2026:AHC:169383

AFR
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HIGH COURT OF JUDICATURE AT ALLAHABAD

SECOND APPEAL No. - 1147 of 1980

Chhajju Ram

.....Appellant(s)

Versus

Babu Singh

.....Respondent(s)

Counsel for Appellant(s)	:	Ashutosh Pandey, Jitendra Singh
Counsel for Respondent(s)	:	Bramhapal Malick, Sunil Kumar Upadhyay

Court No. - 51

HON'BLE ARUN KUMAR, J.

1. Heard Sri R. C. Singh, learned Senior Counsel, assisted by Sri Ashutosh Pandey, learned counsel for the appellant and Sri Amit Malik, holding brief of Sri B. Malik, learned counsel for the respondents.

2. The present second appeal under Section 100 of the Code of Civil Procedure arises from concurrent judgments rendered by the courts below whereby the suit instituted by the plaintiff-respondent for specific performance of an agreement to sell has been decreed, by the judgment and decree of the Trial Court dated 22.03.1979, as upheld by the judgment and decree of the Lower Appellate Court dated 25.02.1980.

3. The appellant, who purchased the suit property in execution of a money decree obtained against the original owner, challenges the legality of the concurrent findings on the ground that the courts below have misapplied the doctrine of *lis pendens*, ignored the effect of orders

passed in execution proceedings, and failed to appreciate that the agreement to sell relied upon by the plaintiff was not genuine. The appeal has, therefore, been admitted on the following substantial questions of law, as framed by the order of this court dated 02.05.1980, while admitting the present appeal:

(I) Whether a suit for specific performance of an agreement to sell property can be enforced against the purchaser of the property in execution of a decree obtained against the real owner?

(II) Whether the finding arrived at the execution proceedings, that the agreement on the basis of which the present suit is based was not genuine, will operate as res judicata?

4. Before entering into the legal issues involved in the appeal, it is necessary to notice the background of the litigation in some detail. The dispute concerns agricultural land comprised in Plot No. 329 measuring 4 Bighas and 16 Biswansis situated in Village Kalakuri, Pargana Jewar, District Bulandshahr. It is undisputed throughout the proceedings that Nawab Singh was the recorded bhumidhar and owner of the property.

5. According to the plaint, Nawab Singh allegedly executed an agreement to sell the disputed property in favour of Babu Singh on 22.04.1972 for a total consideration of ₹7,500, of which ₹3,500 was paid as earnest money. The balance was to be paid at the time of execution and registration of the sale deed within one and a half years. The plaintiff claimed that possession of the property was delivered to him immediately in part performance of the contract. Despite repeated requests and a legal notice, Nawab Singh failed to execute the sale deed, leading the plaintiff to institute a suit for specific performance on 24.10.1973.

6. Meanwhile, Chhajju Ram filed a money suit on 05.07.1973, against Nawab Singh on the basis of an alleged bond dated 13.02.1973 for ₹10,000 and obtained an order of attachment on 16.07.1973, before judgment over the same property. The plaintiff objected to the

attachment, asserting his prior contractual rights under the agreement to sell, but his objections were rejected. The money suit was decreed, and in execution proceedings Chhajju Ram purchased the property himself at a court auction held on 17.04.1974. Babu Singh filed objection under section 47 C.P.C. read with Order 21 Rule 58, against the auction sale on 24.04.1974. The Misc. case registered on the said objection was dismissed on 14.12.1974. On 16.12.1974, the sale was confirmed and a sale certificate was issued on 23.12.1974. Possession through the executing court, was handed over to Chhajju Ram on 16.01.1975.

7. During the pendency of the specific performance suit, the plaintiff amended the plaint to implead Chhajju Ram as a defendant. He alleged that the money suit, decree, and auction sale were fraudulent and collusive, asserting that the bond was fictitious, unsupported by consideration, and did not bear Nawab Singh's genuine thumb impression. The plaintiff further alleged that Nawab Singh had disappeared before institution of the money suit and that attachment before judgment had not been properly served. He contended that Chhajju Ram had knowledge of the earlier agreement to sell, procured the decree to defeat his contractual rights, and that since the agreement dated 22.04.1972 predated both the attachment and the auction sale, those subsequent proceedings could not extinguish his rights. He also invoked the doctrine of lis pendens.

8. Chhajju Ram denied all allegations, maintaining that Nawab Singh had genuinely borrowed ₹10,000 and executed the bond. He asserted that the attachment, decree, auction sale, confirmation of sale, and delivery of possession were all conducted lawfully. He denied any collusion, alleged that the agreement to sell was fabricated after commencement of execution proceedings, disputed payment of earnest money and delivery of possession, questioned the plaintiff's readiness and willingness to perform the contract, and claimed that, as a bonafide court auction purchaser for valuable consideration, he had acquired an indefeasible title.

9. The Trial Court framed issues regarding the genuineness of the agreement, payment of earnest money, delivery of possession, readiness and willingness of the plaintiff, validity of the auction purchase, and the appropriate relief. After considering oral and documentary evidence, the Additional Civil Judge held that the agreement dated 22.04.1972 was genuine, that Nawab Singh had received ₹3,500 as earnest money, and that possession had been delivered to the plaintiff in part performance. The court also found that the plaintiff had continuously remained ready and willing to perform his obligations and that the contract was specifically enforceable.

10. On the effect of the subsequent auction sale, the Trial Court held that although Chhajju Ram had purchased the property in a judicial auction for consideration, the auction had taken place after institution of the suit for specific performance. Applying the doctrine of lis pendens, the court held that the auction purchaser took the property subject to the result of the pending litigation. It therefore concluded that the plaintiff's contractual rights survived the auction sale and decreed specific performance, directing the plaintiff to deposit the balance sale consideration with Chhajju Ram, rather than Nawab Singh, since Nawab Singh was responsible for the dispute.

11. Chhajju Ram challenged the decree before the District Judge, arguing that the agreement to sell was fabricated after execution proceedings had begun. He pointed to several suspicious circumstances, including that the property was situated in Khurja Tehsil while the agreement was allegedly executed at Bulandshahr, the plaintiff's failure to examine the stamp vendor, produce the stamp register, or examine the typist, the existence of different typing styles in the document, contradictions in oral testimony regarding execution, lack of expert evidence proving Nawab Singh's signatures, and the plaintiff's alleged failure to prove readiness and willingness.

12. The plaintiff defended the decree, explaining that the agreement was executed at Bulandshahr because he had gone there to collect money

from his brother-in-law. He argued that the inconsistencies in witness testimony were minor and attributable to the passage of time, that the testimony of Rajvir Singh could not be discarded merely because of his relationship with the plaintiff, and that the objections filed during the execution proceedings demonstrated that Chhajju Ram had prior knowledge of the agreement, payment of earnest money, and delivery of possession. He also contended that Section 52 of the Transfer of Property Act applied to judicial sales, making the auction purchaser bound by the outcome of the pending suit.

13. The First Appellate Court dismissed the appeal, holding that the Trial Court had properly appreciated both oral and documentary evidence. It found that the discrepancies relied upon by the appellant merely created suspicion and did not outweigh the evidence proving execution of the agreement, payment of earnest money, and delivery of possession. The appellate court also held that the plaintiff had continuously remained ready and willing to perform the contract, and that temporary inability to arrange the balance consideration did not amount to abandonment. It further held that the plaintiff's objections in the execution proceedings established that Chhajju Ram had prior knowledge of the agreement, thereby attracting the doctrine of lis pendens. Concluding that Nawab Singh had created the entire controversy, the appellate court affirmed the decree for specific performance and dismissed the appeal with costs.

14. It is against these concurrent judgments that the present second appeal has been preferred. The appellant urges that both the courts below have committed substantial errors of law by overlooking the legal effect of the execution proceedings, by failing to apply the principles of res judicata, and by extending the doctrine of *lis pendens* to a court auction in circumstances where, according to the appellant, such doctrine has no application.

15. Learned Senior Counsel for the appellant contended that the concurrent findings of the courts below were vitiated by serious errors of

law and perversity, justifying interference under Section 100 CPC. It was argued that the alleged agreement to sell dated 22.04.1972 was not proved in accordance with law and was surrounded by suspicious circumstances, including its execution outside the locality of the property, non-examination of the stamp vendor and typist, absence of supporting documentary evidence, discrepancies in the typing of the document, and material contradictions in the testimony of the plaintiff's witnesses.

16. The Senior Counsel for the appellant further submitted that the plaintiff failed to establish continuous readiness and willingness to perform his obligations under the agreement, as required under the Specific Relief Act, having neither possessed the requisite balance consideration nor taken timely steps to secure execution of the sale deed.

17. A principal contention was that the plaintiff's objections under section 47 C.P.C. read with Order 21 Rule 58, against the auction sale, in the earlier execution proceedings arising from the money decree obtained by Chhajju Ram had already been dismissed, was a decree. In support of the aforesaid contention the learned Senior Counsel for the appellant relied upon a Full Bench judgment of the Andra Pradesh High Court, in the case of Gurram Seetharam Reddy Vs. Smt. Gunti Yashoda and another, reported in AIR 2005 AP 95 (FB). Since those proceedings culminated in a judicial sale in favour of the appellant, and the dismissal of the objections had attained finality, the present suit was barred by the principles of res judicata. It was argued that the courts below erred in permitting the plaintiff to re-agitate issues that had already been adjudicated.

18. The Senior Counsel for the appellant also contended that the courts below misapplied Section 52 of the Transfer of Property Act, submitting that the doctrine of lis pendens governs voluntary transfers during the pendency of litigation and does not invalidate judicial sales conducted in execution of a decree. Accordingly, the title acquired by the appellant as an auction purchaser could not be defeated on that basis.

19. It was further argued that the decree for specific performance was inequitable and prejudicial to the appellant, who had purchased the property in a court auction for ₹12,250, whereas the plaintiff was directed to pay only the balance consideration under the agreement of ₹7,500, thereby unfairly depriving the appellant of both the property and the consideration paid. In support of his contention, the learned Senior Counsel for the appellant relied upon the judgment of the Hon'ble Supreme Court in the case of **Her Highness Maharani Shantidevi P. Gaikwad Vs. Savjibhai Haribhai Patel and others**, reported in **AIR 2001 SC 1462**, which reads as under:

> "The grant of decree for specific performance is a matter of discretion under Section 20 of the Specific Relief Act, 1963. The Court is not bound to grant such relief merely because it is lawful to do so but the discretion is not required to be exercised arbitrarily. It is to be exercised on sound and settled judicial principles. One of the grounds on which the Court may decline to decree specific performance is where it would be inequitable to enforce specific performance…….."

20. A similar view has been reiterated by the Hon'ble Supreme Court in the case of **V. Muthusami (dead) by LRs Vs. Angammal and others**, reported in **AIR 2002 SC 1279**, which is reproduced as under:

> "Now the question is to what relief is plaintiff is entitled It is entitled position of law that grant of a decree for specific performance is a discretionary one. This Court in K. Narendra vs. Riviera Apartments (P) Ltd. (1999) 5 SCC 77 held that Section 20 of the Specific Relief Act, 1963 provides that the jurisdiction to decree specific performance is discretionary and the Court is not bound to grant such relief merely because it is lawful to do so, the discretion of the Court is not arbitrary but sound and reasonable, guided by judicial principles. It was further held that if performance of a contract involve some hardship on the defendant which he did not foresee while non-performance involving no such hardship on the plaintiff, is one of the circumstances in which the Court may properly exercise discretion not to decree specific performance and the doctrine of comparative hardship has been statutorily recognised in India."

21. In **Bal Krishna and another Vs. Bhagwan Das (Dead) by LRs and Ors.**, reported in **2008(12) SCC 145**, the Hon'ble Supreme Court has observed:

> "It is also settled by various decisions of this Court that by virtue of Section 20 of the Act, the relief for specific performance lies in the discretion of the court and the court is not bound to grant such relief merely because it is lawful to do so. The exercise of the discretion to order specific performance would require the court to satisfy itself that the circumstances are such that it is equitable to grant decree for specific performance of the contract. While exercising the discretion, the court would take into consideration the circumstances of the case, the conduct of parties, and their respective interests under the contract. No specific performance of a contract, though it is not vitiated by fraud or misrepresentation, can be granted if it would give an unfair advantage to the plaintiff and where the performance of the contract would involve some hardship on the defendant, which he did not foresee. In other words, the court's discretion to grant specific performance is not exercised if the contract is not equal and fair, although the contract is not void."

22. Lastly, the appellant assailed the judgment of the First Appellate Court for non-compliance with Order XLI Rule 31 CPC, contending that it failed to independently formulate points for determination or undertake a fresh appraisal of the evidence, and instead mechanically affirmed the Trial Court's findings, thereby vitiating the appellate judgment. In support of this contention, the learned Senior Counsel for the appellant relied upon the judgment of the Hon'ble Supreme Court in the case of **Malluru Mallappa (D) Thr. Lrs. Vs. Kuruvathappa and others**, reported in **2020(4) SCC 313**.

23. Per contra, learned counsel for the respondent-plaintiff supported the concurrent judgments and submitted that no substantial question of law survived for consideration. He contended that both the courts below had concurrently held, on appreciation of oral and documentary evidence, that the agreement to sell dated 22.04.1972 was genuine, earnest money had been paid, and possession had been delivered to the plaintiff. These being concurrent findings of fact, they could not be interfered with in a second appeal under Section 100 CPC, which is confined to substantial questions of law and does not permit reappreciation of evidence merely because another view is possible.

24. It was further submitted that the agreement to sell had been executed prior to the institution of the appellant's money suit and the

attachment before judgment. The plaintiff had paid substantial earnest money and entered into possession pursuant to the agreement, thereby acquiring prior contractual rights deserving protection. The plaintiff had repeatedly called upon Nawab Singh to execute the sale deed, issued a legal notice, and thereafter instituted the suit, thereby demonstrating his continuous readiness and willingness to perform the contract.

25. The respondent denied the allegation that the agreement was fabricated and submitted that both the Trial Court and the First Appellate Court had examined the attesting witnesses and found the agreement duly proved. The relationship of one witness with the plaintiff had been fully disclosed and duly considered by the Trial Court, and such relationship by itself did not render the testimony unreliable. The discrepancies relied upon by the appellant were minor, stood explained by the long lapse of time, and did not justify interference with the concurrent findings regarding the genuineness of the agreement.

26. On the issue of *lis pendens*, learned counsel submitted that Section 52 of the Transfer of Property Act is based on public policy to preserve the authority of the court during the pendency of litigation. Since the suit for specific performance had been instituted prior to the auction sale, any subsequent transfer, whether voluntary or involuntary, remained subject to the final decision in the suit. It was also argued that the appellant had prior knowledge of the plaintiff's claim because objections based on the agreement to sell had been filed before the auction sale, and therefore the appellant could not claim to be a bona fide purchaser without notice.

27. In support of the aforesaid contention made by the learned counsel for the respondent, he relied upon the judgment of the Hon'ble Supreme Court in the case of **Kedarnath Lal (dead) by Lrs. and another Vs. Sheonarain and others,** reported in **AIR 1970 SC 1717**, the relevant paragraphs 16 and 17, are reproduced as under:

> "(16.) The second ground of attack is that before the proceeding commenced before the Registrar these fields had been attached and therefore, the doctrine of lis pendens again cannot apply. We are unable

> to accept this argument either. If the property was acquired pendente lite, the acquirer is bound by the decree ultimately obtained in the proceedings pending at the time of acquisition. This result is not avoided by reason of the earlier attachment. Attachment of property is only effective in preventing alienation but it is not intended to create any title to the property. On the other hand, Section 52 places a complete embargo on the transfer of immovable property right to which is directly and specifically in question in a pending litigation. Therefore the attachment was ineffective against the doctrine. Authority for this clear position is hardly necessary but if one is desired it will be found in Moti Lal vs. Karrab-ul-Din, (1897) 24 Ind App 170 (PC).
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> (17.) Lastly it was contended that the sale was by court auction and the doctrine of lis pendens would not apply to such a sale. This point was considered in **Samarendra Nath Sinha vs. Krishna Kumar Nag, (1967) 2 SCR 18** by one of us (Shelat J.) and it was observed as follows: ". . . The purchaser pendente lite under this doctrine is bound by the result of the litigation on the principle that since the result must bind the party to it so must it bind the person deriving his right, title and interest from or through him. This principle is well illustrated in Radhamadhub Holder vs. Monohar, (1887) 15 Ind App 97 where the facts were almost similar to those in the instant case. It is true that Section 52, strictly speaking, does not apply to involuntary alienations such as court sales but it is well established that the principle of lis pendens applies to such alienations. (See Nilkant vs. Suresh Chandra, (1885) 12 Ind App 171 and (1897) 24 Ind App 170 (PC))." This ground also has no validity."

28. The learned counsel for the respondent also disputed the plea of *res judicata*, submitting that the appellant had neither properly pleaded nor established that the issues involved in the present suit had been finally decided in the execution proceedings. It was argued that no substantial question of law arose on that issue from the concurrent findings. The respondent further contended that the plaintiff's substantive right to seek specific performance could not be defeated merely because his objections in execution had failed, and that irregularities in the execution proceedings disentitled the appellant from claiming any superior title through the auction purchase.

29. I have given my anxious consideration to the rival submissions and have carefully perused the judgments of the Trial Court and the First Appellate Court. I have also examined the pleadings, documentary evidence and the findings recorded by both courts below to the extent

necessary for determination of the substantial questions of law framed at the time of admission of the appeal.

30. The first substantial question concerns the effect of the auction sale held during the pendency of the plaintiff's suit for specific performance.

31. There can be no dispute about the legal character of an agreement to sell. An agreement for sale does not, by itself, create any right, title or interest in the property agreed to be sold. Title remains with the owner until a legally effective conveyance is executed. The agreement nevertheless creates a contractual right which is capable of enforcement by a decree for specific performance in accordance with law.

32. In the present case, the agreement relied upon by the plaintiff was dated 22.04.1972 and the suit for specific performance was instituted on 24.10.1973. The court auction, on the other hand, took place on 17.04.1974. Thus, the auction sale was subsequent not only to the agreement but also to the institution of the suit in which the very property was the subject matter of litigation.

33. Section 52 of the Transfer of Property Act embodies the rule of *lis pendens*. The principle is founded upon the necessity of preventing parties to litigation from transferring the subject matter of the dispute so as to defeat or prejudice the rights which may ultimately be declared by the Court.

34. The operation of the principle does not depend upon notice to the transferee. A person who acquires an interest in property pendente lite takes such interest subject to the result of the litigation.

35. The contention that the principle of *lis pendens* is confined to voluntary transfers cannot be accepted. In *Samarendra Nath Sinha (supra)*, the Supreme Court expressly held that although Section 52, strictly speaking, does not apply to involuntary alienation such as court sales, the principle of *lis pendens* nevertheless applies to such alienation.

A purchaser at a court sale held during the pendency of litigation is accordingly bound by the result of that litigation.

36. The same principle was reiterated in *Kedarnath Lal (supra)*, where the Supreme Court rejected the contention that an earlier attachment or a subsequent court auction takes the acquisition outside the principle of *lis pendens*. Attachment does not create title in favour of the attaching creditor; nor does a court sale during the pendency of litigation free the purchaser from the consequence of the pending litigation.

37. The fact that the present appellant purchased the property in execution of a money decree, therefore, does not by itself place him in a position superior to that of the judgment-debtor so far as the pending suit for specific performance is concerned.

38. The auction sale cannot be treated as void merely because it took place pendente lite. The legal consequence is that the auction purchaser acquires the property subject to the result of the pending litigation. If the plaintiff ultimately establishes his entitlement to specific performance, the auction purchaser is bound by the decree; if the plaintiff fails to establish such entitlement, the auction purchaser's title is not displaced merely by the pendency of the earlier suit.

39. The appellant's contention that he was a purchaser without notice also cannot defeat the operation of *lis pendens*. Notice is not the foundation of the doctrine. The doctrine operates by reason of the pendency of the litigation itself.

40. The first substantial question of law is, therefore, answered in the affirmative, subject to the plaintiff independently establishing his entitlement to specific performance in accordance with law.

41. The second substantial question concerns the effect of the order passed upon the plaintiff's objection in the execution proceedings and whether that order operated as *res judicata* so as to prevent the plaintiff from prosecuting the present suit.

42. The execution proceedings in question took place in 1973-74. At that time, Order XXI Rules 58 and 63 CPC were in their pre-amendment form. The legal position then prevailing was materially different from the position introduced by the Code of Civil Procedure (Amendment) Act, 1976.

43. Under the unamended Rule 58, a claim or objection to attachment was investigated by the executing court in a summary proceeding. Rule 63 provided a remedy by way of a suit to establish the right claimed in the property. The order passed upon the claim or objection acquired conclusiveness, subject to the statutory remedy contemplated by Rule 63.

44. The distinction between *res judicata* under Section 11 CPC and the statutory conclusiveness attaching to an order under the unamended Order XXI Rule 58 is material. A claim proceeding under the unamended Rule 58 was not itself a suit or a proceeding analogous to a suit, and an order passed therein did not, merely by reason of being an adjudication in that summary proceeding, operate as *res judicata* in the wider sense.

45. In **Mangru Mahto v. Thakur Taraknathji Tarakeshwar Math**, reported in **AIR 1967 SC 1390**, the Supreme Court explained the effect of the unamended Rule 63. It held, in substance, that where an adverse order had been passed in a claim proceeding and the claimant failed to institute the suit contemplated by Rule 63 within the prescribed period, the order became conclusive on the question whether the property was liable to attachment and sale in execution of the particular decree. At the same time, the Court made it clear that the order was not conclusive for all purposes and that a claim proceeding under Rule 58 was not a suit or a proceeding analogous to a suit. The relevant paragraph 5 of the aforesaid judgment reads as under:

> "(5.) The appellants contend that as Kashinath did not file any suit under O. 21, R. 63, C. P. C., the adverse orders passed against him in the proceedings under O. 21, R. 58, C. P. C. operated as res judicata,

> and he and the deity who now stands in his shoes, were precluded from alleging that the leases were not binding on them. We think that this contention should be rejected. In view of the orders passed against Kashinath in the claim proceedings and his failure to institute suits under O. 21, R. 63, C. P. C., Kashinath was precluded from claiming that he had the right to attach the suit lands execution of his money decree, but he was not precluded from claiming that he had the right to sell the lands in execution of his mortgage decree. Rules 58 to 62 of Order 21, C. P. C., provide for a summary investigation of the claims and objections to the attachment of any property attached in execution of a decree. The issue in the proceeding is whether "such property is liable to such attachment." If the claim is allowed, the property is released from attachment (R 60). If the claim is disallowed, attachment continues (R.61). If the property is subject to mortgage or charge in favour of some person not in possession, the attachment may be continued subject to such mortgage or charge (R. 62). The party against whom an order is made in the claim proceeding may institute a suit to establish the right which he claims to the property in dispute, but subject to the result of such suit if any, the order is conclusive (R 63). If no suit is brought under R. 63 within the prescribed period of limitation, the order in the claim proceeding is conclusive on the question whether the property was or was not liable to attachment and sale in execution of the particular decree. But the order in not conclusive for all purposes, see Kandadai Narasimhachariar v. Raghava Padayachi, ILR (1946) Mad 79: (AIR 1945 Mad 333) (FB). A claim proceeding under R. 58 is not a suit or a proceeding analogous to a suit. An order in the claim proceeding does not operate as res judicata. It is because of Rule 63 that the order becomes conclusive. The effect of R 63 is that unless a suit is brought as provided by the rule, the party against whom the order in the claim proceeding is made or any person claiming through him cannot re-agitate in any other suit or proceeding against the other party or any person claiming through him the question whether the property was or was not liable to attachment and sale in execution of the decree out of which the claim proceeding arose, but the bar of Rule 63 extends no further."

46. The statutory consequence of the unamended Rule 63 must therefore be distinguished from a general bar under Section 11 CPC. The former operated upon the specific question which the claim proceeding was competent to determine, namely, whether the property was liable to attachment and sale in execution of the particular decree. It did not necessarily constitute an adjudication of every independent right or remedy which the claimant might have against the judgment-debtor or a subsequent purchaser.

47. In the present case, the chronology is material. The plaintiff instituted the suit for specific performance on 24.10.1973. The auction sale took place thereafter on 17.04.1974. The plaintiff's objection in the execution proceedings was filed on 24.04.1974 and was dismissed on 14.12.1974. Thus, the specific-performance suit was already pending before the execution claim proceeding culminated.

48. The plaintiff did not institute the present suit after the adverse claim order in order to obtain a second adjudication of an execution claim. The suit for specific performance had already been instituted before the objection in the execution proceeding was finally decided.

49. The question directly arising in the present suit is whether the agreement dated 22.04.1972 was genuine and enforceable and, upon that finding, whether the plaintiff was entitled to specific performance against the subsequent purchaser at the court auction. The limited statutory conclusiveness contemplated by the unamended Rule 63 was directed to the question whether the property was liable to attachment and sale in execution of the particular decree. It did not constitute a general adjudication of every right or remedy arising out of the agreement to sell.

50. The mere fact that the plaintiff relied upon the agreement to sell while resisting the attachment does not convert the execution claim proceeding into an adjudication of his entire contractual cause of action. The statutory conclusiveness under Rule 63 extended only to the question whether the property was liable to attachment and sale in execution of the particular decree and not to the independent question whether the plaintiff was entitled to obtain specific performance of his antecedent contract against the person who subsequently acquired the property pendente lite.

51. The Full Bench decision in *Gurram Seetharam Reddy (supra)* does not alter this conclusion. That decision principally concerns the legal character and appellate remedy relating to proceedings under the

amended Order XXI Rule 58. The present claim proceeding arose under the unamended regime. The statutory consequences introduced by the 1976 amendment cannot be retrospectively imposed upon a proceeding which had already taken place under the earlier law.

52. Accordingly, the appellant is correct to the limited extent that the order passed in the execution proceeding had statutory consequences under the then applicable Order XXI Rule 63. It is not correct, however, to characterize that order as a decree operating as *res judicata* upon the entire contractual claim which was already the subject matter of the present suit.

53. The second substantial question of law is therefore answered in the negative. The plea of res judicata accordingly fails, as the order passed upon the plaintiff's claim in the execution proceedings under the unamended Order XXI Rule 58 did not constitute a decree operating as res judicata upon the entire independent contractual claim already pending before the civil court.

54. Both courts below have concurrently found, upon appreciation of the oral and documentary evidence, that the agreement dated 22.04.1972 was genuine, that earnest money of ₹3,500 had been paid, that possession had been delivered pursuant to the agreement, and that the plaintiff had remained ready and willing to perform his part of the contract.

55. In a second appeal under Section 100 CPC, this Court does not ordinarily reappreciate evidence merely because another view may be possible. Interference with concurrent findings of fact is justified only where the findings are shown to be perverse, based on no evidence, founded upon a misreading of material evidence, or otherwise vitiated by a substantial error of law.

56. The circumstances relied upon by the appellant, including the place of execution of the agreement, non-examination of the stamp vendor or typist, differences in typing and alleged contradictions in the

testimony of the witnesses, were matters considered by the courts below. The First Appellate Court found that those circumstances did not outweigh the evidence supporting the genuineness of the agreement. No material has been demonstrated before this Court to show that the concurrent findings are based on no evidence or suffer from such perversity or legal infirmity as would justify interference under Section 100 CPC.

57. The same reasoning applies to the findings regarding readiness and willingness. The courts below considered the plaintiff's conduct, including his demands for execution of the sale deed, the legal notice and institution of the suit. Their conclusion that the plaintiff continued to be ready and willing is a finding based upon appreciation of evidence and has not been shown to be perverse.

58. The appellant's reliance upon the discretionary nature of the relief of specific performance also does not justify interference. The courts below exercised their discretion after finding the agreement genuine and enforceable and after considering the conduct of the parties. The mere fact that the appellant paid a higher amount at the court auction than the consideration stipulated in the prior agreement does not, by itself, establish such unforeseen hardship or inequity as would require the Court to deny relief otherwise established in favour of the plaintiff.

59. The fact that the appellant purchased the property for ₹12,250 whereas the contractual consideration was ₹7,500 cannot, in the circumstances of the present case, override the consequence of the principle of *lis pendens*. The auction purchaser acquired the property during the pendency of the specific-performance suit and therefore subject to the result of that litigation. The operation of *lis pendens* does not, by itself, eliminate the Court's statutory discretion regarding specific performance; however, on the findings in the present case, the appellant has not established circumstances warranting refusal of that relief.

60. The objection based upon Order XLI Rule 31 CPC also does not warrant interference. The first appellate court is undoubtedly required to identify the material points arising for determination and to give reasons for its conclusions. However, the question is whether the judgment, read as a whole, demonstrates proper consideration of the material controversies. In the present case, the First Appellate Court considered the genuineness of the agreement, the evidence regarding earnest money and possession, the plaintiff's readiness and willingness, and the effect of the subsequent auction sale and affirmed the Trial Court's findings for stated reasons. No failure of adjudication of such a nature as would vitiate the appellate decree has been demonstrated.

61. It follows that the subsequent court auction cannot be treated as standing outside the principle of *lis pendens*. The suit for specific performance had already been instituted on 24.10.1973, whereas the auction took place on 17.04.1974. The principle recognised in *Samarendra Nath Sinha (supra)* and reiterated in *Kedarnath Lal* (supra) applies to involuntary alienations, including court sales. The appellant consequently acquired the property subject to the result of the pending litigation.

62. The appellant's status as an auction purchaser for consideration, or his alleged absence of notice of the agreement, does not alter that position. Notice is not the foundation of the doctrine of *lis pendens*. Nor does the fact that the auction price exceeded the consideration stipulated in the prior agreement, by itself, constitute such hardship or inequity as would justify denial of the relief otherwise established under the contract.

63. The substantial questions of law are accordingly answered as follows:

Question No. (i): Where a suit for specific performance relating to immovable property is pending before a court auction of the property, the purchaser at such auction takes the property subject to the result of the pending litigation. The principle of *lis pendens* applies notwithstanding that the auction is an involuntary alienation. This, however, does not dispense with the requirement that the plaintiff establish his independent entitlement to specific performance.

Question No. (ii): An order passed upon a claim or objection under the unamended Order XXI Rule 58, where no suit was instituted under Rule 63 within the prescribed period, acquires the limited statutory conclusiveness contemplated by Rule 63 only in respect of the question whether the property was or was not liable to attachment and sale in execution of the particular decree out of which the claim proceeding arose. Such an order is not, merely by reason of its having become conclusive under Rule 63, a judgment operating as *res judicata* upon an independent cause of action or upon the entirety of the rights and obligations arising under an antecedent contract between the parties, including a pending claim for specific performance.

64. For the foregoing reasons, and subject to the aforesaid clarification regarding the limited scope of the order passed in the execution proceedings, no ground has been made out for interference under Section 100 CPC. The judgment and decree dated 25.02.1980 passed by the learned District Judge and the judgment and decree dated 22.03.1979 passed by the learned Additional Civil Judge are affirmed.

65. The second appeal is dismissed. There shall be no order as to costs.

(Arun Kumar,J.)

August 12, 2026
Ashok Kr.