

Reportable

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 2050-2053 OF 2013

[Arising out of SLP (Civil) Nos. 126-129 of 2012]

Mahalaxmi Co-operative Housing Society Ltd. & Etc. ..

Appellants

Versus

Ashabhai Atmaram Patel (D) Th.Lrs
and Others

.. Respondents

J U D G M E N T**K. S. Radhakrishnan, J.**

1. Leave granted.
2. These appeals arise out of a common judgment rendered by a learned single Judge of the High Court of Gujarat disposing of six special civil applications of which we are concerned with the appeals preferred against Special Civil Application Nos. 7088 of 2010, 10084 of 2009, 11925 of 2009 and 7087 of 2010.

The learned single Judge, in exercise of his powers under Articles 226 and 227 of the Constitution of India quashed the orders dated 14.08.2008 and 08.09.2009 passed in Special Civil Suit No. 292/1993 and Special Civil Suit No. 681/1992 respectfully by the Learned Civil Judge (SD) of Ahmadabad (Rural) and remanded the matter to the court, after reviving the interim order dated 28.05.1993 passed in Civil Suit No. 292/1993.

3. Civil Suit No. 292 of 1993 was preferred by respondent No.4 - Chandrakant Atmaram Patel and respondent nos. 1 to 5 herein (purchasers) against respondent no. 6 - Bai Saraswati and the appellant herein - Mahalaxmi Co-operative Housing Society Ltd. (for short 'Mahalaxmi Society') for a declaration that sale deeds dated 5.6.1992 and 8.6.1992 were illegal and also for an order of permanent injunction restraining the Mahalaxmi Society from dealing with the lands and also for other consequential reliefs. Chandrakant Atmaram Patel, plaintiff no. 1, plaintiff no. 2 are the heirs of the deceased Baldevprasad (respondent nos. 5/1 and 5/2 herein), the plaintiff no. 3 are heirs of Manilal Bechardas (respondent nos. 3/1 and 3/2 herein), plaintiff no. 4 is Ashabai Patel (since deceased) and

now through Legal Representatives – respondent nos. 1/1/A to 1/1/D) and plaintiff no. 5 are heirs of Amrutlal Patel (respondent nos. 2/1, 2/2, 2/3 and 7 herein), along with the plaintiff filed an application for temporary injunction, which was allowed vide order dated 28.5.1993. One Jankalyan Co-operative Housing Society sought intervention in the suit Civil Suit No. 292/1993 on the basis of a registered Agreement to Sell dated 15.6.1992 and joined as defendant no. 3. Civil Suit No. 681/1992 was also a suit filed by respondent Nos. 1 to 5 against the Deputy Collector, the appellant herein and the 6th respondent for an order of permanent injunction on the ground that no permission under Section 63 of the Tenancy Act was obtained before executing various sale deeds.

4. We have to trace the facts leading to the filing of the above suits and the disputes cropped up thereafter between the original plaintiffs, Bai Saraswati and the Mahalaxmi Society, leading to the filing of pursis dated 7.7.2008 and 18.09.2008 and the steps they have taken for resolving those disputes in Civil Suit No. 292 of 1993 and Civil Suit No. 681/1992.

5. Bai Saraswati – respondent no. 6 herein – had executed two Sale Deeds dated 27.10.1964 in respect of separate non-contiguous parcels of lands in favour of five persons i.e. respondent nos. 1 to 5. Respondent nos. 1 to 5 (purchasers) formed a partnership firm in the name of M/s Arbuda Corporation on 4.3.1965 to deal with the above-mentioned properties and each partner had equal share. M/s Arbuda Corporation on 15.9.1975 executed an Agreement to Sell in favour of the Mahalaxmi Society in respect of the above-mentioned lands.

6. The Urban Land (Ceiling and Regulation) Repeal Act, 1999 (for short 'the ULC Act') came into force in 1976. M/s Arbuda Corporation and the appellant Mahalaxmi Society jointly made an application under Section 20 of the ULC Act seeking permission to execute the sale deed before the Deputy Collector, Ahmadabad. Similar applications were also filed by the appellant – Bai Saraswati and respondent No. 4 – Chandrakant Atmaram Patel. On 7.1.1989, respondent nos. 5/1, 5/2 and 5/3, respondent nos. 3/1 and 3/2, respondent no. 1 (since deceased) and respondent no. 2 (since deceased) executed a Power of Attorney in favour of respondent No. 4 –

Chandrakant Atmaram Patel in respect of the above-mentioned properties. The power of attorney provided that the same would be binding on respondent nos. 1, 2, 3 and 5 and their descendants, guardians and heirs. On 1.5.1991, Bai Saraswati executed an Agreement to Sell with possession of the above-mentioned properties in favour of the Mahalaxmi Society. Permission sought for under Section 20 of the ULC Act was also granted by the authority on Bai Saraswati for dealing with the properties.

7. Bai Saraswati then executed two sale deeds dated 5.6.1992 and 8.6.1992 in favour of the Mahalaxmi Society in respect of the above-mentioned properties, which lead to various disputes between the Mahalaxmi Society, Bai Saraswati and the five purchasers mentioned earlier.

8. Respondent Nos. 1-5 then filed Special Civil Application No. 4413 of 1992 before the High Court against the Mahalaxmi Society and Bai Saraswati and the State of Gujarat challenging the order dated 3.6.1992 passed under Section 20 of the ULC Act and that order was stayed, so also the further proceedings thereto. Respondent Nos. 1-5, as plaintiffs, filed Special Civil

Suit no. 681 of 1992 against the Deputy Collector, Ahmadabad, Mahalaxmi Society and Bai Saraswati on 31.07.1992 praying for an injunction restraining the grant of permission under Section 63 of the Tenancy Act, which was, however, granted on the same day. Consequently, Special Civil Suit No. 681 of 1992 was later amended challenging the grant of permission.

9. As already stated, respondent Nos. 1 to 5 had also filed Civil Suit No. 292/1993 on 04.05.1993 against Bai Saraswati and the Mahalaxmi Society for a declaration that the sale deeds dated 05.06.1992 and 08.06.1992 were illegal and also for other consequent reliefs. Bai Saraswati, later, executed a sale deed dated 18.10.2000 in respect of the remaining survey no. 216 in favour of the Mahalaxmi Society.

10. Plaintiffs, Bai Saraswati and Mahalaxmi Society, in view of the various transactions entered into between various parties and the pending litigations were exploring the possibility of settling all their disputes. As a follow up, the Mahalaxmi Society, paid an amount of Rs.29,72,365/- to the plaintiffs by various cheques and a Notarised Acknowledgement-cum-Settlement receipt was also issued on 1.5.2004, which is

reflected in the registered Deed of Confirmation dated 1.5.2004 executed by Chandrakant Atmaram Patel, the first plaintiff for and on behalf of other plaintiffs on the strength of the power of attorney dated 7.01.1989. The first plaintiff also executed a declaration-cum-indemnity of title on 09.11.2004 wherein it was stated that the Mahalaxmi Society was the full, legal, proper and absolute owner and possessor of the properties mentioned therein. Plaintiffs had also agreed to cooperate in obtaining appropriate orders in Special Civil Suit No. 681 of 1992 and Special Civil Suit No. 292 of 1993, in view of the compromise and settlement.

11. Plaintiff no. 1 - Chandrakant Atmaram Patel had also executed various documents individually. He executed a registered Deed of Confirmation dated 10.11.2004, referring to the payment of Rs.29,72,365/- by the Mahalaxmi Society. Reference was also made to the receipt dated 1.5.2004 and the registered Deed of Confirmation dated 1.5.2004 acknowledging the receipt of Rs.29,72,365/- from the Mahalaxmi Society by plaintiff No. 1 as power of attorney holder for himself and on behalf of the other plaintiffs as well. Registered articles of agreement dated 10.11.2004 also refer to a further payment of

Rs.66,05,527/- by the Mahalaxmi Society which was received by plaintiff No. 1 – Chandrakant Atmaram Patel. Declaration-cum-indemnity of title was also made on 10.11.2004, wherein it was stated that Mahalaxmi Society had the full, legal, proper and absolute owner and possessor of the above-mentioned lands.

12. Plaintiff No. 2 – heirs of Baldevprasad Jamnadas – had individually executed a registered Deed of Confirmation on 10.11.2004, referring to the payment of Rs.29,72,365/- and proportionate payment of Rs.5,94,473/-. The documents also refer to the Deed of Confirmation dated 01.05.2004. Registered Article of Agreement dated 11.11.2004 executed by the plaintiff No.2 also refers to a further payment of Rs.66,05,527/- made to the heirs of Baldev Prasad Jamnadas. Declaration-cum-Indemnity of Title dated 10.11.2004 executed by them acknowledged that the Mahalaxmi Society was the legal and absolute owner and was in possession of the properties.

13. Plaintiff Nos. 5/1 to 5/4, heirs of Amrutbhai Patel, had also individually executed various documents. Registered Deed of

Confirmation dated 10.11.2004 executed by them also referred to the payment of Rs.29,72,365/- and the proportionate payment of Rs.5,94,473/-. Registered Articles of Agreement executed by them on the same day also referred to further payment of Rs.66,05,527/-. Declaration-cum-Indemnity of Title executed on 10.11.2004 also referred to the interest of appellant Mahalaxmi Society.

14. Plaintiff Nos. 3/1, 3/2 and plaintiff No. 4, however, issued a public notice on 5.12.2004 in the local newspapers (Gujarat Samachar and Dainik Bhaskar) cancelling the power of attorney dated 7.1.1989 executed in favour of plaintiff No. 1 - Chandrakant Patel. Mahalaxmi Society, through their Solicitor, on 11.12.2004, issued a public notice in the local newspaper (Sandesh) inviting claims/objections to the title of Mahalaxmi Society. On 16.12.2004, plaintiff Nos. 3/1, 3/2 and plaintiff No. 4 gave their replies.

15. Plaintiff No. 4 (who later expired on 2.6.2006) had also executed a registered Deed of Confirmation on 5.1.2005, which acknowledged the payment of Rs.29,72,365/-. In the registered Articles of Agreement dated 5.1.2005, plaintiff No. 4

had acknowledged the receipt of payment of an additional amount of Rs.30,05,527/-. He had also referred to the interest of Mahalaxmi Society in the Declaration-cum-Indemnity of Title executed on the same day.

16. Plaintiff nos. 1, 2/2, 2/2, 4 and 5/1 to 5/4 (all plaintiffs, except plaintiff No. 3) through their advocates published a notice in the local newspapers (Sandesh, Gujarat Samachar, Divya Bhaskar) confirming the above said facts as also the execution of documents. They had indicated that it was after the execution of all the above said documents and receipt of payments, plaintiff No. 4 had expired on 2.6.2006. Respondent nos. 1/1/A to 1/1/D, the legal heirs of plaintiff no. 4, it is seen, did not take any steps to implead themselves as heirs in the two suits, namely, Special Civil Suit No. 681 of 1992 and Civil Suit No. 292 of 1993. Plaintiff No. 1 - Chandrakant Atmaram Patel - in the wake of the above-mentioned facts and circumstances, prepared a pursis on 7.7.2008, the operative portion of which reads as under:

“By filing following pursis, I, plaintiff declare before the Hon’ble Court that outside court, amicable settlement has been arrived at between me and defendants. I, plaintiff, admit Registered Sale Deeds,

bearing Sr. No. 13875, 13881, 1891, 13873, 13886 and 13896 dated 5/6/92 and All Registered Sale Deed No. 14034 dated 8/6/92 and Registered Sale Deeds, Sr. No. 4024 and 4028, dated 18/10/2000 executed by original landlord, Bai Saraswari d/o Ashabhai Revandas in favour of Mahalaxmi Co-Op. Housing Society Limited in respect of suit property mentioned by the plaintiff in the suit application of this case and in this regard, Registered Deeds of Agreement jointly and separately. The said Registered Deeds of Agreement have been produced, vide separate list, by us. The facts mentioned in the said Registered Deeds of Agreement are proper, true and legal. As stated in the said Deeds of Agreement, the ownership right and possession of the said suit property have been received by Mahalaxmi Co-op. Housing Society Limited. In the said suit property, I, plaintiff, have no right, authority or possession. As per said facts, I, plaintiff, unconditionally waive all contentions raised by us in this suit and by undergoing cost of the said suit, I compound the same.

Ahmedabad

Dated: 7/7/2008

Sd/-

(Chandrakant Atmaram

Patel)"

The same was filed before the Court. Defendant No. 3 and plaintiff Nos. 3/1 and 3/2 filed objections to the pursis on

31.7.2008. Plaintiff No. 1 – Chandrakant Atmaram Patel, on 13.9.2008, filed an affidavit before the Court stating that the pursis was given in his individual capacity and in his capacity of power of attorney holder of plaintiff Nos. 2, 4 and 5 and produced the power of attorney dated 7.1.1989 before the trial court. The trial court vide its order dated 14.8.2008 allowed the pursis (Ext.110) and accorded permission to compound the suit. Pursuant to the above mentioned settlement and compromise, a similar pursis dated 18.9.2008 (Ext 172) was also filed in Special Civil Suit No. 681 of 1992, which was also disposed of on 8.9.2009 accepting the same.

17. Plaintiff Nos. 3/1 and 3/2, as already stated, challenged the judgment and order dated 14.8.2008 by filing Special Civil Application no. 10884 of 2009, under Articles 226 and 226 of the Constitution of India. Plaintiff Nos. 3/1 and 3/2 also challenged the order dated 8.9.2009 by filing Special Civil Application No. 11929 of 2009. The heirs of plaintiff No. 4 also challenged the above-mentioned order by filing Special Civil Application no. 7097 of 2010 and the heirs of the deceased plaintiff no. 4 also filed Special Civil Application no. 7087 of 2010. Heirs of plaintiff No. 4 and plaintiff Nos. 5/1 and 5/2 also

challenged the judgment and order dated 8.9.2009 by filing Special Civil Application no. 7088 of 2010. The High Court disposed of those applications by a common judgment on 19.12.2011, the legality of which is under challenge in these appeals.

18. Mr. Mukul Rohatgi, learned senior counsel appearing on behalf of the appellant, at the outset, raised the question of maintainability of the writ petitions filed before the High Court under Articles 226 and 227 of the Constitution by the respondents, on the ground that the orders assailed before the High Court dated 14.8.2008 and 08.09.2009 were the orders passed by the trial Court in exercise of its powers conferred under the proviso to Rule 3 of Order XXXIII of the Code of Civil Procedure (for short 'CPC'). Learned senior counsel submitted that, at best, the remedy available to the respondents was to file an appeal under Section 96 read with Order XLIII Rule 1A(2) and Order XLI CPC before the appellate Court. Learned senior counsel submitted that the pursis was preferred under Order XXIII Rule 3 CPC and not under Order XXI Rule 1 CPC. Learned senior counsel submitted that the order dated 14.8.2008 falls under the second part of Order XXIII Rule 3 CPC and hence it

would be sufficient that plaintiffs or the plaintiffs' counsel appears before the Court and informs the Court that the subject matter suit had been settled or satisfied. Learned senior counsel also submitted that the heirs of the deceased plaintiff no. 4 and plaintiff nos. 5/1, 5/2 and 5/4 could not have preferred the writ petitions under Articles 226 and 227 of the Constitution of India, since the same could have resulted in setting aside of the abetment which was contrary to law in view of Order XXII CPC. Plaintiff No. 4 had died on 2.6.2006 and Civil Suit no. 292 of 1993 had, as such, abated qua the deceased plaintiff no. 4. Since the heirs, who are respondent nos. 1/1/A to 1/1/D, did not take any steps to implead themselves as heirs either in Civil Suit No. 292 of 1993 or in Special Civil Suit No. 681 of 1992, on expiry of the period of limitation under Articles 120 and 121 of the Limitation Act, those suits stood abated qua plaintiff No. 4. The heirs of the deceased plaintiff no. 4 had not taken any steps for setting aside the abetment or to get them substituted on the death of deceased plaintiff No. 4 in the various suits. Further, it was also pointed out that plaintiff Nos. 5/1 to 5/4 had never objected to the pursis dated 7.7.2008 and hence acquiesced to the order dated 14.8.2008 and are

estopped from challenging that order. Learned senior counsel submitted that all disputes with plaintiff Nos. 3/1 and 3/2 were also settled during the pendency of these appeals and their objections before the trial Court under Special Civil Application Nos. 10884 and 11925 of 2005 did not survive. Further, learned senior counsel also pointed out that the power of attorney dated 7.1.1989 executed by respondent Nos. 5/1, 5/2 and 5/3, respondent Nos. 3/1 and 3/2, respondent No. 1 (since deceased) and respondent No. 2 (since deceased) in favour of respondent No. 4 - Chandrakant Atmaram Patel, was binding on respondent Nos. 1, 2, 3, 5 and their descendants, guardians and heirs. Learned senior counsel also submitted that, pending the Special Civil Application before the High Court, building plans put up by Mahalaxmi Society for construction upon the lands in question, were sanctioned by the competent authority and Mahalaxmi Society had commenced the construction. Learned senior counsel submitted that large amounts were paid by Mahalaxmi Society to the owners of the properties and to the respondents and their representatives and they had acknowledged the receipt of those amounts. The judgment of the High Court has now unsettled the things which stood

settled. Consequently, learned senior counsel prayed that the appeals be allowed and the judgment of the High Court be set aside.

19. Shri J.M. Patel, learned counsel appearing on behalf of the contesting respondents, submitted that the High Court has rightly set aside the order dated 14.8.2008 and directed the trial Court to take into consideration the objections raised by the respondent herein and to re-hear Exh. Nos. 110 and 172. Learned senior counsel submitted that the suit was withdrawn without consent of plaintiff Nos. 5/1 to 5/4 by Chandrakant Atmaram Patel. Further, it was pointed out that no documents were produced before the trial Court pointing out that the above mentioned plaintiffs had executed any document in favour of Mahalaxmi Society. Learned senior counsel also pointed out that Bai Saraswati had fraudulently, unauthorizedly and illegally made an application before the authority for seeking permission under Section 63 of the Tenancy Act to transfer the land in question in favour of Mahalaxmi Society. Following that, two registered sale deeds dated 5.6.1992 and 8.6.1992 were executed in favour Mahalaxmi Society, which is in clear violation of Section 63 of the Tenancy Act read with

Section 23 of the Contract Act. Learned senior counsel also pointed out that the plaint in Civil Suit No. 292 of 1993 was instituted in his individual capacity and not as a power of attorney holder for rest of the plaintiffs. Learned senior counsel also pointed out that Chandrakant Atmaram Patel on 15.5.2004 executed one registered document in favour of Mahalaxmi Society, signed and executed for and on behalf of Amrutbhai Ashabai Patel (heirs of Legal Representatives are plaintiff Nos. 5/1 to 5/4) and also signed on behalf of Bai Saraswati, who expired on 22.5.1992, before the institution of suit, on relying upon the power of attorney dated 7.1.1989. Learned senior counsel pointed out that the document executed in the name of and on behalf of dead persons and also for the persons who had not authorized them to sign, such a document, according to the learned senior counsel, could not have been produced before the Court.

20. Learned senior counsel appearing on behalf of the contesting respondents also submitted that the impugned order dated 14.8.2008 is not a decree within the meaning of Section 2(2) CPC and hence, no appeal could have been filed under Section 96 read with Order XLIII Rule 1(1) and Order XLI CPC

before the trial Court. Learned senior counsel also submitted that the contents of the power of attorney dated 7.1.1989 do not empower Chandrakant Atmaram Patel to withdraw the suits, compound the suits for and on behalf of plaintiff Nos. 4 and 5 and the Court should not have allowed the application withdrawing the suit. Learned senior counsel submitted that the High Court has rightly set aside the order dated 14.8.2008 and remanded the matter to the trial Court for fresh consideration and no prejudice would be caused to the appellants, if the validity of Exts. 110 and 172 are re-examined. Learned senior counsel also submitted that this Court, sitting in Article 136 of the Constitution of India, shall not disturb the above finding of the High Court.

21. Dr. Rajeev Dhawan, learned senior counsel appearing for the intervener submitted that the purchasers, landowner and/or their legal heirs viz. Chandrakant Atmaram Patel had entered into an agreement dated 15.06.1992 with the intervener which was registered and hence it has right, title and interest over the property in question. Further, it was also pointed out that the intervener has already filed a suit RCS 783/2004 which is pending consideration before the civil court and hence it has

interest in these proceedings. Learned senior counsel also submitted that the whole matter should go back to the trial court so as to safeguard the interest of the intervener.

22. We have already referred to the facts leading to the making of pursis dated 7.7.2008 and 18.09.2008 by plaintiff No. 1 - Chandrakant Atmaram Patel for himself and as power of attorney holder for others and the orders passed thereon on 14.08.2008 and 08.09.2009 allowing the pursis and compounding the suits Nos. 292/1993 and 681/1992.

23. Bai Saraswati, as already indicated, had executed two sale deeds dated 27.10.1964 in respect of separate/non-contiguous parcels of land in favour of respondent nos. 1 to 5. Schedule to that documents refer to the survey numbers and properties sold. Respondent No. 1 to 5 (purchasers) formed a partnership firm by name M/s Arbuda Corporation and they executed an agreement to sell dated 15.9.1975 in favour of Mahalaxmi Society in respect of the properties above-mentioned. Later, M/s Arbuda Corporation and Mahalaxmi Society jointly made an application in the year 1976 under Section 20 of the ULC Act. Similar applications were also filed by Mahalaxmi Society, Bai

Saraswai and respondent No. 4 – Chandrakant Atmaram Patel. Respondent nos. 5/1, 5/2 and 5/3, respondent nos. 3/1 and 3/2, respondent No. 1 (since deceased) and respondent No. 2 (since deceased) had on 07.01.1989 executed a power of attorney before the Public Notarized Civil Court, Ahmedabad city, in favour of respondent No. 4 – Chandrakant Atmaram Patel in respect of properties mentioned earlier conferring authority on him to deal their property for other plaintiffs and the same would be binding on respondent Nos. 1, 2, 3, 5 and their descendants, guardians and heirs. Bai Saraswati, after getting permission under the ULC Act executed two sale deeds dated 5.6.1992 and 8.6.1992 in favour of Mahalaxmi Society in respect of properties mentioned earlier.

24. We notice that disputes then cropped up between Mahalaxmi Society, Bai Saraswati and respondent Nos. 1 to 5 (purchasers), which ultimately led to the filing of Special Civil Suit No. 681 of 1992, the details of which have already been stated in the earlier part of this judgment, hence not reiterated. Respondent Nos. 1 to 5 as plaintiffs then filed Civil Suit No. 292 of 1993 against Bai Saraswati and Mahalaxmi Society on 4.5.1993 for a declaration that sale deeds dated 5.6.1992 and

8.6.1992 are illegal and for a permanent injunction restraining Mahalaxmi Society from dealing with the lands. Plaintiff was signed by respondent No. 4 - Chandrakant Atmaram Patel, plaintiff No. 2 who are heirs of deceased Baldevprasad (present respondent Nos. 5/1 and 5/2), plaintiff no. 3 who are heirs of Manilal Patel (present respondent Nos. 3/1 and 3/2), plaintiff No. 4 Ashabhai Patel (since deceased) now through respondent Nos. 1/1/A to 1/1/D and plaintiff No. 5 who are heirs of Amrutlal Patel (present respondent Nos. 2/1, 2/2, 2/3 and 7). Contesting respondents, therefore, were duly represented in Civil Suit No. 292 of 1993.

25. Bai Saraswati on 18.10.2000 executed a sale deed in respect of one remaining survey No. 216 in favour of Mahalaxmi Society as well. While the above mentioned suits were pending, efforts were made for settling the entire disputes between parties, consequently, plaintiff No. 1 - Chandrakant Atmaram Patel, for himself and as power of attorney holders for other plaintiffs executed various documents and entered into various transactions. Plaintiff No. 1 for and on behalf of other plaintiffs received an amount of Rs.29,72,326/- made by Mahalaxmi Society by various cheques, evidenced by the

Notarized Acknowledgement-cum-Settlement Receipt dated 1.5.2004. On the same day, a Deed of Confirmation was also registered, which also refers to the above mentioned payment made by Mahalaxmi Society to the plaintiffs. In the Declaration-cum-Indemnity of Title dated 9.11.2004, it has been clearly stated that Mahalaxmi Society is the full, legal, proper and absolute owner and possessor of the above mentioned properties. Further, it is also provided in the said declaration that the plaintiffs had agreed to co-operate in obtaining appropriate orders from the Court in pending cases, including Special Civil Suit No. 681 of 1992 and Civil Suit No. 292 of 1993, in view of the compromise and settlement. Though, at that stage, proportionate amount was given to plaintiff No. 3, he did not encash the same. Above-mentioned are the documents executed by plaintiff No. 1 for himself and on behalf of other plaintiffs on the strength of the power of attorney dated 7.1.1989.

26. Plaintiff No. 1 individually also, apart from the above mentioned documents, executed various other documents as well, which re-enforces and re-confirms the above mentioned transactions entered into by Chandrakant Atmaram Patel – as

power of attorney holder for four other plaintiffs. Plaintiff No. 1 executed a Registered Deed of Confirmation on 10.11.2004 which specifically refers to the payment of Rs.29,72,365/- by Mahalaxmi Society. Deed also indicates that plaintiff no. 1 personally, unconditionally and irrevocably without any reservation or restriction whatsoever accepted, confirmed, acknowledged and admitted the Deed of Confirmation dated 1.5.2004, which was executed by plaintiff no. 1 for himself on behalf of other plaintiffs on the strength of the power of attorney dated 7.1.1989. Registered Articles of Agreement executed on the same day also refers to further payment of Rs.66,05,527/- being made to plaintiff No. 1. The Declaration-cum-Indemnity of Title executed on the same day also recognises that Mahalaxmi Society is in full, legal, proper and absolute owner and possessor of the above mentioned lands.

27. Plaintiff No. 2, heirs of Baldevprasad Jamunadas, individually also executed various documents, apart from the documents dated 1.5.2004 and 9.11.2004 executed by plaintiff No. 1 on the strength of the power of attorney, representing plaintiff No. 2 as well. Plaintiff no. 2 executed, on 11.11.2004, a Registered Deed of Confirmation acknowledging the payment

of Rs.29,72,365/- of the Mahalaxmi Society and proportionate payment of Rs.5,94,473/-. Plaintiff No. 2 in the said deed of confirmation, personally, unconditionally and irrevocably without any reservation or restriction whatsoever accepted, confirmed, acknowledged and admitted the deed of confirmation dated 1.5.2004 executed by plaintiff no. 1 on his behalf and on behalf of other plaintiffs. Registered Articles of Agreement dated 11.11.2004 also recognises the further payment of Rs.66,05,527/-. Declaration-cum-Indemnity of Title made on the same day also indicates that Mahalaxmi Society is the full, legal, proper and absolute owner and possessor of the above mentioned lands.

28. Plaintiff Nos. 5/1, 5/2, 5/3 and 5/4 - heirs of Amrutlal Patel had also individually executed various documents. Registered Deed of Confirmation dated 10.11.2004 refers to the payment of Rs.29,72,365/- by the Mahalaxmi Society and the proportionate payment of Rs.5,94,473/-. Plaintiff Nos. 5/1, 5/2, 5/3 and 5/4, in the said deed of confirmation has personally, unconditionally an irrevocable without any reservation or restriction whatsoever accepted, confirmed, acknowledged and admitted the deed of confirmation dated 1.5.2004 executed by

plaintiff No. 1 on the strength of the power of attorney dated 7.1.1989. Registered Articles of Agreement dated 10.11.2004 also refers to further payment of Rs,66,05,527/- being made to plaintiff Nos. 5/1, 5/2, 5/3 and 5/4. Declaration-cum-Indemnity of Title of the same date would also indicate that Mahalaxmi Society is the full, legal, proper and absolute owner and possessor of the above mentioned lands.

29. Plaintiff No. 4 had also individually, in addition to the documents dated 1.5.2004 and 19.11.2004 executed by plaintiff No. 1, executed a Registered Deed of Confirmation dated 5.1.2005 acknowledging the payment of Rs.29,72,365/-. In that deed also, plaintiff No. 4 has personally, unconditionally and irrevocably without any reservation or restriction whatsoever accepted, confirmed, acknowledged and admitted the deed of confirmation dated 1.5.2004 executed by plaintiff No. 1. Plaintiff no. 4 had also, vide Registered Articles of Agreement, acknowledged the receipt of the additional payment of Rs.30,05,527/- on the same day. Declaration-cum-Indemnity of Title dated 5.1.2005 also acknowledges that Mahalaxmi Society is the full, legal, proper and absolute owner and possessor of the above mentioned lands.

30. Above facts would clearly indicate that plaintiff No. 1 on 5.1.2005 had executed documents as the power of attorney holder and also on his individually capacity, plaintiff Nos. 2/1, 2/2, plaintiff No. 4 and plaintiff Nos. 5/1, 5/2 and 5/4 had also executed documents and settlement acknowledging the receipt of payments made by Mahalaxmi Society and also acknowledging that Mahalaxmi Society is the full, legal, proper and absolute owner and possessor of the above mentioned properties. Further, on 9.11.2005, plaintiff Nos. 1, 2/1, 2/2, 4 and 5/1 to 5/4, through their advocate, published a notice in the local newspaper confirming the above mentioned facts and also the execution of the documents, thereby acknowledging that Mahalaxmi Society is the true, full, legal, proper and absolute owner and possessor of the above mentioned properties.

31. Plaintiff Nos. 3/1, 3/2 and plaintiff no. 4, however, had issued a public notice dated 05.12.2004 in the local newspapers, cancelling the power of attorney dated 7.1.1989 executed in favour of plaintiff No. 1 - Chandrakant Atmaram Patel. Plaintiff no. 4, after having executed the aforesaid

documents in his individual capacity and after receipt of all the payments as per the aforesaid documents from the Mahalaxmi Society expired on 2.6.2006. During his lifetime, he had not disputed any of the above mentioned documents or their contents. The legal heirs of plaintiff No. 4, i.e. plaintiff Nos. 1/1/A to 1/1/D had also not raised any dispute. On the death of plaintiff No. 4, they also did not take any steps to get them impleaded as the heirs of plaintiff No. 4 in Special Civil Suit no. 681 of 1992 or in Civil Suit No. 292 of 1993, consequently, on the expiry of the period of limitation, the suits stood abated, qua plaintiff No. 4.

32. We have found that pursuant to the execution of various documents, referred to hereinbefore, by plaintiff No. 1 - Chandrakant Atmaram Patel, for himself and on behalf of the other plaintiffs, as well as plaintiff no. 1 individually, plaintiff No. 2, plaintiff Nos. 5/1, 5/2, 5/3 and 5/4, plaintiff No. 4 individually, and after having received the amounts mentioned therein from the appellant - Mahalaxmi Society, decided to record the compromise in both suits, since all the disputes between them were settled and they had acknowledged that Mahalaxmi Society is the full, legal, proper and absolute owner

and possessor of the lands in question. Consequently, plaintiff no. 1, on his behalf and on behalf of the other plaintiffs, except plaintiff Nos. 3/1 and 3/2, prepared a pursis dated 7.7.2008, referring to the sale deeds dated 08.06.1992 and 18.10.2000 executed in favour of the Mahalaxmi Society in respect of all the properties in question stating that the plaintiffs have unconditionally given up all the claims raised in the suit and have settled the issues with the Mahalaxmi Society. The same was then presented before the trial Court. Plaintiff Nos. 3/1 and 3/2 and defendant No. 3 - Jankalyan Society, however endorsed their objection to the pursis on 31.07.2008. Plaintiff No. 1 filed an affidavit on 13.8.2008 stating that the pursis was given in his individual capacity and as the power of attorney holder of plaintiff Nos. 2, 4 and 5. The trial Court, after hearing plaintiff nos. 3/1, 3/2 and defendant no. 3 (intervener), came to the conclusion that plaintiff Nos. 3/1 and 3/2 had cancelled the power of attorney only on 3.12.2004, whereas the Deeds of Confirmation were executed prior thereto, and that defendant No. 3 claim rested only on an agreement to sell, and could not enjoy any right under the Transfer of Property Act and, thereby, allowed the pursis and disposed of the suit (Special Civil Suit

no. 292 of 1993) on 14.8.2008. Following that, Civil Suit No. 681 of 1992 was also disposed of on 8.9.2009.

33. We may indicate that the documents referred to earlier, executed by the plaintiff No. 1 for himself and as a power of attorney holder for others and the acknowledgment deed; Declaration-cum-indemnity bonds, deeds of confirmation etc. executed by the plaintiff No.2, heirs of Baldev Prasad, plaintiff Nos. 5/1, 5/2, 5/3 and 5/4, plaintiff No. 4 etc. would clearly show that they had received large amounts from the Mahalaxmi Society and had acknowledged that the Mahalaxmi Society was the full, legal , proper and absolute owner and the possession of the property covered by the sale deeds dated 05.06.1992 and 08.06.1992. Plaintiff Nos. 3/1 and 3/2, though later, challenged the judgment and order dated 14.8.2008, after more than one year, while pending these appeals, they also settled the matter with Mahalaxmi Society and accepted all the arguments raised by Mahalaxmi Society in this appeals.

34. Defendant No. 3 - Jankalyan Co-operative Group Housing Society (present intervener) had never independently

challenged the order dated 14.8.2008 of the trial Court, consequently the order is binding on defendant No. 3.

35. We are now left with the objections raised by the heirs of the deceased plaintiff No. 4 and plaintiff Nos. 5/1 to 5/4. The heirs of deceased plaintiff No. 4 and plaintiff Nos. 5/1, 5/2 and 5/4 challenged the judgment and order dated 14.8.2008 only on 1.3.2010, more than one year and six months later, by filing Special Civil Application no. 7087 of 2010. The documents referred to earlier clearly indicate that they had received large amounts from Mahalaxmi Society and the heirs of the deceased plaintiff no. 4 did not take any steps to get them recorded in the Civil Suit after the death of the plaintiff No. 4, so far as this case is concerned, the suit had abated. The heirs of plaintiff No. 4 and plaintiff Nos. 5/1, 5/2 and 5/4 also challenged the judgment and order dated 8.9.2009 in Civil Suit No. 681 of 1992 only on 1.3.2011 by filing Special Civil Application No. 7088 of 2010. Plaintiff No. 4, we have already indicated, was duly represented by plaintiff No. 1 - Chandrakant Atmaram Patel while executing the various registered documents and issuing Acknowledgement-cum-Settlement Receipts by which large amounts were received by plaintiff No. 1, representing

plaintiff no. 4. Over and above, plaintiff No. 4 himself had executed various registered deed of confirmation dated 5.1.2005 acknowledging the receipt of Rs.29,32,365/- and also Rs.30,05,527/-. We are of the view that the legal heirs of plaintiff no. 4 now cannot come forward and question the various documents executed by plaintiff No. 4, especially when they had not taken any steps to get them impleaded in both the civil suits. Impugned orders passed on 14.8.2008 and 8.9.2009, therefore, would bind them. Plaintiff Nos. 5/1 to 5/4 had also not objected to the execution of various deeds and documents ratified all the actions taken by plaintiff No.1, as power of attorney holder, since they had not objected to the pursis dated 07.07.2008, and hence acquiesced to the order dated 14.08.2008.

36. We may now examine whether the impugned order would fall under Rule 3 of Order XXIII or Rule 1 of Order XXIII of the CPC, the said provisions are given below for easy reference:

ORDER XXIII. WITHDRAWAL AND ADJUSTMENT OF SUITS

1. Withdrawal of suit or abandonment of part of claim

(1) At any time after the institution of a suit, the plaintiff may as against all or any of the defendants abandon his suit or abandon a part of his claim:

Provided that where the plaintiff is a minor or other person to whom the provisions contained in rules 1 to 14 of Order XXXII extend, neither the suit nor any part of the claim shall be abandoned without the leave of the Court.

(2) An application for leave under the proviso to sub-rule (1) shall be accompanied by an affidavit of the next friend and also, if the minor or such other person is represented by a pleader, by a certificate of the pleader to the effect that the abandonment proposed is, in his opinion, for the benefit of the minor or such other person.

(3) Where the Court is satisfied,-

(a) that a suit must fail by reason of some formal defect, or

(b) that there are sufficient grounds for allowing the plaintiff to institute a fresh suit for the subject-matter of a suit or part of a claim, it may, on such terms as it thinks fit, grant the plaintiff permission to withdraw from such suit or such part of the claim with liberty to institute a fresh suit in respect of the subject-matter of such suit or such part of the claim. (4) Where the plaintiff-

(a) abandons any suit or part of claim under sub-rule (1), or

(b) withdraws from a suit or part of a claim without the permission referred to in sub-rule (3),

he shall be liable for such costs as the Court may award and shall be preclude from instituting any fresh suit in respect of such subject-matter or such part of the claim.

(5) Nothing in this rule shall be deemed to authorise the Court to permit one of several plaintiffs to abandon a suit or part of a claim under sub-rule (1), or to withdraw, under sub-rule (3), any suit or part of a claim, without the consent of the other plaintiffs.

“ORDER XXIII - WITHDRAWAL AND ADJUSTMENT OF SUITS-

(3) Compromise of suit.- Where it is proved to the satisfaction of the Court that a suit has been adjusted wholly or in part by any lawful agreement or compromise in writing and signed by the parties, or where the defendant satisfies the plaintiff in respect of the whole or any part of the subject-matter of the suit, the Court shall order such agreement, compromise or satisfaction to be recorded, and shall pass a decree in accordance therewith so far as it relates to the parties to the suit, whether or not the subject-matter of the suit.

Provided that where it is alleged by one party and denied by the other that an adjustment or satisfaction has been arrived at, the Court shall decide the question; but no adjournment shall be granted for the purpose of deciding the question, unless the Court, for reasons to be recorded, thinks fit to grant such adjournment.

Explanation:- An agreement or compromise which is void or voidable under the Indian Contract Act, 1872 (9 of 1872), shall not be deemed to be lawful within the meaning of this rule.”

Rule 1 of Order XXIII speaks of withdrawal of suit or abandonment of part of claim. Rule 1 of Order XXIII covers two types of cases (i) Where the plaintiff withdraws a suit or part of a claim with the permission of the Court to bring in fresh suit on the same subject matter and (ii) Where the plaintiff withdraws a suit without the permission of the Court.

Rule 3 of Order XXIII, on the other hand, speaks of compromise of suit. Rule 3 of Order XXIII refers to distinct classes of compromise in suits. The first part refers to lawful agreement or compromise arrived at by the parties out of court, which is under 1976 amendment of the CPC required to be in writing and signed by the parties. The second part of Rule deals with the cases where the defendant satisfies the plaintiff in respect of whole or a part of the suit claim which is different from first part of Rule 3. The expression 'agreement' or 'compromise' refer to first part and not the second part of Rule 3. The second part gives emphasis to the expression 'satisfaction'.

37. In ***Pushpa Devi V. Rajinder Singh***, (2006) 5 SCC 566, this court has recognised that the distinction deals with the distinction between the first part and the second part.

“What is the difference between the first part and second part of Rule 3? The first part refers to situations where an agreement or compromise is entered into in writing and signed by the parties. The said agreement or compromise is placed before the court. When the court is satisfied that the suit has been adjusted either wholly or in part by such agreement, or compromise in writing and signed by the parties and that it is lawful, a decree follows in terms of what is agreed between the parties. The agreement/compromise spells out the agreed terms by which the claim is admitted or adjusted by mutual concessions or promises, so that the parties thereto can be held to their promise(s) in future and performance can be enforced by the execution of the decree to be passed in terms of it. On the other hand, the second part refers to cases where the defendant has satisfied the plaintiff about the claim. This may be by satisfying the plaintiff that his claim cannot be or need not be met or performed. It can also be by discharging or performing the required obligation. Where the defendant so ‘satisfied’ the plaintiff in respect of the subject-matter of the suit, nothing further remains to be done or enforced and there is no question of any ‘enforcement’ or ‘execution’ of the decree to be passed in terms of it.”

38-39. Further, it is relevant to note the word 'satisfaction' has been used in contradistinction to the word 'adjustment' by agreement or compromise by the parties. The requirement of 'in writing and signed by the parties' does not apply to the second part where the defendant satisfies the plaintiff in respect of whole or part of the subject-matter of the suit.

40. The proviso to Rule 3 as inserted by the Amendment Act 1976 enjoins the court to decide the question where one party alleges that the matter is adjusted by an agreement or compromise but the other party denies the allegation. The court is, therefore, called upon to decide the *lis* one way or the other. The proviso expressly and specifically states that the court shall not grant such adjournment for deciding the question unless it thinks fit to grant such adjournment by recording reasons.

41. So far as the present case is concerned, pursis falls under Order XXIII, Rule 3 since the defendant has satisfied the plaintiffs in respect of whole of the subject-matter of the suit. Since objections were raised by plaintiff No.3 and defendant No. 3, those objections had to be dealt with by the court in

accordance with Order XXIII, Rule 3. The proviso to Order XXIII, Rule 3 cast an obligation on the court to decide that question at the earliest, without giving undue adjournments. Objections raised by plaintiff No. 3 and defendant No.3 were examined by the court and rejected, in our view, rightly. Cogent reasons have been stated by the court while rejecting their objections and accepting the pursis.

42. We have also found that the heirs of plaintiff No. 4 did not took steps to record themselves in Civil Suit No. 292/1993 till the same was disposed of and hence, as per the provisions of Articles 120 and 121 of the Limitation Act, suit stood abated qua plaintiff No. 4. No steps had been taken to set aside the abatement as well. We have also on facts found that the plaintiff No. 4 during his life time executed various documents acknowledging the amounts paid by the Mahalaxmi Society. Plaintiff No. 3, though objected to pursis, later plaintiff Nos. 3/1 and 3/2 have settled disputes and adopted the contention of the Mahalaxmi Society.

43. We are also not much impressed by the argument of the learned senior counsel appearing for the respondent that the

trial court has committed an error in not consolidating the various suits including Civil Suits No. 292/1993 and 681/1992 to be tried together as ordered by the District Court in its order dated 29.08.2006 in Civil Misc. Application No. 16/2005. Section 24 of the CPC only provides for transfer of any suit from one court to another. The court has not passed an order of consolidating all the suits. There is no specific provision in the CPC for consolidation of suits. Such a power has to be exercised only under Section 151 of the CPC. The purpose of consolidation of suits is to save costs, time and effort and to make the conduct of several actions more convenient by treating them as one action. Consolidation of suits is ordered for meeting the ends of justice as it saves the parties from multiplicity of proceedings, delay and expenses and the parties are relieved of the need of adducing the same or similar documentary and oral evidence twice over in the two suits at two different trials. Reference may be made to the judgment of this Court in ***Prem Lala Nahata and Anr. v. Chandi Prasad Sikaria*** (2007) 2 SCC 551.

44. The transfer of the suits from one court to another to be tried together will not take away the right of the parties to

invoke Order XXIII Rule 3 and there is also no prohibition under Order XXIII Rule 3 or Section 24 of the CPC to record a compromise in one suit. Suits always retain their independent identity and even after an order of consolidation, the court is not powerless to dispose of any suit independently once the ingredients of Order XXIII, Rule 3 has been satisfied.

45. We are, therefore, of the view that so far as the instant case is concerned, there is no illegality in the orders passed by the trial court disposing of the suit under Order XXIII, Rule 3 of the CPC accepting the pursis dated 07.07.2008 and 18.09.2008. The High Court, in our view, was not right in upsetting the orders dated 14.08.2008 and 08.09.2009 in Special Civil Suit Nos. 292/1993 and 681/1992. Consequently, all these appeals are allowed and the common judgment of the High Court is, accordingly, set aside. However, there will be no order as to costs.

.....J.
(K.S. Radhakrishnan)

.....J.
(Dipak Misra)

New Delhi,
March 1, 2013

