

**M/S Tej Properties Pvt. Ltd. and anr Vs. Samarjit Chakravarty and ors.**

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**Court :** Delhi

**Decided On :** Jul-25-2014

**Judge :** Rajiv Sahai Endlaw

**Appellant :** M/S Tej Properties Pvt. Ltd. and anr

**Respondent :** Samarjit Chakravarty and ors.

**Judgement :**

\*IN THE HIGH COURT OF DELHI AT NEW DELHI Date of decision:

25. h July, 2014 % + CS(OS) 1474/2008 SAMARJIT CHAKRAVARTY & ANR. .... Plaintiffs Through: Mr. Neeraj Malhotra, Advocate. Versus M/S TEJ PROPERTIES PVT. LTD. & ORS ..... Defendants Through: Mr. Manoj Goel, Mr. Shuvodeep Roy, Ms. Sabika Ahmed and Mr. Aviral Dhirendra, Advocates for D-1&2. Mr. Rajesh Gupta and Mr. Sumit K. Sharam, Advocates for D-3&4. AND + CS(OS) 1523/2009 M/S TEJ PROPERTIES PVT. LTD. & ANR ..... Plaintiffs Through: Mr. Manoj Goel, Mr. Shuvodeep Roy, Mr. Sabika Ahmed and Mr. Aviral Dhirendra, Advocates. Versus SAMARJIT CHAKRAVARTY & ORS. .... Defendants Through: Mr. Neeraj Malhotra, Adv. for D-1&2 Mr. Rajesh Gupta and Mr. Sumit K. Sharam, Advocates for D-3&4. CORAM:HONBLE MR. JUSTICE RAJIV SAHAI ENDLAW1 On 15th April, 2014, the following order was passed in these suits:

1. The files are taken up today as 14th April, 2014 was declared a holiday.

2. The two suits, vide order dated 5th March, 2014, were ordered to be consolidated for the purposes of trial and decision and are listed today for framing of consolidated issues.

3. Though the counsel for Samarjit and Arati and the counsel for Tej and Prabhjit handed over proposed issues but while the issues proposed by counsel for Samarjit and Arati are found to be suit-wise and not consolidated, from the issues proposed by counsel for Tej and Prabhjit, no clarity emerged. Owing to cases of two days being listed, there was no time to peruse the voluminous pleadings in the Court, accordingly, the files were sent to chamber, for framing appropriate issues after perusing the pleadings.

4. Sl. No

1. The position of the parties in the two suits is as under: Name Samarjit Chakravarty (Samarjit) Status in CS(OS) No.1474/2008 Plaintiff No.1 Status in CS(OS) No.1523/2009 Defendant No.1

2. Arati Chakravarty (Arati) Plaintiff No.2 Defendant No.2

3. Tej Properties Pvt. Ltd. (Tej) Defendant No.1 Plaintiff No.1

4. Prabhjit Singh, Director, Tej Properties Pvt. Ltd. (Prabhjit) Defendant No.2 Plaintiff No.2

5. Sunil K. Chakravarty (Sunil) Defendant No.4 Defendant No.3

6. Arun Chakravarty (Arun) Defendant No.3 Defendant No.4

5. The position which emerges upon going through the pleadings in the two suits is as under: (i) the suits concern land admeasuring 8 bighas and 5 biswas situated in Village Chattarpur, Tehsil Mehrauli, New Delhi; (ii) the said land was owned by Sushil K. Chakravarty who had mortgaged the same to New Bank of India succeeded by Punjab National Bank (PNB); (iii) Sushil K. Chakravarty was a bachelor and had no heirs within the meaning of Class I of the Schedule to the Hindu Succession Act, 1956; (iv) Sunil and Arun are brothers and were related to Sushil K. Chakarvarty; (v) Arati is the wife of Sunil and Samarjit is the brother of

Arati; (vi) Sushil K. Chakravarty, Sunil and Samarjit were partners in the partnership firm M/s ESPI Industrial Corporation Ltd.; (vii) Sushil K. Chakravarty, Samarjit and Arati were partners in another partnership firm M/s ESPI Trading Company; (viii) disputes and differences arose with respect to the aforesaid partnerships and the following three legal proceedings were filed: (a) Arbitration Suit under Section 20 of the Arbitration Act, 1940 being CS(OS) No.1479A/1989 was filed by Samarjit against Sushil K. Chakravarty; (b) Sushil K. Chakravarty filed CS(OS) No.1964/1989 against Samarjit; and, (c) Sunil filed CS(OS) No.1275/1990 against Sushil K. Chakravarty; (ix) vide order dated 12th June, 1989 in CS(OS) No.1479A/1989 aforesaid, Sushil K. Chakravarty was restrained from alienating or transferring in any manner or creating any third party interest in the aforesaid land; (x) Sushil K. Chakravarty vide Agreement to Sell dated 17th March, 1992 agreed to sell the aforesaid land to Tej for a consideration of Rs.60 lakhs of which Rs.22 lakhs was paid as advance and Rs.38 lakhs was payable subsequently; (xi) disputes and differences arose between Sushil K. Chakravarty and Tej also with respect to the said Agreement to Sell; (xii) Sushil K. Chakravarty instituted CS(OS) No.1348/1996 for declaration that the Agreement to Sell stood terminated and for recovery of possession of the said land from Tej; (xiii) Tej instituted CS(OS) No.2501/1997 performance of the Agreement to Sell; for specific (xiv) Sushil K. Chakravarty died on 3rd June, 2003 without leaving any Class-I heirs and Sunil and Arun claimed to be the Class-II heirs of Sushil K. Chakravarty; (xv) Sunil and Arun got themselves substituted as legal heirs of Sushil K. Chakravarty in the three legal proceedings aforesaid relating to the partnership businesses; (xvi) a compromise dated 11th November, 2005 was arrived at in the three suits aforesaid relating to the partnership businesses, between Sunil and Arun as legal heirs of Sushil K. Chakravarty on the one hand and Samarjit and Arati on the other hand, whereunder it was agreed that the said land will be sold and the sale proceeds thereof, left after discharging the dues of PNB, will be distributed between Samarjit, Arati and Sunil and Arun; (xvii) however Sunil and / or Arun as legal heirs, did not take any steps for substitution in the two suits aforesaid between Sushil K. Chakravarty and Tej; (xviii) resultantly CS(OS) No.1348/1996 filed by Sushil K. Chakravarty was dismissed for non-prosecution and in CS(OS) No.2501/1997 an ex-parte decree dated 25th July, 2007 of specific performance of

the Agreement to Sell was passed in favour of Tej; (xix) that in execution of the ex-parte decree for specific performance, Tej paid off the dues of the PNB and got the aforesaid land freed from mortgage; (xx) Samarjit and Arati filed CS(OS) No.1474/2008 contending that neither they nor Sunil or Arun knew of the disputes of Sushil K. Chakravarty with Tej and of CS(OS) No.1348/1996 and/or CS(OS) No.2501/1997 and learnt of the same for the first time, after compromise dated 11th November, 2005, upon approaching the PNB for discharging the mortgage; (xxi) CS(OS) No.1474/2008 has been filed only for the relief of declaration that the ex-parte decree of specific performance in favour of Tej is a result of fraud, concealment, misrepresentation, procedural irregularity etc. and is null and void and not binding on Samarjit and Arati and liable to be set aside; (xxii) Tej is contesting CS(OS) No.1474/2008 and has also filed CS(OS) No.1523/2009 contending that the compromise arrived at between Samarjit and Arati on the one hand and Sunil and Arun as legal heirs of Sushil K. Chakravarty on the other hand relating to partnership businesses and on the basis whereof Samarjit and Arati claim rights in the land aforesaid, is fraudulent and null and void.

6. Tej in its written statement in CS(OS) No.1474/2008 was also found to have taken a plea that Sunil and Arun had also made applications in CS(OS) No.1348/1996 and CS(OS) No.2501/1997 for setting aside the order of dismissal for nonprosecution and ex-parte decree respectively therein, on the same grounds as urged by Samarjit and Arati and in CS(OS) No.1474/2008.

7. However, during the hearing on 15th April, 2014, neither counsels informed the fate of the said applications.

8. Being prima facie of the view that the claim of Samarjit and Arati to the subject land depends upon the rights of Sunil and Arun thereto as legal heirs of Sushil K. Chakravarty, and that if Sunil and Arun in the applications filed by them in CS(OS) No.1348/1996 and CS(OS) No.2501/1997 have not met with any success, Samarjit and Arati also can have no right to continue with CS(OS) No.1474/2008, I on my own, started enquiring about the fate of the applications aforesaid.

9. It is found that the said applications being I.A. Nos.4531/2008 and 4532/2008 filed by Sunil and Arun for restoration of CS(OS) No.1348/1996 and for

condonation of delay in applying for restoration and I.A. No.3391/2008 filed by Sunil and Arun for setting aside of the ex-parte decree of specific performance in CS(OS) No.2501/1997 were dismissed by a learned Single Judge of this Court vide order dated 24th August, 2009.

10. My enquiries have further revealed that Sunil and Arun preferred FAO(OS) Nos.516/2009 & 517/2009 against the aforesaid order of dismissal of their applications and which appeals were also dismissed by the Division Bench of this Court vide judgment dated 17th October, 2011.

11. It is yet further found that Sunil and Arun filed SLP(C) Nos.3307-3308 of 2012 against the aforesaid, which were converted into Civil Appeals No.2600-2601 of 2013 and which were dismissed vide judgment dated 19th March, 2013 of the Supreme Court.

12. Thus, the challenge by Sunil and Arun to the ex-parte decree of specific performance aforesaid in favour of Tej and which challenge, upon reading of the judgments of the learned Single Judge, Division Bench and of the Supreme Court, is found to be more or less on the same grounds as urged by Samarjit and Arati, has failed till the Supreme Court and has attained finality.

13. I have wondered the effect of the aforesaid judgments on the suits.

14. I am of the prima facie opinion that once the challenge by Sunil and Arun as legal heirs of Sushil K. Chakravarty to the decree for specific performance in favour of Tej has failed, the claim of Samarjit and Arati to the said land, again through Sunil and Arun as legal heirs of Sushil K. Chakravarty does not survive and need not be put to trial. The claim of Sarmarjit and Arati to the said land is on the basis of the compromise dated 11th November, 2005 with Sunil and Arun, whereunder Sunil and Arun agreed to sell the property and to share the sale proceeds with Samarjit and Arati. Once, Sunil and Arun have been held to be not entitled to sell the property, Samarjit and Arati cannot derive any title to the said property and cannot have any locus to challenge the decree for specific performance and which tantamounts to a second round of challenge to the said decree.

15. I am also of the prima facie opinion that if Samarjit and Arati are so found to be having no right to challenge the decree for specific performance in favour of Tej, there is no need for Tej also to in CS(OS) No.1523/2009 challenge the compromise dated 11th November, 2005 relating to the partnership businesses; after all, Tej has challenged the said compromise only to strike at the root of the claim of Samarjit and Arati in CS(OS) No.1474/2008.

16. It is thus felt that there is no need to put the suits to trial.

17. Unfortunately, neither the counsel for Tej has bothered to consider the matter in the said perspective and has mechanically proposed issues, nor have the counsel for Sunil and Arun who though appearing have informed the Court of the aforesaid subsequent developments having vital impact aforesaid on these two suits. Of course, Samarjit and Arati, though closely related to Sunil and Arun and thus deemed to be in the knowledge of aforesaid developments, being interested in keeping the suits alive, have also suppressed the aforesaid facts.

18. I am further of the view that if CS(OS) No.1474/2008 is to ultimately fail for the aforesaid reasons and owing thereto CS(OS) No.1523/2009 is to be rendered infructuous, no purpose will be served in blindly and mechanically putting these suits to trial, taking valuable time, which can be devoted to deserving cases.

19. However, since the counsels have not been heard on the aforesaid aspect, though have been found to be totally lacking, I still deem it appropriate to give them an opportunity to address on the said aspect.

20. However at the same time, having gone through the pleadings, it is also deemed expedient to frame issues.

21. On the pleadings in the two suits, the following consolidated issues (in which the parties are referred to by their nomenclature in CS(OS) No.1474/2008) are framed:(i) Whether the plaintiffs in CS(OS) No.1474/2008, on the basis of the compromise dated 11th November, 2005 with the defendants no.3&4 in the said suit have any locus to challenge the decree dated 25th July, 2007 for specific performance of the Agreement to Sell by the predecessor-in-interest of the

defendants no.3&4 in favour of the defendant no.1, especially when the said decree against the defendants no.3&4 has attained finality?. OPP (ii) Whether the compromise dated 11th November, 2005 between the plaintiffs and the defendants no.3&4 is collusive and intended to defeat the Agreement to Sell executed by the predecessor of the defendants no.3&4 in favour of the defendant no.1 and if so to what effect?. OPP (iii) What is the effect if any of the discharge by the defendant no.1 of the mortgage in favour of PNB and whether the defendant no.1 had no locus to so discharge the mortgage?. OPPr (iv) Whether CS(OS) No.1474/2008 has been correctly valued for the purposes of Court Fees and jurisdiction and appropriate Court Fees has been paid thereon and if not to what effect?. OPPr (v) Whether the defendants no.1&2 are tenants in possession w.e.f. 1st March, 1989 of the property and if so to what effect (while deciding this issue regard shall be had to the provisions of the Delhi Land Reforms Act, 1954 on the effect of letting out of the land)?. OPPr (vi) Whether the Agreement to Sell by the predecessor-ininterest of the defendants no.3&4 in favour of the defendant no.1 was in violation of interim injunction dated 12th July, 1989 in any proceedings initiated by the plaintiff no.1 against the said predecessor and if so to what effect?. OPP (vii) Whether the defendant no.1 was aware of suit No.1479A/1989 filed by the plaintiff no.1 against the predecessor of the defendants no.3&4 and of the defendants no.3&4 being the legal representatives of the agreement seller and if so what is the effect if any of the defendant no.1 in the suit for specific performance filed by him not disclosing the said fact and not substituting the defendants no.3&4 as legal representatives?. OPP (viii) Whether the defendants no.3&4 were unaware of the Agreement to Sell and the proceedings in relation thereto between their predecessor and the defendant no.1 and if so to what effect?. OPP (ix) Whether the defendant no.1 was aware of the Suit No.1479A/1989 and the compromise dated 11th November, 2005 therein and concealed the said fact from the suit for specific performance and if so to what effect?. OPD (x) Whether the decree dated 25th July, 2007 in the suit for specific performance is liable to be set aside?. OPP (xi) What is the effect if any of the plaintiffs inspite of being aware of the proceedings for specific performance filed by the defendant no.1 against the predecessor of the defendants no.3&4 not taking any steps therein and whether the claim of the plaintiffs is within time?. OPP (xii)

What is the effect of the rights under the compromise dated 11th November, 2005 claimed by the plaintiffs in the property being subsequent to the rights claimed by the defendant no.1 under an Agreement to Sell of an earlier date?. OPP (xiii) Whether no compromise dated 11th November, 2005 could have been recorded in Section 20 of the Arbitration Act, 1940 proceeding?. OPD-1 (xiv) Whether the defendant no.3&4 have inherited any rights in the property from their predecessor Sushil K. Chakravarty so as to be in a position to arrive at a compromise dated 11th November, 2005 with the plaintiffs qua the said property?. OPP (xv) Whether the claim in CS(OS) No.1523/2009 is within time?. OPD-1 (xvi) Whether the document dated 8th June, 1990 is the validly executed last Will of the predecessor-in-interest of the defendants no.3&4 and if so to what effect?. OPD-1&2 (xvii) Relief.

22. No other issue is found to arise.

23. The Issue No.(i) aforesaid is ordered to be treated as a preliminary issue.

24. List for hearing on the said preliminary issue on 16th May, 2014.

2. On 16th May, 2014 though the roster had changed but the suits were again listed before the undersigned, perhaps treating them as part heard. I must also record that though the counsel for Samarjit and Arati on that date initially suggested that the suits be listed for hearing in terms of aforesaid before the concerned roster Bench but upon the undersigned informing of the labour put in perusing the files and culling out the controversy therein and further stating that another Bench will have to again devote comparatively longer time resulting in wastage of precious judicial time, the counsel withdrew his suggestion. The suits were however adjourned for hearing to 23rd May, 2014 and thereafter to 18th July, 2014 when the counsels were heard on the Issue No.(i) framed on 15 th April, 2014 and which was ordered to be treated as a preliminary issue and which for the sake of convenience is again reproduced herein below:

(i) Whether the plaintiffs in CS(OS) No.1474/2008, on the basis of the compromise dated 11th November, 2005 with the defendants no.3&4 in the said suit have any locus to challenge the decree dated 25th July, 2007 for specific performance of the

Agreement to Sell by the predecessor-in-interest of the defendants no.3&4 in favour of the defendant no.1, especially when the said decree against the defendants no.3&4 has attained finality?. OPP

3. Mr. Manoj Goel, Advocate for Tej and Prabjit at the outset stated that his presence in the order dated 15th April, 2014 has been erroneously recorded.

4. The factual controversy having been recorded in the order dated 15 th April, 2014 reproduced herein above, need for reiterating the same does not arise. The counsel for Samarjit and Arati attempted to argue on the merits of the claim in the suit to show as to how the decree dated 25 th July, 2007 in CS(OS) No.2501/1997 is fraudulent and liable to be set aside. However he was reminded that the question of going into the merits of the challenge would arise only if Samarjit and Arati are able to satisfy this Court of having a locus to challenge the said decree. His attention was also invited to paras no.8 & 14 of the order dated 15th April, 2014 recording my prima facie opinion on the subject. The counsel for Samarjit and Arati on the said aspect made only the following contentions: (i) that Samarjit and Arati, under the compromise dated 11 th November, 2005 with Sunil and Arun having acquired rights in the property which is the subject matter of the decree with respect to which CS(OS) No.1474/2008 is filed, have locus to maintain the suit; (ii) that if the decree for setting aside of which CS(OS) No.1474/2008 has been filed is allowed to stand, the same will make the compromise dated 11th November, 2005 supra infructuous and Samarjit and Arati will be unable to settle their claims against Sunil and Arun and in settlement of which under the compromise dated 11th November, 2005 Samarjit and Arati are entitled to sale proceeds of 25% each of the said property.

5. Needless to state that the counsel for Sunil and Arun supported the counsel for Samarjit and Arati.

6. The counsel for Tej and Prabjit invited attention to Order XV Rule 3 of the CPC and to the dicta of the Supreme Court in Shipping Corporation of India Vs. Machado Brothers (2004) 11 SCC168 However, I was and am unable to find any relevance of either to the matter in controversy.

7. The rights asserted by Samarjit and Arati in the property / land are flowing from the compromise dated 11th November, 2005 (supra) and under which Sunil and Arun, who claimed to have inherited the property / land from Sushil K. Chakravarty, agreed that the property / land will be sold and the sale proceeds thereof, left after discharging the dues of PNB, will be distributed between Samarjit, Arati, Sunil and Arun.

8. In my view, for the said compromise dated 11th November, 2005 to be implemented, it was essential that Sunil and Arun, till the date of implementation thereof, remain the owner and have the right to sell the same and which sale proceeds they had agreed to share with Samarjit and Arati.

9. However before the compromise dated 11th November, 2005 could be implemented, a decree dated 25th July, 2007 of specific performance was passed in favour of Tej and against the predecessor in title of Sunil and Arun viz. Sushil K. Chakravarty, to transfer the said property / land to Tej. The said decree, in accordance with law laid down in Johar Mall Bhutra Vs. Bhupendra Nath Basu MANU/WB/0269/1921, Prataprai Trambakal Mehta Vs. Jayant Nemchand Shah AIR1996 Bom 296 and Sampooram Vs. P.V. Kuppaswami MANU/TN/8251/2007 will relate back to the date of the Agreement to Sell of which specific performance was claimed, i.e. 17 th March, 1992. The principle of law is that when a suit for specific performance is ended by a final decree transferring the title, that title relates back to the date of the agreement on which the suit is based and the Court will not permit its decree to be rendered nugatory by intermediate conveyances. Samarjit and Arati as aforesaid, base their right to file this suit on the compromise dated 11th November, 2005 with Sunil and Arun but on which date Sunil and Arun themselves had no rights in the property as the decree for specific performance against their predecessor Sushil K. Chakravarty, though of a date after 11th November, 2005 i.e. 25th July, 2007, in law relates back to 17th March, 1992.

10. Reference in this regard can also be made to Vannarakkal Kallalathil Sreedharan v. Chandramaath Balakrishnan (1990) 3 SCC291 It was held that agreement for sale indeed creates an obligation attached to the ownership of the property and since the attaching creditor is entitled to attach only the right, title and

interest of the judgement debtor, the attachment cannot be free from all obligations incurred under contract for sale. It was further held that though Section 64 of the Code of Civil Procedure, 1908 declares alienations of property after attachment thereof, to be void, but if the conveyance subsequent to attachment is in pursuance to an agreement to sell which was before the attachment, the contractual obligations arising therefrom must be allowed to prevail over the rights of the attaching creditor and the rights of the attaching creditor shall not be allowed to override the contractual obligations arising from an antecedent agreement for sale of the attached property. It was yet further held that the attaching creditor cannot ignore the obligations and proceed to bring the property for sale as if it remained the absolute property of the judgement debtor. The same view was followed in *Rajender Singh v. Ramdhar Singh* (2001) 6 SCC213 and *Kancherla Lakshminarayana v. Mattaparthi Syamala* (2008) 14 SCC258 11. Reference may also be made to the judgement of this Court in *Gomti Devi v. Ram Prasad* MANU/DE/0970/2014, where the factual situation was nearly identical to as here. There, the owner of the property after executing an agreement to sell thereof, entered into a compromise in a legal proceeding with his son and under which compromise he agreed to the son having rights in part of the property. The question for adjudication was whether a subsequent compromise could take away prior rights created by the owner as seller under an agreement to sell. This Court applying the principle of the dicta aforesaid of the judgements of the Supreme Court held that the agreement to sell being prior in point of time to the compromise and resulting in a sale deed, though of a date subsequent to the date of the compromise will prevail over the compromise.

12. In the present also it is not the case of Samarjit and Arati that they had any rights in the property/land prior to the compromise dated 11 th November, 2005. The decree for specific performance dated 25th July, 2007 which is sought to be set aside in the present suit being in enforcement of an agreement to sell the property of 17 th March, 1992, of long prior to the compromise dated 11th November, 2005, the compromise dated 11th November, 2005 necessarily has to be subject to the said decree for specific performance. Samarjit and Arun cannot thus on the basis of the compromise dated 11th November 2005 claim any right to the property. In this regard I may also note that though Samarjit in CS(OS)

1479A/1989 had on 12th June, 1989 got an order restraining Sushil K. Chakravarty from alienating or transferring or creating any third party interest, in the land/property and the agreement to sell dated 17th March, 1992 by Sushil K. Chakravarty in favour of Tej appears to be in violation of the said order but it is not the case of Samarjit and Arati that the said property/land was the subject matter of CS(OS) 1479A/1989; the interim restraint appears to have been obtained merely to secure the monetary claims of Samarjit against Sushil K. Chakravarty. The Supreme Court in Thomson Press (India) Limited Vs. Nanak Builders and Investors Private Limited (2013) 5 SCC397 has held the alienation in violation of an injunction order to be valid between parties thereto though remaining subject to orders of the court whose injunction has been violated (though there appears to be dichotomy of view in this respect as noticed by me in Om Prakash v. Santosh Chaddha MANU/DE/3945/2013). The remedy of Samarjit against such violation of interim order by Sushil K. Chakravarty was to initiate proceeding under Order 39 Rule 2A of the CPC and there is no plea of any such action having been taken. Thus on this account also it cannot be said that Samarjit has any locus to challenge the decree. Moreover, the right if any to challenge the sale on this count also was of Sunil and Arun and by the decree for specific performance attaining finality against Sunil and Arun, the said right also stands extinguished and cannot be revived by Samarjit and Arati.

13. It is not as if Sunil and Arun upon learning of the decree for specific performance did not take any steps. They, as aforesaid applied for setting aside of the decree dated 25th July, 2007 for specific performance and which was ex parte. However their said attempt failed not only before the Single Judge of this Court but also before the Division Bench as well as before the Supreme Court. Thus as of today, the decree for specific performance, though against the predecessor in title of Sunil and Arun, also binds Sunil and Arun.

14. The compromise dated 11th November, 2005 of Sunil and Arun with Samarjit and Arati is at best (though that is also doubtful) an agreement to sell 25% share in the property / land to each of Samarjit and Arati. The said agreement is subsequent to the agreement executed by predecessor in interest of Sunil and Arun of sale of property / land in favour of Tej. Naturally, the agreement to sell

earlier in point of time will have precedence as already discussed above.

15. Not only so, the compromise / agreement dated 11th November, 2005 is during the pendency of the suit filed by Tej for specific performance and which was decreed on 25th July, 2007. The principles of lis pendens enshrined in Section 52 of the Transfer of Property Act, 1882 will also apply and the interest even if any in the property / land which can be said to have been created in favour of Samarjit and Arati under the compromise dated 11th November, 2005 is to abide by the decree in the pending suit and which has attained finality qua Sunil and Arun through whom Samarjit and Arati are claiming. A Single Judge of the Kerala High Court in Abdul Majeed v. Nabeesa 2014 SCC Online Ker 9352 held that transfer effected by way of compromise decree is also hit by doctrine of lis pendens and I respectfully concur with the same.

16. Samarjit and Arati even if can be said to be agreement purchasers from Sunil and Arun cannot be said to have any rights in the property / land. This Court as far back as in Jiwan Das Vs. Narain Das AIR1981 Delhi 291 and which view has been consistently followed in Deewan Arora Vs. Tara Devi Sen 163 (2009) DLT520 Sunil Kapoor Vs. Himmat Singh 167 (2010) DLT806 and ASV Industry Vs. Surinder Mohan MANU/DE/2060/2013 has held that an agreement to sell does not create any right in the property to which it pertains and merely gives a right to the agreement purchaser to seek specific performance thereof. It was further held that no rights in immovable property are created even on passing of a decree for specific performance and till in execution thereof a sale deed is executed. Thus Samarjit and Arati, for this reason also cannot be said to be having any rights in the property.

17. The compromise dated 11th November, 2005 though has the imprimatur of the Court in the three suits relating to partnership business between Sunil and Arun as legal heir of Sushil K. Chakravarty on the one hand and Samarjit and Arati on the other hand but remains a contract and because of the imprimatur of the Court, the contract does not take any other shape. The Supreme Court in State of Punjab (Now Haryana) v. Amar Singh (1974) 2 SCC70 accepted the rule enunciated in Mulla on Code of Civil Procedure that the contract of parties is not the less of a

contract, and subject to the incidents of the contract, because there is superadded the command of the Judge. To the same effect is the judgment in Prithvichand Ramchand Sablok v S.Y.Shinde (1993) 3 SCC271 Similarly in Pushpa Devi Bhagat (decd.) v. Rajinder Singh (2006) 5 SCC566 it was held that the validity of a consent decree depends wholly on the validity of the compromise on which it is made. Mention may also be made of the judgment of the Division Bench of the Calcutta High Court in Fateh Chand v. Narsingh Das MANU/WB/0478/1912 holding that through the intervention of the court and under the devise of the consent decree no better rights than under a private conveyance can be acquired.

18. Once the matter is seen in that perspective, it is clear as daylight that not only do Samarjit and Arati have no right in the property / land subject matter of decree which is challenged in CS(OS) No.1474/2008 but cannot be permitted to make such a challenge after the challenge to the said decree by Sunil and Arun through whom they claim rights in the property has failed. To illustrate the absurdity of the claim of Samarjit and Arati, I had during the hearing put to the counsel for Samarjit and Arun that on the same parity of reasoning, after this round of challenge, would it not be open to any person in whom Samarjit and Arati may have assigned their rights under the compromise deed dated 11th November, 2005 to, after the culmination of these proceedings, again lodge a challenge and which cannot be permitted in law. No answer was coming from the counsel for Samarjit and Arati or the counsel for Sunil and Arun. The same, if permitted would lead to re-litigation and which it has been held in K.K. Modi v. K. N. Modi (1998) 3 SCC573 is not permissible and is an abuse of the process of the Court. To the same effect is the judgment of the Division Bench of this court in Ram Chander Aggarwal v. UOI 187(2012) DLT370 Samarjit and Arati cannot have any better rights than Sunil and Arun through whom they claim and Sunil and Arun in turn cannot have better rights than Sushil K. Chakravarty through whom they claim. In fact the property/land on the date of inheritance thereof by Sunil and Arun was already encumbered with the Agreement to Sell and the suit by Tej for specific performance thereof. In so far as the contention of Samarjit and Arati of their being left high and dry in spite of the compromise decree dated 11th November, 2005 in their favour is concerned, their remedy therefor is against Sunil and Arun and not against Tej.

19. I accordingly decide the preliminary issue aforesaid against the Samarjit and Arati and hold that they do not have any locus to challenge the decree dated 25th July, 2007 for specific performance and also that they are not entitled to make such challenge after the said decree has attained finality against Sunil and Arun through whom Samarjit and Arati claim. Rather, CS(OS) No.1474/2008 filed by Samarjit and Arati is found to be by way of re-litigation and in abuse of the process of the Court. Once it is found so, CS(OS) No.1474/2008 axiomatically has to be dismissed.

20. I have already observed in para 18 of my order dated 15 th April, 2014 that upon CS(OS) No.1474/2008 failing, CS(OS) No.1523/2009 will be rendered infructuous. Neither counsel has controverted the said aspect. Resultantly, CS(OS) No.1523/2009 is disposed of as infructuous. Samarjit and Arati are also burdened with costs of both the suits for indulging in re-litigation. Counsels fee assessed at Rs.50,000/- in each suit. Decree sheet be prepared. RAJIV SAHAI ENDLAW, J.

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