

Form No. J(2)

IN THE HIGH COURT AT CALCUTTA
Appellate/Revisional/Civil Jurisdiction

Present:

The Hon'ble Mr. Justice Bhaskar Bhattacharya
And
The Hon'ble Mr. Justice Rajendra Nath Sinha

F.A.T. No.1666 of 2003.

Mrs. Savitri Devi Daga & Ors.

Versus

Shri Puranmall Goenka

For the Appellant/Petitioner:

Mr Aninda Mitra,
Mr Abhrajit Mitra,
Mr Utpal Majumder,
Mr Soumitra Pal,
Mr Sudip Kumar Bose.

For the Respondent/Opposite Party:

Mr S. P. Roy Chowdhury,
Mr D. S. Mullick,
Mr Supratick Syamal.

Heard on: 08.03.2005, 10.03.2005 & 11.03.2005.

Judgment on: 1/4/2005

Bhaskar Bhattacharya, J. :

This first appeal is at the instance of added defendants and is directed against Judgment and Decree dated 30th May, 2003 passed by the learned Civil Judge, Senior Division, 6th Court, Alipore in Title Suit

No.12 of 1986 thereby passing a decree in a suit for Specific Performance Contract.

The respondent no.1 herein filed the aforesaid suit being Title Suit No.60 of 1984 for Specific Performance of agreement for sale dated 13th day of October, 1982 and the case made out by the respondent no.1 may be summed up thus:

- (a) The original defendant, since deceased, represented to the plaintiff that he was the absolute owner of the suit property and on the basis of such representation the plaintiff agreed to purchase the suit property by a written agreement dated 13th October, 1982 at a price of Rs.6,00,000/-. The suit property consists of 10 bighas, 4 cottahs and 7 chittaks and 37 sq. ft. of land with building and structure belonging to original defendant.
- (b) Pursuant to the said agreement, the plaintiff paid Rs.25,000/- to the defendant at the time of execution of the agreement and thereafter he further made over a cheque of Rs.10,000/- to the defendant on 17th February, 1984 which was duly acknowledged by the defendant.

- (c) The original defendant not only represented to the plaintiff that he was the absolute owner of the suit property but also that he was in exclusive khas possession of the same and the same was free from encumbrances and he would give vacant possession of the entire property including structures and sheds standing thereon within a period of one month after the defendant had made out a marketable title to the said property and obtained necessary clearance certificate for permission under Section 230A of the Income Tax Act and Urban Land Ceiling Act respectively. It was further agreed that defendant would not in the mean time create any fresh tenancy or induct any other person in any part of the suit property.
- (d) The defendant failed and neglected to make over to the plaintiff and/or his learned advocate the documents of title relating to the said property in terms of the said agreement and the plaintiff on being requested to make a further payment of Rs.10,000/-, paid such amount on the assurance and promise of the defendant that he would hand over to the plaintiff all documents of title relating to the said property to enable the plaintiff to complete his investigation to

the title of the property. The defendant, however, failed to fulfil his part of the obligations and delayed the investigation of title by plaintiff by not giving documents relating to title in spite of request. The defendant also failed and neglected to obtain Income Tax Clearance Certificate and permission under Urban Land Ceiling Act in terms of the said agreement ignoring the request of the plaintiff for obtaining such permission.

- (c) The plaintiff, however, started causing enquiry in respect to the title of the property through his advocate and in so doing, the plaintiff was surprised to receive a letter from the defendant dated 17th August, 1983 informing that the property was subject matter of pending litigation and that some families have trespassed into the said property and so the property should be subject to further litigation and that the defendant was not in a position to give vacant possession of the property to the plaintiff and as such, he wanted the plaintiff to have the agreement rescinded and his earnest money would be refunded with interest.

- (f) The plaintiff by his advocate's letter dated 23rd August, 1983 replied to the said letter of defendant dated 17th August, 1983 containing untrue allegations and categorically asserted that the plaintiff was always ready and willing to perform his part of the agreement dated 13th October, 1982 and demanded the following information and documents:-
(i) Order of Court with respect to eviction of trespassers, if any, occupying the property; (ii) Income Tax Clearance Certificate under Section 230A of the Income Tax Act; (iii) Clearance Certificate under Section 27 of the Urban Land Ceiling and Regulation Act, 1976.
- (g) The plaintiff assured the defendant that on production of the aforesaid documents the plaintiff would complete the purchase upon payment of the balance price and that without those documents it was not at all possible to complete the registration of the deed.
- (h) The defendant, however, failed and neglected to comply with the said lawful requisitions made by the plaintiff. Subsequently, by letter dated 6th September, 1983 through a learned advocate the defendant illegally terminated the agreement dated

13th October, 1982 alleging that the plaintiff had intentionally kept the matter hanging.

- (i) The plaintiff by his letter dated September 8, 1983, personally requested the defendant to complete the sale in terms of agreement dated October 13, 1982 and not to try to repudiate the said agreement illegally by pointing out that without production of clearance certificate by Income Tax Authority or permission under Section 27 of the Urban Land Ceiling Act it was not possible for the defendant to complete the sale of the property.
- (j) The plaintiff again by his advocate's letter dated 28th February, 1984 informed the defendant that he was ready and willing to complete the purchase of the said property and sent the defendant draft conveyance for the approval and to return the same so that the sale might be completed on production of necessary certificate and permission from Income Tax and Urban Land Ceiling authorities and giving vacant possession of the property to the plaintiff.
- (k) The defendant, however, failed and neglected to comply with the reasonable demand of the plaintiff and by his letter dated 19th March, 1984 had

wrongfully alleged that the said agreement dated 13th October, 1982 was cancelled and terminated and he was under no obligation to honour the said agreement.

(i)

- (ii) The plaintiff was always ready and willing to perform his part of agreement. Although the defendant represented to the plaintiff that he was the full owner and was in exclusive and khas possession of the property and he expressly agreed to sell the property to the plaintiff free from encumbrances and to put the plaintiff in vacant and peaceful possession of the property before completing the sale of the same, at a later stage, on being asked by the plaintiff to complete the said transaction upon delivery of vacant possession of the property, he disclosed that the property was in occupation of the trespassers and suits for eviction of the trespassers were pending. Hence the suit.

The original defendant, since deceased, entered appearance in the suit and filed written statement and the defence of the original defendant may be summed up thus:

- 1) The defendant never disclosed to the plaintiff that he was the owner with possession and he and by his letter dated 19th March, 1984 had

had the intention to enter into an agreement for sale in "as is where is basis" and the plaintiff persuaded the defendant fraudulently to sign and execute and register a deed of agreement for sale not in accordance with the terms of the agreement that was agreed.

- 2) The defendant, being a busy medical practitioner, relied upon one S. N. Banerjee who happened to be an advocate and told the defendant that the deed had been written according to the terms settled. The defendant being a septuagenarian and hard of hearing and being a busy medical practitioner could get hardly any little time to go through the document thoroughly and he relied upon Sri S. N. Banerjee and accordingly signed the same.
- 3) Rs.25,000/- was received on the date of agreement for sale and no cheque of Rs.10,000/- was made over to him or that he ever requested to make further payment since it became apparent to the defendant that agreement was not executed in terms of agreed talk and the defendant did not encash the cheque.

- 4) The defendant never represented to the plaintiff that he was absolute owner of the property with Khas possession as on the date of alleged agreement, the defendant had no possession and could not even thereafter recover possession from the trespassers sitting over the suit property in execution proceedings pending in the 7th Court of Subordinate Judge at Alipore. It was impossible to make a marketable title to the property free from all encumbrances and as such, question of giving vacant possession after one month of making marketable title and other obligation as alleged did not arise. The defendant did not create any tenancy over the suit property till the agreement for sale dated 13th October, 1982 was rescinded.
 - 5) The defendant never requested the plaintiff to make further payment of Rs.10,000/-. The defendant candidly expressed that he was not in possession of the property and litigations for recovery of possession were pending and the plaintiff made an enquiry into the matter and got an agreement of sale signed, executed and
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registered fraudulently in collusion with Sri S. N. Banerjee containing wrong statement that the defendant was in khas possession of the property knowing fully well that those are wrong.

- 6) The plaintiff was never ready and willing to perform his part of contract and he kept silence for a long time without correspondence. The agreement having already been cancelled, no question of passing or claiming a decree of Specific Performance of Contract arose.

During the pendency of the suit the original defendant by separate registered deeds of conveyance dated September 6, 1985 transferred the suit property in favour of the present appellants and subsequently, the original defendant died on 9th December, 1987.

On the death of the original defendant, the plaintiff filed an application for substitution of the heirs and legal representative of the deceased defendant and at the same time some of the appellants filed application for being added as defendants in the suit.

The learned Trial Judge rejected the application for substitution filed by the plaintiff and allowed the application filed by some of the

appellants for being added as defendants. Subsequently, however, the trial Court by order dated 11th August, 1988 recorded that the newly added defendants had no right of filing separate written statement and they were bound to adopt the written statement originally filed by the deceased defendant. The learned Trial Judge thereafter by the Judgment and Decree dated 13th October, 1988 decreed the suit *exparte*.

Being dissatisfied, the present appellants in the past, preferred an appeal before this Court which was allowed by a Division Bench of this Court thereby setting aside the *exparte* Judgment and Decree passed by the learned Trial Judge and directing the learned Trial Judge to substitute the heirs and legal representatives of the deceased defendant and also to give opportunity to the present appellants to contest the suit.

Pursuant to such order passed by this Court, the heirs and legal representatives of the original defendant were substituted and the present appellants filed additional written statement.

In the written statement filed by the present appellants, they virtually adopted the written statement filed by the original defendant and further clarified the position showing that the plaintiff was not ready and willing to perform his part of contract and that the present appellants were acting *bona fide* after purchasing the suit property

during the pendency of the suit and contended that in view of the conduct of the plaintiff, no decree for specific performance of contract should be granted in his favour.

The heirs and legal representatives of the deceased defendant, however, did not appear or contest the suit in spite of service.

After remand the plaintiff gave further evidence and two persons adduced evidence on behalf of added defendants.

The learned Trial Judge on consideration of the entire materials on record decreed the suit for specific performance of contract in favour of the plaintiff after overruling the various objections raised by the present appellants.

Being dissatisfied, the added defendants have preferred the present appeal.

At the time of hearing of this appeal, one of the heirs and legal representatives of the deceased defendant filed an application for being added as respondent in this appeal and for giving her permission to file cross-objection against the decree. We have by order dated 11th March, 2005, rejected such application holding that the present appellants and the deceased defendant were sailing in the same boat and the decree having been passed against both, heirs of the deceased defendant could

not get the right of cross-objection in an appeal filed by added defendants when she had decided not to prefer any appeal against the decree which was also passed against the heirs and legal representatives of the deceased defendant.

Mr Anindya Mitra, the learned senior advocate appearing on behalf of the appellants has attacked the Judgment and Decree passed by the learned Trial Judge by contending that from the materials on record the learned Trial Judge ought to have held that the plaintiff was not ready and willing to perform his part of the agreement from the date of agreement till even the filing of the suit. Mr Mitra further contends that the plaint even does not disclose averments showing compliance of Form No.47 and 48 of Appendix A of the Code of Civil Procedure. According to Mr Mitra, although, the agreement for sale between the parties specifically mentioned that the original defendant was in actual physical possession of the suit property at the time of entering into agreement, the plaintiff well knew that the defendant was not in possession at that time and that the same was in actual physical possession of the trespassers. Mr Mitra contends that the plaintiff was deliberately delaying execution of the deed and by taking false plea of inaction, did not even send the draft of the conveyance to the original defendant for approval. Mr Mitra points out that although in the letters written by the plaintiff, he demanded Income Tax clearance from the defendant, such plea was not tenable in the eye of law because according to Income Tax Act and the Rules framed thereunder, in order

to obtain Income Tax clearance, the approved draft deed must be given to the Income Tax Authority. Mr Mitra referred to the letter written by the plaintiff himself showing that such draft was sent to the defendant for the first time after the agreement was cancelled. Mr Mitra further points out that from the various letters written by the plaintiff to the original defendant it would appear that the plaintiff was asking for the order of the Court for eviction of the trespassers knowing fully well that it was not possible for the defendant to produce such order. Mr Mitra contends that the plaintiff could not produce any material showing that he was ever willing to take the suit property with the trespassers as suggested by him at the time of hearing of the suit.

Mr Mitra next contends that the plaintiff has taken a deliberate false plea of making further payment of Rs.10,000/- as earnest money by cheque, although, the plaintiff well knew that such cheque, even if issued by him, was never encashed. By referring to the aforesaid fact, Mr Mitra contends that the plaintiff has with mala fide intention averred such conscious false statement in the plaint knowing fully well that the said amount of Rs.10,000/- was not debited to the account of the plaintiff. Mr Mitra contends that relief of specific performance being a discretionary relief, the Court should not favour a plaintiff with such relief if it appears that he came with deliberate false plea before the Court. Mr Mitra, however, maintains that the plaintiff has failed to prove that such cheque was ever received by the defendant as alleged in the plaint.

Mr Mitra lastly contends that relief of specific performance being discretionary one and in this case, his client being bona fide purchasers and having spent huge amount of money for maintenance of the property for the last 20 years and have even fought up to the Supreme Court of India for the eviction of trespassers, this Court, even if it is proved that there was a valid agreement for sale, should not approve the decree of specific performance of contract in favour of plaintiff. Mr Mitra, thus, prays for setting aside the Judgment and Decree passed by the learned Trial Judge.

The aforesaid contentions of Mr Mitra are seriously disputed by Mr Roy Chowdhury, the learned senior advocate appearing on behalf of plaintiff. Mr Roy Chowdhury contends that in this case, the heirs of the deceased defendant in spite of service of notice did not contest the suit to controvert the allegations of the plaintiff and as such, the learned Trial Judge rightly disbelieved the defences taken by the original defendant as those were not substantiated by any evidence on behalf of deceased defendant. Mr Roy Chowdhury submits that the defendant himself having disclosed in the agreement for sale that vacant possession would be given within one month from the approval of title by plaintiff, he could not avoid execution of the deed by mere plea of invasion of the property by trespassers. Mr Roy Chowdhury contends that the defendant cannot take advantage of his own wrong by taking plea of dispossession by trespassers.

Mr Roy Chowdhury next contends that the plaintiff was all along ready and willing to perform his part of contract as would appear from the letters written by his client asking for Income Tax clearance and clearance from Urban Ceiling Authority. Mr Roy Chowdhury contends that so long the defendant had not conveyed to his client that he had obtained Income Tax clearance the plaintiff cannot be blamed for inaction. According to Mr. Roy Chowdhury, in the present case, no document has been produced showing that the defendant ever obtained Income Tax clearance and as such, his client cannot be held responsible of any negligence or inaction. Mr Roy Chowdhury, therefore, contends that there was no just cause for cancellation of the agreement.

Mr Roy Chowdhury further contends that the present appellants purchased the suit property during the pendency of the suit and their purchase deeds will disclose that they are fully aware of the agreement between the plaintiff and the original defendant and as such, they cannot take the plea of bona fide purchase. According to Mr Roy Chowdhury, a subsequent purchaser is bound by the doctrine of lis pendence and as such, he cannot resist a claim for specific performance of contract on the plea of bona fide improvement of the property. Mr Roy Chowdhury submits that if the appellants being fully conscious that their purchase is subject to the decision of the suit, spent any amount for improvement, they did so at their own risk and peril. Mr Roy Chowdhury lastly contends that in the present case although, decree has been passed against not only the appellants but also the heirs of the

deceased defendant, yet, the appellants not having impleaded the heirs of the deceased defendant in the memorandum of appeal, this appeal is not maintainable because the decree against heirs of deceased defendant has attained finality and if this Court set aside the decree passed against the present appellants, there will be conflicting decrees. Mr Roy Chowdhury, thus, prays for dismissal of the appeal.

At the very outset, we propose to answer the last question raised by Mr Roy Chowdhury as to whether this appeal is maintainable without impleading the heirs and legal representative of the original defendant, since deceased, in this appeal.

It is now settled position of law that if a decree is passed against more than one person, any one of them can prefer appeal against such decree even though the other persons have decided not to prefer any such appeal. If the appellant succeeds on merit, in such a case, the Court can set aside the decree against other non-appealing defendants if the appeal proceeds on any ground common to all the defendants by invoking the provision contained in Order 41 Rule 4 and Order 41 Rule 33 of the Code of Civil Procedure. The law is equally settled that in such a case, the appeal preferred without impleading a Judgment-debtor is also maintainable (See: Mahabir Prosad vs. Jage Ram reported in A.I.R. 1971 Supreme Court page 742). We, therefore, find no merit in the aforesaid contention of Mr Roy Chowdhury as regards non-joinder of other defendants against whom decree has also been passed.

Therefore, the real question that arises for determination in this appeal is whether the plaintiff was ready and willing to perform his part of the contract all along right from entering into the agreement for sale.

We have already indicated that in the agreement it was specifically stated that the defendant was in khas possession of the property and actual possession would be handed over to the plaintiff. In the written statement filed by the original defendant it was pleaded that the agreement was prepared by practising fraud in connivance with the lawyer without the knowledge of the defendant and the plaintiff well knew that the defendant was not in actual possession of the property. It is true that at the time of hearing no evidence has been adduced on behalf of the original defendant as he was dead and at the same time, his heirs decided not to contest the suit probably because the suit property having been already sold by the original defendant, they had no subsisting interest in the property. We must not lose sight of the fact that even if no evidence is adduced on behalf of defendant, for that reason the plea taken by the plaintiff in the plaint cannot be automatically proved. In this case, we find from the evidence of the plaintiff himself that it was known to him at the time of execution of the agreement that there were trespassers on the suit property and proceedings for recovery of possession were then pending. He also admitted in his evidence that at the time of inspection of the suit property in 1982 he found some families residing there. From the aforesaid admission it is abundantly clear that the plaintiff well knew at

the time of execution of agreement that the property was not in khas possession of the defendant and proceedings for recovery of possession were then pending but notwithstanding such fact, in the written agreement between the parties it was mentioned that defendant was in actual khas possession of the property and the plaintiff insisted on khas possession as would appear from various letters written by him before institution of the suit. We find from those letters that plaintiff asked for the order of the Court directing recovery of possession instead of expressing his willingness to accept the property with trespassers. Therefore, although, no evidence has been adduced on behalf of either the original defendant or his heirs and legal representative in support of the written statement filed by the original defendant, we find that plea of fraud taken by the defendant in the written statement to the effect that in collusion with the lawyer the plaintiff deliberately incorporated in the agreement that the defendant was in actual possession, has been substantially proved from the own admission of PW-1. If the plaintiff himself knew at the time of entering into agreement that defendant was not in actual possession and execution case was pending, there was no justification of accepting an agreement of sale wherein it was mentioned that the defendant was in khas possession and demanding actual khas possession from the defendant on the basis of such agreement.

We further find substance in the contentions of Mr Mitra that in the letters written by the plaintiff he repeatedly asked for Income Tax clearance certificate from defendant but his own letter will show that he

for the first time sent the copy of the draft of conveyance when agreement for sale was already cancelled by plaintiff. According to existing provision of Income Tax Act and Rules framed thereunder in order to get an Income Tax Clearance Certificate under Section 230A of the Income Tax Act, a copy of the deed sought to be registered should be produced before the Income Tax Authority. (See Form no 34A of the Income Tax Rules). Therefore, before blaming the defendant for non-submission of Income Tax Clearance Certificate, the plaintiff must prove that he did his part of contract by handing over the proposed sale deed for approval. Therefore, in this case, the plaintiff has failed to prove that he ever sent the draft of the sale deed to the defendant before the agreement was cancelled.

From the aforesaid fact it is clear that before institution of suit the plaintiff was never ready and willing to purchase the property with trespassers in possession and always insisted on giving vacant possession knowing well that the property was not in actual possession of the defendant. Therefore, we are convinced by the submission of Mr Mitra that the plea of the plaintiff that he was under the impression that the defendant was in actual possession of the suit property is a false plea and in the agreement such fact was wrongly incorporated with the knowledge of the plaintiff. We, therefore, find that the plaintiff was never ready and willing to take the property with trespassers, although, at the time of execution of the agreement he was aware of such fact. It is true that at the time of hearing of the suit, he agreed to purchase the

property with trespassers but before filing of the suit the plaintiff having declined to purchase the property with trespasser, it is apparent that the plaintiff was not ready and willing to perform his part of the contract and as such, the Court could not pass a decree of specific performance of contract. In this connection, reference may be made to the decision of the Supreme Court in the case of Surjit Kaur vs. Naurata Singh and another reported in AIR 2000 SC 2027 where the Apex Court held that a party decided not to accept part performance of the contract at one stage is not permitted to resile from that stance and insist on part performance. The principle laid down in the aforesaid decision squarely applies to the facts of the present case. In the case of Sm. Purnima Rani Dutta vs. Sm. Lakhmi Bala Dasi reported in 1987(2) CHN 84 relied on by Mr Roy Chowdhury, the defendant made no endeavour to evict the tenants although she agreed to give vacant possession and the plaintiff was willing to take the property with tenants. In such a situation, a division bench of this court held that the defendant could not take advantage of her own wrong in resisting the claim of the plaintiff. In this case, we have already found that the defendant consciously entered in to agreement to purchase the property with trespassers but insisted on purchase after evicting the trespassers and refused to accept the property with outsiders. Therefore, principles laid down in that decision cannot have any application to the facts of the present case.

We further find substance in the contention of Mr Mitra that plaintiff did not approach the Court with clean hand. In the plaint, the

plaintiff specifically averred that in addition to Rs.25, 000/- he further paid Rs.10, 000/- by cheque dated 17th February, 1983. The present suit was filed on 2nd June, 1984 more than 16 months after the issue of such cheque. Though in written statement specific plea was taken that such cheque was never encashed, the plaintiff did not care to produce any evidence showing that such cheque was really encashed. Therefore, on the date of presentation of plaint, the plaintiff knew that the cheque of Rs.10,000/-, even if the same was given to the defendant, was not encashed and he deliberately made false statement alleging payment of further of Rs.10,000/- pursuant to contract and prayed for direction of payment of balance amount of consideration money as if Rs. 35,000/- was paid as advance. At this juncture, we may refer to Ext.-3, the letter written by original defendant to plaintiff dated 17th August, 1983 where in the last paragraph, the original defendants proposed to refund Rs.25,000/- paid by way of earnest money. In reply to the said letter, the plaintiff in its letter dated 23rd August, 1983 being Ext.-3A never pointed out that he had paid not only Rs.25,000/- but also a further sum of Rs.10,000/-. The aforesaid fact shows that the plaintiff was conscious of the fact that a further sum of Rs.10,000/- was not paid but notwithstanding such fact in the plaint he made out a case of further payment of Rs.10,000/-. Even in the subsequent few letters written by the plaintiff to the original defendant he never claimed to have paid any further amount of Rs.10,000/- in excess of Rs.25,000/- originally paid. However, long thereafter, in the letter dated February 28, 1984, Ext.-4

the plaintiff for the first time, made out a case that he gave a cheque of Rs.10,000/- about one year back.

Therefore, we are satisfied from the aforesaid materials that even if any cheque was given, such cheque was not at all encashed by the original defendant and notwithstanding such fact, the plaintiff maliciously claimed in the plaint that he had paid such amount. As regards actual handing over of cheque, although, in the plaint the plaintiff stated that such amount was paid to defendant himself who accepted the cheque but in evidence a receipt has been produced showing that the same was received by the son of the defendant but such plea was never put forward earlier in the plaint and not even before the defendant, when defendant in his letter specifically asserted that he accepted only Rs.25,000/-. It is true that the son of the defendant has been subsequently substituted and in spite of service he has not come forward but taking into consideration the fact that the substituted defendants had no subsisting interest in the property as their predecessor had already sold away the property, it is very difficult to accept the said receipt as proof of the statement made in the plaint.

Although, we are not impressed by the submission of Mr Mitra that the plaintiff could not show his financial capacity to purchase the property as the plaintiff is not required to produce the amount in court at the time of filing of the suit, we are of the view that in this case the plaintiff was not ready and willing to purchase the property with illegal

trespassers before institution of the suit. We have already held that plaintiff was well aware that the property was not in khas possession of the defendant as admitted by him in the evidence and as such, the clause in the agreement for sale that the plaintiff was in possession was not correct and was very much within the knowledge of plaintiff. If the plaintiff was not willing to purchase the property with trespassers in spite of the offer given by the defendant and in the process the defendant cancelled the agreement and sold away the property to the present appellants, we are of the opinion that in such circumstances, the plaintiff should not be entitled to get a decree of specific performance of contract for sale with trespassers.

Over and above, it appears that the present appellants are all along in possession for the last 20 years and are also fighting against trespassers by substituting themselves in pending litigations and as such, it will be unfair to grant a decree for specific performance of contract against present appellant thereby giving him opportunity to reap the fruit of the litigations so long fought out by the appellants against the trespassers.

We, therefore, set aside the Judgment and Decree passed by the learned Trial Judge and instead of that, we direct the appellants to refund the earnest money of Rs.25,000/- with interest @ Rs.18 per cent per annum from the date of agreement till actual payment of amount.

Such amount be paid within one month from today. In default, of such payment, this appeal will stand dismissed.

The appeal is, thus, allowed. In the facts and circumstances there will be, however, no order as to costs.

sd- Bhaskar Bhattacharya J.
(Bhaskar Bhattacharya, J.)

I agree.

sd- Rajendra Nath Sinha J.
(Rajendra Nath Sinha, J.)

12/4/05

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4. 10

Noting by Office or Advocate	Serial No.	Date	Office notes, reports, orders or proceedings with signature
	1	Later	<p>Xerox certified copies of this order, if applied for, be supplied to the parties within a week on compliance with requisite formalities.</p> <p><i>Sd- Bhaskar Bhattacharya, J.</i> (Bhaskar Bhattacharya, J.)</p> <p><i>Sd. Rajendra Nath Sinha, J</i> (Rajendra Nath Sinha, J.)</p>

12/4/05



M. 10

Noting by Office or Advocate	Serial No	Date	Office notes, reports, orders or proceedings with signature
		21. 04.2006.	<p data-bbox="722 541 1063 634">R.V.W. No. 4157 of 2005 With CAN No.9936 of 2005</p> <p data-bbox="841 718 928 751">(Later)</p> <p data-bbox="565 835 1226 991">Let xerox certified copy of this order be given to the parties within <i>one week</i> from the date of making of such application.</p> <p data-bbox="799 1087 1274 1201"><i>sd B. Bhattacharya</i> (Bhaskar Bhattacharya, J.)</p> <p data-bbox="750 1228 1372 1375"><i>sd A.K. Bhattacharya</i> (Arun Kumar Bhattacharya, J.)</p> <p data-bbox="418 1558 527 1663"><i>sd</i> <i>11/4/06</i></p>