G

Code of Civil Procedure, 1908 :

S. 11—Finality of decree not appealed against—Effect of.

S. 144—Reversal of decree transferring life interest in property to one

H

A *vendee—Adjustment and payment of cost of construction raised on property by Vendee in period prior to reversal of said decree, ordered by Court reversing decree—Held, on principle of restitution contained in S. 144 there was no ground to interfere with the said order of adjustment and payment.*

B *Constitution of India—Art. 136—Abuse of process—Direction of Division Bench of High Court ordering payment of a certain sum in favour of prior vendee against subsequent vendee for having misled the Court Held, the direction deserved no interference.*

C **The vendor of the suit property, grandfather of respondent No. 6 executed a Will and two Codicils on 7.3.1948, under which he was bequeathed the right of enjoyment during his life, of the estate of the testator, including the suit property but without powers of alienation. In the Will, it was provided that after the death of the vendor, his male issue living at the time of his death would take all the properties absolutely. In the absence of any such male issue of the vendor, the properties would be taken by other descendants, the ‘reversioners’.**

D **The testator died on 23.10.1956. On 26.6.1977, the vendor entered into an agreement of sale of the suit property with the appellant. It was clearly recited in the agreement that the sale of the property was necessitated because of the pressing demands of public authorities towards dues and tax liabilities on the estate and likelihood of coercive recovery of public dues by attachment and sale by public auction. The vendor, therefore, agreed to sell and the purchaser agreed to purchase the entire interest in the suit property inclusive of life interest of the Vendor and the interest of the reversioners (described as remainder men) free from all encumbrances, for a total price of 5.5 lacs. A sum of Rupees 25,000 was paid as advance. The balance of the sale consideration was to be paid by the purchaser by bank drafts in favour of the concerned public authorities for discharging the public dues and taxes. The purchaser agreed to pay Rupees 18,000 to the tenant in occupation of the property which was the liability of the vendor. The vendor agreed to obtain at his own cost and expense the sanction of the High Court of Madras for sale of life interest of the remainder men in the property. The agreement further provided that in case the sanction of the Court was not accorded for the sale, the agreement shall**

forthwith stand cancelled and the *vendors* shall return the advance amount of Rupees 25,000 to the purchaser. A

There was a separate stipulation in the agreement that if after the sanction of the Court the *vendor* commits breach of the contract he shall return the advance money of Rupees 25,000 and pay a sum of Rupees 15,000 to the *vendee* by way of liquidated damages for failure to complete the sale. The agreement further provided that if after the sanction of the Court, *vendee* commits breach and does not complete the sale, he shall be liable to pay to the *vendor* a sum of Rupees 15,000 by way of liquidated damages. B

At the time of execution of the agreement Ex. P1 dated 26.6.1977 the Testator's only daughter and the three sisters of the *vender* were the *reversioners* in accordance with the terms of the Will because by that time the *vendor* had no male issue. The *vendor* filed a Civil Suit on the original side of the High Court for seeking sanction of the court for sale of full interest in the property inclusive of his own life interest and the interest of the *reversioners*. The *reversioners* were impleaded as parties to that suit. C D

As the sanction sought from the Court was opposed by two *reversioners*, the *vendor* sent a lawyer's notice on 11.9.1979. E

The suit was prosecuted by the *vendee* himself who got himself transposed in the suit as co-plaintiff. In reply to the lawyer's notice the *vendee* alleged breach of contract on the part of the *vendor* with intention of selling the property for higher price to third parties. It was reiterated that the *vendee* was always ready to discharge the tax liability in accordance with the sale agreement. F

In his reply sent through his lawyer to the lawyer's notice of the *vendor* cancelling the agreement, the *vendee* did not express desire to purchase life interest of the *vendor* without insisting on transfer of interest of the *reversioners* which was subject matter of the suit filed for seeking sanction of the Court. G

On 29.12.1979, the *vendor* sold his life interest in the suit property for a sum of Rs. 4.40 lacs by execution registered instrument in favour H

- A** of respondents 1 to 5. What is apparent from the contents of the subsequent sale deed is that large part of the sale consideration in different sums aggregating to Rs. 2.68 lacs was paid directly by the *subsequent vendee* to various authorities to discharge public dues and taxes like Corporation Property Tax, Urban Land Tax and Income Tax arrears.

B The *subsequent vendee* by separate release deeds dated 21.10.1980, 22.11.1980, 22.2.1980 and 29.4.1980 obtained surrender of rights individually from the *reversioners* by paying each of them a sum of Rs. 20,000. After receiving the lawyer's notice and cancellation of the sale agreement, the *vendee* on 25.3.1981 got himself impleaded as a party-defendant in the suit which was filed to seek sanction of the Court. On 16.8.1981 the *vendee* filed a Civil Suit seeking Specific Performance of the Agreement of Sale.

C The two suits seeking court sanction for sale under the agreement Ex.P1 and Civil Suit No. 423/81 seeking Specific Performance of the Agreement of Sale, were clubbed and tried together by the Single Judge.

D After the pleadings were completed in the two suits, the *vendee* on 25.11.1986 filed an affidavit purporting to be under Section 12(3) of the Specific Performance Act of 1963 stating therein that without prejudice to his claim for transfer of full interest in the suit property to him the agreement of sale, if he was found not entitled to maintain the suit seeking sanction of the Court for sale of full interest in the property a decree be granted for Specific Performance of transfer of life interest of the *vendor* in the suit property.

E In view of the averment made in the affidavit filed by the *vendee* in which he alternatively claimed lesser relief of transfer of only life interest in the suit property of the *vendor*; single judge by common judgment dated 6.9.1988 dismissed Civil Suit No. 471/77 seeking sanction of the Court for sale as infructuous.

F This part of the common judgment dismissing Civil Suit No. 471/77, in which sanction for sale sought from the Court, has not been appealed against before this Court although counsel for the

vendee has contended that no separate appeal was required to be filed against dismissal of the suit for court's sanction as infructuous because the common judgment passed in the suit seeking sanction of the suit for sale and the suit for specific performance is already under appeal. A

The single judge by the impugned common judgment decreed Civil Suit No. 423/81 in favour of the *vendee* to the extent of directing conveyance of life interest in the suit properties of the *vendor* under the Agreement Ex.P1. It was further held that as the *subsequent vendee* has purchased the property with knowledge of the prior sale agreement with the *vendee* the former should join in re-conveying the property to the latter. B C

The *subsequent vendee* has not disputed in this appeal that the sale in favour of the *subsequent vendee* was with notice of the prior sale agreement Ex.P1 with the *vendee*. D

Against the judgment granting decree of specific performance of sale of life interest of *vendor* in the suit property, an appeal was preferred by the *subsequent vendee* to the Division Bench of the High Court. The Division Bench concluded hearing of the appeal on 22.3.1989 but pronounced judgments almost five years after, on 24.1.1994 and dismissed the appeal. The judgment has been set aside by this Court by order dated 13.1.2000 reported in [2000] 2 SCC 13. This Court remanded the appeal for re-hearing by the Division Bench of the High Court. After re-hearing, the Division Bench by the impugned judgment dated 24.4.2001 has allowed the appeal preferred by the *subsequent vendee*. The decree granted for conveying life interest of the *vendor* in the suit property has been set aside. The only relief granted to the plaintiff, is that out of the rental income realised by the plaintiff during long pendency of the appeal, a sum of Rs. 5.5. lacs has been deducted to deprive the *subsequent vendee* of that sum for his misconduct of projecting Bob Daswani and Fateh Chand Daswani as two persons when, in fact, they were one. Rest of the rental income recovered by the plaintiff *vendee* has been directed to be paid to the *subsequent vendee* as a consequence of success of appeal and setting aside of the decree for specific performance. E F G H

A Dismissing the appeals, the Court

B HELD : 1.1. From the recitals of the sale agreement Ex. P-1 and particularly those requiring the *vendee* to discharge public debts and dues directly as part of the consideration of sale, it is clear that the necessity of sale for the *vendor* arose for safeguarding the property from being put to auction and sale through coercive process of recovery of public dues. Naturally, the *vendor* wanted to obtain market price of the property and desired to avoid sale of the property through a coercive process at a lesser price. That there were outstanding taxes and public dues have not been disputed by the *vendee* and in fact, they are acknowledged by him in reply to the lawyer's notice sent by the *vendor* terminating the contract. In the reply sent through lawyer by the *vendee*, it is clearly acknowledged that tax dues were there but it is stated that the alleged pressure from tax authority was merely as an excuse to terminate the agreement. The motive attributed to the *vendor* that he tried to wriggle out of the sale agreement Ex. P-1, only to obtain higher price of his property by selling it to the *subsequent vendee*, is not borne out from the evidence on record. The contents of the sale-deed Ex. D-1 dated 29.12.197 executed in favour of the *subsequent vendee* clearly show that a substantial portion of agreed consideration of Rs. 4,40,000 was paid directly by cheques towards the property tax (Rs. 50,383.98) to Corporation of Madras, Urban Land Tax to Tehsildar (Rs. 36,860.70) and income tax (Rs. 1,10,000) to Income-Tax Officer. The above payments made by the *subsequent vendee* to public authorities justify the stand of the *vendor* that there were pressing demands of public authorities on the property and the sale of the property, well before the impending initiation of coercive recovery by public authorities, was an urgent necessity. [70-G-H; 71-A-D]

G 1.2. The recitals of the agreement of sale clearly mention the necessity of sale arising from the pressure of public dues and taxes. The *vendor* could not have waited for an unreasonably long period of pendency of sanction suit when commencement of recovery proceedings for public dues and taxes could have commenced any time. There is no period fixed in the terms of the contract for obtaining sanction of the court, but keeping in view the other terms of the contract and the pressing requirement for sale of the property to clear public dues, it

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has to be held that obtaining of court's sanction within a reasonable period and in any case within a period well before commencement of recovery proceedings for dues and taxes, was in contemplation of the parties as an implied term. Notice served for terminating the contract, after waiting for two years for sanction by the court, cannot be held to be a breach of the contract on the part of the *vendor*. The argument that the *vendor* rescinded the contract only because he had entered into secret negotiations with the *subsequent vendee* to obtain higher price for the property is not borne out from the evidence. Too much importance cannot be attached to the fact of initial attempt made by *subsequent vendee* to conceal knowledge of the existing contract with the *vendee* when sale-deed was obtained by the former. For the misconduct of misrepresentation and attempt to mislead the court, the Division Bench of the High Court has rightly deducted a sum of Rs. 5.5 lacs from the rental income found payable to the *subsequent vendee*. This Court does not propose to disturb the same. But the aforesaid misconduct of *subsequent vendee* does not render the act of *vendor* in rescinding the contract to be an act of breach of contract which can be said to have been committed solely with desire to obtain higher price of the property. [71-G-H; 72-A-D]

1.3. Only life interest was sold to the *subsequent vendee* for higher price. Out of the agreed sale consideration, major portion of money was directly paid by the *subsequent vendee* to satisfy dues and taxes of public authorities. The notice served for terminating the contract, anticipating remote prospect of grant of sanction by the Court within a reasonable period and after waiting for two years from date of the contract, cannot be termed to be a breach to justify grant of any specific relief to the *vendee*. It is also relevant to state that although by lawyer's notice, the *vendor* terminated the contract and instructed his lawyer to withdraw the suit for sanction, but in fact, the suit was not withdrawn. The *vendee* got himself impleaded initially as defendant to the suit and then sought his transposition as co-plaintiff. That part of the action of the *vendee* cannot be castigated as self-defeating because he was naturally interested in prosecuting the suit for sanction diligently to obtain conveyance of full rights in the property. However, the further act on the part of the *vendee* of filing an affidavit restricting his claim only to life interest resulted in dismissal of the suit for

A sanction as infructuous. The learned single judge trying jointly the two suits came to the conclusion that as the *vendee* gave up his claim for transfer of interest of the *reversioners*, the court's sanction was not required. [72-E-H; 73-A]

B 2. When decree granted for conveyance of life interest of the
vendor in the suit for specific performance was challenged by the
subsequent vendee before the Division Bench of the High Court, the
vendee could as well have preferred cross appeal against the dismissal
of the suit for sanction as infructuous. He was a co-plaintiff in that suit
and had an independent right of appeal. The non-filing of any appeal
C against dismissal of sanction suit as infructuous is a clear indication
that the *vendee* was satisfied with the grant of decree merely of specific
performance of conveyance of life interest of the *vendor*. It is not open
to the *vendee* now to question the correctness of the dismissal of the
suit for sanction as infructuous. [73-C-E]

D 3.1. At the time when the sale agreement was entered into, the
parties were conscious that the *vendor* laid only life interest in the property
and he could not convey more than his own interest. It was open to the
vendee to obtain conveyance of interest of the *reversioners* by obtaining
E release deeds from them by paying them consideration for surrender
for their interest, as was done by the *subsequent vendee*. Another course
open to him was to enter into separate agreement with the *reversioners*
or insist on the *reversioners* joining the sale agreement. It seems the
vendee entered into a speculative deal for obtaining full interest in the
F property depending upon the sanction to be granted by the court. It
seems to be in contemplation of the parties that if the *reversioners*
objected, the court might refuse sanction. They could as well foresee
that despite the *reversioners'* objection, the court might grant sanction.
The transfer of full interest in the property was, therefore, dependent
on sanction of the court. To meet this contingency, there were specific
G terms such as clauses (4) and (6) incorporated in the contract whereby
it was clearly agreed that the *vendor* shall obtain sanction of the court
at his own expense and costs and if the sanction was not accorded by the
court, the agreement would stand cancelled and the advance money
refunded to the *vendee*. Clause (15) of the agreement could come into
H operation only if the court granted sanction and any of the parties failed

to complete the sale. Clause (15) had no operation when the sanction A
was not accorded to the sale. [73-G-H; 74-A-D]

3.2. If the *vendee* intended to seek conveyance separately of the B
life interest of the *vendor*, the earliest opportunity for him was when
he had received notice dated 11.9.1979 sent through lawyer by the *vendor* C
cancelling the contract. Assuming that at that time he could not
opt for lesser relief as the suit for sanction was pending, he could have,
in any case, opted for conveyance of life interest of the *vendor* soon
after he came to know of the negotiations for sale with took place in
the presence of one of the partners of the plaintiff-*vendee*. Even after D
deriving the knowledge of the execution of the sale deed dated
29.12.1997 Ex. D-1, the option to obtain lesser relief of transfer of life
interest was not exercised. It was exercised as late on 25.11.1986 by
filing an affidavit and at the time when pleadings of the parties were
complete and the joint trial in the two suits had already commenced. D
During long pendency of the suit between 1979 and 1986, the parties
interested in the property changed their positions. The *vendor* by
executing registered sale deed in favour of the *subsequent vendee* got
his public dues paid to relieve the pressure on the property and
obtained market price of the property. After obtaining possession of
the property pursuant to the sale deed, the *subsequent vendee* has raised E
construction and inducted tenants. Accepting the legal stand based on
sections 90, 91 & 92 of the Indian Trusts Act that the *subsequent vendee*,
being a purchase with knowledge of prior agreement, is holding the
property as a trustee for the benefit of the prior *vendee*, the *vendor*, F
who changed his position by effecting subsequent sale cannot be
compelled to convey his life interest when such lesser relief was not
claimed at the earliest opportunity and the terms of the contract did
not contemplate transfer of life interest alone. On duly appreciating
the evidence on record, construing specific terms of the contract and
considering the conduct of the parties, it is concluded that the recession G
of the contract due to non-grant of sanction by the court within two
years after execution of the contract and filing of the suit for sanction,
was not an act of breach of contract on the part of the *vendor* to justify
grant of relief of specific performance of the contract to the prior
vendee. [74-H; 75-A-F] H

A 3.3. The *subsequent vendee*, by his own act in the pending suits,
was responsible for rendering the suit for sanction as infructuous. He
was guilty of lapse in not seeking conveyance of life interest of the
B *vendor* at the earliest opportunity when notice of recession of the
contract was received by him and later when he derived the knowledge
of execution of registered sale-deed in favour of the *subsequent vendee*.
The option was exercised conditionally in the midst of the joint trial
of the two suits. There was one integrated and indivisible contract by
the *vendor* to convey full interest in the property i.e., his own life
interest and the interest of the *reversioners* with sanction of the court.
C As the court had not granted the sanction, the contract could not be
specifically enforced. The lesser relief of transfer of life interest was
not claimed within a reasonable time after the *vendor* had intimated
that the contract, as agreed for full interest, was not possible of
performance. There is neither equity nor law is in favour of the
D plaintiff. [75-G-H; 76-A-B]

4.1. The *reversioners* have surrendered their interest by accepting
consideration separately and executed separate release deeds in favour
of the *subsequent vendee*. Even though the *subsequent vendee* has acquired
property with knowledge of sale agreement Ex. P1 existing with the
E prior *vendee*, the latter has no equity in his favour as to bind the
reversioners and in any manner adversely affect their interest. They
were not parties to the sale agreement and have already by separate
release deeds, on accepting separate consideration, surrendered their
interest in favour of the *subsequent vendee*. Any grant of relief transfer
of life interest of the *vendor* to the prior *vendee* would involve the
F *reversioners* in further litigation. If only life interest of the *vendor* is
allowed to be conveyed to the prior *vendee*, after death of *vendor*, the
reversioners are likely to be involved in litigation in future to help in
restoring possession of the property to the *subsequent vendee* and
effectuate the release deeds executed in his favour by them. Grant of
G such equitable relief would adversely affect the immediate efficacy of
the release deeds and would create various hurdles in working out the
rights and remedies of the *reversioners vis-à-vis* the *subsequent vendee*.
It would not be a proper exercise of discretion by the Court to grant
such partial relief of directing conveyance of life interest of the *vendor*
H as that would adversely affect the interest of the *reversioners*. [77-E-H]

4.2. The contracting parties were fully aware that *reversioners*, A who had a mere chance of succession, were not parties to the agreement. The parties to the contract could have taken care of the eventuality of refusal of sanction by the Court and possibility of the *vendor* transferring only his life interest to the *vendee**+, but such eventuality of separate transfer of life interest is conspicuously absent in the terms of the agreement. Such obligation on the part of the *vendor* to transfer his B life interest, if sanction for transfer of *reversioners*' interest was not granted, cannot be read in the contract by implication and recourse to Section 12(3) of the Specific Relief Act, therefore, is impermissible. Section 12(3) of the Specific Relief Act can be invoked only where terms C of contract permit segregation of rights and interest of parties in the property. The provision cannot be availed of when the terms of the contract specifically evince intention contrary to segregating interest of the *vendor* having life interest and *spes successionis* of *reversioners*. Neither law nor equity is in favour of the *vendee* to grant Specific Performance of the Contract. [78-C-F] D

4.3. The single judge of the High Court was in error in granting decree of specific performance of transfer of life interest of the *vendor* on a finding that the *vendor* had committed breach by rescinding contract during pendency of sanction suit. The Division Bench of the High Court, rightly reversed the decree and dismissed the suit. [78-G] E

Dalsukh M. Pancholi v. The Guarantee Life and Employment Insurance Co. Ltd. & Ors., AIR (1947) 34 PC 182, relied on.

Narain Pattro v. Aukhay Narain Manna & Ors, ILR 152; *Sreemati Kalidasi Dasse & Ors. v. Sreemati Nobo Kumari Dasse & Ors.*, 20 CWN 929, approved. F

M.V. Shankar Bhat & Anr. v. Claude Pinto Since (dead) by LRs. & Ors., [2003] 4 SCC 86, referred to. G

5.1. The alternative claim for lesser relief of life interest of *vendor* is also rejected. [81-D]

William Graham v. Krishna Chandra Dey, AIR (1925) PC 45; and *Govinda Naicken & Anr. v. Apathsahaya Iyer alias Ayawaiyer*, 37 Madras H

A Series 403, referred to.

B 5.2. In the present case, the terms of the contract fully indicate that the parties did contemplate that if the sanction of the court was not granted for transfer of the interest of the *reversioners*, the contract could not be enforced. Clause (6) specifically provided that in case sanction by the court was not granted, the advance money of Rs. 25,000 shall be refunded to the purchaser. It was known to the parties that the *vendor* had only life interest in the property and the *reversioners* were not the parties to the agreement. Even with this knowledge of limited right to the *vendor* and the *reversioners* being not signatories to the sale agreement, there is no stipulation made in the contract that if court's sanction was not obtained for transfer of *reversioners'* interest, the *vendor* shall convey his life interest to the *vendee*. [83-E-G]

D 5.3. That the parties had agreed to wait for the whole period during which the suit for sanction was pending and till its finalisation including appeal proceedings, if any. Such a course was not in contemplation of the parties because the *vendor* had agreed that the *vendee* would directly discharge the tax liabilities from the total amount of sale consideration. It was not possible for the *vendor* to have waited indefinitely for final orders on the suit for sanction when the *reversioners* had objected to the sanction and there was remote possibility of the grant of sanction in foreseeable near future. [85-A-B]

Suisse Atlant v. N.V. Rotterdam, (1966) 2 All ER 61, referred to.

F 5.4. It would be purely in the field of speculation as to what would have actually happened had the *vendor* continued to prosecute the suit despite the objection of the *reversioners*. The complications in disposal of sanction suit on merit were created by the *vendee* himself by getting himself transposed as co-plaintiff and then filing an affidavit restricting his claim to transfer of life interest. It is, thereafter, that the sanction suit was dismissed as infructuous. If the order of the court refusing sanction was erroneous and when an appeal was filed by the *subsequent vendee* against grant of decree of specific performance of life interest to the *vendee*, the *vendee* could have appealed against dismissal of suit for sanction as infructuous. It is argued that the two suits were clubbed for

trial and as the lesser relief of transfer of life interest was granted in suit for specific performance, it was not necessary for the *vendee* to have appealed against dismissal of the sanction suit. There is no need to deal with this argument any further as the sanction was not granted for sale by the court within a reasonable period of two years and the possibility of commencement of coercive proceedings of tax recovery loomed large, the *vendor* cannot be held to have committed a breach of the contract when he served a notice of termination of contract. [85-D-G]

5.5. The *vendor* could not have waited indefinitely for the final result of the sanction suit as coercive proceedings for recovery of tax were likely to be initiated at any time. As already held, reasonable period for obtaining sanction from the court has to be read as an implied condition of the contract in view of urgent necessity of sale to satisfy the tax dues and save the property from coercive recovery. The *vendor* had agreed for transfer of full interest in the property including his own life interest and of the *reversioners*. As the *reversioners* objected and ultimately the sanction suit failed, the performance of contract, as agreed for transfer of full interest in the property, had become impossible. There was no agreement between the parties that if sanction was not granted, the *vendor* would transfer his life interest. On the contrary, the agreement clause specifically stated that if the sanction was not obtained, the advance money shall be returned. This stipulation shows an intention contrary to the parties agreeing for transfer of life interest of *vendor*, if transfer of *reversioners'* interest was not possible for want of court's sanction. [86-E-H]

Satyabratae Ghose v. Mugneeram Bangur & Co., [1954] SCR 310 and *The Humma Masjid v. Kodimaniandra Deviah*, [1962] Supp. 2 SCR 554, referred to.

5.6. This is not a case where the *vendor* had only right of *spes successionis* and after execution of agreement of sale, he subsequently acquired full interest in the property to be held bound by section 43 of the Transfer of Property Act. The *reversioners* were not parties to the agreement of sale. When in the suit for sanction to transfer their interest they were made parties and were noticed, they expressly objected to the proposed transfer. No principle of estoppel or provisions

A of section 43 of the Transfer of Property Act can, therefore, operate against them. So far as the *subsequent vendee* is concerned, in the course of suit, he was pushed to a position in which he could not take a stand that he had no knowledge of the prior agreement with the *vendee* but he separately purchased life interest from the *vendor* and obtained separate release deeds, on payment of consideration, from the *reversioners*. The *reversioners* being not parties to the sale agreement Ex. P-1 entered into with the *vendee*, the latter could not enforce the contract Ex. P-1 against the former. [87-F-H; 88-A]

C 5.7. It is not found that the *vendor* was guilty of rendering the suit for sanction infructuous. It did terminate the contract pending the suit for sanction but never withdrew that suit. The *vendee* himself prosecuted it and rendered it infructuous by its own filing of an affidavit giving up his claim for the interest of *reversioners*. In such a situation where the *vendor* was not in any manner guilty of not obtaining the sanction and the clause of the contract requiring court's sanction for conveyance of full interest, being for the benefit of both the parties, the contract had been rendered unenforceable with the dismissal of the sanction suit. [88-F-G]

E *Dr. Jiwanlal & Ors. v. Brij Mohan Mehra & Anr.*, [1972] 2 SCC 757, referred to.

F 5.8. The *vendor* waited for a reasonable period for grant of sanction to the sale by the court. There was a pressing need for sale as the public dues and taxes could have been recovered from the property by coercive process at any time. The *vendor*, therefore, advisedly withdrew from the contract, negotiated sale on different terms with the *subsequent vendee* and ultimately entered into the contract with the latter. The *vendor* did not actually withdraw the suit for sanction. The *vendee* himself became co-plaintiff to the suit and unsuccessfully tried to prosecute it. The sanction suit was rendered infructuous by *vendee's* own conduct of filing affidavit restricting his claim to life interest. He suffered the dismissal of sanction suit as infructuous and did not question the correctness of the court's order in appeal before the Division Bench, although the *subsequent vendee*, against grant of decree of specific performance of life interest, had preferred an appeal. [90-A-C]

5.9. The *vendor* cannot be held guilty of breach as to entitle the *vendee* to seek specific performance of life interest of the *vendor*. The contract entered into between the parties was for conveying full interest in the property namely life interest of *vendor* and chance of succession of *reversioners*. The contract was one and indivisible for full interest. There is no stipulation in the contract that if sanction was not obtained, the *vendor* would transfer only his life interest for the same or lesser consideration. On the contrary, the contract stipulated that if the sanction was not granted, the contract shall stand cancelled and the advance money would be refunded to the purchaser. [90-E-F]

6.1. After execution of the decree and registered sale-deed the *vendee* plaintiff was placed in possession of the property on 25.2.1995. The basement and ground floor have been constructed by the *subsequent vendee* after obtaining possession on the basis of his sale deed. Thereafter plaintiff – *vendee*, on obtaining possession pursuant to the execution of decree granted by the single judge, has constructed two floors above the ground floor although the construction is said to be not complete in all respects. According to the plaintiff – *vendee*, he has incurred an expenditure of Rs. 46,28,403 for construction of two floors above the ground floor. As the construction put up by the plaintiff-*vendee* is to ensure for the benefit of the *subsequent vendee*, and the latter having succeeded in appeal before the Division Bench of the High Court, the Division Bench in adjusting equities has directed that on payment of construction cost incurred by the plaintiff-*vendee* for two floors above ground floor, the whole construction will become the sole property of the *subsequent vendee*. [91-B-D]

6.2. From the date of the impugned judgment of the Division Bench the total rent received from the property has been accounted for. The whole rental income has been directed to be paid to the successful party i.e. the *subsequent vendee*. Out of the total rental income payable to the *subsequent vendee*, apart from adjusting the construction cost incurred by the plaintiff-*vendee*, deduction has been directed towards return of the sale consideration of Rs. 5.5 lacs paid under the sale agreement Ex. P-I. A further sum of Rs. 5.5 lacs has been directed to be deducted for the misconduct of the *subsequent*

A *vendee* in trying to mislead the court that **B** and **D** were two different persons and the *subsequent vendees* had no knowledge of the prior agreement. [91-E-F]

B 6.3. On the principle of restitution contained in Section 144 of the Code of Civil Procedure, there is no ground to interfere with the order of the Division Bench of the High Court in directing adjustment and payment by *subsequent vendee* of the cost of construction incurred by the plaintiff *vendee*. The directions for return of full sale consideration as also deduction towards misconduct of impersonation and misleading the Court also deserve no interference. [91-G-H]

C 6.4. The directions of the Division Bench of the High Court to deduct a sum of Rs. 5.5. lakhs for the alleged misconduct of impersonation and misleading the Court, are maintained. [92-A]

D CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6006 of 2001.

From the Judgment and Order dated 24.4.2001 of the Madras High Court in O.S.A. 202 of 1988.

E WITH

C.A. No. 336 of 2002.

K. Parasaran and Gopal Subramaniam and V. Balachandran for the Appellant in C.A. No. 6006/2001 & Respondent in C.A. No. 336/2002.

F Soli J. Sorabjee, Attorney General, E.R. Kumar, Saurav Kirpal, P.H. Parekh, Jayesh Dolia and S. Ramakrishnan, for the Respondent in C.A. No. 6006/2001 & Appellant in C.A. No. 336/2002.

G The Judgment of the Court was delivered by

H **DHARMADHIKARI J.** : These two cross appeals have been preferred against common judgment dated 24.4.2001 passed by the Division Bench of the High Court of Madras by which decree of Specific Performance of Contract of Sale of the suit property granted by the learned single judge has been set aside with certain directions to adjust the equities

between the parties. A

The facts of the present case should be an eye opener to functionaries in law courts at all levels that delay more often defeats justice invariably adds complications to the already complicated issues involved in cases coming before them, and makes their duties more onerous by requiring them to adjust rights and equities arising from delay. B

This introductory comment is occasioned by the fact that against the judgment of the learned single judge passed on 6.9.1988 the appeal was earlier heard by the Division Bench of the High Court on 22.3.1989 but it passed the judgment after a period of about five years on 24.1.1994. It dismissed the appeal and confirmed the decree of Specific Performance of the Contract granted by the single judge. C

In appeal preferred by the defendants, this Court by order passed on 13.1.2000 (reported in 2000 (2) SCC 13) remanded the appeal to the Division Bench of the High Court for a fresh decision only because of long gap of five years in hearing arguments and decision of appeal by the High Court. D

After remand the Division Bench reheard the appeal and by the impugned judgment dated 24.4.2001 has allowed it. The decree granted by the learned single judge of partial relief of Specific Performance of Contract of Sale of life interest of the *vendor* in the suit properly has been set aside. E

With this background the facts of the case may be stated:- F

The owner of the suit property namely, Mouna Gurusamy Naicker, (hereinafter referred to as the '*vendor*') grandfather of respondent No. 6 (G. D. Narendra Kullamma Naicker) executed a Will and two Codicils on 7.3.1948. Under the Will, the *vendor* herein was bequeathed the right of enjoyment during his life, of the estate of the testator, including the suit property (described as Municipal Door No. 36C, Mount Road, Madras-600 002) but without powers of alienation. In the Will, it was provided that after the death of the *vendor*, his male issue living at the time of his death would take all the properties absolutely. In the absence of any such male issue of the *vendor*, the properties would be taken by other descendants H

A (hereinafter referred to as the 'reversioners').

Shri M.G. Naicker, the testator died on 23.10.1956. On 26.6.1977, the *vendor* entered into an agreement of sale of the suit property with the appellant HPA International, a partnership firm (hereinafter referred to as the *vendee*). It was clearly recited in the agreement that the sale of the property was necessitated because of the pressing demands of public authorities towards, dues and tax liabilities on the estate and likelihood of coercive recovery of public dues by attachment and sale by public auction. The *vendor, therefore*, agreed to sell and the purchaser agreed to purchase the entire interest in the suit property at Mount Road, Madras inclusive of life interest of the *Vendor* and the interest of the *reversioners* (described as remainder men) free from all encumbrances, for a total price of 5.5 lacs. A sum of Rupees 25,000 was paid as advance. The balance of the sale consideration was to be paid by the purchaser by bank drafts in favour of the concerned public authorities for discharging the public dues and taxes. The purchaser agreed to pay Rupees 18,000 to the tenant in occupation of the property which was the liability of the *vendor*. The *vendor* agreed to obtain at his own cost and expense the sanction of the High Court of Madras for sale of his life interest and interest of the remainder men in the property. The agreement further provided that in case the sanction of the Court was not accorded for the sale, the agreement shall forthwith stand cancelled and the *vendors* shall return the advance amount of Rupees 25,000 to the purchaser.

There was a separate stipulation in the agreement that if after the sanction of the Court the *vendor* commits breach of the contract he shall return the advance money of Rupees 25,000 and pay a sum of Rupees 15,000 to the *vendee* by way of liquidated damages for failure to complete the sale. The agreement further provided that if after the sanction of the Court, *vendee* commits breach and does not complete the sale, he shall be liable to pay to the *vendor* a sum of Rupees 15,000 by way of liquidated damages.

The relevant part of opening recitals and clauses 1, 2, 3, 4, 6, 7, 9 & 15 of the agreement dated 26.6.1977 Ex.P1 are reproduced hereunder as rights, and equities of the contesting parties are dependent on its proper construction, and understanding:

AGREEMENT OF SALE

"THIS AGREEMENT OF SALE executed at Madras this 26th day of June 1977 between G.D. NARENDRA KULLAMMA NAICKER, son of late M. Dorai Pandian alias Subba Naicker, Hindu, aged about 38 years and now residing at Plot No. 24, Second Stage, Panmanabha Nagar, Adyar, Madras-20, hereinafter referred to as the *VENDOR* of the one part and HPA INTERNATIONAL, a firm having its business office at No.15/16, Casa Major Road, Egmore, Madras-8 represented herein by its Managing Partner H.A. ALEEMUDDIN, hereinafter called the *PUTVHASER* of the other part:

WHEREAS the *Vendor* is the Paternal grandson of late Mounaguruswamy Naidu, Zamindar of Naickarpatti, Madurai District, whereas the said Mounaguruwamy Naidu owned and possessed large immovable properties consisting of Houses and lands situate in Madurai district and in Madras City.

WHEREAS he executed his last Will and Testament dated 7.3.1948 and two Codicils to the said Will, whereas he had bequeathed thereunder a life estate in all the said properties to his grandson, the *vendor* herein, whereas he provided therein that after the life time of the *Vendor*, his male issues, if any, who may survive him, should take all his properties absolutely, whereas he also provided in the said Will that if the *vendor* should die without leaving any male issue, his brothers and in default of brothers, his brothers' male issues who may be alive at the time of death of the *vendor* should take the property absolutely and in default of any of them, the testators' daughter and son's daughters then living at the time of the death of the *vendor* should take the property absolutely.

WHEREAS the said Mounaguruswami Naidu died on 23.10.1956, Whereas the *vendor's* father M. Doraipandian alias Subba Naicker obtained probate to the said Will and Codicils from the High Court, Madras in OP No.14 of 1957 and was administering the estate until 4.12.1963 when he delivered possession of the

A estate to the *vendor* under orders of the High Court, Madras. Whereas the *vendor* is in possession of the said estate ever since then and has been administering the same.

B WHEREAS the *vendor* has not begotten any issues, male or female, until now, whereas the *vendor's* father died on 29.9.1972. Whereas the *vendor* had to spend very large sums of money for Managing the vast extent of agricultural lands comprised in the estate and the net income from the same ever since the *vendor* took up management of the same until now has been very negligible and practically nil.

C WHEREAS the house properties have also not yielded any surplus income after discharge of liabilities.

D WHEREAS large sums of money by way of public dues such as Agricultural income Tax, Capital Gains Tax, Income-Tax, Wealth tax, penalties and interest, property tax, Urban Land Tax, compulsory deposits, etc., payable on the various assessments could not be paid and discharged as and where demanded for want of requisite net income from the estate to meet the same and on account of paucity of funds in the estate.

E WHEREAS there is now due towards the said Public debts and public liabilities a sum of nearly six lakhs, whereas consequent on the inability of the estate to pay the same, interest on the said public debts are accruing from day to day thereby increasing the liability of the estate enormously. Whereas in consequence of the inability and failure of the estate to meet the said public debts within the periods of the respective demands, penalties are also levied thereby further swelling the public Debt liabilities of the estate.

G WHEREAS the *vendor* apprehends that eventually the public debts and liabilities may swallow up the estate whereas the payment of all the said Public Debts and dues and public liabilities is a first charge on the entire state.

H WHEREAS the *vendor* also apprehends that in the circumstances the State and Public Authorities may take coercive

steps and bring the properties comprised in the Estate to sale for the realisation of the public Debts and Liabilities. Whereas the *vendor* also apprehends that if the properties are brought to sale in public auction by coercive steps by the state they may be sold away for ridiculously low and nominal prices and that the estate would thereby be put to enormous loss and damage, whereas the *vendor* has therefore considered it imperative in the interest of the estate to sell some of the properties of the estate and to discharge the public dues and liabilities payable by the estate from the net sale proceeds thereof, in order to save the remaining portion of the estate.

WHEREAS house, ground and premises bearing Municipal Door No. 36-C, Mount Road, Madras-2 and more fully described in the Schedule hereto is comprised in the said estate.

WHEREAS the *vendor* has therefore negotiated for a sale of the same with a view to utilize the entire net sale proceeds thereof for discharge of the public debts and dues and public liabilities of the estate.

WHEREAS the Purchaser has offered to purchase the said property described in the schedule hereto in its entirety, that is inclusive of the interest of the remainder men after the life time of the *vendor* and free from all encumbrances, charges or trusts whatsoever for the net sum of Rs.5.5 lakhs (Rupees five and a half lakhs) only upon and subject to the performance of all the terms and conditions mentioned hereinbelow:

WHEREAS the *vendor* has considered the said offer to be fair, reasonable and best according to present market conditions and in the circumstances of the case.

WHEREAS the *vendor* has also considered that it is in the best interest of and beneficial to the estate to accept the offer in order to discharge the Public Debts and dues and public Liabilities of the estate and to save the estate from coercive steps by the State and from a forced sale of the properties comprised in the estate in public auction and has therefore deemed it fit, proper and

A necessary to accept the said offer.

NOW THIS AGREEMENT WITNESSETH as follows in pursuance of the premises and agreement hereinabove recited:

- B
- C
- D
- E
- F
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- H
1. The *vendor* doth hereby agrees to sell and the purchaser does hereby agrees to purchase the entire interest, both present and future, in house ground and premises bearing Municipal Door No. 36-C, Mount Road, Madras-2 inclusive of the life interest of the *Vendor* and the interests of the remaindermen and free from all encumbrances, charges of trusts whatsoever from the net sum of Rupees five and a half lakhs and subject to and upon all the terms and conditions mentioned below:
 2. The sale is of the entire interests in the said property namely, the present interest of the *vendor* and the interest of the remaindermen or revesioners after his death.
 3. This agreement is subject to the passing of the *vendor's* title to the property and of the *vendor's* rights to sell the entire interest, present and future in the property by the Purchaser's advocate.
 4. The *vendor* shall obtain at his own cost and expense the sanction of the High Court, Madras for the absolute sale as aforesaid of the entire interest in the property inclusive of the interest of the remaindermen or *reversioners* after the life time of the *vendor*.
 5. The purchaser has this day paid to the *vendor* a sum of Rs. 25,000 (rupees twenty five thousand only) by bank draft bearing No.CL/AA 779570 dated 24.6.1977 drawn on the State Bank of India, Adyar, Madras, in favour of the *Vendor*, as advance towards agreement of sale.
 6. In case sanction of the Court is not accorded as aforesaid, this agreement shall forthwith stand cancelled and the *vendor* shall forthwith return the advance amount of rupees twenty five thousand to the purchaser.

7. If the sanction of Court is obtained the sale shall be completed within a period of three months thereof. A
8.
9. The balance of the sale price of Rs. Five lakhs twenty five thousand shall be paid by the purchaser at or before the execution and registration of the sale deed by bank draft drawn in favour of the respective concerned Public Authorities on behalf of the *vendor* for discharge of the public debts and dues and public liabilities of the said estate and other liabilities binding on the said property, viz. The advance of Rs.18,000 liable to be returned to the tenant of the said property by the *vendor* and the commission payable by the *vendor* to the broker on this transaction. B
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15. If after the sanction of court to the aforesaid sale is obtained the *vendor* fails to complete the sale he shall be liable to refund forthwith to the Purchaser the advance of rupees twenty five thousand and also pay a sum of rupees fifteen thousand to the Purchaser by way of liquidated damages for his failure to complete the sale. If after the sanction of court is obtained the purchaser fails to complete the same he shall be liable to pay to the *vendor* a sum of rupees fifteen thousand by way of liquidated damages for his failure to complete the same." F
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At the time of execution of the agreement Ex.P1 dated 26.6.1977 the Testator's only daughter and the three sisters of the *vendee* were the *reversioners* in accordance with the terms of the Will because by that time H

A the *vendor* had no male issue.

B In accordance with the terms of the sale agreement the *vendor* filed Civil Suit No. 471/77 (originating Summons Suit) on the original side of the High Court for seeking sanction of the court for sale of full interest in the property inclusive of his own life interest and the interest of the *reversioners*. The *reversioners* were impleaded as parties to that suit.

C On 16.1.1978, one of the *reversioners viz.*, Saraswati Devi filed a written statement objecting to the grant of sanction for sale and prayed for dismissal of the suit. Another *reversioner* Prema Gangaiya adopted the written statement filed by other *reversioner* and objected to the sale.

As the sanction sought from the Court was opposed by the above-named *reversioners*, the *vendor* sent a lawyer's notice on 11.9.1979 to the *vendee* stating therein as under:

D "In view of the prolonged proceedings in obtaining sanction of Court, for sale of the above said property and the pressing demands from Tax Authorities, my client Mr. G.D. Narendra, hereby cancels the agreement of sale referred to above and the advance sum of Rs. 25,000 paid by your draft under the above
E said agreement is, therefore, refunded by his check bearing No.....dated 11.9.1979."

F Soon after issuance of the above lawyer's notice, the *vendor*, on 12.9.1979, instructed his lawyer stating that the suit seeking sanction of the Court was not likely to be decided early and the chances of grant of sanction being remote, the suit be withdrawn.

G It may be mentioned at this very stage that eventually the suit was not, in fact, withdrawn and, as would be stated in detail hereinafter, the suit was prosecuted by the *vendee* himself who got himself transposed in the suit as co-plaintiff.

H The *vendee* sent a detailed reply to the lawyer's notice sent by the *vendor* canceling the agreement. In his reply, the *vendee* attributed *mala fides* to the *vendor* in rescinding the agreement. In his reply, the *vendee* acknowledged that the sale was necessitated because of public liabilities

towards taxes and other dues in respect of the property but it was alleged A
 that there was no such pressing demand from any tax authorities creating
 an urgency as to compel the *vendor* to rescind the contract. It was alleged
 in the reply that the *vendor* was negotiating a sale for higher price with
 one Bob Daswani and to effectuate sale in favour of the new purchaser,
 one of the partners of the *vendor* firm was called for discussion. It is B
 disclosed from the evidence led in the trial that Bob Daswani and
 respondent Fateh Chand Daswani who were shown and impleaded as two
 different persons, were one and the same although initially attempt was
 made by the defendants to mislead the Court that they were two persons
 and the subsequent sale to respondents 1 to 5 was without knowledge of C
 prior agreement with the *vendee*. The purchaser of the suit properties shall
 hereinafter be referred as the *subsequent vendee*.

What is to be taken note of from the lawyer's reply for *vendee* to
 the lawyer's notice for the *vendor* is that the former had alleged breach D
 of contract on the part of the *vendor* with attributing intention to the latter
 of selling the property for higher price to third parties. The other relevant
 part of the reply to lawyer's notice sent by the *vendee* is the acknowledgement
 of the fact of necessity of sale of the property for discharging public taxes
 and dues although in reply it was reiterated that the *vendee* was always
 ready to discharge the tax liability in accordance with the sale agreement. E
 The relevant part of the reply reads thus:

"The very object of the intended sale is for discharge of the
 income tax and other tax liabilities and my clients are always
 ready to discharge the same as per the sale agreement."

It may be mentioned at this very stage that in his reply sent through F
 his lawyer to the lawyer's notice of the *vendor* cancelling the agreement,
 the *vendee* did not express desire to purchase life interest of the *vendor*
 without insisting on transfer of interest of the *reversioners* which was
 subject matter of the suit filed for seeking sanction of the Court. G

On 29.12.1979, the *vendor* sold his life interest in the suit property H
 for a sum of Rs.4.40 lacs by executing registered instrument in favour of
 respondents 1 to 5 (shortly referred to as the *subsequent vendee*). What
 is apparent from the contents of the subsequent sale deed Ex.D1 dated
 29.12.1979 executed in favour of the *subsequent vendee* is that large part

A of the sale consideration in different sums aggregating to Rs.2.68 lacs was paid directly by the *subsequent vendee* to various authorities to discharge public dues and taxes like Corporation Property Tax, Urban Land Tax and Income Tax arrears.

B The *subsequent vendee* by separate release deeds dated 21.10.1980, 22.1.1980, 22.2.1980 and 29.4.1980 obtained surrender of rights individually from the *reversioners* by paying each of them a sum of Rs. 20,000.

C After receiving the lawyer's notice and cancellation of the sale agreement, the *vendee* on 25.3.1981 got himself impleaded as a party-defendant in Suit No. 471/77 which was filed to seek sanction of the Court.

On 16.8.1981 the *vendee* filed Civil Suit No.423/81 seeking Specific performance of the Agreement of Sale agreement Ex.P1.

D Under order dated 17.12.1981 passed in Civil Suit No. 471/77 seeking sanction of the Court, the *vendor* got himself transposed as co-plaintiff. The two suits i.e. Civil Suit No. 471/77, seeking court sanction for sale under the agreement Ex.P1 and Civil Suit No. 423/81 seeking Specific Performance of the Agreement of Sale, were clubbed and tried together by the learned single judge on the original side of the High Court.

E After the pleadings were completed in the two suits, the *vendee* on 25.11.1986 filed an affidavit purporting to be under Section 12(3) of the Specific Performance Act of 1963 stating therein that without prejudice to his claim for transfer of full interest in the suit property to him under the agreement of sale, if he was found not entitled to maintain the suit seeking sanction of the Court for sale of full interest in the property a decree be granted for Specific Performance of transfer of life interest of the *vendor* in the suit property. The relevant part of the affidavit claiming lesser relief of sale of life interest of the *vendor* reads as under:

G "I submit that the relief as prayed for in CS No. 471 of 1977 can be granted by this Hon. Court. The relief prayed for in the present suit is for a decree for specific performance in respect of the entire property with full rights of the first defendant and of the *reversioners*. Without prejudice to what is stated above, it has become necessary for me to file this affidavit before commencement of

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the trial of the suit under the following circumstances. A

I state that in the event of this Hon. Court taking the view and coming to the conclusion that the plaintiff herein as the second plaintiff in CS No. 471 of 1977 is not entitled to maintain the suit and pray for the relief sought for, then, I submit that this Hon. Court may be pleased to decree the suit in CS No. 423 of 1981 for specific performance of the life interest of the first defendant and direct the defendants in the suit to execute the sale deed in favour of the plaintiff to the extent of the life interest of the first defendant.” B

In view of the above averment made in the affidavit filed by the *vendee* in which he alternatively claimed lesser relief of transfer of only life interest in the suit property of the *vendor*, the learned single judge by common judgment dated 6.9.1988 dismissed Civil Suit No. 471/77 seeking sanction of the Court for sale as infructuous. The relevant part of order of the learned single judge dismissing Civil Suit for sanction as infructuous reads thus: C

“While so, by affidavit dated 25th November, 1986, Messrs. HPA International, swore in CS No. 423 of 1981, that in the event of this Court coming to the conclusion that Messrs. HPA International as 2nd plaintiff in CS No.471 of 1977 is not entitled to maintain the suit as prayed for, HPA International is restricting their claim in CS No. 423 of 1981 for specific performance of the agreement Ex.P1 with reference to the life-estate of Narendra Kullamma Naicker alone and for a direction to the defendants in that suit to execute the sale deed in favour of the plaintiff to the extent of the life-estate of Narendra Kullamma Naicker as provided under Section 12(3) of the Specific Relief Act for the consideration of Rs. 5,50,000 for which he had bargained for the whole interest in the suit property. D E F G

In view of the above affidavit filed by Messrs. HPA International in CS No. 423 of 1981, this suit viz., CS No. 471 of 1977 has become infructuous. Further, this Court cannot compel the *reversioners* to part with their interest. H

A As such, I find that the suit in CS No.471 of 1977 has become infructuous, and it is dismissed as infructuous accordingly. No costs.”

B It may be stated that this part of the common judgment dismissing Civil Suit No. 471/77, in which sanction for sale was sought from the Court, has not been appealed against before us although learned counsel for the *vendee* has contended that no separate appeal was required to be filed against dismissal of the suit for court’s sanction as infructuous because the common judgment passed in the suit seeking sanction of the suit for sale and the suit for specific performance is under appeal before us. We shall deal with this argument separately at the appropriate stage as to whether any separate appeal was required to be filed against dismissal of suit seeking sanction of the Court for sale, as having been rendered infructuous.

D The learned single judge by the impugned common judgment decreed Civil Suit No. 423/81 in favour of the *vendee* to the extent of directing conveyance of life interest in the suit properties of the *vendor* under the Agreement Ex.P1. It was further held that as the *subsequent vendee* has purchased the property with knowledge of the prior sale agreement with the *vendee* the former should join in re-conveying the property to the latter.

E It is necessary to take note of the legal and factual issues decided by the learned single judge in favour of the *vendee*. On the issue whether the *vendee* can be granted lesser relief directing conveyance of life interest of property of the *vendor*, the learned single judge held in favour of the *vendee* thus:

F “A perusal of the oral and documentary evidence clearly proves that DW 1 has no regard for truth. Further, the built-in clauses namely clauses 4 & 6 in Ex.P1 have been introduced for the benefit of the plaintiff. The non-enforcement of those clauses will not prejudice the 1st defendant. As such I find that the facts of this case amply illustrate the forethought of the framers of the Specific Relief Act in introducing Section 12 therein. The failure to get sanction of the court by the 1st defendant to convey the whole of the interest of the suit property as contained in clause 4 of Ex. P1 agreement is not a bar for the plaintiff herein to

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enforce Ex.P1.since he has relinquished the benefit that accrues to him, which will not prejudice the 1st defendant. In view of the relinquishment of the right given to the plaintiff under clause 4 of Ex. P1, clause 6 of the agreement becomes otiose.” A

In granting decree of Specific performance of Conveyance of life interest of the *vendor*, learned single judge further held thus: B

“Whereas, the agreement involved in this suit is capable of separation, one consisting of enforceable portion *viz.* the life interest of the first defendant and unenforceable portion *viz.* interest of remainder men and *reversioners.*” C

The learned single judge found that the equity was in favour of the *vendee* as the *vendor* has been found guilty of misrepresenting Bob Daswani and Fateh Chand Daswani as two persons when they were the same and the negotiations for subsequent sale were held in presence of one of the partners of the *vendee*. The learned single judge on this aspect in the judgment comments thus: D

“It is a pity that third defendant who is considered to be an enlightened citizen having international connections with so much of wealth has not come forward to state at the earliest opportunity that he carries the name Bob Daswani also. That shows the guilty conscious of the third defendant. Having projected his image as Bob Daswani, the presence of the first defendant and the plaintiff on 9.9.1979 he wanted to hoodwink the plaintiff for getting his sale-deed in the name of the third defendant so as to plead that third defendant is *bona fide* purchaser for value “without notice.” F
But anticipating that his claim would be exposed he omitted to mention the aforesaid facts that he and his wife and children are *bona fide* purchases for value only. They omitted to state “without notice.” G

It needs to be mentioned at this stage that learned counsel appearing for the *subsequent vendee* has not disputed in this appeal that the sale in favour of the *subsequent vendee* was with notice of the prior sale agreement H

A Ex.P1 with the *vendee*.

B Against the judgment granting decree of specific performance of sale of life interest of *vendor* in the suit property, an appeal was preferred by the *subsequent vendee* to the Division Bench of the High Court. As has been mentioned earlier, the Division Bench concluded hearing of the appeal on 22.3.1989 but pronounced judgments almost five years after on 24.1.1994 and dismissed the appeal. That judgment has been set aside by this Court by order dated 13.1.2000 reported in 2000(2) SCC 13. This Court remanded the appeal for re-hearing by the Division Bench of the High Court. After re-hearing, the Division Bench by the impugned judgment dated 24.4.2001 has allowed the appeal preferred by the *subsequent vendee*. The decree granted for conveying life interest of the *vendor* in the suit property has been set aside. The only relief granted to the plaintiff, is that out of the rental income realised by the plaintiff during long pendency of the appeal, a sum of Rs. 5.5 lacs has been deducted to deprive the *subsequent vendee* of that sum for his misconduct of projecting Bob Daswani and Fateh Chand Daswani as two persons when, in fact, they were one. Rest of the rental income recovered by the plaintiff *vendee* has been directed to be paid to the *subsequent vendee* as a consequence of success of appeal and setting aside of the decree for specific performance.

E Before considering the various grounds urged in this appeal, it is necessary to briefly indicate the basis on which the Division Bench on re-hearing of the appeal - reversed the judgment of the learned Single Judge.

F Construing the relevant clauses of the contract the Division Bench held that clause (6), which placed an obligation on the *vendor* to approach the court for sanction of sale of interest of *reversioners*, was incorporated not with a view to safeguard interest of the *vendee* alone but it was a term meant for benefit of both the parties. The Division Bench in paragraph 31 held thus:

G “The sanction referred to in the agreement is a sanction which was clearly meant for the benefit of both the parties to the agreement. The plaintiff was interested only in the purchase of entire interests’ in the property, had made the agreement subject to such interest being lawfully conveyed and accepted liability for pay-

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ment of liquidated damages if it failed to obtain the sale deed after the sanction was obtained. Plaintiff not having contracted with the *reversioners* to buy their interest, could not have secured the 'entire interest' in the property without an order of this Court directing conveyance of the reversionary interest to the purchaser. The sanction of the Court was clearly meant for the benefit of the purchaser as well as the *vendor*." A B

The Division Bench has taken the view that as the sanction for sale was not granted by the Court as was contemplated by the parties under the terms of the agreement; the contract was rendered un-enforceable. The Division Bench concluded thus: C

"Appellants are entitled to contend that the contract is a contingent one, and that the contingency contemplated by the parties not having occurred, the contract, regard being had to what had been expressly provided by the parties in clause 6 of the agreement, had collapsed by implosion, the dismissal of the suit for sanction having triggered it." D

With regard to dismissal of Civil Suit No. 471/77 seeking sanction of the Court as infructuous and having attained finality because of non-preferring of appeal by the *vendee*-plaintiff in paragraphs 25 & 34, the Division Bench held thus: E

"It is now a matter of record that the sanction sought for the sale of reversionary interest was not given the Civil Suit 471 of 1977 having been dismissed that dismissal has become final. By virtue of clause 6, the suit agreement Ex.P1, forthwith stood cancelled, if that clause was meant for the benefit of both the parties to the contract. If the contract thus stood cancelled the suit for specific performance had necessarily to be dismissed. F

That suit for sanction, CS No. 471 of 1977, was in fact prosecuted by the respondent herein, who after becoming a party to that proceeding, had itself transposed as a co-plaintiff. Having thus put itself in a position where it could seek sanction, plaintiff's failure to lead evidence on the justification for sanction, on the ground that it had invoked S.12(3) of the specific Relief Act, is H

A a default which cannot now be turned to its advantage, after the suit for sanction was dismissed.”

B The claim allowed for grant of lesser relief of conveyance of life interest of the *vendor* in the suit property, was negatived by the Division Bench and the decree granted by single judge was reversed by recording the following conclusion:

C “The suit agreement being an integrated whole was one and indivisible incapable of being split into an agreement for sale of life interest and another for the sale of reversionary interest. What perished was the whole of the contract and not only a part. What was contemplated by the parties to the agreement was the sale of ‘entire interest’ in the property provided sanction was given, and in the event of sanction not being given the agreement stood cancelled as a whole leaving each of the parties to arrange their affairs as they thought fit wholly unhampered by anything contained in the agreement. The agreement contemplated the sale of all interests in the property if sanction was forthcoming, and no sale of any part of the property in case sanction was not given. The bargain was for all or nothing. It was not open to the court to make a new contract for the parties after the contract in its entirety had perished.”

D The Division Bench negatived the claim seeking conveyance of life interest in the property of the *vendor*, also on the ground of delay and equity by observing thus:

F “Plaintiff cannot be allowed to claim performance in part several years later. Had the plaintiff been earnest about relinquishing its claim for reversionary interest, it could have obtained Narendra’s life interest in 1977 itself, and at any time up to the execution of the sale deed by Narendra In favour of appellants in 1979. Narendra was eager to sell and had been waiting for the plaintiff to take a sale deed from him. The sale by Narendra to appellants was for the purpose *inter alia*, of raising the monies required for paying the arrears of revenue — funds which the plaintiff could have provided by obtaining conveyance of his life interest, but

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was not so provided. Having regard to these facts the prayer for part performance made during the course of the trial at a stage when it was evident that the suit as laid was doomed to failure, was not one which could be acceded to. The trial court was in error in granting that prayer by ignoring the plaintiff's conduct." A

As a result of the conclusion reached as mentioned above, the Division Bench allowed the appeal and set aside the decree of granting Specific Performance of the Contract Ex.P1 to the extent of conveyance of life interest of the *vendor*. A decree of refund of full sale price to the *vendee* was however granted. Since pending the appeal, the decree granted by the learned single judge had been executed and possession had been obtained by the *vendee*, who had raised further construction on the property and collected rents from the tenants, the Division Bench in paragraph 63 made directions to adjust the rights and equities between the parties with regard to the amounts spent by each of them on putting up their own constructions and rental income realised by each of them from the property. We shall separately deal with that aspect at appropriate stage of our judgment. B C D

We have heard the learned counsel appearing for the contesting parties at great length. Apart from long oral arguments, written submissions have been made and plethora of case law has been placed before us on various legal contentions advanced. Considering the view that we propose to take and the conclusions reached by us, we do not consider it necessary to deal with each of the rulings cited before us by the learned counsel at the Bar. We will confine our consideration to certain rulings directly on the issues and few others touching them. E F

In substance, the main submission advanced by learned counsel Shri K. Parasaran on behalf of the *vendee* is that the *vendor* clearly committed a breach of the terms of the sale agreement Ex. P-1. During pendency of the suit seeking sanction of the court, the contract was formally terminated by lawyer's notice dated 11.9.1979 sent by him. It is submitted that actions such as of sending notice of terminating the contract, thereafter instructing his lawyer to withdraw the suit for sanction followed by the negotiations which were proved to have been held to sell the suit property to the *subsequent vendee*, were clearly *mala fide* attempts on the part of the *vendor* to resile from the contract for getting higher price for the property. G H

A It is pointed out that an attempt was made to mislead the Court by creating confusion that Bob Daswani and Bhagwandas Daswani were two different persons and the *subsequent vendee* had no knowledge of the prior agreement entered with the plaintiff- *vendee*. This deception sought to be practised on the opposite party and the court was exposed during trial and

B the learned single judge has imposed penalty on the *subsequent vendee* for the misconduct of misleading the court. It is submitted that the *subsequent vendee* having purchased the property with knowledge of the prior agreement holds the property in trust for the benefit of the prior *vendee* and is obliged in law to make over the property to the prior *vendee* under decree for specific performance of the prior contract. Sections 90, 91 & 92 of the Indian Trusts Act are relied for the above proposition and need reproduction at this stage for better appreciation of the arguments advanced on this point on behalf of the *vendee* :-

D “*Section 90. Advantage gained by qualified owner.*— Where a tenant for life, co-owner, mortgagee or other qualified owner of any property, by availing himself of his position as such, gains an advantage in derogation of the rights of the other persons interested in the property, or where any such owner, as representing all persons interested in such property, gains any advantage

E he must hold, for the benefit of all persons so interested, the advantage so gained, but subject to repayment by such persons of their due share of the expenses properly incurred, and to an indemnity by the same persons against liabilities properly contracted, in gaining such advantage.

F *Section 91. Property acquired with notice of existing contract.*— Where a person acquires property with notice that another person has entered into an existing contract affecting that property, of which specific performance could be enforced, the former must hold the property for the benefit of the latter to the extent

G necessary to give effect to the contract.

H *Section 92. Purchase by person contracting to buy property to be held on trust.*—Where a person contracts to buy property to be held on trust for certain beneficiaries and buys the property accordingly, he must hold the property for their benefit to the extent necessary to give effect to the contract.”

In elaborating the above argument to support claim of specific performance of the contract, the further submission made is that the act of rescinding contract, pending suit for sanction of the court and selling the property with only life interest to the *subsequent vendee*, who later on, obtained surrender deeds from the *reversioners* by independently paying them, were acts done in conspiracy between *vendor* and the *subsequent vendee*. They were self-induced actions to render the suit for seeking sanction as infructuous and frustrate the contract. It is contended that in such a situation, the prior *vendee* can take recourse to section 90 read with sections 91 & 92 of the Indian Trusts Act, and is entitled to seek specific performance of the contract of full rights of the property i.e. life interest of the *vendor* and *spes successionis* of the *reversioners*. To give effect to the right of the *vendee* to specific performance — the *vendor*, *reversioners* and *subsequent vendee* can be compelled in law to convey full title of the property to the plaintiff.

The alternative argument advanced on behalf of the plaintiff-*vendor* is that although the petitioner is, in law, entitled to conveyance of full title in the property by the *vendor*, the *reversioners* and the *subsequent vendee*, he has restricted his claim to the lesser relief of seeking conveyance only of life interest in the property of the *vendor*. Such relief can be granted under section 12(3) of the Specific Relief Act as the *vendee* is willing to pay full agreed consideration for lesser relief of conveyance of life interest in the property. Reliance is placed on *Lala Durga Prasad v. Lala Deep Chand*, [1954] SCR 360 at pg. 367; *Jhumma Masjid v. Kodimaniandra Devaiah*, [1962] Supp 2 SCR 554 at pg. 570; *Soni Lalji Jetha v. Sonkalidas Devchand*, [1967] 1 SCR 873 at pg. 879 and *Narandas Karsondas v. S.A. Kamtam*, [1977] 3 SCC 247.

It is argued that the Division Bench of the Madras High Court was wrong in coming to the conclusion that the contract was a contingent one and as the court did not grant sanction for sale of *reversioners'* interest and dismissed the suit seeking sanction as infructuous, the contract failed. The contention advanced is that where the grant of sanction of the court was frustrated by the *vendor* himself by prematurely rescinding the contract and instructing his lawyer not to prosecute the sanction suit, the dismissal of the suit as infructuous was self-induced by the *vendor*. The *vendor* cannot be allowed to take advantage of his own wrong. The law

A and equity is in favour of the plaintiff- *vendee*. Reliance is placed on *Ganga Saran v. Ramcharan Ram Gopal*, [1952] SCR 36 at pg. 42.

B Alternatively, it is submitted that even though sanction could not be obtained from the court for transferring interest of the *reversioners*, the law permits the equity court to grant lesser relief of directing conveyance of life interest of the *vendor* on payment of full agreed consideration, in accordance with section 12(3) of the Specific Relief Act. In this respect, it is contended that the Division Bench of the High Court was wrong in holding that there was undue delay on the part of the plaintiff- *vendee* in exercising the option for lesser relief of transfer of life interest of the *vendor*. Further it is also contended that the option exercised for lesser relief was not 'conditional,' as is sought to be projected by the other side. It is submitted that when both suits for seeking sanction and for specific performance were jointly tried, exercise of option by filing affidavit stating that it was without prejudice to the right of obtaining full title with sanction of the court, cannot be said to be conditional to deny relief under section 12(3) of the Specific Relief Act.

E In support of the claim for lesser relief of transfer of life interest, it is submitted that the clause in the contract requiring sanction of the Court for transfer of *reversioners'* interest was a condition solely in favour of the plaintiff-*vendee* which he could waive and the *vendor* could not insist on fulfilment of that condition as a fundamental term of the contract.

F In reply to the plea of the finality of the decree of dismissal of sanction suit as infructuous, being not appealed against, it is submitted that the proceedings for sanction are summary in nature, under the rules and procedures of Madras High Court framed for its original side. That suit for sanction which was of summary nature happened to be clubbed with the suit for specific performance. The two suits were jointly tried. A common judgment was passed dismissing the sanction suit as infructuous and partly decreeing the suit for specific performance. An appeal was filed against the common judgment. Therefore, non-filing of appeal against the dismissal of sanction suit as infructuous does not operate as *res judicata* and is no ground to refuse specific performance of the grant of decree of specific performance of contract for transfer of life interest for which no sanction of the court was needed. Reliance is placed on *S.P. Chengalvarya Naidu*

v. *Jagannath*, [1994] 1 SCC 1 and *Sheoparsan v. Ramnandan*, AIR (1916) A PC 78 at pg. 81.

Rest of the contentions advanced at the Bar on behalf of the plaintiff-vendee, in our opinion, are not required to be separately dealt with because of the view we propose to take and the conclusion reached by us which shall be elaborated hereinafter.

Learned senior counsel Shri Soli J. Sorabjee appearing for the subsequent vendee rested his argument on his main submission that the sale agreement was a contingent contract — the contingency named being sanction of the court which did not materialize. Upon failure of that contingency, the agreement stood cancelled forthwith under clause (6) of the agreement. On failure of the happening of the contingency, the agreement had been rendered unenforceable in accordance with section 32 of the Indian Contract Act read with definition of ‘Contingent Contract’ contained in section 31 of the said Act :-

“Section 31.— A ‘contingent contract’ is a contract to do or not do something, if some event, collateral to such contract, does or does not happen.

Section 32. Enforcement of contracts contingent on an event happening.- Contingent contracts to do or not to do anything if an uncertain future event happens cannot be enforced by law unless and until that event has happened.

If the event becomes impossible, such contracts become void.”

Heavy reliance is placed on decisions of Privy Council reported in *Dalsukh M. Pancholi v. Guarantee Life & Employment Insurance & Co.* AIR (1947) PC 182 at pg. 186; *Narain Pattro v. Aukhoy Narain Manra*, ILR 12 Calcutta 153 at pg. 155; *Sreemati Kalidasi Dassee v. Sreemati Nobo Kumari Dassee*, 20 CWN 929 at pp. 937, 938 & 939 and *Golab Ray & Anr. v. Muralidhar Modi & Ors.*, AIR (1964) Orissa 176 at pg. 180 & 181.

The decision cited by the other side in the case of *Mrs. Chandnee Widya Vatee Madden v. Dr. C.L. Kataial & Ors.*, [1964] 2 SCR 495, is

- A sought to be distinguished on the ground that there the *vendor* without sufficient reason withdrew the application made to the Chief Commissioner for sanction and therefore, the relief granted was to direct the *vendor* to make the necessary application for sanction. In that case, it was further made clear that ultimately if the sanction was refused, the plaintiffs would
- B be entitled only to damages as decreed by the High Court.

- With regard to the claim allowed for grant of lesser relief of transfer of life interest, the contention in reply is that the agreement Ex. P-1 was a single indivisible and inseparable contract based on sanction of the court. By segregating the contract, no new contract can be created by the court and take recourse to section 12(4) of the Specific Relief Act is impermissible. Reliance is placed on *William Graham v. Krishna Chandra Dey*, (1925) PC 45; *Abdul Haq v. Mohammed Yehia Khan & Ors.*, AIR (1924) Patna 81 at pg. 84 and *Hiralal Lachmiram Pardesi v. Janardhan Govind Nerlekar & Anr.*, AIR (1938) Bombay 134.

- D The claim for conveyance of life interest is also opposed on the ground that the option exercised under section 12(3) of the Specific Relief Act was not unconditional and without reservations. There was no surrender of claim to the interest of the reversioners. Such a conditional claim for lesser relief was rightly rejected by the Division Bench of the High Court. Reliance is placed on *T.V. Kochuvareed & Anr. v. P. Mariappa Gounder & Ors.*, AIR (1954) TC 10, para 40; *Bolla Narayan Murthy v. Cannamaneedi Madhavayya & Anr.*, (1947) 2 MLJ 347 and *Surjith Kaur v. Naurata Singh & Anr.*, [2000] 7 SCC 379.

- F The additional ground urged to oppose claim for lesser relief of the conveyance of life interest is that such option under section 12(3) of the Specific Relief Act was not exercised at the first available opportunity when a formal legal notice was given by the *vendor* to terminate the contract anticipating remote possibility of grant of sanction. It is submitted
- G that the option for lesser relief was claimed when the joint trial had already commenced in the suits and all the pleadings of the parties had been completed. It was not an unconditional offer to obtain life interest. The provisions of Section 12(3)(b)(i) & (ii) of the Specific Relief Act were thus not fully complied with which require for obtaining partial relief of specific
- H performance, unconditional surrender of remaining part of the contract.

In reply to the argument that the sanction suit was not prosecuted by the *vendor* deliberately to render it infructuous with a design to back out from the contract in conspiracy with the *subsequent vendee*, it is pointed out that despite service of notice terminating the contract, the suit was not in fact withdrawn. Soon thereafter the *vendee* got himself impleaded and later transposed in the suit as co-plaintiff. In the course of trial of sanction suit with suit for specific performance, the *vendee* exercised option by an affidavit of claiming lesser relief of life interest. He himself was thus responsible for rendering the sanction suit infructuous. It is argued that if it was possible to obtain sanction of the court on the ground of continuous pressure on the property for recovery of public dues, the order of the single judge on original side dismissing the sanction suit as infructuous should have been challenged in appeal by the *vendee*. In any case when the *subsequent vendee* had gone in appeal against the decree granted for life interest in the suit for specific performance, the *vendee* could not have allowed the dismissal of the sanction suit to attain finality by not filing cross appeal against the same. Even in this Court, there is no appeal preferred and no ground urged challenging the dismissal of the sanction suit as infructuous. It is, therefore, submitted that one of the essential terms of the contract of obtaining sanction of the court having been rendered impossible of performance, the contract for sale of the property was rightly held by the Division Bench of the High Court to have failed rendering it incapable of specific performance.

Lastly, it is submitted that grant of specific relief being discretionary the court should decline the relief to the plaintiff- *vendee* as the sanction suit got delayed and ultimately no sanction was granted. The *vendor* had no other option but to sell the property to clear the taxes and public dues for saving the property from being attached and sold through coercive process of recovery of public dues and possibly at a price less than the prevailing market price. The *subsequent vendee* has purchased separately the life interest of the *vendor* which alone he could convey and obtained separate surrender-deeds from the reversioners by paying each of them price of their interest. In the agreement Ex.P-1 entered with the *vendee*, as also in the sale-deed obtained by *subsequent vendee*, there is clear mention of the fact of pressure on the property for recovery of taxes and public dues. In the sale-deed obtained by the *subsequent vendee*, there is recital that taxes and public dues were directly paid by the *subsequent*

A *vendee* to the public authorities. The contents of the agreement of sale Ex. P-1 and the sale-deed Ex. D-1 are evidence of the fact that early disposal of the property was the pressing necessity to ward off coercive recovery from the property.

B The additional argument advanced in opposing the claim for lesser relief of conveyance of life interest is that the clause requiring the sanction of the court for transfer of the *reversioners'* interest was a term of contract for the benefit of both the *vendor* and the *vendee*. The court's sanction would have protected the *vendor* from claims and possible legal proceedings against him by the *reversioners*. Court's sanction was also for the benefit
C of the *vendee* to ensure effectuation of the agreement of sale which purported to sell entire interest that is life interest of *vendor* and *spes successionis* of *reversioners*. The term of seeking court's sanction being a term in common interest — both of *vendor* and the *vendee*, the *vendee* could not be allowed to unilaterally waive it by restricting his claim to life
D interest. There is also no pleading and evidence to justify claim set up by the *vendee*. The dismissal of sanction suit as infructuous was induced by the *vendee* becoming a co-plaintiff and filing an affidavit restricting his claim to life interest. It was, therefore, a self-defeating act on the part of the *vendee* and the Division Bench of the High Court rightly dismissed
E the suit for specific performance for the life interest.

After hearing the argument at length advanced by the counsel for the parties and perusing the record of the case, the basic question that first needs consideration is whether there was any breach of contract on the part of the *vendor* so as to justify the grant of relief of specific performance
F of the contract of sale. We do not consider it necessary to deal with the legal contention whether clause (4) of the contract requiring *vendor* to obtain sanction of the court was an exception clause or a fundamental term of the contract. From the recitals of the sale agreement Ex. P-1 and particularly those requiring the *vendee* to discharge public debts and dues
G directly as part of the consideration of sale, it is clear that the necessity of sale for the *vendor* arose for safeguarding the property from being put to auction and sale through coercive process of recovery of public dues. Naturally, the *vendor* wanted to obtain market price of the property and desired to avoid sale of the property through a coercive process at a lesser
H price. That there were outstanding taxes and public dues have not been

disputed by the *vendee* and in fact, they are acknowledged by him in reply A
to the lawyer's notice sent by the *vendor* terminating the contract. In the
reply sent through lawyer by the *vendee*, it is clearly acknowledged that
tax dues were there but it is stated that the alleged pressure from tax
authority was merely as an excuse to terminate the agreement. The motive B
attributed to the *vendor* that he tried to wriggle out of the sale agreement
Ex. P-1, only to obtain higher price of his property by selling it to the
subsequent vendee, is not borne out from the evidence on record. The
contents of the sale-deed Ex. D-1 dated 29.12.1979 executed in favour of
the *subsequent vendee* clearly show that a substantial portion of agreed
consideration of Rs. 4,40,000 was paid directly by cheques towards the C
property tax [Rs.50,383.98] to Corporation of Madras, Urban Land Tax to
Tehsildar [Rs. 36,860.70] and income tax [Rs. 1,10,000] to Income-Tax
Officer. The above payments made by the *subsequent vendee* to public
authorities justify the stand of the *vendor* that there were pressing demands
of public authorities on the property and the sale of the property, well D
before the impending initiation of coercive recovery by public authorities,
was an urgent necessity.

The main contention advanced against the *vendor* is that the contract
term clause (4) imposed a liability on him to seek sanction of the court
for transfer of full title in the property. During pendency of suit for E
sanction, actions on the part of the *vendor* such as terminating the contract
by sending a lawyer's notice and instructing his lawyer to withdraw the
suit for sanction, amounted to committing breach of the contract.

The agreement was entered into on 26.6.1976. The reversioners F
opposed sanction by filing written statements on 16.1.1978. It is long after,
on 11.9.1979 by lawyer's notice, the *vendor* terminated the contract. The
sanction suit was pending from 26.6.1976. Even after two years, the
sanction was not granted. The question is whether the agreement Ex.P-1
contemplated that the *vendor* should have waited for grant of sanction by
the court for an indefinite period of time. The recitals of the agreement of G
sale clearly mention the necessity of sale arising from the pressure of public
dues and taxes. The *vendor* could not have waited for an unreasonably
long period of pendency of sanction suit when commencement of recovery
proceedings for public dues and taxes could have commenced any time.
There is no period fixed in the terms of the contract for obtaining sanction H

A of the court, but keeping in view the other terms of the contract and the pressing requirement for sale of the property to clear public dues, it has to be held that obtaining of court's sanction within a reasonable period and in any case within a period well before commencement of recovery proceedings for dues and taxes, was in contemplation of the parties as an implied term. Notice served for terminating the contract, after waiting for two years for sanction by the court, cannot be held to be a breach of the contract on the part of the *vendor*. The argument that the *vendor* rescinded the contract only because he had entered into secret negotiations with the *subsequent vendee* to obtain higher price for the property is not borne out from the evidence. We cannot attach too much importance to the fact of initial attempt made by *subsequent vendee* to conceal knowledge of the existing contract with the *vendee* when sale-deed was obtained by the former. For the misconduct of misrepresentation and attempt to mislead the court, the Division Bench of the High Court has rightly deducted a sum of Rs. 5.5 lacs from the rental income found payable to the *subsequent vendee*. We propose not to disturb the same. But the aforesaid misconduct of *subsequent vendee* does not render the act of *vendor* in rescinding the contract to be an act of breach of contract which can be said to have been committed solely with desire to obtain higher price of the property.

E As we have mentioned above, only life interest was sold to the *subsequent vendee* for higher price. Out of the agreed sale consideration, major portion of money was directly paid by the *subsequent vendee* to satisfy dues and taxes of public authorities. The notice served for terminating the contract, anticipating remote prospect of grant of sanction by the Court within a reasonable period and after waiting for two years from date of the contract, cannot be termed to be a breach to justify grant of any specific relief to the *vendee*.

G In this respect, it is also relevant to state that although by lawyer's notice, the *vendor* terminated the contract and instructed his lawyer to withdraw the suit for sanction, but in fact, the suit was not withdrawn. The *vendee* got himself impleaded initially as defendant to the suit and then sought his transposition as co-plaintiff. That part of the action of the *vendee* cannot be castigated as self-defeating because he was naturally interested in prosecuting the suit for sanction diligently to obtain conveyance of full rights in the property. However, the further act on the part of the *vendee*

of filing an affidavit restricting his claim only to life interest resulted in dismissal of the suit for sanction as infructuous. The learned single judge trying jointly the two suits came to the conclusion that as the *vendee* gave up his claim for transfer of interest of the *reversioners*, the court's sanction was not required. He dismissed the suit for sanction as infructuous. A

In this appeal on behalf of the *vendee* it is now contended that had the suit for sanction been prosecuted by the *vendor bona fide* and diligently, as stipulated in the terms of the contract, the court might have granted sanction despite objection of the *reversioners* because there was likelihood of loss of the property in process of recovery of public dues by auction and sale. If that was the legal position, the *vendee* ought not to have suffered the alleged wrongful dismissal of suit for sanction as infructuous. When decree granted for conveyance of life interest of the *vendor* in the suit for specific performance was challenged by the *subsequent vendee* before the Division Bench of the High Court, the *vendee* could as well have preferred cross appeal against the dismissal of the suit for sanction as infructuous. He was a co-plaintiff in that suit and had an independent right of appeal. The non-filing of any appeal against dismissal of sanction suit as infructuous is a clear indication that the *vendee* was satisfied with the grant of decree merely of specific performance of conveyance of life interest of the *vendor*. It is not open to the *vendee* now to question the correctness of the dismissal of the suit for sanction as infructuous by the learned single judge. B
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The next question that arises is whether the terms of the contract justify grant of decree of specific performance for lesser relief of conveyance of life interest of the *vendor*. F

The argument advanced on behalf of the *subsequent vendee* seems *prima facie* acceptable that the contract Ex.P-1 is one single indivisible contract for sale of full interest in the property that is life interest of the *vendor* and *spes successionis* of the *reversioners* with sanction of the court. G
The *reversioners* were not parties to the sale agreement Ex.P-1 entered with the *vendee*. At the time when the sale agreement was entered into, the parties were conscious that the *vendor* had only life interest in the property and he could not convey more than his own interest. It was open to the *vendee* to obtain conveyance of interest of the *reversioners* by H

- A obtaining release deeds from them by paying them consideration for surrender of their interest, as was done by the *subsequent vendee*. Another course open to him was to enter into separate agreement with the *reversioners* or insist on the *reversioners* joining the sale agreement. It seems the *vendee* entered into a speculative deal for obtaining full interest
- B in the property depending upon the sanction to be granted by the court. It seems to be in contemplation of the parties that if the *reversioners* objected, the court might refuse sanction. They could as well foresee that despite the *reversioners'* objection, the court might grant sanction. The transfer of full interest in the property was, therefore, dependent on sanction of the court. To meet this contingency, there were specific terms
- C such as clauses (4) and (6) incorporated in the contract whereby it was clearly agreed that the *vendor* shall obtain sanction of the court at his own expense and costs and if the sanction was not accorded by the court, the agreement would stand cancelled and the advance money refunded to the *vendee*. Clause (15) of the agreement could come into operation only if
- D the court granted sanction and any of the parties failed to complete the sale. Clause (15) had no operation when the sanction was not accorded to the sale.

As has been seen from the facts of this case, the *vendor* did apply for sanction, waited for two years and when it found that the *reversioners*

E opposed the grant of sanction, cancelled the contract. The sanction suit, despite instructions to his lawyer was not, in fact, withdrawn. The suit for sanction frustrated not because the *vendee* became co-plaintiff but because he filed an affidavit restricting his claim to life interest of *vendor*. The life interest was not agreed to be separately sold apart from the interest of

F the *reversioners*. The terms of sale agreement Ex.P-1 clearly stipulate sale of full interest in the property. Whatever may be the reasons, the sanction of the court could not be obtained for sale of interest of the *reversioners*. The *reversioners* were not parties to the sale agreement Ex.P-1. In such a situation, the question is whether in law and equity, the *vendee* can insist

G that the *vendor* should convey, if not full interest, his own life interest in the property.

If the *vendee* intended to seek conveyance separately of the life interest of the *vendor*, the earliest opportunity for him was when he had received notice dated 11.9.1979 sent through lawyer by the *vendor*

H cancelling the contract. Assuming that at that time he could not opt for

lesser relief as the suit for sanction was pending, he could have, in any case, A
opted for conveyance of life interest of the *vendor* soon after he came to
know of the negotiations for sale with Bob Daswani, which took place in
the presence of one of the partners of the plaintiff-*vendee*. Even after
deriving the knowledge of the execution of the sale deed dated 29.12.1979
Ex. D-1, the option to obtain lesser relief of transfer of life interest was B
not exercised. It was exercised as late on 25.11.1986 by filing an affidavit
and at the time when pleadings of the parties were completed and the joint
trial in the two suits had already commenced. During long pendency of the
suits between 1979 to 1986, the parties interested in the property changed
their positions. The *vendor* by executing registered sale deed in favour of C
the *subsequent vendee* got his public dues paid to relieve the pressure on
the property and obtained market price of the property. After obtaining
possession of the property pursuant to the sale deed, the *subsequent vendee*
has raised construction and inducted tenants. Accepting the legal stand
based on sections 90, 91 & 92 of the Indian Trusts Act that the *subsequent* D
vendee, being a purchaser with knowledge of prior agreement, is holding
the property as a trustee for the benefit of the prior *vendee*, the *vendor*,
who changed his position by effecting subsequent sale cannot be compelled
to convey his life interest when such lesser relief was not claimed at the
earliest opportunity and the terms of the contract did not contemplate
transfer of life interest alone.

On duly appreciating of the evidence on record, construing specific
terms of the contract and considering the conduct of the parties, we have
arrived at the conclusion that the recession of the contract, due to non-grant
of sanction by the court within two years after execution of the contract
and filing of the suit for sanction, was not an act of breach of contract on F
the part of the *vendor* to justify grant of relief of specific performance of
the contract to the prior *vendee*.

We are also of the view that the *subsequent vendee*, by his own act
in the pending suits, was responsible for rendering the suit for sanction as
infructuous. He was guilty of lapse in not seeking conveyance of life G
interest of the *vendor* at the earliest opportunity when notice of recession
of the contract was received by him and later when he derived the
knowledge of execution of registered sale-deed in favour of the *subsequent*
vendee. The option was exercised conditionally in the midst of the joint
trial of the two suits.

A There was one integrated and indivisible contract by the *vendor* to convey full interest in the property i.e., his own life interest and the interest of the *reversioners* with sanction of the court. As the court had not granted the sanction, the contract could not be specifically enforced. The lesser relief of transfer of life interest was not claimed within a reasonable time

B after the *vendor* had intimated that the contract, as agreed for full interest, was not possible of performance. We find neither equity nor law is in favour of the plaintiff-*vendee*.

Section 12(3)(a)(b)(i)(ii) of the Specific Relief Act read thus :-
 "12. *Specific performance of part of contract.*-

- C
- (1)
 - (2)

D (3) Where a party to a contract is unable to perform the whole of his part of it, and the part which must be left unperformed either-

- (a) forms a considerable part of the whole, though admitting of compensation in money; or
- (b) does not admit of compensation in money;

he is not entitled to obtain a decree for specific performance; but the *court may*, at the suit of other party, *direct the party in default to perform specifically so much of his part of the contract as he can perform, if the other party -*

- F
- (i) in a case falling under clause (a), pays or has paid the agreed consideration for the whole of the contract reduced by the consideration for the part which must be left unperformed and a case falling under clause (b), [pays or had paid] the consideration for the whole of the contract without any abatement; and

- G
- (ii) in either case, relinquishes all claims to the performance of the remaining part of the contract and all right to compensation, either for the deficiency or for the
- H

loss or damage sustained by him through the default of the defendant.” A

[Emphasis added]

The power to grant partial relief, from the very language of the Section 12(3) is discretionary with the Court to be exercised keeping in view the facts and circumstances of each case and the rights and interests of the parties involved. B

What is most important to be taken note of is that the *reversioners* were not parties to the sale agreement Ex.P1. In the sanction suit they filed written statement opposing the proposed sale as adversely affecting their *spes successionis*. C

The Court dismissed the sanction suit rightly or wrongly but the matter having not been carried further in appeal, the subject of grant or refusal of sanction is no longer open to consideration in this appeal preferred only against the decision of the Division Bench in appeal refusing decree of Specific Performance of Sale of life interest. D

The *reversioners* have surrendered their interest by accepting consideration separately and executed separate release deeds in favour of the *subsequent vendee*. Even though the *subsequent vendee* has acquired property with knowledge of sale agreement Ex.P1 existing with the prior *vendee*, the latter has no equity in his favour as to bind the *reversioners* and in any manner adversely affect their interest. They were not parties to the sale agreement and have already by separate release deeds, on accepting separate consideration, surrendered their interest in favour of the *subsequent vendee*. Any grant of relief of transfer of life interest of the *vendor* to the prior *vendee* would involve the *reversioners* in further litigation. If only life interest of the *vendor* is allowed to be conveyed to the prior *vendee*, after death of *vendor*, the *reversioners* are likely to be involved in litigation in future to help in restoring possession of the property to the *subsequent vendee* and effectuate the release deeds executed in his favour by them. Grant of such equitable relief would adversely affect the immediate efficacy of the release deeds and would create various hurdles in working out the rights and remedies of the *reversioners vis-à-vis* the *subsequent vendee*. It would not be a proper exercise of discretion by the Court to grant such partial relief of directing conveyance of life interest of the *vendor* as that would adversely affect the interest of the H

A *reversioners*.

We have already held above while construing the terms of sale agreement Ex.P1 that as the *reversioners*' interest in the property was likely to be affected, the contracting parties never intended piecemeal transfer of life interest of the *vendor* and *spes successionis* of *reversioners*.

B What the contracting parties intended and stipulated was transfer of full interest in the property i.e. *vendor*'s life interest and *reversioners*' *spes successionis* with sanction of the Court. It is for the above reason that parties very clearly agreed by specific clause (6) in the agreement that if the sanction of the Court was not accorded, the agreement shall forthwith stand cancelled and the advance money received shall be returned to the purchaser. The contracting parties were fully aware that *reversioners*, who had a mere chance of succession, were not parties to the agreement. The parties to the contract could have taken care of the eventuality of refusal of sanction by the Court and possibility of the *vendor* transferring only his life interest to the *vendee*, but such eventuality of separate transfer of life interest is conspicuously absent in the terms of the agreement. Such obligation on the part of the *vendor* to transfer his life interest, if sanction for transfer of *reversioners*' interest was not granted, cannot be read in the contract by implication and recourse to Section 12(3) of the Specific Relief Act, therefore, is impermissible.

E In our considered opinion, Section 12(3) of the Specific Relief Act can be invoked only where terms of contract permit segregation of rights and interest of parties in the property. The provision cannot be availed of when the terms of the contract specifically evince a intention contrary to segregating interest of the *vendor* having life interest and *spes successionis* of *reversioners*. Neither law nor equity is in favour of the *vendee* to grant Specific Performance of the Contract.

G On these facts, in our opinion, the learned single judge of the High Court was in error in granting decree of specific performance of transfer of life interest of the *vendor* on a finding that the *vendor* had committed breach by rescinding contract during pendency of sanction suit. The Division Bench of the High Court, in our considered opinion, rightly reversed the decree and dismissed the suit.

H We are fortified in our conclusion by the decisions of Privy Council reported in AIR (34) 1947 PC 182 [*Dalsukh M. Pancholi v. The Guarantee*

Life and Employment Insurance Co. Ltd., & Ors.] in which facts were somewhat similar requiring court's approval for performance of the agreement of the sale. Two questions were posed by the court – (a) was the term “subject to the Court's approval” an essential term of the agreement?; and (b) if it was essential, by whose default did it fail? The Privy Council answered the questions saying – “ No wonder that the approval of the ‘attaching court’ was insisted on as a necessary condition for effecting the sale, for without it, the title to the property was not at all safe. In their Lordships’ opinion there can be no doubt that the condition was an essential one.”

The Privy Council then recorded the following conclusions on the questions posed :-

“The person to apply to the ‘attaching Court’ for securing the approval of the Court was the *vendor*; on the construction of the contract, the provision for approval by the Court was not exclusively for the benefit of the purchaser, and therefore, the purchaser cannot by his waiver get rid of the necessity for the Court's approval; the Court contemplated, was the Court having charge of the mortgage proceedings, as that Court alone could get rid of the Order for public sale; application was made by the *vendor* to the proper Court and was refused; the contract then fell to the ground and had worked itself out. In their Lordships’ opinion, the contract was a contingent contract and, as the contingency failed, there was no contract which could be made the basis for a decree for specific performance and the appellant's suit has to be dismissed. In this view, it is unnecessary to consider the second question, or any other point in the case.”

The above Privy Council decision was sought to be distinguished on the ground that it was not a case where the *vendor* was not in a position to convey his own interest in the property without the court's sanction. In our opinion, however, that aspect is not of much importance because our conclusion is that the agreement was indivisible, for sale of full interest in the property i.e. *vendor's* life interest and *reversioners spes successionis*. As the court's sanction was not obtained within a reasonable time, the contract became unenforceable.

- A The decision of the Calcutta High Court reported in ILR 152 [*Narain Patro v. Aukhoy Narain Manna & Ors.*] also supports the respondents. When the sanction as contemplated was not obtained from the court, the contract *even with variations* could not be directed to be enforced. See the following observations of the Calcutta High Court :-
- B “It is not necessary for us to express any opinion as to whether the suit was barred by clause (e) of section 21 or clause (b) of section 27 of the Specific Relief Act, for in our opinion the Judge was quite right in saying that the contract as it stood could not be enforced, and that section 26 had no application to the case. The contract such
- C as it was, was not a complete contract at any time. It was contingent upon the permission of the court. The court’s permission did not extend to the whole contract as set out in the *shuttanamah*. The defendants, therefore, could not be compelled to carry out the terms of the original agreement, nor could they have insisted upon
- D the plaintiff’s carrying out the terms sanctioned by the court. Section 26, upon which the vakeel for the appellant relies, sets out cases in which contracts cannot be specifically enforced except with a variation; and there are five particular cases set out in which a contract may be enforced subject to a variation, such variation being in favour of the defendant, and the section in our opinion
- E assumes that the parties or vakeels representing them are agreed as to the existence of the contract, but not agreed as to specific terms. The section provides that, when fraud or mistake of fact, or misrepresentation has induced the defendant to sign an agreement, that agreement can only be enforced on the terms which the
- F defendant intended to agree to. There is no provision of law of which we are aware which entitles the plaintiff to claim a variation in the terms of his contract, when he finds that the contract itself cannot be carried out. In the present case the plaintiff by his plaint sought to enforce the original contract without any variation. It seems to us, therefore, that the Judge was right in holding that the
- G agreement in the *shuttanamah* could not be enforced as it stood, and that section 26 would not entitle the plaintiff to enforce it with a variation.

H The case of *Narain Patro* (supra) was relied by the same Calcutta High Court in the case of *Sreemati Kalidasi Dassee & Ors. v. Sreemati*

Nobo Kumari Dasse & Ors., 20 CWN 929 wherein on similar circumstances for not obtaining letters of administration from the Court, the contract was held to have failed. A

In the case *M.V. Shankar Bhat & Anr. v. Claude Pinto Since (dead) by LRs. & Ors.*, [2003] 4 SCC 86, the agreement for sale was subject to ratification by co-heirs and this Court concluded in para 31 as under :- B

“When an agreement is entered into subject to ratification by others, a concluded contract is not arrived at. Whenever ratification by some other persons, who are not parties to the agreement is required, such a clause must be held to be a condition precedent for coming into force of a concluded contract.” C

The alternative claim for lesser relief of life interest of *vendor* has been rejected by us. We find support for our conclusion from the following observations of Privy Council reported in AIR 1925 PC 45 [*William Graham v. Krishna Chandra Dey*], where on similar provisions of section 16 of the old Specific Relief Act, such claim for lesser relief was negatived on the ground that it would amount to creating a different contract between the parties not in contemplation by them when they entered into the contract in question, which is sought to be enforced. E

“Their Lordships think (1) that before a Court can exercise the power given by section 16 it must have before it some material tending to establish these propositions, and cannot apply the section on a mere surmise that, if opportunity were given for further enquiry, such material might be forthcoming and possibly might be found to be sufficient; and (2) that the words of the section wide as they are, do not authorise the Court to take action otherwise than judicially, and in particular do not permit it to make for the parties, or to enforce upon them a contract, which in substance they have not already made for themselves. F G

.....

Hence section 16, both because it must be something not covered by section 14 and because no court can act unjudicially without H

A either statutory warrant or consensual authority, must be limited and the expression “stands on a separate and independent footing” points to a limitation, which would exclude any new bargain, that cannot be said to be contained in the old one.”

B As the lesser relief was claimed after long delay and the contract was found to be indivisible and inseparable, the partial relief was denied in the case of *Govinda Naicken & Anr. v. Apathsahaya Iyer alias Ayawaiyer*, 37 Madras Series 403.

C “But when the family is divided as here, section 17 distinctly prohibits a Court from directing the specific performance of a part of a contract except in accordance with the preceding sections. *Even in cases where the conditions of section 15 are fulfilled the use of the word ‘may’ indicates that the granting of a decree for part performance is discretionary with the Court, and we should hold that when there has been great delay in attempting to enforce a contract and circumstances have greatly changed either from a rise of prices or other causes in the interval, the Courts would be justified in refusing to give legal effect to an inequitable arrangement.*

E Now the plaintiff in the present case wants the Court to compel the defendant to execute a deed of sale for the whole property and if he refuses, to issue one in his name under the seal of the court, and to allow him to make what he can out of the title thus conveyed. Such a request is quite inadmissible. A sale is a transfer of ownership in exchange for a price (section 54, Transfer of Property Act). The defendant has nothing which he is capable of transferring in the moiety of the property of which he is not the owner and is not in possession. It is impossible to sever the execution of the deed from the transfer to be effected thereby and to treat them as separate acts of the same person.

G

[Emphasis added]

H An old decision of Judicial Commissioner, Nagpur reported in AIR (1915) Nappur 15 [*Shardaprasad v. Sikandar*] is being referred only because it has some persuasive value and the facts of that case are to a great

extent nearer to the facts of the present case. The pertinent observations in that case are :-

“The first defendant made two undertakings. The first was to apply for sanction for the sale to the plaintiffs of Sir land without reservation of occupancy rights. This part of his contract he duly performed. The second undertaking was that, if sanction were granted, he would sell his share with cultivating rights in Sr. No provision was made for the event of sanction being applied for and refused. This part of the contract was purely a contingent contract, and if the future event provided for became impossible the contract fell through. *Sections 14 and 15 of the Specific Relief Act appear to me to refer to cases where the inability to perform the whole contract was not contemplated by the contracting parties. Where, as here, the contracting parties knew of and contemplated the possibility of the whole contract being incapable of performance, for reasons beyond the control of either of the parties, the sections have no application. They apply to unforeseen contingencies, not to foreseen contingencies. The parties should have provided in the contract for such an eventuality, but failed to do so.*

[Emphasis added]

In the present case, the terms of the contract fully indicate that the parties did contemplate that if the sanction of the court was not granted for transfer of the interest of the *reversioners*, the contract could not be enforced. Clause (6) specifically provided that in case sanction by the court was not granted, the advance money of Rs. 25,000 shall be refunded to the purchaser. It was known to the parties that the *vendor* had only life interest in the property and the *reversioners* were not the parties to the agreement. Even with this knowledge of limited right of the *vendor* and the *reversioners* being not signatories to the sale agreement, there is no stipulation made in the contract that if court's sanction was not obtained for transfer of *reversioners'* interest, the *vendor* shall convey his life interest to the *vendee*.

On behalf of the plaintiff-*vendee*, strong reliance was placed on *Suisse Atlant v. N. V. Rotterdam*, [1966] 2 ALL. ER 61. It has been argued that seeking sanction of the court for transfer of *reversioner's* interest was an obligation on the *vendor* and if it deliberately acted in a manner to get

A relieved of that obligation by not prosecuting sanction suit and prematurely
 terminating the contract, the *vendee* has a right to waive that condition
 and ask for transfer of life interest of the *vendor* which he could alienate
 to the *vendee*. In other words, it is submitted that even if the clause seeking
 sanction of the court was a fundamental term of the contract, its breach
 B was deliberately committed by the *vendor* and the *vendee* was, therefore,
 entitled to insist on fulfilment of the contract to the extent the *vendor* is
 in a position to fulfil.

C We have gone through the opinions expressed by Hon'ble Judges of
 the House of Lords in the case of *Suisse Atlant* (supra). On the evidence,
 in the present, we do not find that the decision of the House of Lords, can
 be taken aid of for claiming specific relief of transfer of life interest. We
 have found from the evidence discussed above that there was pressure on
 the property for recovery of taxes. It was not expected or in contemplation,
 D of the parties, as can be gathered from the terms of the contract, to wait
 for an uncertain period of time and to expose the property to coercive
 public recovery proceedings. The *vendor* applied for sanction but the
reversioners had opposed. Finding, no possibility of grant of sanction, the
vendor terminated the contract but did not withdraw the sanction suit,
 although his lawyer was instructed accordingly. We are, therefore, not
 E prepared to accept that the *vendor* had committed any breach of the
 contract as has been sought to be urged on behalf of the *vendee*. It is not
 possible to accept allegations of fraud, conspiracy or bad faith on the part
 of the *vendor* for which there is no firm foundation in the pleadings or
 the evidence led. In this respect, the following observations of the Lord
 F Reid in the House of Lords' decision (supra) are pertinent :-

G "I think that it would be open to the arbitrators to find that the
 respondents had committed a fundamental or repudiatory breach.
 One way of looking at the matter would be to ask whether the
 party in breach has by his breach produced a situation fundamen-
 tally different from anything which the parties could as reasonable
 men have contemplated when the contract was made. Then one
 would have to ask not only what had already happened but also
 what was likely to happen in future. And there the fact that the
 H breach was deliberate might be of great importance".

Applying the above test to the terms of the contract and the conduct of the parties under consideration before us, we do not find that the parties had agreed to wait for the whole period during which the suit for sanction was pending and till its finalisation including appeal proceedings, if any. Such a course was not in contemplation of the parties because the *vendor* had agreed that the *vendee* would directly discharge the tax liabilities from the total amount of sale consideration. It was not possible for the *vendor* to have waited indefinitely for final orders on the suit for sanction when the *reversioners* had objected to the sanction and there was remote possibility of the grant of sanction in foreseeable near future.

It is argued that the Court could have granted sanction even though the *reversioners* objected because there was threat of coercive sale of the property for recovery of tax dues and taxes.

It would be purely in field of speculation as to what would have actually happened had the *vendor* continued to prosecute the suit despite the objection of the *reversioners*. As we have mentioned above the complications in disposal of sanction suit on merit were created by the *vendee* himself by getting himself transposed as co-plaintiff and then filing an affidavit restricting his claim to transfer of life interest. It is, thereafter, that the sanction suit was dismissed as infructuous. If the order of the court refusing sanction was erroneous and when an appeal was filed by the *subsequent vendee* against grant of decree of specific performance of life interest to the *vendee*, the *vendee* could have appealed against dismissal of suit for sanction as infructuous. It is argued that the two suits were clubbed for trial and as the lesser relief of transfer of life interest was granted in suit for specific performance, it was not necessary for the *vendee* to have appealed against dismissal of the sanction suit. We need not deal with this argument any further, as in our view, as the sanction was not granted for sale by the court within a reasonable period of two years and the possibility of commencement of coercive proceedings of tax recovery loomed large, the *vendor* cannot be held to have committed a breach of the contract when he served a notice of termination of contract.

On behalf of the *vendee*, reliance is heavily placed on *Satyabrata Ghose v. Mugneeram Bangur & Co.*, [1954] SCR 310. The decision is distinguishable. In that case, the defendant company for the purpose of

A developing certain land, entered into the contract with plaintiff for sale of its plot. The sale-deed was to be executed after construction of drains and roads. After the execution of the agreement and when construction of public roads and drains was half done, the land was requisitioned by the government for military purposes. The defendant company could not
 B further undertake the road construction work and therefore, wrote to the plaintiff to treat agreement as cancelled. It is on these facts that this court held :-

C “that having regard to the nature and terms of the contract, the actual existence of war conditions at the time when it was entered into, the extent of the work involved in the scheme fixing no time limit in the agreement for the construction of the roads etc., and the fact that the order of requisition was in its very nature of a temporary character, the requisition did not affect the fundamental
 D basis of the contract; nor did the performance of the contract become illegal by reason of the requisition, and the contract had not, therefore, become impossible within the meaning of section 56 of the Indian Contract Act.”

E Such is not the position in the present case. The *vendor* could not have waited indefinitely for the final result of the sanction suit as coercive proceedings for recovery of tax were likely to be initiated at any time. We have held above that reasonable period for obtaining sanction from the court has to be read as an implied condition of the contract in view of the urgent necessity of sale to satisfy the tax dues and save the property from
 F coercive recovery. The *vendor* had agreed for transfer of full interest in the property including his own life interest and of the *reversioners*. As the *reversioners* objected and ultimately the sanction suit failed, the performance of contract, as agreed for transfer of full interest in the property, had become impossible. There was no agreement between the
 G parties that if sanction was not granted, the *vendor* would transfer his life interest. On the contrary, the agreement clause specifically stated that if the sanction was not obtained, the advance money shall be returned. This stipulation shows an intention contrary to the parties agreeing for transfer of life interest of *vendor*, if transfer of *reversioners*' interest was not
 H possible for want of court's sanction.

Another argument advanced is that the *reversioners* had merely a chance of succession and had no transferable interest in the property. Reference is made to section 6(a) of the Transfer of Property Act which states :-

“6. *What may be transferred.*—Property of any kind may be transferred, except as otherwise provided by this Act or by any other law for the time being in force, -

(a) The chance of an heir-apparent succeeding to an estate, the chance of a relation obtaining a legacy on the death of a kinsman, or any other mere possibility of a like nature, cannot be transferred.”

Elaborating this argument further, it is argued that as the *vendor* erroneously represented and agreed for transfer of *spes successionis* of the *reversioners*, on the principle of section 43 of the Transfer of Property Act read with sections 90, 91 & 92 of the Indian Trusts Act, the *vendor*, the *subsequent vendee* and the *reversioners*, who have surrendered whatever right they had in the property, are bound by estoppel and are obliged in law by the provisions of Specific Relief Act to transfer full interest in the property to the prior *vendee*. Reliance is placed on *The Jumma Masjid v. Kodimaniandra Deviah*, [1962] Supp. 2 SCR 554.

The above argument has no merit and the aforesaid decision is hardly of any help to the *vendee*. This is not a case where the *vendor* had only right of *spes successionis* and after execution of agreement of sale, he subsequently acquired full interest in the property to be held bound by section 43 of the Transfer of Property Act. In the case before us, the *reversioners* were not parties to the agreement of sale. When in the suit for sanction to transfer their interest they were made parties and were noticed, they expressly objected to the proposed transfer. No principle of estoppel or provisions of section 43 of the Transfer of Property Act can, therefore, operate against them. So far as the *subsequent vendee* is concerned, in the course of suit, he was pushed to a position in which he could not take a stand that he had no knowledge of the prior agreement with the *vendee* but he has separately purchased life interest from the *vendor* and obtained separate release deeds, on payment of consideration,

A from the *reversioners*. The *reversioners* being not parties to the sale agreement Ex. P-1 entered into with the *vendee*, the latter could not enforce the contract Ex. P-1 against the former.

B The decision in *Dr. Jiwanlal & Ors. v. Brij Mohan Mehra & Anr.*, [1972] 2 SCC 757 is also distinguishable on the facts of that case. There clauses (5) & (6) of the agreement provided for execution of sale-deed within three months from the date the premises agreed to be sold were vacated by the Income-Tax Authorities . It was further provided that if the income-tax authorities did not vacate the premises or they stood requisitioned by the Government before registration of sale-deed – the *vendor* shall refund the consideration to the purchaser. As the premises were requisitioned by the government, the stand taken by the *vendor* was that it was contingent contract and on requisition of the premises, the contract failed. On the evidence of the parties, the finding reached was that the *vendor* had manipulated requisition of the premises. This Court, therefore, in appeal held that the contract did not provide that the sale would be effected only if the premises remain non-requisitioned or that on requisition of the premises, the contract would come to an end. The clause providing for refund of consideration if the premises were not vacated by the income-tax authorities or subsequently requisitioned by the government was held to be solely for the benefit of the *vendee*. It was held that if the *vendor* manipulated the requisition, the *vendee* could waive that condition and insist on sale of premises in the condition of it having been requisitioned.

F In the case before us, we have not found that the *vendor* was guilty of rendering the suit for sanction infructuous. It did terminate the contract pending the suit for sanction but never withdrew that suit. The *vendee* himself prosecuted it and rendered it infructuous by his own filing of an affidavit giving up his claim for the interest of *reversioners*. In such a situation where the *vendor* was not in any manner guilty of not obtaining the sanction and the clause of the contract requiring court's sanction for conveyance of full interest, being for the benefit of both the parties, the contract had been rendered unenforceable with the dismissal of the sanction suit.

H Where the clause requiring obtaining of sanction was to protect interest of both the parties and when the sanction could not be obtained

for reasons beyond the control of the parties, the contract cannot be directed to be specifically enforced. House of Lords in the case of *New Zealand Shipping Co. Ltd. v. Societe Des Ateliers Et. Chantiers De France*, 1918-19 All ER 552, in similar circumstances, negated the claim of specific performance. It was held in that case that where two parties are equally blameless and none of them could be said to have brought about a situation by their act or omission to frustrate the contract, the contract cannot be directed to be specifically enforced.

On behalf of the *vendee*, support for his claim was sought from the following observations of Lord Atkinson :-

“The application to contracts such as these of the principle that a man shall not be permitted to take advantage of his own wrong thus necessarily leaves to the blameless party an option whether he will or will not insist on the stipulation that the contract shall be void on the happening of the named event. To deprive him of that option would be but to effectuate the purpose of the blameable party. When this option is left to the blameless party it is said that the contract is voidance, but that is only another way of saying that the blameable party cannot have the contract made void himself, cannot force the other party to do so, and cannot deprive the latter of his right to do so. Of course the parties may expressly or impliedly stipulate that the contract shall be voidance at the option of any party to it. I am not dealing with such a case as that. *It may well be that question whether the particular event upon the happening of which the contract is to be void was brought about by the act or omission of either party to it may involve a determination of a question of fact.*”

As has been observed by Lord Atkinson, it is always a question of fact to be determined in each case as to who is guilty of the act or omission to render the contract void or unenforceable. In the case of *New Zealand Shipping Co. Ltd.* (supra) on facts the ultimate conclusion reached unanimously by their Lordships was that the clause of the contract in that case, was a stipulation in favour of both the parties and the situation was not brought about by any of the parties to give rise to avoidance. It was found that the failure to fulfil the contract was not due to any fault on the part of the respondents but was due to a cause beyond their control.

A In the present case also, we have come to conclusion that the *vendor* waited for a reasonable period for grant of sanction to the sale by the court. There was a pressing need for sale as the public dues and taxes could have been recovered from the property by coercive process at any time. The *vendor*, therefore, advisedly withdrew from the contract, negotiated sale on different terms with the *subsequent vendee* and ultimately entered into the contract with the latter. The *vendor* did not actually withdraw the suit for sanction. The *vendee* himself became co-plaintiff to the suit and unsuccessfully tried to prosecute it. The sanction suit was rendered infructuous by *vendee's* own conduct of filing affidavit restricting his claim to life interest. He suffered the dismissal of sanction suit as infructuous and did not question the correctness of the court's order in appeal before the Division Bench, although the *subsequent vendee*, against grant of decree of specific performance of life interest, had preferred an appeal.

D In this situation, even if we come to a conclusion that the *vendee* had rightly tried his utmost to obtain court's sanction and cannot be blamed for transposing him as a co-plaintiff and prosecuting the sanction suit, the sanction sought could not be obtained for reasons beyond the control of the parties. The *vendor* can not be held guilty of the breach as to entitle the *vendee* to seek specific performance of life interest of the *vendor*. The contract entered into between the parties was for conveying full interest in the property namely life interest of *vendor* and chance of succession of *reversioners*. The contract was one and indivisible for full interest. There is no stipulation in the contract that if sanction was not obtained, the *vendor* would transfer only his life interest for the same or lesser consideration. On the contrary, the contract stipulated that if the sanction was not granted, the contract shall stand cancelled and the advance money would be refunded to the purchaser.

G Lastly, the stage has arrived for considering the question of adjustment of equities between the parties because of the change of positions by them in the course of a very long period of litigation. The decree for specific relief of conveyance of life interest, has been executed and registered sale deed through the court in favour of the *vendee* has also been issued. Possession of the property has been obtained by the *vendee* on execution of decree granted by the single judge of the High Court. The Division

Bench of the High Court in adjusting the equities in paragraphs 62 to 68 of its judgment has taken note of the above relevant facts and subsequent events. A

After execution of the decree and registered sale-deed the *vendee* plaintiff was placed in possession of the property on 25.2.1995. The basement and ground floor have been constructed by the *subsequent vendee* after obtaining possession on the basis of his sale deed. Thereafter plaintiff-*vendee*, on obtaining possession pursuant to the execution of decree granted by the learned single judge, has constructed two floors above the ground floor although the construction is said to be not complete in all respects. According to the plaintiff-*vendee*, he has incurred an expenditure of Rs. 46,28,403 for construction of two floors above the ground floor. As the construction put up by the plaintiff-*vendee* is to ensure for the benefit of the *subsequent vendee*, and the latter having succeeded in appeal before the Division Bench of the High Court, the Division Bench in adjusting equities has directed that on payment of construction cost incurred by the plaintiff-*vendee* for two floors above ground floor, the whole construction will become the sole property of the *subsequent vendee*. B C D

From the date of the impugned judgment of the Division Bench the total rent received from the property has been accounted for. The whole rental income has been directed to be paid to the successful party i.e. the *subsequent vendee*. Out of the total rental income payable to the *subsequent vendee*, apart from adjusting the construction cost incurred by the plaintiff-*vendee*, deduction has been directed towards return of the sale consideration of Rs.5.5 lacs paid under the sale agreement Ex. P-I A further sum of Rs.5.5 lacs has been directed to be deducted for the misconduct of the *subsequent vendee* in trying to mislead the court that Bob Daswani and F.C. Daswani were two different persons and the *subsequent vendees* had no knowledge of the prior agreement. E F

On the principle of restitution contained in Section 144 of the Code of Civil Procedure, we find no ground to interfere with the order of the Division Bench of the High Court in directing adjustment and payment by *subsequent vendee* of the cost of construction incurred by the plaintiff *vendee*. The directions for return of full sale consideration as also deduction towards misconduct of impersonation and misleading the Court also H

A deserve no interference.

We maintain the directions of the Division Bench of the High Court to deduct a sum of Rs.5.5 lakhs for the alleged misconduct of impersonation and misleading the Court. The Civil Appeal No.336 of 2002 preferred by the *subsequent vendees* only against the above impugned directions
B deserves to be dismissed.

During pendency of these appeals, various interim orders were passed by this Court on 27.8.2001, 11.1.2002 and 17.2.2003. In pursuance of those orders, rental income derived from the property has been collected and paid to the *subsequent vendee*, subject to the result of these appeals.

C Learned counsel appearing for the *subsequent vendee*, at the conclusion of the arguments, has handed over to this Court a chart mentioning the figures of total rent received up to February 2004 and separately shown the amount deposited in the Court. The figures submitted in the chart by the *subsequent vendees* are open to verification by the prior *vendee*.
D With dismissal of these appeals, we confirm the judgment of Division Bench of the High Court including the directions made to adjust equities with regard to the construction cost and the rental income derived from the suit property.

E In the result, both the appeals are dismissed. In the circumstances, we direct the parties to bear their own costs in these appeals.

G.N.

Appeals dismissed.