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THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : RSA/116/2022

BIPIN BARUAH @ BIPIN BEZBARUAH
S/O LATE GOBINDA BARUAH
RESIDENT OF CHEREKAPAR, DIST SIVASAGAR, ASSAM, 785640

VERSUS

PARESH BARUAH AND 2 ORS.
S/O LATE MUKUNDARAM BARUAH
RESIDENT OF CHEREKAPAR, DIST SIVASAGAR, ASSAM, 785640

2:SRI NARAYAN BARUAH
S/O LATE MUKUNDARAM BARUAH
RESIDENT OF CHEREKAPAR
DIST SIVASAGAR
ASSAM
785640

3:SRI SANJIB KR. BORA
S/O SURYA KR. BORA

RESIDENT OF GANAK PATTY
SIVASAGAR TOWN
GAIL LAKWA
DIST SIVASAGAR
ASSAM 78564

Advocate for the Appellant : Mr. J. Deka, Advocate.

Advocate for the Respondents : None appeared.



BEFORE

HONOURABLE MR. JUSTICE DEVASHIS BARUAH

Date of Hearing : 19.09.2022

Date of Judgment : 27.09.2022

JUDGMENT AND ORDER (CAV)

Heard Mr. J. Deka, the learned counsel appearing on behalf of the appellant. None appeared on behalf of the respondents.

2. This is an appeal under Section 100 of the Code of Civil Procedure, 1908 (for short, the Code) challenging the judgment and decree dated 24.01.2022 passed by the learned Additional District Judge, Sivasagar in Title Appeal No.11/2019 whereby the said appeal was dismissed and the judgment and decree dated 29.06.2019 passed by the Civil Judge, Sivasagar in Title Suit No.36/2006 was affirmed.

3. This appeal has been taken up for consideration at the stage of Order XLI Rule 11 to ascertain as to whether there arises any substantial question of law which can be formulated in terms with Section 100(4) of the Code.

4. For the purpose of ascertaining as to whether the questions of law proposed by the learned counsel appearing on behalf of the appellant are substantial and arises/involved in the instant appeal, it would be relevant to take note of the brief facts of the case.

For the sake of convenience, the parties herein are referred to in the same status as they stood before the trial court.

5. The appellant herein as plaintiff instituted a suit being Title Suit No.2/2005 against the defendant Nos.1 & 2 along with another brother of the plaintiff before the Court of the Munsiff No.1, Sivasagar for declaration, partition and permanent injunction. It has been alleged in the plaint that the defendant Nos. 1 & 2 along with the other brother illegally got the ancestral property of the plaintiff and defendants, partitioned in P.P. Case No.41/89-90 and tried to construct the private path used by the plaintiff and his other brothers for which the plaintiff also prayed for a temporary injunction against the

defendant Nos. 1 & 2 and others in Misc. (J) Case No.3/2005, arising out of the Title Suit No.2/2005. The said Title Suit No.2/2005 was pending and was sub-judice. It has been also mentioned in the plaint that the deceased father of the plaintiff, namely, Gobinda Baruah and the deceased father of the defendant Nos. 1 & 2, namely Mukundaram Baruah were brothers and they were the joint owners and pattadars of PP No.1734 of Sivasagar Town, Mouza- Nagarmahal. Gobinda Baruah had a private path over the said land of PP No.1734 which has been in continuous possession and in continuous use of the plaintiff and his other brothers, i.e., the sons of Late Gobinda Baruah. The defendant Nos.1 & 2 and the other legal heirs of Late Mukundaram Baruah, as alleged in the plaint, illegally partitioned the said land covered by PP No.1734 and the plaintiff challenged the said partition in Title Suit No.2/2005 and prayed for partition of the said land by the Civil Court and issuance of precept to S.D.C. (3), Sivasagar to effect partition as per decree of Title Suit No.2/2005 amongst other prayers.

6. It has been further stated that during the pendency of the Title Suit No.2/2005, the defendant Nos.1 & 2 along with Binoyananda Baruah, their deceased brothers, tried to sell the land covered by the aforesaid PP No.1734 and obtained permission for sale from the Sivasagar Development Authority to the defendant No.3. The plaintiff lodged complaint with the said Development Authority informing it about the pendency of the suit and prayed that no permission should be granted. However, the Development Authority granted permission. The plaintiff, finding no other alternative filed Title Suit No.58/2005 against the defendants, Binoyananda Baruah and Sivasagar Development Authority as well and obtained an *ex-parte* ad-interim injunction restraining the defendants from executing and registering the sale deed vide order dated 29.11.2005 passed in Misc. (J) Case No.104/2005, arising out of Title Suit No.58/2005 by the Munsiff No.1, Sivasagar. The said notice of injunction was duly served upon the defendants and also upon Binoyananda Baruah, the defendant No.2 of Title Suit No.58/2005 and they contested the suit and injunction proceedings by filing written



statement and show cause reply. The said show cause reply was filed on 01.03.2006 in Misc. (J) Case No.104/2005, arising out of Title Suit No.58/2005. On that day, the Presiding Officer of the Court of the Munsiff No.1 was on casual leave for which the case was fixed on 20.03.2006 for necessary order. On 20.03.2006, it was informed to the court that the defendant No.2 Binoyananda Baruah died on 27.02.2006 and the plaintiff was directed to take formal steps for substitution, fixing 05.04.2006 for necessary steps and likewise 03.07.2006 was fixed for necessary order. It was mentioned in the plaint that as Binoyananda Baruah died unmarried, there was none to be substituted. Vide an order dated 03.07.2006, the Munsiff No.1 vacated the ad-interim injunction and disposed of the Misc. (J) Case No.104/2005. In the said order it was reflected that the suit land had already been transferred to the defendant No.3 in the instant suit. After vacation of the ad-interim injunction, the defendant No.1 & 2 executed the registered sale deed No.834 dated 10.08.2006 before the Office of the Sub-Registrar, Sivasagar. It was alleged in the plaint that in view of the pendency of Title Suit No.2/2005 and Title Suit No.58/2005, the defendant Nos.1 & 2 could not have legally transferred the suit property except under the authority of the Court and on such terms as it may impose and as such, the sale so made vide the registered deed of sale bearing deed No.834 dated 10.08.2006 was illegal and the same is liable to be cancelled and delivered up. Further to that, it was also mentioned in the plaint that the property, being a joint property and the partition so effected by the S.D.O (Sadar), Sivasagar in PP Case No.41/89-90 being under challenge in Title Suit No.2/2005 which was sub-judice in the Court of the Munsiff No.1, Sivasagar, the defendants could not have legally transferred the suit land of Title Suit No.58/2005 and as such the sale was illegal and the sale deed is liable to be cancelled and delivered up. In paragraph No.6 of the said plaint, it was mentioned that vide the sale deed No.934 dated 10.08.2006, the defendant Nos. 1 & 2 sold the private path belonging to the plaintiff. It was mentioned that in the permission the defendant did not show the private path to be sold out rather they showed the private path as a boundary line of the land which fell on the eastern boundary of the land shown to be

sold. But in the sale deed, the defendants sold the private path also. It was mentioned that the said defendant Nos.1 & 2 cannot legally sell the private path to the defendant No.3 which belongs to the plaintiff and as such the defendant played fraud upon the plaintiff. Further to that, it was also the case of the plaintiff that the permission so granted on 25.11.2005 by the Sivasagar Development Authority and in the said permission there were three applicants, i.e. the defendant Nos.1 & 2 and their brother Binoyananda Baruah. But before registration of the sale deed on 10.08.2006, one of the applicants of the said permission, i.e. Binoyananda Baruah died on 27.02.2006 and on the death of one of the applicants, the permission became infructuous and could not be legally enforceable. But the defendants played fraud upon Sub-Registrar by concealing the fact of the death of one of the applicants of the said permission and got the sale deed registered illegally and as such the sale deed in question is not enforceable in law and the same is liable to be cancelled and delivered up being illegal and deemed to be registered without proper permission from the Sivasagar Development Authority and registered fraudulently.

7. On the basis of the above, the plaintiff sought for a declaration that the sale deed No.834 dated 10.08.2006 by the Sub-Registrar, Sivasagar Development Authority executed and registered between the defendants is illegal, fraudulent and not binding on the plaintiff and adjudged it to be void and ordered it to be delivered up and cancelled; for compensation of Rs.64,000/- in favour of the plaintiff and against the defendants as described in Schedule-B to the plaint; permanent injunction restraining the defendant No.3 from entering into the land and the private path described in Schedule-A to the plaint and as described in the sale deed No.834 dated 10.08.2006 etc. The said suit was registered and numbered as Title Suit No.36/2006 and was filed before the Court of the Civil Judge at Sivasagar.

8. The defendant Nos. 1 to 3 jointly filed their written statement stating *inter-alia* that Late Gobinda Baruah, father of the plaintiff and Late Mukundaram Baruah, father the



defendant Nos.1 & 2 who were the joint pattadars and possessors of 2 Bighas 2 Kathas 17 Lechas of land covered by Dag No.3406 of PP No.1734 of Sivasagar Town under Nagarmahal Mouza. It was mentioned that after the death of Mukundaram Baruah, the defendant's family filed a partition case being PP Case No.41/89-90 in the Court of the S.D.O. (Sadar), Sivasagar and in the due process of law, the plaintiff and the brothers of the plaintiff were made necessary parties. The S.D.O. (Sadar) granted partition vide the order dated 20.12.1990 and subsequently in respect to a plot of land measuring 1 Bigha 1 Katha 7 ½ Lechas, a separate patta was issued in favour of the defendant Nos.1 on 02.01.2003 being PP No.3159 (new) of Sivasagar Town. The learned S.D.C., Sivasagar as per the provisions of law demarcated the land after serving notices to plaintiff's family including the plaintiff also and handed over the possession. It has been mentioned that since then both the parties were enjoying their respective shares peacefully openly with right, title and interest and possession thereon with bamboo fence in the boundary which is also known to the plaintiff and if the plaintiff was aggrieved with the said partition, they ought to have gone on appeal, but not by way of a separate suit. It was mentioned that the defendants have/has owned land just on the southern side of the plaintiff and the proforma defendant's land and house where they reside and to ingress and egress of both the parties there is a joint path used by the all concerned. It was further mentioned that though in PP Case No.41/89-90, on mandal report dated 05.03.2001, the legal heirs of Gobinda Baruah were made parties and served notices upon them for which the plaintiff filed a petition on 01.02.2002 before the S.D.C., Sivasagar but in due course, took no follow-up steps. Further to that, it was mentioned that the filing of Title Suit No.2/2005 and Misc. (J) Case No.3/2005 in the Court of the Munsiff No.1, Sivasagar was based upon false allegations and the said Court dismissed the Misc. (J) Case No.3/2005 on contest and Title Suit No.2/2005 was fixed for plaintiff evidence. It was mentioned that after the partition and demarcation of the respective shares of the land, the defendant Nos.1 & 2 and the plaintiff's family were enjoying the land with right, title and interest and possession and as the absolute owner of land

covered by Dag Nos.3848 & 3849 of PP No.3159 of Sivasagar Town under Nagarmahal Mouza. The defendant Nos.1 & 2's families handed over the possession of land measuring 1 Katha 10 Lechas covered by Dag No.3849 of PP No.3159 of Sivasagar Town to the defendant No.3 vide deed of agreement for sale dated 12.02.2004 and received Rs.5,000/- from the defendant No.3 and since then the defendant No.3 was in possession of the land as described above. It was mentioned that during this period the plaintiff had filed two title suits with injunction petitions, i.e. Title Suit No.2/2005 with Misc. (J) Case No.3/2005 and Title Suit No.58/2005 with Misc. (J) Case No.104/2005 before the courts for restraining the defendants from entering into the path and the suit land. But after perusal of the records, facts and the legal position, the learned Munsiff No.1 dismissed Misc. (J) Case No.3/2005 as well as Misc. (J) No.104/2005 and ordered in favour of the defendants that the defendants are in possession of the suit land and the path. It was further mentioned that after disposal of Misc. (J) Case No.104/2005, the defendants Nos.1 & 2 executed the registered sale deed in favour of the defendant No.3.

9. At this stage, it is very pertinent to mention that in the said written statement it was mentioned that due to oversight, the schedule of the sale deed was wrongly inserted but later on it was duly rectified vide deed of Rectification No.995 dated 26.09.2006 and duly mutated the name of the defendant No.3 in the patta. Further to that, it was mentioned that during the pendency of Title Suit No.2/2005 and after the disposal of the Misc. (J) Case No.3/2005 for joint path, the plaintiff started to raise constructions over the joint path used by the defendants for their ingress and egress in spite of specific civil court order. Against the said obstruction, the defendant Nos.1 & 2 filed a petition before the Court of Additional Deputy Commissioner, Sivasagar which was registered as Misc. Case No.152/2005. In that case on contest, the learned S.D.O. (Sadar), Sivasagar passed an order in favour of the defendant Nos.1 & 2 and directed the O/C, Sivasagar to remove the blockage of the plaintiff from the said joint path. It was also specifically mentioned in the written statement that the path under reference is a joint path used by all

concerned, the plaintiff's side and the defendant No.1 & 2 since their father's time and the defendant No.3 since 12.02.2004 and it is also an admitted fact of the plaintiff in Title Suit No.2/2005 in which the plaintiff had filed a sketch map of the suit land stating that the said joint common path upto the defendants' land and possession for which the learned Munsiff No.1, Sivasagar disposed of the Misc. (J) Case No.3/2005 on merits vide order dated 13.06.2005. On the basis of the above statements, the defendants further denying the case of the plaintiff as set out in the plaint, filed the written statement.

10. On the basis of the said pleadings, the trial court framed as many as eight issues which are as herein under:-

- i. *Whether there is cause of action for the suit?*
- ii. *Whether the suit is maintainable in its present form?*
- iii. *Whether the suit is bad for non-joinder of necessary parties?*
- iv. *Whether the suit is not properly valued?*
- v. *Whether the registered Sale Deed No.834 dated 10.08.2006 of the Sub-Registrar, Sivasagar is illegal, fraudulent and not binding on the plaintiff and liable to be cancelled?*
- vi. *Whether the plaintiff is entitled for compensation of Rs.64,000/- from the defendants?*
- vii. *Whether the plaintiff is entitled to get a decree as prayed for?*
- viii. *To what other relief or reliefs the plaintiff is entitled?*

11. During the course of the trial, the plaintiff adduced his evidence and the defendant No.3 had also adduced his evidence. At this stage, it may be relevant herein to mention that in the documentary evidence so adduced by the plaintiff, he had also adduced the registered sale deed No.834 dated 10.08.2006 as Ext.3 and the certified copy of the sale permission of the Sivasagar Development Authority as Ext.7 amongst others.

12. The trial court vide the judgment and decree dated 29.06.2019 dismissed the suit of the plaintiff. The Issue No.(v) was of vital importance which pertains as to whether the registered sale deed bearing No.834 dated 10.08.2006 of Sub-Registrar, Sivasagar was illegal, fraudulent and not binding on the plaintiff and liable to be cancelled. The trial court, after taking into account the evidence on record, came to a finding that the registered sale deed No.834 dated 10.08.2006 was neither illegal nor fraudulent and was binding on the plaintiff.

13. At this stage it may be relevant herein to mention that during pendency of the instant suit, Title Suit No.2/2005 was dismissed by the Court of the Munsiff No.1, Sivasagar. It was held by the trial court that as the registered sale deed cannot be declared void without the prayer of declaring partition and permission to sale the suit land void and as the plaintiff has filed a separate suit regarding the said issue, the trial court was of the opinion that the suit was not maintainable. The other issues were also decided against the plaintiff. Being aggrieved and dissatisfied, the plaintiff preferred an appeal before the Court of District Judge, Sivasagar which was endorsed to the Court of the Additional District and Sessions Judge, Sivasagar for disposal. The said appeal was registered and numbered as Title Appeal No.11/20019.

14. The First Appellate Court framed as many as 4 (four) points for determination which are quoted herein below:-

1. Whether the learned trial court had rightly decided the Issue Nos. (i), (iii) & (iv) in favour of the plaintiffs?

2. Whether the leaned trial court had rightly decided the Issue No. (ii)?

3. Whether the learned trial court had rightly decided the Issue No. (v) against the plaintiff/appellant and

4. Whether the leaned trial court had rightly decided the Issue Nos. (vi), (vii) & (viii) against the plaintiff/appellant?

15. The First Appellate Court decided the point of determination No. 1 by upholding

the decision of the trial court in respect to Issue No. (i), (iii) & (iv). On the point for determination No.2, the First Appellate Court reversed the decision of the trial court in respect to Issue No.(ii) holding *inter-alia* that the suit was maintainable in the present form. On the point of determination No.3 as to whether the trial court had rightly decided the Issue No.(v) against the plaintiff it was observed that merely because the Sale Deed No.834 dated 10.08.2006 was executed during the pendency of the suits, the said Sale Deed cannot be held to be alleged as the right of the transferee, i.e. the respondent No.3 will be subject to the outcome of the Title Suit No.2/2005 and Title Suit No.58/2005. It was observed that though the Title Suit No.2/2005 had already been disposed of by the trial court but the decision will be subject to the decision passed in the appeal, if any. As regards the point for determination No.4 as to whether the trial court had rightly decided the Issue Nos. (vi), (vii) & (viii) against the plaintiff it was observed that in view of the decision in respect to Issue No.(v), the plaintiff/appellant was not entitled to any relief and as such the decision of the trial court as regard the Issue Nos.(vi), (vii) & (viii) were affirmed.

16. Being aggrieved and dissatisfied, the present appeal has been preferred by the plaintiff as appellant. In the Memo of Appeal, three questions of law have been proposed as substantial. However, the learned counsel appearing on behalf of the appellant submitted that the three questions of law so submitted were in fact one and the same, i.e.:-

Whether the concurrent findings of facts arrived at by the court below suffer from perversity on the ground that both the courts below failed to take into consideration the Ext.3 and Ext.7 in the proper perspective?

17. The learned counsel for the appellant submitted that perusal of Ext.7 would show that on the eastern side of the land transferred by way of the impugned deed of sale bearing deed No.834 dated 10.08.2006, there is a private path whereas from a perusal of the deed of sale, i.e. Ext.3, it would be seen that the said 10 feet private path has been

transferred by way of the said deed of sale. The learned counsel for the appellant submitted that this aspect of the matter was duly mentioned in the pleadings, more particularly, in paragraph No.6 of the plaint. The learned counsel for the appellant, therefore, submitted that both the courts below did not take into consideration this vital aspect of the matter and decided the suit against the plaintiff, and as such, the same suffers from perversity.

18. The learned counsel for the appellant further submitted that another substantial question of law so arises in the instant case in as much as Section 52 of the Transfer of Property Act, 1882 prohibits any transfer of the immovable property during the pendency of the suit which is the subject matter of the suit and in the instant case there were two suits pending, one is Title Suit No.2/2005 and the other is Title Suit No.58/2005 when the land was sold which was the subject matter of both the suits. The learned counsel for the appellant, therefore, submitted that the second question of law which is substantial is:-

Whether the courts below were justified in deciding the Issue No.(v) against the plaintiff without taking into consideration the scope and ambit of Section 52 of the Transfer of Properties Act, 1882?

19. From the submission so made by the learned counsel for the appellant it appears that there are two questions of law which have been proposed to be substantial questions of law. Let this Court take into consideration each of the said questions of law so proposed one at a time.

20. The first question of law so proposed is in respect to the inclusion of the private path in the deed of sale No.834 dated 10.08.2006 and the non-consideration thereof by both the courts below would amount to perversity or not. To ascertain as to whether the same would be a substantial question of law involved in the appeal, it would be relevant to take note of that in paragraph No.6 of the plaint, there is an allegation to that effect that vide the sale deed No.834 dated 10.08.2006, the defendant Nos.1 & 2 sold the

private path belonging to the plaintiff whereas in the permission, the defendants did not show the private path to be sold out rather they showed the private path as a boundary line of their proposed sale of land which fell on the eastern boundary of the land shown to be sold.

21. In the written statement so filed by the defendants it would be seen that at paragraph No.7 (b) wherein it has been mentioned that to ingress and egress of both the parties there is a joint path used by all concerned, i.e. the plaintiff's family and the defendant Nos.1 & 2 since their father's time for decades. It was also mentioned in paragraph No.7(f) of the written statement that the defendant Nos.1 & 2 executed the sale deed in favour of the defendant No.3, but due to oversight, the schedule of the sale deed was wrongly inserted but later on it was duly rectified vide Deed of Rectification No.995 dated 26.09.2006 and the land was duly mutated in the name of the defendant No.3 in the patta. In the same paragraph it was also mentioned that after the disposal of Misc. (J) Case No.3/2005, the plaintiff started to raise obstruction over the suit/the said path in the ingress and egress in spite of Civil Court's order and thereupon at the intervention of the Additional Deputy Commissioner, Sivasagar, the O/C, Sivasagar was directed to remove blockage of the plaintiff from the said joint path. Further to that, it has also been mentioned that it is an admitted fact of the plaintiff in Title Suit No.2/2005 in which the plaintiff had filed a sketch map of the suit land stating that the said joint common path up to the defendants' land and possession for which the learned Munsiff No.1, Sivasagar disposed of vide Misc. (J) Case No.3/2005. The learned counsel for the appellant, during the course of hearing also produced photocopies of Ext.3 and Ext.7. The said photocopies of Ext.3 and Ext.7 are kept on record and marked with the letters 'X' & 'Y' respectively.

22. A perusal of Ext.7 would show that on the eastern side of the land proposed to be sold abuts a private road. A perusal of Ext.3 shows that the schedule of the land so conveyed vide the deed of sale bearing deed No.834 dated 10.08.2006. The said

schedule, for the sake of convenience, is quoted herein below:

SCHEDULE

Land measuring 1 katha 10 lechas with 10 ft. breadth private common path from main road to the schedule land covered by Dag No.3849 of PP No.3159 of Sivasagar Town (Charckapar) under Nagarmahal Mouza, Sivasagar district which is bounded by:-

- On East - private path
- On West - Abhoya Gogoi
- On North - B. Bezbarua
- On South - Gogoi

23. From a perusal of the said schedule, it would be clear that on the east side of the said land of 1 katha 10 lechas stands a private path which is in consonance to the permission so granted vide Ext.7. Therefore, vide the said deed of sale, there was no transfer of any private path. But what was transferred was land measuring 1 katha 10 lechas with the private path on the eastern boundary of the suit land. Under such circumstances, the said question of law so proposed is not involved in the instant proceedings as any decision on the said question of law would not effect the decision arrived at by the courts below. Further, question of perversity would only arise when a material evidence or fact which would have changed the decision, if taken into consideration, but not done have materially effected the decision which is however not the case herein.

24. The second question of law so proposed is as regards Section 52 of the Transfer of Property Act, 1882, which as per the learned counsel for the appellant, prohibits any transfer of the immovable property which is the subject matter of the suit during the pendency of the suit and taking into consideration that there were two suits pending bearing Title Suit No.2/2005 and Title Suit No.58/2005, the trial court ought to have held that the registered sale deed No.834 dated 10.08.2006 was hit by Section 52 of the Transfer of Property Act, 1882.

25. From a perusal of the judgment of the First Appellate Court it appears, more particularly at paragraph No.21 that the First Appellate Court observed that the right of transferee, i.e. the respondent No.3 will be subject to the outcome of Title Suit No.2/2005 and Title Suit No.58/2005. It was further observed that though Title Suit No.2/2005 has already been disposed of by the trial court but the decision will be subject to the decision passed in the appeal, (if any). On the basis of the said observation can it be said that the First Appellate Court did not take into consideration Section 52 of the Transfer of Property Act, 1882. The answer can be found from a recent judgment of the Supreme Court of India rendered in the case of *Madhukar Nivrutti Jagtap and Others Pramilabai Chandulal Parandekar*, reported in (2020) 15 SCC 731 wherein the Supreme Court dealt with the scope and ambit of Section 52 of the Transfer of Property Act, 1882. The Supreme Court observed in the said judgment that the effect of Section 52 of the Act of 1882 is not to render transfers effected during the pendency of a suit by a party to the suit void; but only to render such transfers subservient to the rights of the parties to such suit, as may be, eventually, determined in the suit. In other words, it was observed that the transfer remains valid subject, of course, to the result of the suit. The pendente lite purchaser would be entitled to or suffer the same legal rights and obligations of his vendor as may be eventually determined by the court. Paragraph No.14 and its subparagraphs, being reliant, are quoted herein below:-

14. The third question as regards the sale transactions in favour of the present appellants (the subsequent purchasers) need not detain us longer, except to correct an error on the part of the High Court where it is observed that such sale deeds are to be treated as illegal.

14.1. The suit in question was filed on 26-8-1968. So far the sale transaction in favour of Defendants 4 & 5 (Appellants 1 & 2 herein), in relation to 25 acres of land out of the suit property, is concerned, the same was effected by way a sale deed registered only on 10-7-1978 i.e. nearly 10 years after filing of the suit. So far the sale transaction in favour of Defendant 6 (Appellant 3 herein), in relation to other 25 acres of land out of the suit property, is concerned, though it is suggested that there had been an agreement (dated 8-5-1968) in his favour before filing of the suit but then, admittedly, the sale transaction was

effected by way of a sale deed registered only on 18-9-1968, that had also been after filing of the suit. The suggestion about want of knowledge of the subsequent purchasers about the transaction of the vendors with the plaintiffs and about the pendency of the suit has been considered and rejected by the High Court and even by the subordinate court after due appreciation of evidence on record; and we are unable to find any infirmity in these findings. Both the sale transactions in favour of the present appellants, purporting to transfer the suit property in part, having been effected after filing of the suit, are directly hit by the doctrine of lis pendens, as embodied in Section 52 of the Transfer of Property Act, 1882 that reads as under:

“52. Transfer of property pending suit relating thereto.—During the pendency in any court having authority within the limits of India excluding the State of Jammu and Kashmir or established beyond such limits by the Central Government of any suit or proceeding which is not collusive and in which any right to immovable property is directly and specifically in question, the property cannot be transferred or otherwise dealt with by any party to the suit or proceeding so as to affect the rights of any other party thereto under any decree or order which may be made therein, except under the authority of the court and on such terms as it may impose.

Explanation.—For the purposes of this section, the pendency of a suit or proceeding shall be deemed to commence from the date of the presentation of the plaint or the institution of the proceeding in a court of competent jurisdiction, and to continue until the suit or proceeding has been disposed of by a final decree or order and complete satisfaction or discharge of such decree or order has been obtained, or has become unobtainable by reason of the expiration of any period of limitation prescribed for the execution thereof by any law for the time being in force.”

14.2. *In Guruswamy Nadar, this Court has held as under:*

“13. Normally, as a public policy once a suit has been filed pertaining to any subject-matter of the property, in order to put an end to such kind of litigation, the principle of lis pendens has been evolved so that the litigation may finally terminate without intervention of a third party. This is because of public policy otherwise no litigation will come to an end. Therefore, in order to discourage that same subject-matter of property being subjected to subsequent sale to a third person, this kind of transaction is to be checked. Otherwise, litigation will

never come to an end.”

*14.3. The aforesaid observations in no way lead to the proposition that any transaction on being hit by Section 52 *ibid.*, is illegal or void *ab initio*, as assumed by the High Court. In *Sarvinder Singh*, as relied upon by the High Court, the subsequent purchasers sought to come on record as defendants and in that context, this Court referred to Section 52 of the TP Act and pointed out that alienation in their favour would be hit by the doctrine of *lis pendens*. The said decision is not an authority on the point that every alienation during the pendency of the suit is to be declared illegal or void. The effect of doctrine of *lis pendens* is not to annul all the transfers effected by the parties to a suit but only to render them subservient to the rights of the parties under the decree or order which may be made in that suit. In other words, its effect is only to make the decree passed in the suit binding on the transferee *i.e.* the subsequent purchaser. Nevertheless, the transfer remains valid subject, of course, to the result of the suit. In *A. Nawab John*, this Court has explained the law in this regard, and we may usefully reiterate the same with reference to the following:*

*“18. It is settled legal position that the effect of Section 52 is not to render transfers effected during the pendency of a suit by a party to the suit void; but only to render such transfers subservient to the rights of the parties to such suit, as may be, eventually, determined in the suit. In other words, the transfer remains valid subject, of course, to the result of the suit. The *pendente lite* purchaser would be entitled to or suffer the same legal rights and obligations of his vendor as may be eventually determined by the court.”*

*14.4. Hence, the effect of Section 52 *ibid.*, for the purpose of the present case would only be that the said sale transactions in favour of the appellants shall have no adverse effect on the rights of the plaintiffs and shall remain subject to the final outcome of the suit in question. However, the High Court, while holding that the said transactions were hit by *lis pendens*, has proceeded to observe further that the sale deeds so made in favour of the present appellants were illegal. These further observations by the High Court cannot be approved for the reasons foregoing.*

26. Taking into account the above quoted paragraphs of the said judgment of the Supreme Court and the observations made by the First Appellate Court in paragraph No.21, this Court is of the opinion that the said substantial question of law so proposed



that the deed of sale is void as the same was executed and registered during the pendency of the two suits cannot be construed to be substantial question of law involved in the instant appeal. This Court is of the opinion that the observation made by the First Appellate Court in paragraph No.21 has been rightly observed by the First Appellate Court and calls for no interference.

27. Consequently, the two questions of law as proposed by the appellant are not substantial question of law involved in the instant appeal and consequently sans any substantial question of law arising to be formulated under Section 100(4) of the Code, the instant appeal is devoid of any merits and liable to be dismissed. Accordingly, the instant appeal stands dismissed. However, in the present facts, this Court is not inclined to impose costs for the present appellate proceedings.

28. The Registry is directed to intimate both the courts below about the instant judgment and order.

JUDGE

Comparing Assistant