Received on : 27.07.2010
Registered on: 29.10.2010
Decided on : 26.10.2016
Duration : Ys. Ms. Ds.
05 11 29

IN THE COURT OF 2nd ADDL. JUDGE SMALL CAUSES COURT & JT. CIVIL JUDGE S.D., PUNE, AT : PUNE.

(Presided over by N.G. Shukla)

Spl. Civil Suit No.1565/2010 **Exh.No.**

PLAINTIFFS: 1] Chandrakant Tukaram Landge
Age 44 years, Occupation- Agriculturist
R/at- Sanaswadi, Jakatemala, Taluka
Shirur, District Pune.
2] Karna Suresh Landge
Age-22 years, Occupation- Service
R/at- S. No. 53/58, Sainath Nagar,
Vadgaon Sheri, Pune 411 014.
3] Somnath Suresh Landge
Age-19 years, Occupation-Education
4] Nilesh Suresh Landge
Age-16 years, Occupation- Education.
Sr. No. 3 & 4 R/at- S. No. 53/58,
Sainath Nagar,Vadgaon Sheri, Pune 411 014.
On behalf of plaintiff no.4 legal guardian
plaintiff no.2 Karna Suresh Landge.

Versus

DEFENDANTS:- 1] Parvatibai Tukaram Landge
Age- 73 years, Occupation- Agriculturist
R/at- Sanaswadi, Jakatemala, Taluka
Shirur, District Pune.
At present R/at- A/post- Wada, Taluka
Khed, District Pune
(Deceased hence abated)
2] Chandrakant Dattatray Tapkir
Age- 53 years, Occupation-Business
R/at- 403, Peacock Palace, Road No.10,
79, Kalyani Nagar, Pune 411 006.

3] Vasantrao Kisanrao Pathare
Age-34 years, Occupation- Agri. & Business
R/at- Pathare Mala,Narendra Park, Chandan Nagar, Pune- Nagar Road, Kharadi,
Pune 411 014.

4] Babanrao Tukaram Landge
Age- 54 years, Occupation- Agriculturist
R/at- Shankar Kalatenagar, Prabhat Colony, Shivganga Niwas, Wakad, Taluka- Mulshi,
District Pune 27.

Shri. S. P. Deo Advocate for the Plaintiff no.1.
Shri. D. P. Sarphale, Advocate for plaintiffs no. 2 to 4.
Shri. B. H. Nikate, Advocate for the Defendants no.2 and 3.
Shri. K. C. Wagaj, Advocate for defendant no. 4.

Suit for declaration, partition and cancellation of agreement to sale and sale deed.

AND

Received on : 29.10.2010
Registered on: 19.11.2010
Decided on : 26.10.2016
Duration : Ys. Ms. Ds.
05 11 12

IN THE COURT OF 2nd ADDL. JUDGE SMALL CAUSES COURT & JT. CIVIL JUDGE S.D., PUNE, AT : PUNE.

(Presided over by N.G. Shukla)

Spl. Civil Suit No.2452/2010 **Exh.No.**

PLAINTIFFS: 1] Chandrakant Dattatray Tapkir
Age- 53 years, Occupation-Business
R/at- 302, Peacock Palace, Road No.10,
79, Kalyani Nagar, Pune 411 006.

2] Vasantrao Kisanrao Pathare
Age-32 years, Occupation- Business
R/at- Pathare Mala, Mahendra Park, Chandan Nagar, Pune- Nagar Road, Kharadi,
Pune 411 014.

Versus

DEFENDANTS:- 1] Shri. Babanrao Tukaram Landge
Age- 54 years, Occupation- Agriculturist

2] Sou. Jayshree Baban Landge
Age- 47 years, occupation- Household

3] Shri. Tushar Baban Landge
Age- 23 years, Occupation- Agriculturist

4] Shri. Pritesh Baban Landge
Age- 19 years, Occupation- Agriculturist
Sr. No. 1 to 4 R/at- Shankar Kalatenagar, Prabhat Colony, Shivganga Niwas, Wakad, Taluka- Mulshi, District Pune.

5] Sou. Priti Mahesh Aware
Age- 25 years, Occupation- Household
R/at- Behind Uttam Nagar Police Chowky Warje Malwadi, Taluka Haveli District Pune.

6] Shri. Chandrakant Tukaram Landge
Age 44 years, Occupation- Agriculturist
R/at- Gat No. 239, In front of Indian Smelting Company, Sanaswadi, Taluka Haveli, District Pune.

7] Shri. Karna Suresh Landge
Age-20 years, Occupation- Education

8] Shri. Somnath Suresh Landge
Age-18 years, Occupation-Education

9] Nilesh Suresh Landge
Age-16 years, Occupation- Education.
Sr. No. R/at- S. No. 53/58, Sainath Nagar,
Vadgaon Sheri, Pune 411 014.

Shri. B. H. Nikate Advocate for the Plaintiff no.1 and 2.
Shri. K. C. Wagaj, Advocate for defendants no. 1 to 5 .
Shri. S. P. Deo, Advocate for defendants no. 6 to 9.

Suit for specific performance and alternative claim of Rs.7,71,60,282/-.

AND

Received on : 11.10.2011
Registered on: 18.10.2011
Decided on : 26.10.2016
Duration : Ys. Ms. Ds.
05 00 10

IN THE COURT OF 2nd ADDL. JUDGE SMALL CAUSES COURT & JT. CIVIL JUDGE S.D., PUNE, AT : PUNE.

(Presided over by N.G. Shukla)

Spl. Civil Suit No.2030/2011 **Exh.No.**

PLAINTIFFS: 1] Shri. Babanrao Tukaram Landge
Age- 54 years, Occupation- Agriculturist
2] Sou. Jayshree Babanrao Landge
Age- 46 years, occupation- Household
3] Shri. Tushar Babanrao Landge
Age- 24 years, Occupation- Education
4] Shri. Pritesh Babanrao Landge

Age- 19 years, Occupation- Education
Sr. No.1 for himself and on behalf of
Sr. No. 4 as legal guardian.
All R/at- Shankar Kalatenagar,
Prabhat Colony, Shivganga Niwas,
Wakad, Taluka- Mulshi, District Pune-27.

Versus

DEFENDANTS:- 1] Chandrakant Dattatray Tapkir
Age- 54 years, Occupation-Business
R/at- 302, Peacock Palace, Road No.10,
79, Kalyani Nagar, Pune 411 006.

2] Vasantrao Kisanrao Pathare
Age-35 years, Occupation- Agri. and Business
R/at- Pathare Mala, Mahendra Park, Chandan
Nagar, Pune- Nagar Road, Kharadi,
Pune 411 014.

3] Shri. Chandrakant Tukaram Landge
Age 45 years, Occupation- Agriculturist
R/at- Sanaswadi, Jakate Mala Taluka
Shirur, District Pune.

4] Shri. Karna Suresh Landge
Age-23 years, Occupation- Service

5] Shri. Somnath Suresh Landge
Age-19 years, Occupation-Education

6] Nilesh Suresh Landge
Age-17 years, Occupation- Education.
Sr. No. 4 for himself and on behalf of
Sr. No. 5 and 6 as legal guardian
All R/at- S. No. 53/58, Sainath Nagar,
Vadgaon Sheri, Pune 411 014.

7] Shri. Anil Tatyaba Pawar
Age-58 years, Occupation- Agriculturist

8] Shri. Vijay Tatyaba Pawar
Age-56 years, Occupation- Agriculturist

9] Shri. Ashok Tatyaba Pawar
Age-54 years, occupation- Agriculturist

10] Shri. Nandkumar Tatyaba Pawar
Age-52 years, occupation- Agriculturist
Sr. No. 7 to 10 R/at- Near Krishna
Hospital, Kothrud, Pune.

Shri. K. C. Wagaj, Advocate for plaintiffs no. 1 to 4 .
Shri. B. H. Nikate Advocate for the defendants no.1 and 2.
Shri. S. P. Deo, Advocate for defendants no. 3 to 6.
Suit proceeded exparte against defendants no. 7 to 10.

Suit for declaration and cancellation of sale deed dated 10/6/2010, declaration of ownership and permanent injunction.

COMMON JUDGMENT

(Delivered on : 26.10.2016)

1] Special Civil Suit No. 1565/2010 is filed for declaration, partition and cancellation of agreement and sale deed. Spl.Civil Suit No. 2030/2011 is filed for declaration in respect of sale deed dated 10/6/2010, declaration of ownership and permanent injunction. Spl. Civil Suit No. 2452/2010 is filed for specific performance and alternative claim of Rs.7,71,60,282/-. Parties to these suits and the main suit property are same in all three suits. Main dispute in between parties arose out of one and the same series of transaction. Evidence of all these suits is commonly recorded in Sp.C.S. no. 1565/2010. Hence, I have decided to dispose off these suits by common judgment.

2] Parties to the suits are referred hereinafter as below :-

Sr. No.	Names of the parties	Status in the suits.	Hereinafter referred as
(1)	1] Chandrakant Dattatray Tapkir. 2] Vasantrao Kisanrao Pathare	Plaintiffs in Spl.C.S. No.2452/2010. Defendants no. 2 and 3 in Spl. Civil Suit No.1565/2010. Defendants no.1 and 2 in Sp. Civil Suit No.2030/2011	Purchasers.
(2)	Chandrakant Tukaram Landge	Plaintiff in Spl.C.S. No.1565/2010. Defendant no. 6 in Spl.Civil Suit No. 2452 /2010. Defendant no.3 in Sp. Civil Suit No. 2030/2011	Owner no.1
(3)	i] Karna Suresh Landge ii] Somnath Surresh Landge iii] Nilesh Suresh Landge	Plaintiffs in Spl.C.S. No.1565/2010. Defendants no. 7 to 9 in Spl.Civil Suit No. 2452 /2010. Defendants no. 4 to 6 in Sp. Civil Suit No. 2030/2011	Owners no.2
(4)	Baban Tukaram Landge	Defendant no. 4 in Spl.C.S. No.1565/ 2010.	Owner No.3

		Defendant no. 1 in Spl.Civil Suit No. 2452 /2010. Plaintiff no.1 in Sp. Civil Suit No. 2030/2011.	
(5)	i) Jayshree Babanrao Landge ii) Tushar Babanrao Landge iii) Pritesh Babanrao Landge iv) Priti Mahesh Aware	Defendants no. 2 to 5 in Spl. Civil Suit No. 2452 /2010. Plaintiffs no. 2 to 4 in Spl. Civil Suit No. 2030/2011.	Family members of owner no.3.

3] Following are the suit properties :-

(a) Agricultural land bearing Gat No. 222/2, adm. 2 Hector 20 Ares well described in plaint para no.1-A in Spl. C.S. No. 1565/2010 (Hereinafter referred as “suit property-A”).

(b) Agricultural land bearing Gat No. 239, adm. 00 Hector 61 Ares well described in plaint para no.1-B in Spl. C.S. No. 1565/2010 (Hereinafter referred as “suit property-B”).

(c) Agricultural land bearing Gat No. 687/63 adm. 00 Hector 02 Ares well described in plaint para no.1-C in Spl. C.S. No. 1565/2010 (Hereinafter referred as “suit property-C”).

(d) Agricultural lands bearing Gat No. 250/5, 250/9, 301/1, 337/3, 337/7, 337/11, 337/16, 332/3, 339/10 situated at village Wada, Taluka Khed, District Pune well described in plaint para no.

1(c) in Spl. C.S. No. 1565/2010 (Hereinafter referred as "suit property-D").

4] Pleadings of the parties in their respective plaints and written statements in other suits are commonly and briefly stated as below:-

Pleadings of owners no.1 & 2 in Spl.C.S.No. 1565/2010; Spl.C.S.No. 2452/2010 and Spl.C.S.No. 2030/2011 :

5] Agricultural land Survey No. 455/A+B+C+D+E+F, Hissa No.1 situated at Mouje Wada, Taluka Khed, District Pune was owned by Tukaram Vithu Landge, father of owner nos. 1 and 3 and grandfather of owners no.2. He received said land under the provisions of Bombay Tenancy and Agricultural Lands Act. After his death, names of his widow Parvatibai and her sons i.e. owners no.1 and 3 and father of owners no.2 were mutated as legal heirs in the record of rights of the said land. Name of Parvatibai was recorded as Karta of Hindu Joint Family. Thus, it was joint family property. Said land was acquired for Chaskaman Irrigation Project. Thereafter, Parvatibai in her capacity as Karta of joint family made application to Collector, Pune for receiving alternative land in lieu of above stated acquired land. After due inquiry on her application, suit property-A was received to Parvatibai. She had paid amount for obtaining said land to State Government out of the joint family funds. However, only her name was recorded in the 7/12 extract of suit property-A without showing her as Kara of joint family. But, she was holding suit property-A as Karta of joint family. Owners no.1 to

3 are having undivided shares in the suit property-A. Suit property-B and Suit property-C are also their joint family properties. There are other properties at village Wada which are suit property-D as referred above. However, owner no.1 does not claim any right and partition in suit property-D.

6] It is their further contention that, deceased Parvatibai and owners no.1 and 3 had executed Visar Pavati of suit property-A in favour of purchaser no.1 on 8/11/2007. Purchaser no. 1 took owners no.1 and 3 and Parvatibai at the office of Sub-Registrar by representing that, he intend to get register said Visar Pavati. But instead of that, purchaser no.1 got executed and registered General Power of Attorney in respect of suit property by practicing fraud upon owner no.1. He realized said fraud and immediately returned amount of Rs. 3,00,000/- to purchaser no.1, which were received to him from purchaser no. 1. He also informed to purchaser no. 1 that, he has cancelled the transaction.

7] It is their further contention that, purchasers no.1 and 2 got executed bogus agreement to sale dated 4/8/2008 which is registered at Sr. No. 3589/2008 in the office of Sub-Registrar, by practicing fraud upon Parvatibai. Owners no. 2 i. e. sons of Suresh were minor at the time of execution of Visar Pavati and agreement to sale. Parvatibai never maintained and grown up them. In spite of that, purchases no.1 and 2 got executed agreement to sale by showing Parvatibai as their guardian. After death of Suresh, Parvatibai never maintained and grown up sons of Suresh. Therefore, agreement to sale dated 4/8/2008 is bogus.

8] It is their further contention that, purchasers no.1 and 2 got executed sale deed of entire suit property-A on 10/6/2010 from Parvatibai by taking disadvantage of her illiteracy and old age and practicing fraud upon her. Moreover, in spite having undivided shares of owners no.1 and 3 in suit property-A as it was their jointly family property, purchasers no.1 and 2 got executed said agreement to sale as well as sale deed dated 10/6/2010 without consent of owner no.1. Though payment of consideration of the shares of owners no. 1 to 3 are shown unpaid in the said sale deed, but no such payment was made to owners no.1 to 3. For these reasons, the sale deed dated 10/6/2010 is illegal and void to the extent of share of owner no.1. It is further contended that owners' no.1 to 3 and Parvatibai have 1/4th share each in suit property-A. The sale deed is void to the extent of 1/4th share each of owner no.1 and owners no. 2. Hence, they have sought relief in Spl.C.S. No. 1565/2010 that, the sale deed dated 10/6/2010 be declared as not binding on 1/4th share each of owners no.1 and 2. They also sought relief of cancellation of agreement to sale dated 4/8/2008. They have also sought relief of partition and separation of shares in suit property-A and suit property-B and to send the decree for partition to Collector, Pune for effecting partition. Parvatibai died on 27/06/2010.

9] Owner no.1 and owners no. 2 jointly filed their written statement in Spl.C.S. No. 2030/2011 and disputed the claim and contention of owner no.3 and his family members upto some extent. They disputed sale deed dated 10/6/2010. They have pleaded that, they are not accepting transaction of sale of suit property-A in favour of purchasers. They have further pleaded that, they are not having knowledge of any permissions obtained from the Government for sale of said land and payment made for obtaining said permissions. They denied that, owner no. 3 maintained and grown up sons of Suresh.

10] Owner no.1 and owners no. 2 filed joint written statement at Exh. 30 in Spl.C.S. No. 2452/2010. They have denied claim and contentions of purchasers in Spl.C.S.No. 2452/2010. They have contended that, there is no agreement to sale by owners no.1 and 2 with purchasers. Therefore, Suit for specific performance filed by purchasers is not maintainable against owners no. 1 and 2. Pleadings and reliefs are contrary to each other and therefore, purchasers are not entitled for relief of specific performance. They denied that, suit property-A is exclusively received to Parvatibai and she was exclusive owner of suit property. They reiterated their stand that, the suit property-A is joint family property even though it was standing in the name of Parvatibai. They further contended that, they never executed any agreement to sale in favour of purchasers. Owners no.2 i.e. sons of Suresh were minor at the relevant time and any transaction whosoever made on their behalf is not binding upon them. They denied that Parvatibai was maintaining sons of Suresh and she was their guardian. They further denied that the suit property-A was agreed to be sold to purchasers for consideration of Rs.2,09,00,000/-. They denied execution of Visar Pavati dated 8/11/2007.

11] Owners no.1 and 2 further contended that, owner no.3 was on leading for talks of the transaction with purchasers. Owner no. 3 has obtained certain amounts from purchasers by misleading to Parvatibai. Owners no.1 and 2 have no any knowledge in respect of any such transaction by owner no. 3 with purchasers. Owner No.1 started hotel for his livelihood in south-east corner of suit property-A. Parvatibai was very old aged lady and she was not doing any business for her livelihood. Owners no.1 and 2 further denying that, Parvatibai was met with one accident. They further denied that, owner no.1 was not available for signing at the time of execution of agreement to sale and therefore, he had not signed the said agreement. They further denied that, purchasers paid amount of Rs.31,30,262/- to State Government as Nazrana for obtaining sale permission. They further denied that, after obtaining permission for sale, it was agreed in between purchasers and Parvatibai and owners no.1 to 3 that, it was not possible for all the members in the family of Landge to remain present at once for execution of sale deed and as only name of Parvatibai was standing in the 7/12 extract, therefore, Parvatibai would execute sale deed and as per convenience and available time, owners no. 1 to 3 would execute consent deed to the sale deed being executed by Parvatibai. They further denied that, in view of said oral conversation, Parvatibai had executed sale deed, but owners no. 1 to 3 refused to execute consent deed.

12] Owners no.1 and 2 further denied that, 1/4th part of the agreed consideration was paid to Parvatibai. They contended that, they are not having knowledge in respect of investment of Rs.35,00,000/- by Parvatibai in Life Insurance Corporation (hereinafter "LIC"). According to them, there is no agreement to sale in between purchasers and owners no.1 and 2. Visar Pavati is cancelled by owner no.1 by returning the amount of Rs.3,00,000/-. Parvatibai was not guardian of owners no. 2 and no authority to execute agreement to sale dt. 4/08/2008. Therefore, purchasers are not entitled for relief of specific performance from them. Hence, owners no.1 and 2 prayed to dismiss the Spl.C.S. No. 2452/2010.

Pleadings of owner no. 3 and his family members in Spl.C.S. No. 2030/2011; Spl.C.S. No. 1565/2010 and Spl.C.S.No. 2452/2011 :

13] Owner no. 3 and his family members described suit property-A as the suit property in plaint para no.1 in Spl.C.S. No. 2030/2011. They have pleaded the same story in respect of S. No. 455/A to F, Hissa no.1 situated at Wada, which was receive to Tukaram Landge and acquired for Chaskaman Project. They have also pleaded that after death of Tukaram Landge names of his legal heirs i.e. parvatibai and owners no.1 and 3 and Suresh Landge were recorded and Parvatibai was shown as Manager of Joint family vide mutation entry No. 5590. Said land was acquired for Chaskaman Project. Suit property-A was received to Parvatibai on her application from Government as Karta of joint family. They have further contended that Parvatibai was not exclusive and possessor of suit property-A. But owners no.1 to 3, Parvatibai as well as sisters namely Aruna and Saguna were also having shares in suit property-A. Thus, suit property-A is joint family property. They have further contended that, other properties at village Wada described in para 1 of the plaint in Spl.C.S. No. 1565/2011 are also joint family properties.

14] It is further contended that purchasers have taken undue advantage of illiteracy and old age of Parvatibai in got executing sale deed dated 10/6/2010. Parvatibai was never fallen ill to admit her in any hospital. She met with one small accident and was admitted in the hospital. Owner no.3 has spent amount on her medical treatment. Therefore, Parvatibai had no need to sale suit property-A and spent amount received as consideration from sale transaction. Purchasers have falsely shown in the sale deed dated 10/6/2010 that they had paid huge amount to Parvatibai during her hospitalization.

15] It is further contended that, purchasers misrepresented to owner no. 3 to come at Government office for making signatures on some documents to obtain loan from the Bank. Under the said misrepresentation and fraud, purchasers got executed Visar Pavati dated 8/11/2007. So also they had got executed alleged power of attorney on the date of execution of sale deed by practicing fraud upon owner no. 3 and his family members by saying to come at Government office to obtain loan. Therefore, owner no. 3 and his family members denied Visar Pavati and general power of attorney dated 8/11/2007. They further denied that purchasers deposited amount of Rs.31,30,262/- to Government as amount of Nazrana for obtaining permission for sale. They further denied that statement of Parvatibai was recorded on 12/5/2010 before Revenue Officer. Neither owner no. 3 nor owners no. 1 and 2 were participated in the process of obtaining permission for sale of suit property-A.

16] They further contended that, Purchasers had got executed sale deed dated 10/6/2010 from Parvatibai by practicing fraud and misrepresentation on her. Said sale deed got executed without consent of owner no.3 and his family members. Owner no. 3 and his family members have undivided share in the suit property-A. Parvatibai was not exclusive owner of suit property-A. In spite of that, purchases got executed sale deed dated 10/6/2010 in respect of entire suit property-A from Parvatibai. Sale deed is without consent of owner nos. 3 and his family members. Therefore, it is void to the extent fo share of owner no. 3 and his family members. Though part of consideration is shown unpaid to owner no. 3 in the sale deed, but no such amount is paid to owner no. 3. For this reason also sale deed dated 10/6/2010 is void and not binding on owner no. 3 and his family members to the extent of their shares. Parvatibai had invested Rs.35,00,000/- out of share of her consideration received from purchasers in LIC. She had shown owner no. 1 and 2 and Shri. Karna Landge as her nominees to receive said amount. Parvatibai had executed one affidavit dated 14/6/2010 wherein she had contended that she had sold her undivided share in suit property-A to purchasers. Said contention clearly discloses that Parvatibai had only 1/4th share in the suit property-A. She had never sold entire suit property-A to purchasers.

17] It is further contended that, if purchasers are claiming that Parvatibai was exclusive owner of entire suit property-A and she had executed sale deed of entire suit property-A in their favour, then the purchasers have no right to seek relief of specific performance asking execution of sale deed or consent deed from owners no.1 to 3. The sale deed executed by Parvatibai is not binding on 1/4th share of owner no.3. Therefore, owner no. 3 and his family members sought relief of declaration that, the sale deed dated 10/6/2010 is not binding on 1/4th share of owner no.3 and his family members and to that extent it be cancelled. Owner no. 3 has claimed his joint possession with Parvatibai and owners no. 1 and 2 on suit property-A. In view of that, owner no. 3 and his family members sought relief of permanent injunction restraining purchasers from disturbing their possession over the suit property. They further sought relief of declaration that owner no.3 and his family members are owner and possessor of 1/4th share in suit property-A.

18] Owner no. 3 filed written statement at Exh. 108 in Spl. C.S. No. 1565/2010 and claimed his 1/3rd share in suit property-B. He further contended that, after death of Suresh and his wife, sons of Suresh were minor. Owner no. 3 has maintained sons of Suresh for some period. So also their grandfather Narayan More also maintained and grown up sons of Suresh i.e. owner no. 2. Rest of the plaint is admitted by owner no. 3. He has also stated in para 17 of written statement that, he is having undivided share in all the suit properties as well as house standing on suit property-B. He sought to pass decree of partition in respect of all the suit properties.

19] In Written statement filed in Spl. C.S. No. 2452/2010, owner no. 3 and his family members denied the claim and contentions of purchasers. They have reiterated contentions in respect of joint ownership over suit property-A and denied exclusive ownership of Parvatibai. They have denied transaction with Nalini Pitti and issuance of demand draft of Rs.50,000/- dated 22/10/2007 by purchaser no.1 to Nalini Pitti for cancellation of transaction with Nalini Pitti. It is their further contention that, Visar Pavati dated 8/11/2007 was with purchaser no.1 as per said Visar Pavati and therefore, purchaser no. 2 have no right to ask for specific performance on the basis of said Visar Pavati. Visar Pavati dated 8/11/2007 is not registered and not sufficiently stamped. Therefore, it is not admissible in evidence. Purchasers had got executed general power of attorney dated 8/11/2007 by taking disadvantage of illiteracy of Parvatibai and practicing fraud. If as per contentions of purchasers, suit property-A was exclusively owned by Parvatibai, they have no reason to get execute Visar Pavati and power of attorney from owners no. 1 and 3. Sons of Suresh are not party to said Visar Pavati. Aruna Chavan and her legal heirs are also not party to said Visar Pavati. Therefore, purchasers have no right to ask for any specific performance of said Visar Pavati.

20] Owners no. 3 and his family members further denied contentions in respect of R.C.S. No. 192/2006 filed by Aruna Chavan and settlement by purchasers with legal heirs of Aruna Chavan by paying Rs.10,00,000/-. Owner no. 3 and his family members further denied amount spent by purchasers on medical expenses of Parvatibai when she was admitted in Hightek Hospital, Ramwadi. They furhter denied execution of agreement to sale dated 4/8/2008. It is also denied that owner no.1 was not available and therefore, his signature was not obtained on agreement dated 4/8/2008. Purchasers no.1 and 2 got executed different document in respect of suit property independently from Parvatibai and owners no. 1 and 3 by misguiding and cheating to them. Purchasers were having knowledge that, the suit property-A is joint family property of Parvatibai, owner no. 1 to 3 and in spite of that they got executed sale deed of entire suit property-A from Parvatibai. In fact, only Parvatibai had right to execute sale deed only her 1/4th share. Hence, sale deed dated 10/6/2010 is not binding on owner no.3 and his family members. Purchasers have intention to grab the suit property. Payment shown in the sale deed is never paid to owner no.3 and his family members. Owner no.3 and his family members were not ready to give consent to the sale deed dated 10/6/2010 and therefore, no question of giving consent would arise. Purchasers have got executed Visar Pavati and agreement to sale by practicing fraud upon the owner no.3 and his family members. Therefore, they are not entitled for decree of specific performance. They are also not entitled for alternative claim of compensation. Hence, owner no. 3 and his family members prayed to dismiss Spl.C.S. No. 2452/2010.

Pleadings of purchasers in Spl.C.S.No.2452/2010; Spl.C.S. No.1565/2010 and Spl.C.S.No. 2030/2011 :

21] Suit property-A was given by the State Government in the name of Parvatibai for the reason of acquisition of land S. NO. 455/ A to F, Hissa no. 1 situated at Wada. Suit property-A is in exclusive possession of Parvatibai. Owners no.1 and 3 and deceased Suresh (father of owner no.2) are sons of Parvatibai. They had agreed to sale suit property-A to Smt. Nalini Pitti for consideration of Rs.1,16,87,500/-. They had executed Visar Pavati on 27/9/2006 and received amount of Rs.50,000/- by way of cheque from Nalini Pitti. Thereafter, Suresh died. Within short period wife of Suresh was also died. Owner no. 2 was minor and deceased Parvatibai was guardian and maintaining sons of Suresh.

22] It is further contended that, transaction with Nalini Pitti was not completed. Parvatibai and her sons were intending to sale suit property to any other person and to cancel the transaction with Nalini Pitti. Purchasers shown interest to purchase the suit property-A. Talks were taken place in between purchasers and Parvatibai and her sons. Purchasers also took meeting with Nalini Pitti. Owners no.1 to 3 demanded amounts from purchasers to give to Nalini Pitti for cancellation of her transaction. Accordingly, purchases gave amount of Rs.1,50,000/- each by way of cheques to owners no. 1 and 3. Thereby purchasers paid total amount of Rs.3,00,000/- to owners no.1 and 3. Purchaser no. 2 also gave demand draft of Rs.50,000/- in the name of Nalini Pitti. Said DD was handed over to Nalini Pitti and deed of cancellation of her Visar Pavati was executed on 22/10/2007. Thereafter, owners no.1 and 3 and Parvatibai agreed to sale suit property-A to purchasers for consideration of Rs.2,09,00,000/-. Accordingly, they executed Visar Pavati dated 8/11/2007 in the name of purchaser no.1. Thereby Parvatibai and owners no.1 and 3 agreed to execute sale deed in the name of purchasers or any person on behalf of them. Parvatibai and owners no.1 and 3 accepted to receive amount of Rs.3,00,000/- on the said Visar Pavati to them. They also executed power of attorney dated 8/11/2007 which is registered at Sub-Registrar office at Sr. No. 5106/2007.

23] It is further contended that, after some days purchasers came to know that Parvatibai's daughter Aruna Chavan had filed R.C.S. No. 192/2006 for partition of the properties including suit property-A against Parvatibai and her sons. Temporary injunction order was also passed in that suit. Aruna Chavan was died during the said period. Hence, with consent of Parvatibai and her sons, purchasers contacted with legal heirs of Aruna Chavan. With consent of Parvatibai and her sons, amount of Rs.10,00,000/- was agreed to be given to the legal heirs of Aruna Chavan to settle their dispute. Purchasers paid said amount of Rs.10,00,000/- to legal heirs of Aruna. Accordingly, legal heirs of Aruna executed consent deed and power of attorney dated 11/3/2008. They also executed release deed in favour of Parvatibai and onwer no. 3. Then they withdrew R.C.S. No. 192/2006.

24] It is further contended that, Parvatibai met with one accident in June 2008. She was admitted in Hightek Hospital, Ramwadi. On the say of Parvatibai and owners no. 1 and 3, purchasers spent amount on her medical treatment. After recovering from the said ailment, Parvatibai for herself and guardian of sons of Suresh and owners no.3 executed agreement to sale dated 4/8/2008 in respect of suit property-A. Said agreement to sale came to be registered on 7/8/2008 at Sr. No. 3589/2008 in the office of Sub-Registrar, Talegaon Dhamdhere. Owner no. 1 was not available for signing said agreement and therefore, his signature was not made on the said agreement. However, Parvatibai and her other family members had taken responsibility to obtain signature of owner no.1 at the time of execution of sale deed. On the said agreement, Parvatibai and owner no.3 accepted amount of Rs. 35,25,000/- received to them and confirmed amount of Rs.10,00,000/- received to legal heirs of Aruna.

25] It is further contended that, so as to avoid technical and legal lacuna, other members from Landge family in addition to Parvatibai were taken as signatory in the agreement to sale. Parvatibai and her family members being executant of the agreement, agreed to obtain permission for sale of suit property-A and to pay amount for Nazrana for obtaining said sale permission. Accordingly, Parvatibai filed application for sale permission to District Rehabilitation Officer on 12/8/2008. Public notice was also published in daily newspaper "Prabhat" dated 8/9/2008 with consent of Parvatibai and her family members. After publication of said notice, no any objection was received from owners no. 1 to 3 or any other person. After due inquiry and direction of Distirct Rehabilitation Officer, purchasers deposited amount of Rs. 31,30,262/- to the State Government. Divisional Revenue Commissioner, Pune granted permission to sale the suit property-A on 3/6/2010. All the owners no.1 to 3 are having knowledge and understanding in respect of obtaining permission and payment of Nazrana by the purchasers. During the said period, in the month of November 2009, Parvatibai fallen ill and she was admitted in Ruby Hall Hospital. Purchasers spent amount of her medical treatment. During said period Parvatibai and owner no.3 accepted various amounts time to time from purchasers.

26] It is further contended that, after receiving permission to sale from the State Government, purchasers met to Parvatibai and owners no. 1 to 3 and requested to execute sale deed. They had also agreed to remain present and to execute the sale deed. However, it was not possible for all the members in the family of Parvatibai to remain present at once. Moreover, only name of Parvatibai was appearing on 7/12 extract. Hence, parvatibai and owners no. 1 to 3 and their family members told purchasers to get execute sale deed from Parvatibai and other members including owners no.1 and 3 would subsequently remain present and execute consent deeds to the sale deed being executed by Parvatibai. Accordingly, Parvatibai executed sale deed of suit property-A in the name of purchasers No. 1 and 2 on 10/6/2010. Said sale deed came to be registered in the office of Sub-Registrar, Talegaon Dhamdhere at Sr. No. 3040/2010. Purchasers paid amount of Rs.36,82,935/- to Parvatibai on the said sale and she had accepted said amount. Parvatibai also confirmed on the sale deed that, the amount received by her time to time and the amount spent by purchasers on her medical treatment and payment to legal heirs of Aruna and deposited as Nazrana with the State Government. Parvatibai also delivered vacant and peaceful possession of suit property-A to purchasers on the said sale deed with knowledge and understanding by owners no. 1 to 3..

27] It is further contended that, owners no. 1 to 3 and their family members were not present for giving signatures to the sale deed at the time of execution of sale deed, hence purchasers paid amount of 1/4th share of Parvatibai to her and shown the amount of 1/4th share each of owners no.1 to 3 and family members for owner no.1 in the sale deed dated 10/6/2010. Parvatibai invested amount of Rs.35,00,000/- in three equal shares in LIC and appointed owner no.1 and 3 and sons of Suresh as nominees for receiving amount of each share to them. Parvatibai also executed one affidavit dated 14/6/2010. After death of Parvatibai, all these nominees have received said amount from LIC.

28] It is further contended that purchasers are ready to pay the amount of shares of owners no.1 to 3 and to comply their part of agreement to sale as per terms of Visar Pavati and agreement. After execution of sale deed dated 10/6/2010 purchasers repeatedly met to owners no. 1 to 3 time to time and requested to accept the remaining amount of their respective shares and to execute consent deed to the sale deed. However, because of increase in price of the properties, owners no.1 to 3 refused to execute sale deed of their shares or to execute consent deed to the sale deed dated 10/6/2010. Purchasers are ever ready and willing to pay the remaining amount of consideration of the respective shares to owners no.1 to 3. Owners no. 1 to 3 not only refused to accept the amount to execute sale deed or consent deed, but filed their respective suits. Therefore, purchasers are constrained to file Spl.C.S. No. 2452/2010, seeking direction to owners no.1 to 3 to execute either sale deed of their respective shares or to execute consent deed to the sale deed dated 10/6/2010 in favour of purchasers. Purchasers have alternatively claimed monetary claim of compensation of Rs.7,71,60,282/-.

29] Purchasers filed mostly identical pleadings in the written statement to plaints in Spl. C. S. No. 1565/2010 and 2030/2011.

They admitted suit property-A was received in the name of Parvatibai for acquisition of the agricultural land situated at Wada. However, purchasers denied claim and contentions pleaded by owners no. 1 and 2 in their respective plaints. Purchasers have denied that sale deed dated 10/6/2010 is got executed from Parvatibai by practicing fraud upon her. They further denied that, general power of attorney was bogus and obtained by fraud by misrepresenting to owner no.1. They further denied that Visar Pavati dated 8/11/2007 and agreement to sale dated 4/8/2008 were executed by practicing fraud and misrepresentation by owner no. 3 and his family members.

30] Purchasers contended in the written statements that, suit property-A was in exclusive possession of Parvatibai. Parvatibai and owners no.1 to 3 had agreed to sale suit property and executed Visar Pavati dated 8/11/2007. Parvatibai and owner no. 3 executed agreement to sale dated 4/8/2008 in favour purchasers no. 1 and 2. Parvatibai and owners no. 1 to 3 accepted various amount out of agreed consideration time to time. After receiving permission to sale the suit property-A, purchasers met to owners no. 1 and 3 and repeatedly requested to execute sale deed in their favour, but owners no. 1 and 3 refused to execute sale deed by accepting the balance consideration of their respective shares and committed breach of terms of Visar Pavati and agreement. Suit property -A is in possession of purchasers and they have taken crop of Toor and groundnut. Purchasers have also kept container used for office cabin and erected shed for watchman in the suit property-A.

31] During pendency of suit, sons Suresh i.e.owner no.2 have compromised dispute with purchasers and accepted amount of Rs. 41,79,935/-by way of cheque from purchasers. They have executed consent deed and confirmed execution of sale deed dated 10/6/2010 to the extent of their share in favour of purchasers. Therefore, owner no. 2 i.e. sons of Suresh does not remain right to contest the suit and to claim relief in respect of suit property-A in Spl.C.S. No. 1565/2010. Purchasers have sought relief of specific performance against owners no.1 and 3 in Spl.C.S. No. 2452/2010. In view of pleading therein, reliefs claimed by owners no.1 and 3 in their respective suits cannot be granted. Purchasers prayed to dismiss Spl.C.S. No. 1565/2010 and Spl. C. S. No. 2030/2011.

32] On the basis of above rival contentions, my learned predecessor had framed issues in all the three suits. I have recast said issues which are reproduced as below. After hearing submissions of Advocates for parties and appreciating evidence on record, my findings with reasons to the said issues are noted as below :-

Issues in Spl. C.S.No.1565/2010	**Findings**
1. Does plaintiffs prove that, suit property Gat No. 222/2 was received to Parvatibai as Karta of HUF and plaintiffs no. 1 and plaintiffs no. 2 to 4 jointly have undivided 1/4 share in the said property ?	In the affirmative.

2.	Does plaintiffs prove that, agreement dated 4/8/2008 is illegal for want of consent of plaintiffs ?	In the negative.
3	Does plaintiffs prove that, sale deed dated 10/6/2010 is illegal for want of consents of plaintiff nos. 1 to 4 and defendant no.4 and it is not binding upon them ?	In the negative.
4.	Are the plaintiffs entitled for reliefs claimed ?	In the partly affirmative.
5.	What order and decree ?	.. As per final order.

	Issues in Spl. C.S. No.2030/2011	**Findings**
1.	Do plaintiffs prove that, suit property Gat No. 222/2 was received to Parvatibai as Karta of HUF and plaintiffs no. 1 and plaintiffs no. 2 to 4 jointly have undivided 1/4 share in the said property ?	In the affirmative.
2.	Do plaintiffs prove that suit property is is joint property of Parvatibai and her sons and in their joint possession ?	In the partly affirmative.
3	Do plaintiffs proves that, Visarpavati and agreement to sale of Gat No. 222/2 got executed by defendants no. 2 and 3 by misrepresentation ?	In the negative.

4. Do plaintiffs prove that, sale deed dated 10/6/2010 is not binding upon them to the extent of their 1/4th share ?	In the negative.
5. Are the plaintiffs entitled for reliefs claimed ?	In the negative.
6. What order and decree ?	.. As per final order.

Issues in Spl. C.S.No.2452/2010	**Findings**
1. Do plaintiff proves that, deceased Parvatibai, defendant no.1 and defendant no. 6 agreed to sale suit property to them for consideration of Rs. 2,09,00,000/- and executed Visar Pavati in favour of plaintiff no.1 ?	In the affirmative.
2. Do plaintiff proves that deceased Parvatibai for herself and guardian of defendant nos. 7 to 9 and defendant no. 1 executed agreement to sale dated 4/8/2008 in favour of plaintiff ?	In the Partly affirmative.
3 Do plaintiffs proves that, after receiving permission to sale deceased Parvatibai executed sale deed of suit property and all other defendants agreed to execute consent deed to sale deed ?	In the partly affirmative.
4 Do plaintiffs proves that, they are ready and willing to perform their part of Visarpavati and agreement ?	In the affirmative.

5	Are plaintiffs entitled for relief of execution of sale deeds or consent deeds from defendants ?	In the affirmative.
6.	Are plaintiffs entitled for alternative relief of amount of Rs.7,71,60,282/- ?	In the negative.
7.	What order and decree ?	.. As per final order.

REASONS

EVIDENCE :-

33] Owner no.1 Shri. Chandrakant Landge adduced evidence at Exh. 112. He examined witness Shri. Ganesh Jadhav at exh. 202. Owner no. 2 Shri. Somnath Landge adduced evidence at Exh.211. Owner no. 1 closed evidence vide pursis Exh. 202 and owner no. 2 closed evidence vide pursis Exh. 218. Owner no. 3 Shri. Baban Landge adduced evidence at Exh. 223. He closed evidence vide pursis Exh. 240. Purchaser no.1 Shri. Chandrakant Tapkir adduced evidence at Exh. 241. He examined four witnesses namely Shri. Barchis at Exh. 339, Shri. Vikas Kamble at Exh. 246, Shri. Anil Karande at Exh. 369 and Kirti Nalawade at Exh. 383. Purchasers closed evidence vide pursis Exh.386. Documentary evidence led by the parties is referred in forthcoming paragraphs at relevant stage.

As to issue no.1 in Spl.C.S.No.1565/2010 and issue no. 1 in Spl.C.S. No. 2030/2011 :-

34] These issues are similar, hence, I have decided to record findings to these issues by common reasons. Learned Advocate Shri.

S. P. Deo and learned Advocate Shri. Wagaj submitted that, Survey No. 455/A+B+C+D+E+F, Hissa No.1 was joint family property which was acquired for Chaskaman Project. Suit property-A was received in lieu of the acquired land. Hence, the status of suit property-A was joint family property. They further argued that, purchasers have not specifically denied contentions of owner no. 1 in written statement in Spl.C.S. No. 1565/2010. So also, purchasers have pleaded in Spl.C.S. No. 2452/2010 that, suit property was in exclusive possession of Parvatibai, but there is no specific pleadings that it was exclusively owned by Parvatibai. Therefore, according to them, the suit property-A is joint family property.

35] Learned Advocate Shri. Nikte submitted that, Parvatibai had alone made application and not Karta of the joint family property for receiving suit property-A. It was allotted to Parvatibai alone. He further submitted that purchasers cannot say that suit property-A was exclusive property of Parvatibai and her sons have no right in the suit property. In view of this position, purchasers have prayed direction against owners no. 1 & 3 either to execute the sale deed or consent deed confirming sale deed dt. 10/06/2010.

36] After going through pleadings, it appears that, owners no.1 and 3 have specifically pleaded that suit property-A was received in lieu of acquired land situated at Wada. Therefore, status of suit property-A is joint family property. While denying said contentions, purchasers have not specifically pleaded in the written statement in Spl.C.S. No. 1565/2010 that suit property-A was exclusively received to Parvatibai. Though in the evidence, purchasers stated that, amount received to Parvatibai for acquisition of Survey No. 455/A+B+C+D+E+F, Hissa No.1, was distributed by her amongst her sons and herself and She paid amount to Government from share of her amount while receiving suit property-A and therefore, suit property-A is her exclusive property. However, there is no such specific pleading in the plaint in Spl.C.S. No. 2452/2010. In para 2 of the said plaint, purchasers have only pleaded exclusive possession of Parvatibai over the suit property-A. However, there is no specific pleading in respect of exclusive ownership of Parvatibai.

37] Moreover, entire conduct of purchasers since entering into transaction itself show that, they are not denying the right, interest and title of owners no.1 to 3 in the suit property-A. If suit property-A would not have joint family property, purchasers had no reason to implead owners no. 1 to 3 in Visar Pavati and agreement to sale and to pay amounts to the shares of owners no.1 to 3 and legal representatives of Aruna Chavan daughter of Parvatibai. This conduct of purchasers itself shows that they are not denying right, interest and title of owners no. 1 to 3 in the suit property-A. Though in the cross examination purchaser no.1 stated that to get clear and perfect title, they want sale deed or consent deed from owners no.1 to 3, but unless owners no. 1 to 3 would have right and interest in the suit property-A, purchasers had no reason to pay the amount of shares of owners no.1 to 3 and to obtain consent deed or sale deed from them.

38]] Moreover, 7/12 extract at Exh. 123 and 124 discloses that Survey No. 455/A+B+C+D+E+F, Hissa No.1 was joint family property after death of Tukaram Landge, name of Parvatibai and her sons were mutated in the 7/12 extract of said land. Mutation entry no. 5590 at Exh. 128 also supports this position. There is no dispute about acquisition of Survey No. 455 for Chaskaman Project. There is also no dispute that, suit property-A was received for the reason of acquisition of said land. Therefore, status of land received in lieu of the acquired land would remain the same status so far as ownership is concerned. As S. No. 455 was joint family property, therefore, even though Parvatibai had alone applied for receiving suit property-A, but it was received as joint family property. Admittedly name of Parvatibai in the record of S. No. 455 was appearing as Manager of the joint family, therefore I come to conclusion that suit property-A was received to Parvatibai as Karta of joint family and owners no. 1 to 3 have undivided share in the suit property-A.

39] So far as possession over suit property-A is concerned, it appears that owner no.1 has not specifically pleaded about his possession in plaint in Spl.C.S. No. 1565/2010. He has taken plea of his possession and existence of his hotel in the suit property-A in written statement in Spl.C.S. No. 2452/2010. Owner no. 3 also claimed his possession and adduced evidence to support his contention of possession. Purchasers have come with case that, Parvatibai had given possession of the suit property-A to them. Thereby purchasers have claimed possession over entire suit property-A and denied existence of hotel and possession of owner no.1.

40] Learned Advocate Shri. S. P. Deo argued that, owner no. 1 is running hotel named "Pratik Tea House" in some part of the suit property-A. Remaining portion is agricultural land. Owner no.1 has examined witness Shri. Ganesh Jadhav who is Junior Engineer of MSEDCL. By his oral evidence and electricity bills at Exh. 203 to 206, owner no.1 has proved existence of electricity meter in the hotel run by owner no.1. Witness Shri. Jadhav had visited the suit property-A and found electricity meter in the hotel. Thereby owner no.1 has proved his possession by way of existence of hotel in suit property-A. Learned Advocate Shri. Deo further argued that, suit property-A is joint family property and therefore, all the members of joint family have joint possession over the suit property-A. Parvatibai had no right to deliver possession of suit property-A to purchasers. Parvatibai had no title and interest to execute sale deed more than her 1/4th share and therefore, purchasers cannot claim possession over the suit property-A. Learned Advocate Shri Deo relied on the following rulings.

1] Ramdas V/s.Sitabai, 2009(6) Mh. L. J. 886.

2] Manjunath Anandappa V/s. Tammanasa, AIR 2003 SC 1391.

3] Vimal V/s. Nagoao, 2008(3) Mh.L.J.,868

4] Gajara Vishnu Gosavi V/s. Prakash Nanasaheb Kamble, 2010(3) Bom.C.R. 388.

41] Learned Advocate Shri. Wagaj supported to argument of learned Advocate Shri. S. P. Deo in respect of possession. He also argued that, Parvatibai had no right to deliver possession of entire suit property-A. It has come in the evidence of owners no. 1 to 3 that, suit property-A is in their possession and owner no.1 is running hotel. When the suit property-A is joint family property, and owners no. 1 to 3 were jointly possessing same, presumption has to be drawn about their possession.

42] Learned Advocate Shri. Nikte submitted that, evidence of witness Shri. Ganesh Jadhav is not reliable as he had no authority to visit suit property-A. Court had also not directed him to visit the suit property and to adduce evidence. He had not prepared any report of his visit and submitted to his officer. Electricity bills at Exh. 203 to 206 are in respect of electricity meter at the address at house no. 1134 which is admittedly residential house of owner no.1. Said bills are in respect of supply electricity for residential purpose. Therefore, it cannot be held that said meter is installed in any such hotel in the suit property-A. Hence, evidence of witness Ganesh Jadhav and electricity bills Exh. 203 to 206 is not reliable evidence to prove existence of hotel and thereby possession of owner no. 1 over suit property-A. Learned Advocate Shri. Nikte further argued that, in the cross examination, owner no.1 admitted possession of purchasers even though by way of encroachment. In para 13 of the cross examination of purchasers no.1 suggestion was put that purchasers have obtained possession by way of encroachment. According to him, by way of this suggestion, owner no.1 has accepted possession of purchasers over suit property-A.

43] Learned Advocate further argued that purchaser no.1 has adduced evidence in respect of existence of shed and cabin of watchman in the suit property-A. There is entry of shed and cabin in extract of Form-A of house no. 2211/2221 at Exh. 296 and 310 and electricity bill at Exh. 297. Thereby purchaser no.1 has proved his possession over the suit property-A. In the cross examination, owner no.2 Somnath Landge has admitted that, purchasers no. 1 and 2 are taking crop in the suit property-A. This evidence is sufficient to prove possession of purchasers. Learned Advocate further argued that, rulings relied by learned Advocate Shri.Deo are not applicable in this case. All these rulings are in respect of coparcenary property. The suit property-A is not coparcenery property, but at the most Parvatibai and owners no.1 to 3 can be said as tenants-in-common and purchasers claimed their possession as they entered into sue of Parvatibai and owner no.2. Therefore, purchasers can certainly claim their possession over suit property-A.

44] Evidence affidavit of owner no.1 is totally silent in respect of his claim of possession an running hotel allegedly existed in suit property-A. Though he filed said evidence affidavit to prove pleadings in Spl.C.S. No. 1565/2010 and in written statement in Spl.C.S. No. 2452/2010, but he has not stated specifically that his hotel named "Pratik Tea House" is existed in suit property-A. There is only one stray statement in para 17 of examination in chief in respect of his prayer about not to disturb his possession over suit property-A. Thus, there is no oral evidence by owner no.1 in support of his contention of existence of hotel and possession over the suit property-A. In the cross examination, owner no.1 admitted that there is one tin-shed and container kept in the suit property-A. Though he denied that purchasers erected said tin shed and kept container and using it as cabin of watchman, but he has not stated that the container is kept by him. He voluntarily stated that, the tinshed is erected by him and there is electricity connection in his name in the said tin shed.

45] So as to establish this fact further, owner no.1 examined Ganesh Jadhav, Junior Engineer of electricity company. In the evidence of this witness owner no.1 tried to prove electricity bills Exh. 203 to 208. This witness deposed that, the electric meter in respect of said bills is installed in Pratik Tea House, hotel of owner no.1 existed in the suit property-A. He further deposed that, he visited to suit property-A after receiving summons to verify the situation and existence of meter in the hotel. From his cross examination, it revealed that, he was not authorized by his senior officer to verify the situation by visiting the suit property-A. He also admitted that, said electric meter was given for supply of electricity for residential purpose.

46] After perusing electricity bills and receipts thereof at Exh. 203 to 208, it appears to me that, said bills were in respect of House no. 1334 and the supply of electricity was provided for residential purpose. As per cross examination of witness Shri. Ganesh Jadhav, there was no record in his office about change of place of said meter. When the said meter was installed for the purpose of electricity supply for residential customer and it's address as per record is House no. 1334 which is admittedly the house belonging to owner no.1, it is improbable that, said meter would have existed in any such hotel of owner no.1. Though witness Shri. Ganesh Jadhave stated that, he visited to said Pratik Tea House to verify the position, but he had not prepared such report of his visit and submitted to his office. He was not authorized or directed by his senior officer to visit the site and to verify the position. Therefore, evidence of witness Shri. Ganesh Jadhav and electricity bills at Exh. 203 to 208 is not believable to prove existence of Hotel Pratik Tea House and possession of owner no.1 in the suit property-A. There is no other independent evidence to prove existence of hotel.

47] As noted above, owner no.1 admitted existence of container kept in suit property-A. It is not his case that, he has kept container in the suit property-A. In the cross examination he further admitted that, purchasers no.1 and 2 is having possession over the suit property since the year 2010 and they are cultivating suit property-A. Though he voluntarily stated that purchasers no. 1 to 3 forcefully obtained possession of the suit property-A, but there is neither such pleading by owner no.1 in Spl. C. S. No. 1565/2010 nor in written statement in Spl. C. S. No. 2452/2010. Therefore, his evidence in respect of forceful possession is not believable. Owner no. 2 Somnath Landge also admitted in cross examination that, owner no. 3 kept container and using it as watchman cabin in suit property-A. Though he denied that, tinshed adjacent to container is erected by purchasers, but by way of existence of container, this witness has admitted possession of purchasers. He also admitted that purchasers no. 1 and 2 are taking crop in suit property-A.

48] Learned Advocate Shri. Deo cross examined owner no.3 Baban Landge so as to bring on record existence of Hotel of owner no.1 in the suit property-A. However, admittedly owner no. 3 Baban Landge is person interested upto some extent to support case of owner no.1 and his interest is against purchasers similar to the interest of owner no.1 Therefore, it is obvious that owner no. 3 would depose supporting to case of owner no.1 in respect of possession over suit property. In view of this reason and disbelieving the evidence of owner no.1 and his witness Ganesh Jadhav regarding existence of hotel “Pratik Tea House”, evidence of owner no. 3 Baban in the cross examination taken by learned Advocate Shri. Deo is not believable.

49] Evidence affidavit of owner no. 3 Baban Landge is also silent on the point of claim of possession over suit property-A and taking crop in the suit property-A. In the cross examination owner no. 3 admitted that, there is crop of Jwar in suit property-A. Though he denied that, purchasers have taken crop of Jwar, but there is absence of is evidence in respect of cultivating suit property-A in his examination in chief. In view of this, his contention about possession over the suit property-A is not at all believable. In view of evidence of owner no.1 and owner no. 2 in respect of cultivation of suit property-A by purchasers, the admission of existence of crop of Jwar given by Baban Landge has to be considered to hold that purchasers no. 1 and 2 are cultivating suit property since the year 2010. Thereby, I hold that purchasers are rightly and wrongly having possession over suit property-A. Owner no.1 failed to prove by cogent and believable evidence that he is running hotel " Pratik Tea House" in some portion of suit property-A.

50] So far as contentions of joint possession by owners no. 1 to 3 in view of their claim of joint family property is concerned, admittedly the suit property-A is not coparcenary property. Learned Advocate Shri. Wagaj also not disputed that owners no.1 to 3 have status as tenants-in-common in the suit property-A. Even if, it is presumed that, Parvatibai had no right to execute sale deed dated 10/6/2010 for entire property and she had right to execute sale deed to the extent of her 1/4th share, but as per evidence came on record purchasers are cultivating the suit property-A and taking crops since the year 2010. As against this, owner no.1 failed to prove his possession by way of proving existence of hotel "Pratik Tea House" at least on some portion of suit property-A. Therefore, in view of this factual position, rulings relied by learned Advocate Shri. Deo are not helpful to at least prove possession of owners no. 1 and 3 in the suit property-A.

51] It is a matter of record that, while seeking specific performance of Visar Pavati and agreement, purchasers have not sought relief of recovery of possession. It is settled position of law that, while seeking specific performance of the agreement for sale, the intended purchaser is not required to seek recovery of possession of the suit property. If the specific performance of agreement is granted, he can certainly ask for the possession of the property in which specific performance is granted. In the case in hand, possession of purchasers is established from the cross examination of owners no.1 to 3. Moreover, owner no.1 failed to prove possession and existence of hotel on some portion of suit property-A. In view of this, I come to conclusion that owners no.1 to 3 though established their undivided shares in suit property-A, but failed to establish their actual possession over the suit property-A. Hence, **I answer issue no.1 in Spl.C.S.No. 156/2010 and issue no. 1 and 2 in Spl.C.S. NO. 2030/20111 accordingly.**

Issue no. 2 in Spl. C. S. No. 1565/2010, issue no. 3 in Spl. C. S. No. 2030/2011 and issue no. 1 and 2 in Spl. C. S. No. 2452/2010:-

52] All these issues are interconnected with each other and therefore, I have decided to deal them by common reasons.

Execution of Visar Pavati is not disputed by owners no. 1 and 3. Execution of agreement to sale dated 4/8/2008 is not disputed by owner no. 3 in his cross examination. It is a matter of record that, owner no.1 is not party to agreement to sale dated 4/8/2008. There is no allegation of fraud or misrepresentation in execution of Visar Pavati alleged by owner no.1. As per his case, on the same day of execution of Visar Pavati, purchaser no. 1 took him, owners no. 3 and Parvatibai at the office of Sub-Registrar and by misrepresenting to got register Visar Pavati, purchaser no. 1 got executed general power of attorney. When he realized said fact, he returned amount of Rs.3,00,000/- to purchasers which was received to him from purchasers no.1 and cancelled the transaction. So as to substantiate this contention, there is no documentary evidence in respect of return of amount of Rs. 3,00,000/- to purchaser no.1.

53] Learned Advocate Shri. Nikate for purchasers submitted that, owner no.1 received amount of Rs.1,00,000/- by way of cheque from purchaser no. 2. According to his cross examination, he realized misrepresentation and fraud in obtaining general Power of Attorney on the very second day of execution of Visar Pavati and power of attorney. In spite of that, he obtained amount of Rs.1,00,000/- from purchasers on 22/11/2007. Therefore, his said conduct in receiving said amount itself destroyed the case of fraud and misrepresentation in executing general power of attorney as well as returning amount of Rs.3,00,000/- and cancellation of transaction.

54] In the cross examination, owner no.1 admitted amount of Rs.1,50,000/- each received to him and owner no. 3 on 8/11/2007. He also admitted amount of Rs.1,00,000/- received by way of cheque from purchasers. As per his cross examination, he realized misrepresentation and fraud allegedly practiced by purchaser no. 1 in got executing power of attorney on the second day of execution of Visar Pavati. He returned the amount of Rs.3,00,000/- to purchasers within 15 days. If the said period of 15 days calculated from 9/11/2007, it comes to 23rd November 2007. As per his evidence, on 22/11/2007 he received amount of Rs.1,00,000/- by way of cheque from purchasers. The person having realized fraud practiced upon him, cannot accept cheque of Rs.1,00,000/- from the person who allegedly cheated to him. Therefore, conduct of owner no.1 by accepting cheque of Rs.1,00,000/- itself falsifies his contentions that, he was cheated by purchasers by executing power of attorney by practicing fraud and misrepresentation. Moreover, after realizing alleged fraud and misrepresentation, owner no.1 had not issued notice in respect of cancellation of transaction more particularly the Visar Pavati dated 8/11/2007 to purchaser no. 1 till filing of Spl.C.S. No. 1565/2010. This conduct of remaining silent also create doubt about his contentions of misrepresentation and fraud. Hence, contention of owner no.1 in respect of misrepresentation and fraud is not acceptable.

55] It is also case of owner no.1 that, he had not executed agreement to sale dated 4/8/2008. He had disputed that, amount of

Nazrana shown in the name of vendor i.e. Parvatibai and owners no. 1 to 3 and deducted from the consideration agreed to be paid to them. In view of said dispute, he had not executed agreement to sale. Learned Advocate Shri. Deo made submission to support this contention. Learned Advocate Shri. Nikate argued that, owner no.1 was not present at the time of execution of the agreement to sale. However, he got knowledge of the agreement to sale after 8 to 15 days from execution thereof. In spite of that, he had not issued notice to purchasers or Parvatibai and owners no.3. This conduct of owner no.1 itself shows that, agreement to sale was executed with his knowledge and consent.

56] It is matter of record that there is no signature of owner no.1 on agreement to sale. As per his cross examination, he came to know about execution of agreement to sale within 8 to 15 days from execution thereof. He also obtained copy of agreement to sale. After reading said document, he came to know about payment of Rs. 35,25,000/- by purchasers to Parvatibai and owner no.3. Though he denied knowledge about reference of Visar Pavati and payment made to him in the said agreement after reading it's copy, but said denial is not acceptable. Once he read copy of agreement to sale, it has to be presumed that, he got knowledge of all contents of the agreement. Agreement to sale was executed on 4/8/2008 and probably owner no.1 obtained it's copy within 15 days i.e. at the most upto the end of August 2008. It appears from conduct of owner no. 1 that, since having knowledge of the contents of agreement to sale, he remained silent till filing of suit and neither challenged the said agreement nor issued any notice to purchasers or Parvatibai and owner no. 3 to resist furthering the transaction. His said conduct disbelieves his contention that he had no knowledge of the agreement to sale.

57] Learned Advocate Shri. Deo for owner no.1 submitted that, Visar Pavati dated 8/11/2007 is the only document in between purchasers and owner no.1 as he was not party to agreement to sale dated 4/8/2008. According to him, there was no concluded contract and no terms of the transaction of sale of suit property-A were finalized in between purchasers and members of Landge family. According to learned Advocate Shri. Deo, Visar Pavatii is not actionable document. Said document is not covering all the terms of the transaction. Sons of Suresh i.e. owners no.2 and sister Aruna Chavan were not party to Visar Pavati. Said Visar Pavati was for token amount. There was no terms of payment of Nazarana and payments to be made to legal heirs of Aruna Chavan. Therefore, according to him, said Visar Pavati cannot be legally enforceable and specific performance cannot be asked. As against this, learned Advocate Shri. Nikate submitted that, Visar Pavati dated 8/11/2007 is concluded agreement. Though said document does not speak about the payment of Nazarana, but that would not be hurdle to legally enforce the document for seeking specific performance. Learned Advocate Shri. Nikate relied on the ruling in ***Futuristici Solutions Ltd V/s. Nirmal Promoters (P) Ltd and others, MANU/DE/2436/2016***.

58] Admittedly, Visar Pavati dated 8/11/2007 at Exh. 119 is the only document signed by and beween purchasers and owner no.1. Though transaction with Nalini Pitti was denied by owner no.1 and owner no. 3 in their respective written statements filed in Spl. C.S. No. 2452/2010, but in the cross examination, they admitted transaction of Visar Pavati entered with Nalini Pitti. They further admitted that, they had cancelled transaction with Nalini Pitti by paying amount to her which was received from purchasers. There is entry of Demand Draft of Rs.50,000/- received from purchasers no. 2 so as to handover to Nalini Pitti for cancellation of her transaction on Visar Pavati Dt. 8/11/2007. Purchasers have placed on record simple copy of Visar Pavati of Nalini Pitti at Exh. 192, and deed of cancellation of her transaction at Exh. 194.

59] Learned Advocate Shri. Wagaj tried to punch holes to the Visar Pavati Exh. 192 by submitting that landed property at village Wada is shown in description of property in Exh. 192 and Nalini Pitti had not signed the said document. There is no substance in these submissions. It appears from description of the property in Exh. 192 that except the word Wada (वाडा) and Gat number, other contents of Visar Pavati are in typed form. Gat number of the land in Exh. 192 is Gat No. 222/1 adm. 2 Hector 20 Ares which appears to be suit property-A. It is neither case of purchasers nor of owners no. 1 to 3 in their written statement in Spl. C.S. No. 2452/2010 that, owners no.1 to 3 and Parvatibai had entered into transaction with Nalini Pitti in respect of any land at Wada. Absence of signature of Nalini

Pitti at Exh. 192 would not vitiate contention of purchasers for the reason that, owners no.1 to 3 have specifically admitted transaction of Visar Pavati with Nalini Pitti. Thereby it becomes clear that, owners no. 1 and 3 and Parvatibai had entered with transaction of Visar Pavati by agreeing to sale suit property-A to Nalini Pitti. They have further admitted in cross examination that, they accepted amount of Rs.50,000/- by way of demand draft for payment to Nalini Pitti for cancellation of her transaction. Thereby it becomes clear that, by entering into Visar Pavati dated 8/11/2007 with purchasers, owners no.1 and 3 and Parvatibai accepted amount and cancelled the transaction with Nalini Pitti.

60] Learned Advocate Shri. Deo for owner no.1 submitted that, said Visar Pavati is not concluded contract. It is not disputed that owners no.1 and 3 as well as Parvatibai had received amount on Visar Pavati dated 8/11/2007. After going through contents of Visar Pavati at Exh. 189, it appears that, the property which was agreed to be sold is described in said Visar Pavati. Clause no.2 of the said Visar Pavati discloses that, the price for which suit property-A was agreed to be sold is also mentioned. Part of the said consideration i.e. Rs. 1,50,000/- each paid to owners no.1 and 3 is also mentioned in clause no. 2 of the said Visar Pavati. Clause A to H of Visar Pavati are regarding clearing marketable title, obtaining permission for sale of suit property-A, clearing all the dues by making payment of taxes etc, and expenses to be incurred for execution of sale deed. From the said clauses, it appears that, not only particulars included but the terms of transaction were also decided and concluded in between purchasers and Parvatibai and owners no.1 to 3. Said concluded terms are incorporated in Visar Pavati at Exh. 189. Therefore, I am of the view that, Visar Pavati dated 8/11/2007 at Exh. 189 is concluded contract in between purchaser no.1 and Parvatibai and owners no. 1 and 3.

61] Admittedly clause no. (c) of Exh. 189 is only in respect of responsibility taken by purchaser no.1 for obtaining permission for sale. There is no term as to who had to pay or bear the amount of Nazarana to be paid to Government. However, absence of said term would not be hurdle to hold that Visar Pavati is concluded contract in view of ruling in ***Futuristici Solutions Ltd***(*cited supra*). In that case the MOU in question was silent on the term as to who has to perform the obligation to obtain NOC/ permission. The Hon'ble High Court of Delhi has observed that,

> “ mere omission to provide which of the two vendors or the purchaser had the responsibility to obtain NOC did not render the MOU in inchoate or enforceable or justify a conclusion that there was no consensus ad idem between the parties".

62] In view of this ruling, I am of the view that, even though there was no term in respect of payment of Nazarana in Visar Pavati at Exh. 189, it is concluded contract as all the necessary terms in respect of concluded contract are incorporated therein. Therefore, said Visar Pavati is enforceable against owner no.1. Admittedly there is no term of payment of amount to legal heirs of Aruna Chavan incorporated in Visar Pavati. However, from the oral as well as documentary evidence came on record, it reveals that, purchasers had got knowledge of the civil suit filed by Aruna Chavan in respect of suit property-A in the court at Shirur. Amount of Rs.10,00,000/- was paid to legal heirs of Aruna Chavan after execution of Visar Pavati dated 8/1/1/2007. Thus it is obvious that, there can not be any term in respect of payment made or agreed to be made to legal heirs of Aruna Chavan in Visar Pavati which was executed much prior to said payment. Hence, absence of term in respect of payment made or agreed to be made to legal heirs of Aruna Chavan would not be hurdle for acting upon the Visar Pavati dated 8/11/2007.

63] It is contention of owner no.1 that, he had disputed that, payment of amount of Nazarana and amount paid to legal heirs of Aruna Chavan were shown to be paid and deducted from the consideration agreed to be paid to Parvatibai and owners no.1 and 3, inspite there were no such terms argeed in between them. However, there is no such specific pleading in respect of dispute crop up with purchasers in respect of dispute about amounts of Nazarana and paid to legal heirs of Aruna Chavan deducted from consideration. Owner no.1 neither pleaded this material fact in his plaint in Spl. C. S. No. 1565/2010 nor in written statement filed in Spl. C. S. No. 2452/2010. Apart from that, it has come in his cross examination that, he received copy of agreement to sale within 8 to 15 days from execution of agreement dated 4/8/2008. As observed above, owner no.1 had gone through the contents of agreement wherein there is reference in respect of amount of Rs.10,00,000/- paid to legal heirs of Aruna Chavan and payment of Nazarana out of consideration amount. In spite having got knowledge of these facts, owner no.1 remained silent and not taken any action raising his objection. This conduct of owner no.1 is sufficient to infer that he had knowledge and he had implied consent for payment of amounts of Rs.10,00,000/- to legal heirs of Aruna Chavan and payment of Nazarana from the consideration amount. Therefore, submission of learned Advocate Shri. Deo in that regard is not acceptable.

64] Learned Advocate Shri. Deo for owner no.1 and learned Advocate Shri. Wagaj for owner no.3 much argued on release deed executed by legal heirs of Aruna Chavan. Learned Advocate shri. Deo argued that, amount of Rs.10,00,000/- was paid to legal heirs of Aruna Chavan at one hand and release deed showing relinquishment of rights without consideration is got executed by Parvatibai and owner no. 3 at the instance of purchasers. Said release deed is at Exh. 186. According to learned Advocate Shri. Deo when amount of Rs.10,00,000/- was accepted for releasing the rights, nature of document is not release deed, but it is gift deed.

65] Payment of Rs. 10,00,000/- to legal heirs of Aruna Chavan is an admitted fact. The release deed Exh. 186 is not disclosing that it is without consideration. Though the amount of Rs. 10,00,000/- is not disclosed in that document, but contents thereof are also not disclosing that it is without consideration. Whether the said document is release deed or gift deed is not fact in issue in this suit. The fact remains that, legal heirs of Aruna Chavan had accepted amount of Rs.10,00,000/- and relinquished their rights in favour of Parvatibai and owner no.3.

66] The question at this stage is that, whether owner no.1 had knowledge and had he consented for the said payment. Payment made to legal heirs of Aruna Chavan is mentioned in the agreement to sale dated 4/8/2008. Owner no.1 did not raise any objection since receiving copy of the agreement till filing of suit. If owner no.1 would not have knowledge of the payment of being made to legal heirs of Aruna Chavan and he would not have consented to said payment, he had no reason to remain silent without raising any objection in respect of said payment. I have decided the question of payment of Nazarana deducted from the amount of consideration to be paid to Landge family, little later and separately.

67] From the above discussions, it becomes clear that, Visar Pavati dated 8/11/2007 is the only document in between purchasers and owner no.1. Said Visar Pavati is a concluded contract which is enforceable against owner no.1. The case of fraud and misrepresentation alleged by owner no. 1 for cancellation of the transaction with purchasers is falsified by his conduct by accepting amount of Rs.1,00,000/- by way of cheque on 22/11/2007. There is no documentary evidence by owner no.1 to establish that, he had returned the amount of Rs.3,00,000/- and cancelled the transaction.

Therefore, Visar Pavati dated 8/11/2007 is still in existence against owner no.1 and it is enforceable against him.

68] Now I turn towards the allegations of misrepresentation and fraud alleged by owner no.3 in got executing Visar Pavati and agreement to sale from owner no. 3 and his family members. After going through Visar Pavati Exh. 189 and original agreement to sale dated 4/8/2007 annexed to sale deed dated 10/6/2010 at Exh. 298 it appears to me that, owner no. 3 has accepted various amounts in cash as well as by cheques from purchasers since execution of Visar Pavati and agreement to sale till 7/5/2010 i.e. prior to one month of execution of sale deed. Evidence affidavit of owner no. 3 at Exh. 223 is replica of contents of plaint in Spl.C. S. No. 2030/2011 in respect of his allegations of misrepresentation and fraud. While alleging misrepresentation and fraud in got executing Visar Pavati and agreement to sale, owner no. 3 has not stated in evidence that when he realized the fact of misrepresentation and fraud in obtaining his signature on Visar Pavati and signatures of his family members and him on agreement to sale dated 4/08/2008.

69] In cross examination of owner no. 3 by learned Advocate Shri. Nikate, he has admitted receiving various amounts by way of cash and cheques and entries thereof on Visar Pavati Exh. 189 and at the end of original agreement to sale annexed to sale deed dated 10/6/2010. If purchasers would have practiced fraud upon owner no. 3 and his family members in got executing Visar Pavati and agreement to sale, owner no. 3 had no reason to accept the amounts at various times and giving signatures below the endorsements acknowledging the said payments. In cross-examination, owner no. 3 admitted in clear words that, meeting was taken place in between purchasers and Parvatibai as well as owners no.1 and 3 at the house at Sanaswadi and in the said meeting they agreed to sale suit property-A to purchasers for consideration of Rs. 2,09,00,000/-. He further admitted that, Visar Pavati was executed within two months from the said meeting. He also admitted payment agreed to be made to Nalini Pitti for cancellation of her transaction of Visar Pavati. He also admitted that, demand draft of Rs. 50,000/- was given to owner no.1 by purchasers for handing over to Nalini Pitti. Owner no. 3 further admitted execution of Visar Pavati dated 8/11/2007 and signature of his son Tushar as attesting witness to said Visar Pavati. All these admissions by owner no. 3 in respect of execution of Visar pavati as well as agreement to sale and acknowledgment of various payments falsifies his case about fraud and misrepresentation in got executing Visar Pavati and agreement to sale allegedly practiced by purchasers. Therefore, I hold that owner no. 3 failed to prove case of fraud and misrepresentation allegedly practiced upon him and his family members by purchasers.

70] Learned Advocate Shri. Wagaj for owner no. 3 disputed admissibility of Visar Pavati Exh. 189 in evidence as it is not sufficiently stamped. According to him, in view of amendment in Schedule of Bombay Stamp Act, 1983, Visar Pavati in respect of handing over possession in future, needs to be sufficiently stamped. The present Visar Pavati is not sufficiently stamped and hence cannot be read in evidence. Learned Advocate Shri. Wagaj relied on the ruling in **Sheshrao Bhikaji Kale V/s. Damodar, 2004(3) Mh.L. J. 357**.

71] Learned Advocate Shri. Nikate submitted that possession was agreed to be delivered at the time of execution of sale deed as per contents of Visar Pavati. Therefore, no stamp duty is required on Visar Pavati as per consideration of the property. Learned Advocate Shri. Nikate further argued that, no such objection was raised when Visar Pavati was exhibited and admitted in evidence. Therefore, in view of section 36 of Bombay Stamp Act, now this objection cannot be raised. Upon this, learned Advocate Shri. Wagaj submitted that exhibiting the document is ministerial act and mere exhibiting is not sufficient to hold that it is proved and read in evidence.

72] Provision of Article 25, explanation 1 in Schedule I of Bombay Stamp Act is reproduced in the ruling in **Sheshrao Kale's** case. As per said provision, the agreement to sale shall be deemed conveyance only if possession of the immovable property is transferred or agreed to be transferred before the execution or at the time of execution or after execution of agreement. In the present case, possession is agreed to be delivered on the sale deed. Visar Pavati Exh. 189 is not disclosing that possession was transferred or agreed to be transferred before the execution or at the time of execution or after execution of Visar Pavati. Therefore, in my view, Visar Pavati is not falling in the category "deemed conveyance" under Article 25 of the Schedule I of Bombay Stamp Act.

73] The objection of insufficient stamp was not raised at the time of admitting the document in evidence by marking exhibit thereon. Though exhibiting the document is ministerial act, but under Order 13 Rule 1 of CPC, if the document is admissible in evidence, then only it is to be marked Exhibit. When Visar Pavati was marked exhibit as Exh. 189 and admitted in evidence, this objection was not raised by owner no. 3. Therefore, at this stage, this objection is not sustainable in view of section 36 of Bombay Stamp Act. In the ruling in **Mahendra V/s. Kailas, 2014(4) Bom. C. R. 877,** it has been observed that once the court rightly or wrongly decides to admit the documents in evidence, so far as parties are concerned the matter is closed. Section 36 is categorical, it is termed that when the document once has been admitted in evidence, such admission cannot be called in question at any stage of the suit or the proceedings on the ground that the instrument has not been duly stamped.

74] Learned Advocate Shri. Deo for owner no.1 disputed the legality and enforceability of agreement dated 4/8/2008. He argued that Parvatibai was not guardian of sons of Suresh i.e. owner no.2. There is no evidence that she was their guardian. Owner no. 2 Somnath adduced evidence to the effect that, Parvatibai was not their guardian. In such circumstances, Parvatibai had no right to execute agreement to sale as guardian of sons of Suresh. Therefore, agreement to sale is not legal and valid. Hence, it is not enforceable.

75] I am not agree with this submission. Admittedly, there is no evidence that Parvatibai was guardian and grown up sons of Suresh. As per evidence came on record, their maternal grandfather grown up sons of Suresh when they were minor after death of their parents. Therefore, admittedly Parvatibai had no right to execute agreement to sale on behalf of them. However, considering provisions of Contract Act in respect of void document, for this reason agreement to sale cannot be held as void document. At the most it can be said that said agreement could not have been enforced against sons of Suresh as it was not entered into by their legal guardian to sale their share in suit property-A in favour of purchasers.

76] However, now this aspect does not have any significance because sons of Suresh i.e. owners no. 2 namely Karna Suresh Landge, Somnath Suresh Landge and Nilesh Suresh Landge have ratified the sale deed dated 10/6/2010 to the extent of their share. Admittedly, the sale deed of entire suit property was executed by Parvatibai. Owners no. 2 have confirmed transfer of right and interest of their 1/4th share in favour of purchasers by executing consent deed, compromise deed and supplementary compromise deed at Exh. 215 to 217. Consent deed Exh. 215 is registered document. By way of said document, they have confirmed said sale deed dated 10/6/2010 and transfer of right and interest to the extent of their 1/4th shares in suit property-A in favour of purchasers. By this way owners no. 2 have ratified the sale deed. So far as challenging the agreement to sale on the ground of transfer of minor's share, only the minor has right to challenge the said document. Now in the present case, said minors i.e. sons of Suresh who were minors and now attained majority had ratified transfer of their share by Parvatibai. Therefore, there is no substance in submissions of learned Advocate Shri. Deo. Agreement to sale dated 4/8/2008 admittedly executed by owner no. 3, hence, it is valid and legal and enforceable against owner no. 3 and his family members.

77] Owners no. 1 and 3 admitted execution of Visar Pavati dated 8/11/2007. Said Visar Pavati is disclosing concluded contract as Parvatibai and her two sons i.e. owners no. 1 and 3 agreed to sale suit property-A for consideration of Rs.2,09,00,000/- to purchasers. Case of fraud and misrepresentation is not proved by owners no. 1 and 3. In this situation, it must be held that, purchasers have proved that Parvatibai and owners no. 1 and 3 had entered into transaction of sale of suit property-A to purchasers for consideration of Rs.2,09,00,000/-. Parvatibai and owner no. 3 also executed sale deed dated 4/8/2008 in favour of purchasers. Owner no.1 had knowledge of the agreement to sale within 8/10 days and he had not raised any objection in respect of said agreement since August 2008 till filing of Spl. C. S. No. 1565/2010. This shows his implied consent and acquiescence to the agreement dated 4/8/2008. In view of this, **I answer issue no. 2 in Spl. C. S. No. 1565/2010 and issue no. 3 in Spl.C.S. No. 2030/2011 in the negative and issues no.1 and 2 in Spl. C. S. No. 2452/2010 in the affirmative and partly affirmative.**

As to issue no. 3 in Spl. C. S. No. 1565/2010, issue no. 4 in Spl. C. S. No. 2030/2011 and issue no. 3 in Spl. C. S. No. 2452/2010.

78] It is a matter of record that Parvatibai had executed sale deed dated 10/6/2010 in respect of entire suit property-A. It is also matter of record that, suit property-A was received in the name of Parvatibai as project affected persons in Rehabilitation Scheme and therefore, the land was allotted into new tenure. It is also not disputed that permission to sale was required to be obtained before execution of sale deed. As per contents of Visar Pavati Exh. 189, responsibility in respect of obtaining permission was taken by purchaser no.1. In the cross-examination he admits said responsibility. General power of attorney was also executed in favour of purchaser no.1 for obtaining said permission for sale. Visar Pavati Exh. 189 is silent in respect of payment of Nazarana. There is no recital in Exh. 189 as to who has to pay the amount of Nazarana for Government for obtaining sale permission. Clause (f) of agreement to sale shows that owners i.e. Parvatibai and her sons would pay the amount of Nazarana to the State Government. It is a matter of record that purchasers paid Rs. 31,30,260/- to Government ass Nazarana and then permission to sale was granted by the Government. The said amount of Nazarana was paid out of consideration amount agreed to be paid to Parvatibai and other members in the family. Owners no. 1 to 3 strongly disputed payment of Nazarana out of the consideration amount.

79] Learned Advocate Shri. Deo for owner no.1 submitted that there was no such condition in respect of payment of Nazarana out of the consideration amount agreed in between purchasers and owner no.1. No such term is incorporated in Exh. 189 which is only document in between purchaser no.1 and owner no.1. After execution of Visar Pavati, dispute was arose in between purchasers and owner no.1 in respect of contributing amount of Nazarana out of the amount of consideration and showing it accordingly in the payment column of the document and from that stage, owner no.1 withdrawn him from the transaction. In absence of such term in respect of payment of Nazarana, purchasers had no right to reduce the amount of Nazarana from the consideration amount. Therefore, according to him, Visar Pavati was not enforceable and the transaction was not completed and purchasers had no right to ask specific performance from owner no.1.

80] Learned Advocate Shri. Wagaj for owner no. 3 submitted that, there was no term of payment of Nazarana for converting land into Non Agricultural purpose. The only term agreed in between

Parvatibai, owner no. 3 and purchasers was in respect of payment of amount of possessory right and to obtain permission from District Rehabilitation Officer. However, purchasers were intending to use the suit property-A for non agricultural in future. For that purpose deletion of new tenure condition was required from Divisional Revenue Commissioner. For that purpose, huge amount of Nazarana approximately 75% of the value was required to be paid. Purchasers had obtained permission for sale with deletion of new tenure condition and non agricultural use in future by paying Nazarana amount of Rs.31,30,260/- from the consideration amount for which there was no agreement in between parties. Hence, according to him, in absence of any such agreed term, purchasers had no right to deduct the amount of Nazarana from the consideration amount and they had no right to ask specific performance because purchasers acted fraudulently violating the terms of agreement. Therefore, purchasers have no right to ask specific performance of the agreement to sale dated 4/8/2008.

81] Learned Advocate Shri. Nikate for purchasers referred Visar Pavati Exh. 189 and argued that though purchaser no. 1 had taken responsibility to obtain sale permission, but that does not include to incur expenses particularly payment of Nazarana by the purchasers. Hence, according to him, Visar Pavati cannot be interpreted by that way as argued by learned Advocate Shri. Deo for owner no.1. Learned Advocate Shri. Nikate further argued that, Parvatibai and owner no. 3 had agreed to pay Nazarana from the consideration and accordingly, clause no. (f) was incorporated in agreement to sale dated 4/8/2008. Learned Advocate referred sale permission Exh. 267 and argued that even after 10 years from allotment of the property to the person affected by irrigation project, permission to sale was required by paying Nazarana @ 75% of the value of the property. Learned Advocate relied on Government Resolutions dated 11/6/2004 and 24/12/2004.

82] It is a matter of record that Visar Pavati Exh. 189 does not have recitals as to who has to pay amount of Nazarana to Government. Though purchaser no.1 had shouldered responsibility to obtain sale permission from Government, however, it cannot be interpreted by the way as argued by learned Advocate Shri. Deo. Recitals in respect of permission in the Visar Pavati Exh. 189 does not mean that, purchaser no.1 had taken responsibility to pay amount of Nazarana from his pocket. Moreover, agreement to sale was subsequently executed. Admittedly, agreement to sale dated 4/8/2008 is not novation of Visar Pavati Exh. 189. Reason for execution of agreement to sale dated 4/8/2008 is that Parvatibai and owner no. 3 were obtaining various amounts out of consideration for one or other reasons from the purchasers and there were subsequent events which delayed the execution of sale deed. For example, dispute raised by Aruna Chavan by filing suit for partition and settlement of her dispute, illness of Parvatibai and her hospitalization etc. Therefore, purchasers sought to execute agreement to sale which was accordingly executed by Parvatibai and owner no. 3 in favour of purchasers. Thus, the agreement to sale dated 4/8/2008 is supplementary document to Visar Pavati. Hence, by no stretch of imagination, agreement to sale can be said as novation of Visar Pavati under section 62 of the Contract Act.

83] Admittedly, owner no.1 was not party to agreement to sale dated 4/8/2008. Thus, apparently there was no term in respect of payment of Nazarana in between purchasers and owner no.1 in Visar Pavati Exh. 189. However, as observed above, owner no.1 had knowledge of execution of agreement to sale dated 4/8/2008. Though he was not present at the time of execution of said agreement and purchasers did not ask from him to execute agreement to sale in respect of his share, but the conduct of owner no.1 even after having got knowledge of the agreement, he did not raise any objection in respect of terms of agreement more particularly in respect of responsibility to pay Nazarana taken by Parvatibai and owner no. 3. Therefore, by way of acquiescence, owner no.1 had impliedly consent to pay Nazarana out of the consideration amount.

84] Statement of Parvatibai was recorded before revenue authority. Certified copy of statement is at Exh. 266 (it was again exhibited as Exh. 385 in the evidence of Sub-Division Officer Smt. Nalawade examined by purchasers). As per evidence of this witness, because of one oral complaint raising objection of identity of Parvatibai, notice was issued and Parvatibai called to record her statement. Nothing material was extracted in cross-examination of this witness to hold that this witness had not recorded statement of Parvatibai on 12/5/2010.

85] Upon perusal of certified copy of statement Exh. 385, it appears that Parvatibai had agreed to sale suit property-A with consent of her both the sons i.e. owners no.1 and 3. It further revels from Exh. 385 that owners no. 1 and 3 were having knowledge in respect of taking permission by Parvatibai by applying to State Government. Thereby it becomes clear that, owner no.1 had knowledge and he had consented to obtain permission by Parvatibai for sale of suit property-A. As observed above, owner no.1 had not raised any objection in respect of recitals in the agreement to sale regarding payment of Nazarana from the consideration amount. His conduct of remaining silent itself shows that he had consented. Moreover, as per suggestions given by Advocate Shri. Deo for owner no.1 in the cross-examination of purchaser no.1 that dispute regarding payment of Nazarana out of consideration was arose when the said payment was tried to be shown in particulars of payment. By this suggestion it becomes clear that, owner no.1 was having knowledge that Parvatibai and owner no. 3 had agreed to pay Nazarana from and out of the consideration amount. Therefore, his contention that for the reason of payment of Nazarana from consideration amount, the agreement and Visar Pavati are not enforceable and no specific performance can be asked, is not acceptable.

86] Admittedly owner no. 3 had executed agreement to sale and have consented to pay Nazarana by the owners. Therefore, owner no. 3 had no right to make complaint or raise objection in respect of payment of Nazarana from the amount of consideration. So far as dispute in respect of payment of Nazarana for converting land for non agricultural purpose by deleting entry of new tenure condition raised by Advocate Shri. Wagaj is concerned, permission was granted in reference with Government resolution dated 11/6/2004 and 24/12/2004. As per Government Resolution dated 11/6/2004, project affected persons falling in occupancy Class II are entitled to convert the land in occupancy Class I by paying prescribed value to Government even after 10 years from allotment of the land. Government Resolution dated 24/12/2004 discloses that, for converting Class II land in Class I land by changing its tenure, the condition in Government Resolution dated 11/6/2004 was applicable. As per Clause IV of the Resolution dated 24/12/2004, for sale of the land allotted to project affected persons at new tenure, seller has to pay amount @ 62.5% to 75% of the value of the land. In view of this provision, it becomes clear that, for sale of the land allotted by new tenure, even after 10 years from allotment of land, sale permission is required to be obtained by paying Nazarana @ 62.5% to 75% of the value of land. Therefore, submission of learned Advocate Shri. Wagaj that sale permission could have been obtained only by paying amount of possessory rights is not acceptable. His further submission that sale permission was obtained for use of land for non agricultural in future and therefore, amount of Rs.31,30,260/- was required to be paid is also not acceptable. As observed above, Parvatibai and owner no. 3 had agreed to pay Nazarana amount and therefore, purchasers had rightly paid Nazarana amount and deducted it from the agreed consideration amount. Owner no.1 consented by acquiescence to the term in clause (f) of agreement dated 4/8/2008. Therefore, I do not find any substance in the objection regarding deduction of Nazarana amount from consideration amount raised by owners no. 1 and 3.

87] Owners no. 1 and 3 also disputed deduction of amount of medical bills and purchase of gold by Parvatibai by showing the said amount in the column of payment of particulars in the sale deed from consideration amount. According to learned Advocate Shri. Deo for owner no.1 there was no such agreed term. Purchasers had no reason to spend amount on medical treatment of Parvatibai during her hospitalization. Documentary evidence produced by purchasers is not reliable. In absence of any said term in respect of deduction of the amount of medical treatment and gold purchase, purchasers had no right to deduct the said amount. Learned Advocate Shri. Wagaj also supported to this submission.

88] Learned Advocate Shri. Nikate for purchasers submitted that, Parvatibai fallen ill after execution of Visar Pavati and therefore, there was no question having incorporated said term in Visar Pavati. Learned Advocate Shri. Nikate pointed out that owners no.1 and 3 had no reason to raise these objections because the amounts spent on medical treatment of Parvatibai and purchase of gold to the tune of Rs. 3,21,000/- is not reduced from the share of amount agreed to be given to owners no. 1 to 3. Said amount of Rs.3,21,000/- was deducted from the amount agreed to be given to share Parvatibai.

89] Learned Advocate Shri. Nikate drawn my attention towards payment particulars column and submitted calculation with list Exh. 391 and submitted that, amount of Rs.50,000/- paid to Nalini Pitti, Rs.10,00,000/- to legal heirs of Aruna Chavan and amount of Nazarana Rs.31,30,260/-, total amounting to Rs. 41,80,260/- was reduced from entire consideration amount of Rs.2,09,00,000/-. After deducting said amount, remaining amount of Rs.1,67,19,740/- was divided into four shares which comes to Rs.41,79,935/- each. The amount of Rs.3,21,000/- spent on medical treatment and gold purchase by Parvatibai was deducted from the amount of the share of Parvatibai. Therefore, according to him, owners no.1 and 3 had no reason to make grievance of the said amounts.

90] Learned Advocate Shri. Nikate further argued that, though owners no.1 and 3 stated in their evidence that, they had spent amount at Hospital and medical treatment of Parvatibai but they had not placed on record any single document to support their contentions. As against this, purchasers have produced various documents in respect of payment of amount spent on medical treatment at hospital of Parvatibai. Hence, according to him, contentions of purchasers will have to be accepted.

91] It appears from cross-examination of owner no.1 that, Parvatibai was met with small domestic accident and she was admitted in High Line Hospital. Thereafter, because of suffering by paralysis, she was admitted in Ruby Hospital by owner no.3. As per cross-examination of owner no.1, he spent amount of medical treatment in High Line Hospital and owner no. 3 and he deposited amount in Ruby Hospital. He further deposed that amount of Rs.1,50,000/- to Rs.1,70,000/- was spent in Ruby Hospital and amount of Rs.40,000/- was spent on medical treatment in High Line Hospital. Though owner no. 1 has stated that he and owner no. 3 spent these amounts on the hospitalization and medical treatment, but he admitted that he has no documents i.e. receipts and bills in respect of payment incurred by them of both the hospitals.

92] It reveals from cross-examination of owner no. 3 that, amount of Rs.40,000/- to Rs.60,000/- spent for the medical treatment when Parvatibai was admitted in High Line Hospital. According to him, Parvatibai spent said amount. This version in his cross-examination is contradictory to the evidence of owner no.1 about spending amount in High Line Hospital by owner no.1. Owner no. 3 was unable to state that how Parvatibai spent amount of Rs.40,000/- to Rs.60,000/- on her medical treatment when she was admitted in the hospital. In view of this, it has to be accepted that Parvatibai spent said amount which was given by purchasers to her.

93] Similarly, owner no. 3 stated in cross-examination that Parvatibai spent amount of Rs.40,000/- for her surgery of eyes in August 2008. Owner no. 3 was unable to state the source amount spent by Parvatibai. Again case of purchasers in respect of giving amount for medical treatment by Parvatibai has to be accepted. Owner no. 3 further deposed that amount of Rs.1,25,000/- to Rs.1,50,000/- was spent on the medical treatment in Ruby Hospital. According to him, some amount of said medical treatment was incurred by Parvatibai and some amount was incurred by owners no.1 and 3. He was unable to state how many amount they spent on the medical treatment in Ruby Hospital. Neither owner no.1 nor owner no.3 placed on record any single bill or receipt from the Hospital showing that they have spent amount on any of the medical treatment of Parvatibai.

94] As against this, purchasers have placed on record receipts of the amounts given to parvatibai for spending amount on her medical treatment. Said receipts are at Exh. 280/1 to 280/5, 281. Admittedly, these receipts are not sufficient to prove the amount of Rs.3,21,000/- claimed to be given by them to Parvatibai for medical treatment and purchase of gold. However, that would not vitiate the contentions of purchasers. Because the important thing is that the amount of Rs.3,21,000/- given to Parvatibai was spent on her medical treatment and purchase of gold. All these amounts have been deducted from the share of parvatibai in the consideration to be paid to her.

95] Though the chart filed by purchasers with list Exh. 391 is not exhibited, but it is useful to help for calculation and to ascertain the amounts of shares of the consideration paid to Parvatibai and owner no. 2 and payable to owners no.1 and 3. The calculation submitted by learned Advocate Shri. Nikate as noted above, appears to be correct. The amount of Rs.3,21,000/- spent on medical treatment and purchase of gold appears to be deducted from the share of amount of Rs.41,79,935/- which was given to Parvatibai. After deducting said amount of Rs.3,21,000/- and the amounts already received by Parvatibai during her lifetime, amount of Rs.36,83,935/- was paid by cheque no. 943216 drawn on Bank of Maharashtra to Parvatibai on execution of sale deed.

96] It appears from case of purchasers that Parvatibai had invested Rs.35,00,000/- in LIC in three equal shares and names of owner no.1, owner no.3 and sons of Suresh were entered as nominees for receiving said amounts. Owner no. 2 Somnath admitted in cross-examination that, after death of Parvatibai, he received amount of Rs.11,70,00/- from LIC. Owner no. 3 also admitted in cross-examination that, Parvatibai had invested amount in Life Insurance Corporation. Owner no.1 also admitted in cross-examination that, amount of Life Insurance Corporation was received to him. From this material, it can be inferred that, owner no. 1 & 3 had knowledge of execution of sale deed by Parvatibai and amount received to her after deducting amount of medical treatment and gold purchase from her share of consideration.

97] It is case of owners no.1 and 3 that, Parvatibai was illiterate and old aged lady. Taking disadvantage of that, purchasers have got executed sale deed dated 10/6/2010 by practicing fraud upon Parvatibai. This contention is not acceptable. If purchasers would have practiced fraud upon Parvatibai they had no reason to not pay amount of share of sons of Suresh to Parvatibai at the time of execution of sale deed. In the cross-examination of purchaser no. 1 he was asked about non payment of the amount of share of the consideration of sons of Suresh. He has stated that, amount of their share was not given to Parvatibai on her say. Therefore, they had shown amount of their share payable to them in column of payment of particulars in the sale deed. Considering this aspect and the amount of share received to Parvatibai which was invested by her in LIC appointing owners no. 1 to 3 as nominees for receiving said amounts after her death, It appears to me that, the case of fraud is not at believable. Parvatibai might had executed sale deed presuming that her name was alone standing in the 7/12 extract and in believing that her sons i.e. owners no. 1 and 3 as well as grandsons owners no.2 would give consent to the sale deed executed by her. Therefore, contentions of owners no. 1 and 3 about practicing fraud upon Parvatibai by the purchases in got executing sale deed dated 10/6/2010 is not at all believable.

98] The question remains about the consent of owners no. 1 and 3 and execution of sale deed dated 10/6/2010 with their knowledge. So far as this aspect, there is absolutely no documentary evidence. Purchasers have come with a specific contention that after receiving sale permission, they met to owners no. 1 to 3 and Parvatibai requesting to execute sale deed. These contentions are supported by the evidence of purchaser no.1. Suggestions in that regard put in the cross-examination of owners no.1 to 3 are denied by them. As per cross-examination of owner no.1, he was unable to state that when he got information about receiving the sale permission. He was unable to state that whether he got said information prior to filing of Spl.C.S. No. 1565/2010 or after filing of said suit. His said evidence is not believable as Parvatibai was also residing at Sanaswadi where he is residing. As per cross-examination of owner no. 3 Parvatibai was residing at Sanaswadi for some days and at his house for some days. House no. 1334 constructed by owner no.1 is in Gat No. 239 where the house of Suresh is also situated. Considering these facts, it is improbable that, owner no.1 did not have knowledge of receiving sale permission for execution of sale deed of suit property-A before execution of said sale deed by Parvatibai.

99] It appears from cross-examination of owner no. 3 that, he received information of the sale deed from purchasers no. 2 and

3. All other suggestions in respect of his knowledge and consent to get execute sale deed of suit property-A from Parvatibai and giving consent by them by executing consent deed afterwards, are denied by him. Similar suggestions in respect of execution of sale deed of entire property from Parvatibai and giving consent by executing consent deed afterwards, are also denied by owner no.1. Therefore, the contentions of purchasers that it was agreed in between them that Parvatibai would execute sale deed of entire suit property-A as her name alone is standing in 7/12 extract and owners no. 1 to 3 would executed sale deed/ consent deed confirming the sale deed afterwards is not proved by cogent evidence.

100] However, in my view, consent of owners no. 1 to 3 though not proved by purchasers, it would not be hurdle to grant specific performance. Because, as observed above, Parvatibai was entitled to execute sale deed of her 1/4th share in suit property-A as suit property-A joint family property and purchasers have entered into Visar Pavati and agreement with every co-owners except sons of Suresh. In view of ratification of the sale deed to the extent of 1/4th share by sons of Suresh during the pendency of this suit, no question in respect of transfer of their rights and title to the extent of their shares would arise.

101] Owners no. 1 and 3 had not executed sale deed of their shares and by way of sale deed dated 10/6/2010 only right and interest to the extent of 1/4th share of Parvatibai is transferred to purchasers. Even though purchasers failed to prove knowledge and consent of owners no.1 to 3 in execution of sale deed by Parvatibai is not proved it would not affect case of purchasers. As I have come to conclusion that only the right and interest of the share of Parvatibai has been transferred. Therefore, said sale deed is not binding upon the owners no. 1 and 3. However, they are not entitled for such relief as claimed in their respective suits because of relief of specific performance sought by purchasers against them on the basis of Visar Pavati and agreement to sale respectively. **Therefore, I answer issue no.3 in Spl. C.S. No. 1565/2010 and issue no. 4 in Spl.C.S. No. 2030/2011 in the negative and issue no. 3 in Spl.C.S. No. 2452/2010 in the partly affirmative.**

<u>As to issue no. 4 in Spl. C. S. No. 2452/2010.</u>

102] It is settled position of law that while seeking specific performance of the agreement, plaintiff must aver and prove readiness and willingness to perform his part of contract under section 16(1)(c) of Specific Relief Act. It is a matter of pleading that, in para 17 of plaint in Spl. C. S. No. 2452/2010, purchasers have averred about their readiness and willingness to perform their part of agreement by offering to pay amount of the shares of owners no. 1 to 3 payable to them. It is also averred that, prior to and after sale deed also, purchasers met to owners no. 1 to 3 and offered to pay amount of their respective shares and demanded to execute consent deed. Thus, first part of section 16(1)(c) is complied by purchasers.

103] So far as proof of readiness and willingness is concerned, learned Advocate Shri. Deo and learned Advocate Shri. Wagaj vehemently argued that purchasers have not proved their readiness and willingness to perform their part of agreement. Learned Advocate Shri. Deo submitted that, even if it is presumed that Visar Pavati was actionable and enforceable, purchasers had not shown their readiness and willingness by tendering the amount of share of owner no.1 or sending the same to him and therefore, purchasers failed to prove readiness and willingness. Learned Advocate Shri. Deo relied on the ruling in **Manjunath Anandappa (**cited supra).

104] Learned Advocate Shri. Wagaj also submitted that, no notice was issued by purchasers to owner no.3 demanding execution of sale deed and offering to pay the amount. Evidence of purchasers in respect of having amount in the bank accounts of purchasers and their wives is not believable for the reason that said bank account statements placed in evidence are not proved in accordance with the provisions of Evidence Act. Witnesses of Bank examined by purchasers are only the postman who brought copies of statements and placed on record. According to learned Advocate Shri. Wagaj said statements are not properly proved.

105] Learned Advocate Shri. Nikate submitted that, in view of statements by owner no. 3 about the knowledge of the sale deed from purchasers, it can be inferred that purchasers met to owner no. 3 for obtaining sale permission. Purchasers have proved by way of statements of bank accounts that, they had sufficient amount at the time of execution of sale deed dated 10/6/2010 to pay the amount of shares owners no. 1 to 3 out of the consideration. Hence, according to him, purchasers have proved that they approached to owners no. 1 and 3 after receiving sale permission and demanded execution of sale deed and consent deed after execution of sale deed by Parvatibai by offering to pay amount of their respective shares of the consideration.

106] It appears from cross-examination of owner no. 3 that, he got knowledge of the execution of sale deed from purchasers thereby it can be inferred that purchasers no.1 and 2 had met to owner no.3. The purchasers had no reason to meet owner no. 3 only to give information of execution of sale deed by Parvatibai. They might had been met to owner no. 3 to demand execution of sale deed of his share. Therefore, the aspect of meeting by the purchases to owner no. 3 is said to be proved. Purchaser no.1 has stated in evidence affidavit that, after receiving permission for sale, they met to owners no.1 to 3 and demanded execution of sale deed and even after execution of sale deed by Parvatibai, they met owners no. 1 to 3 and demanded to execute consent deed by offering to pay the amount. In the cross-examination of purchaser no.1, except suggestions of denial there is no material so as to disprove the case of readiness and willingness of the purchasers.

107] Purchasers have placed on record passbook of wife of purchaser no.2 at Exh. 300 and 301, bank account statements of purchaser no.1 at Exh. 340 to 344 and statement of Bank account and fixed deposits of purchaser no. 2 and his wife at Exh. 349 to 364. It reveals from passbook Exh. 300 that amount of Rs. 34,36,289/- was lying in the account of Manisha Pathare on 10/6/2010. It reveals from passbook of purchasers no.2 at Exh. 301 that amount of Rs. 39,89,993/- was lying in his bank account. It reveals from oral evidence of witness Barjis Todiwala, accountant of Union Bank of India and account extract at Exh. 343 and 344 that, the said account extract is of the account of purchaser no.1. Amount of approximately Rs. 1,78,00,000/- was lying in both the accounts of purchaser no.1. It reveals from account extracts of fixed deposits in the name of wife of owner no. 2 that, sufficient amount to pay the consideration of the share of owners no.1 to 3 was lying in this accounts.

108] Though learned Advocate Shri. Wagaj disputed admissibility and proof of these statements of Bank accounts, but the persons authorized by the Bank had produced statements of accounts with certificates under Bankers Book Evidence Act. Therefore, said account extracts have evidential value and presumption is attached under section 34 of the Evidence Act to the said statements. Hence, objection in respect of admissibility and proof of said statements raised by learned Advocate Shri. Wagaj is not at all sustainable. From these statements of accounts of purchasers no.1 and 2 and the wife of purchasers no. 2, it becomes clear that, purchasers were having sufficient amount at the time of execution of sale deed dated 10/6/2010 and even thereafter for payment of 1/4th share each of the consideration payable to owners no. 1 to 3. By the cross-examination of owner no. 3, it has come on record that, purchasers were met to him even after execution of sale deed by Parvatibai. Thereby certainly it can be inferred that purchasers would have offered amount of shares of owner no. 3 as they were possessing sufficient amount to him. Therefore, I come to conclusion that purchasers have proved their readiness and willingness to perform their part of agreement.

109] So far as submission of learned Advocate Shri. Deo in respect of tendering amount is concerned, the ruling in **Manjunath's** case (cited supra) is not applicable in the present case. The ratio of the said ruling nowhere speaks that the purchasers has to actually tender or sent to the vendor. Purchasers have placed on record statements of their bank accounts and thereby established that they have sufficient amount to pay to purchasers. Admittedly purchasers had not issued any notice to owners no. 1 to 3. But considering evidence and dates i.e. execution of sale deed and challenge thereof immediately within one and half month by owner no.1 by filing Spl. C. S. No. 1565/2010, non issuance of notice by purchases would not vitiate their case of readiness and willingness. In view of evidence placed by purchasers, I hold that purchasers have proved their readiness and willingness to perform their part of agreement. **Accordingly, I answer issue no. 4 in Spl. C. S. No. 2452/2010 in the affirmative**.

<u>As to issues no. 4 and 5 in Spl.C.S. No. 1565/2010, issues no. 5 and 6 in Spl. C.S. No.2030/2011 and issues no. 5 to 7 in Spl. C. S. No. 2452/2-010</u>.

110] All these issues are in respect of reliefs claimed in all three suits. Before dealing with these issues in view of above noted discussions and findings, it is necessary to deal with certain other submissions which relates with reliefs.

111] Learned Advocate Shri. Deo submitted that there was no privity of contract in between purchaser no. 2 and owner no.1 as purchaser no. 2 was not party to Visar Pavati Exh. 189 which is the only document executed by owner no.1. Therefore, no specific performance can be granted against owner no.1 in favour of purchaser no. 2. I am not agree with this submission because contents of Exh. 189 shows that owner no. 1 had agreed to execute sale deed in favour of purchaser no.1 or any person as asked by him. Purchaser no. 2 is not asking relief of specific performance independent from purchaser no.1. They are jointly asking relief of specific performance. Though purchaser no. 2 is not party to the Visar Pavati, but it has come in evidence that purchaser no. 2 had issued demand draft of Rs.50,000/- which was accepted by owner no.1 to handover to Nalini Pitti. Therefore, there is no substance in the submission of learned Advocate Shri.Deo.

112] Learned Advocate Shri. Deo further argued that, relief of specific performance is discretion of the Court. The circumstances in respect of status of parties has to be considered to decide the point of hardship while granting discretion relief of specific performance. Purchasers are businessmen dealing in crores of rupees and the owners are project affected persons. Owners are truck and tempo drivers. Therefore, more hardship will cause to owners than purchasers if decree of specific performance is passed.

113] The status of parties as argued by learned Advocate Shri. Deo is not disputed. However, intention of owners in executing Visar Pavati and agreement to sale with purchasers as well as Visar Pavati with Nalini Pitti has to be considered. They had clear intention to sale the land while entering into transaction with Nalini Pitti. So also they had clear intention to sale the suit property-A to purchasers while executing Visar Pavati dated 8/11/2007 and agreement to sale dated 4/8/2008. Moreover, though owners claimed their possession in the suit property-A, they had no evidence to establish that, they are cultivating the suit property-A and their livelihood is depend upon suit property-A. Therefore, in my view, no hardship would cause to owners, if specific performance is granted against them. As against this, purchasers have acquired right, title and interest at least to the half of suit property-A i.e. to the extent of share of Parvatibai and owner no.2. In view of this, it would not be proper to refuse specific performance as neither owners nor purchasers would enjoy the entire suit property-A in such situation. Therefore, submission of learned Advocate Shri. Deo is not acceptable.

114] Learned Advocate Shri. Wagaj submitted that, no permission of District Court was sought while alienating shares of minor co-owners i.e. owners no. 2 and Tushar Landge, minor son of owner no. 3, therefore, specific performance can not be granted. This submission is not acceptable because suit property-A is not property acquired by minors. Though agreement to sale was not executed by proper guardian or guardian legally appointed for owners no.2, but owners no. 1 and 3 does not have right to raise grievance in that regard. Only minors after attaining majority has right to raise such issue. Though sons of Suresh i.e. owner no. 2 had challenged agreement to sale and sale deed, but subsequently they ratified sale deed and transfer of their interest by executing consent deed to the sale deed dated 10/6/2010.

115] So far as submission in respect of right of Tushar Landge, son of owner no. 3 is concerned, suit property-A is not ancestral property. Within the lifetime of owner no. 3 who is tenant-in-common for suit property-A, his son Tushar has no right by birth in suit property-A. Therefore, he cannot dispute alienation of undivided share of owner no.3. In this regard ruling in **Uttam V/s. Saubhag Singh, AIR 2016 SC 1169** relied by Advocate for purchasers is important. In this ruling it is observed that, when the suit property is held as tenant-in-common and not as joint tenant, son of the said co-owner has no right to ask for partition during lifetime of his father. Therefore, submissions of learned Advocate Wagaj in respect of alienation of minors share is not acceptable.

116] Learned Advocate Shri. Wagaj referred section 13, 16 and 17 of Indian Contract Act and argued that owner no. 3 come with a specific case of undue influence, fraud and misrepresentation. Parties to the agreement had not agreed on same sense to sale the suit property-A. Owners no. 1 an 3 had no free consent in executing Visar Pavati, agreement to sale and sale deed by Parvatibai. Therefore, specific performance is not enforceable on the basis of Visar Pavati and agreement and the sale deed is not binding upon owners no.1 to 3. I am not agree with this submission.

117] Though owners no.1 and 3 came with a case of fraud and misrepresentation, but for the reasons and findings noted above, they failed to prove case of fraud and misrepresentation and undue influence. Owner no. 3 had accepted various amounts time to time since execution of Visar Pavati till 7/5/2010. He has admitted in clear words in the cross-examination that, he executed Visar Pavati and agreement to sale. Therefore, it cannot be accepted that owner no. 3 was not on the same sense of transfer of his interest in favour of purchasers for consideration while executing Visar Pavati and agreement to sale. There is no material on record to show that, owners no. 3 and Parvatibai were not at same sense while executing Visar Pavati and agreement to sale. Therefore, submission of learned Advocate Shri. Wagaj with reference to above noted provisions of Contract Act is not acceptable.

118] Learned Advocate Shri. Wagaj further submitted that, purchaser no.1 had created trap to grab suit property-A since receiving the suit property-A to Parvatibai. Purchaser no.1 has admitted in cross-examination that, he had helped to Parvatibai for obtaining possession of suit property-A from previous owners shri. Dhamdhere. Purchaser no.1 has also placed on record affidavit of Shri. Dhamdhere, but not examined him. It shows fraud practiced by purchaser no.1 since beginning and arranged trap to bring Parvatibai and her sons in the said trap to grab suit property-A. This submission was advanced to demonstrate element of alleged fraud against purchaser no1. However, there is no particulars in respect of this element of fraud which was required to be pleaded by owner no.3 in his plaint in Spl. C. S. No. 2030/2011 under Order 6 Rule 4 of CPC. For want of pleading, this submission is not acceptable.

119] Learned Advocate Shri. Wagaj submitted that purchasers have already sought compensation. Damages can be ascertained even if specific performance is not granted. Therefore, specific performance is not enforceable in favour of purchasers. Explanation to section 10 of Specific Relief Act is not helpful to purchasers. Learned Advocate Shri. Wagaj relied on the ruling in **Tejsingh V/s. State of U. P., AIR 1981 Allahabad 103**. Learned Advocate Shri. Nikate submitted that this ruling is not helpful as it is in respect of movable property. He further argued that merely because compensation is alternatively claimed, it cannot be held that specific performance is not enforceable.

120] Above noted ruling is not applicable in the present case as the question of specific performance in respect of movable property was involved in that case. So far as applicability of explanation to section 10 of Specific Relief Act is concerned, in my view, compensation in money would not be adequate relief for refusing specific performance in present case. As observed above, purchasers had acquired half share in suit property-A. Therefore, compensation or damage would not be adequate relief in lieu of specific performance. Hence, submission of learned Advocate Shri. Wagaj is not acceptable.

121] Learned Advocate Shri. Wagaj further referred section 14 (a) and (c) of Specific Relief Act and argued that, specific performance cannot be granted as the Visar Pavati was determinable in its nature and the compensation in money is adequate relief. I have given reason for not accepting the submission in respect of compensation in money an adequate relief. So far as another part of this submission is concerned, it seems to be based on the period of 45 days for execution of sale deed after receiving permission to sale as incorporated in the said Visar Pavati. However, Visar Pavati cannot be held determinable in its nature because the term of execution of sale deed within 45 days was depend upon receiving sale permission from State Government. Moreover, the time of two months for making application to seek sale permission was set out in agreement to sale dated 4/8/2008. It was not incorporated in Visar Pavati Exh. 189. Therefore, Visar Pavati Exh. 189 cannot be held as determinable in its nature and provision of section 14(c) does not come to aid of owner no. 3. Hence, I discard submission of learned Advocate Shri. Wagaj in that regard.

122] Learned Advocate Shri. Wagaj argued on the point of limitation in compliance of the term in respect of obtaining sale permission. As per contents of Visar Pavati Exh. 189, sale deed was to be executed within 45 days from obtaining permission for sale. Learned Advocate Shri. Wagaj referred cross-examination of purchaser no.1 and argued that application has to be made within two months from execution of agreement to sale dated 4/8/2008. According to learned Advocate Shri. Wagaj, purchasers had not complied said term about seeking permission to sale from Government. Though general power of attorney was given by owners no.1 and 3 and Parvtibai in favour of purchaser no.1, he had not obtained said permission. Therefore, according to learned advocate Shri. Wagaj, there is breach of agreement by purchasers and hence they are not entitled for specific performance.

123] I am not agree with these submissions. Because firstly there is no such pleading in the plaint in Spl.C.S. No. 2030/2011 as well as in written statement by owner no.3 in Spl. C.S. No. 2452/2010. Secondly, owner no. 3 has admitted in cross-examination that, being owner of suit property-A, Parvatibai had to make application to State Government for seeking permission. Purchaser no. 1 has stated in cross-examination that, Parvatibai had applied for permission and therefore, he had not made any application for seeking permission. As per Government Resolution dated 11/6/2004 and 24/12/2004 permission for sale was required to be obtained by the project affected person to whom the land was allotted. Therefore, submission of learned Advocate Shri. Wagaj in that regard is not acceptable.

124] Learned Advocate Shri. Wagaj further submitted that purchaser no.1 acted fraudulently and subverged Visar Pavati Exh. 189, therefore, in view of section 16(b) of Specific Relief Act, purchasers are not entitled for specific performance. This submission also seems to be based on not making application and not obtaining permission for sale by the purchasers. However, it has come in the evidence that, after execution of Visar Pavati, the fact of pendency of civil suit filed by Aruna Chavan came within the knowledge of purchasers. Time was spent in settlement of dispute of Aruna Chavan. Thereafter, Parvatibai met with an accident and because of her hospitalization, the transaction was not proceeded further for seeking permission from State Government. If purchasers had willfully in fraud in Visar Pavati dated 8/11/2007 the question arose that why owner no. 3 accepted various amounts during the said period till 7/5/2010. His said conduct itself falsifies this submission. There is no willful act in subversion of Visar pavati or fraud in the Visar Pavati and agreement to sale. Hence, I do not find any personal bar under section 16(b) of Specific Relief Act to grant specific performance in favour of purchasers.

125] Learned Advocate Shri. Wagaj further submitted that section 17 of the Specific Relief Act create bar in granting specific performance against owners and in favour of purchasers. Learned

Advocate Shri. Nikate submitted that said bar is for enforcing specific performance of the contract executed by person who had no title of the property. In the present case, owners no. 1 and 3 have not come with such case. Therefore, according to learned Advocate Shri. Nikate, there is no bar of section 17 of Specific Relief Act to grant relief in favour of purchasers. I find substance in submission of learned Advocate Shri. Nikate. Provisions of section 17 speaks about bar to enforce the contract against the person who have no any title of the property and entered into contract to sale the said property. In the case in hand, owners no. 1 and 3 have not come with such case, on the contrary, they come with specific case about their undivided 1/4th share in the suit property-A. Hence, there is no bar under section 17 of the Specific Relief Act in enforcing Visar Pavati against owner no.1 and agreement to sale against owner no.3.

126] Lastly learned Advocate Shri. Wagaj referred provisions of section 20 of Specific Relief Act and argued that to grant relief of specific performance is discretion of the court, if specific performance is granted in favour of purchasers, it would be unfair advantage to purchasers and hardship will cause to owner no.3. So far as point of hardship is concerned, I have already recorded finding in respect of hardship against owners no.1 and 3. So also, no unfair advantage will receive to purchasers if specific performance is granted. Because purchasers have already acquired right, title and interest in half of the property-A. In such situation refusing specific performance to them would cause hardship to purchasers and neither purchasers nor owners no. 1 and 3 could enjoy the suit property satisfactorily. Therefore, submission based on section 20 of Specific Relief Act is not acceptable.

127] After detailed discussion as above, findings can be briefly summarized that, the suit property-A was joint family property standing in the name of Parvatibai. Owners no. 1 to 3 have undivided share therein. Owners no. 1 to 3 and Parvatibai had agreed to sale suit property-A to purchasers for consideration of Rs.2,09,00,000/-. Visar Pavati dated 8/11/2007 at Exh. 189 is concluded contract. Owner no.1 failed to prove return of amount of Rs.3,00,000/- received to him from purchasers and cancellation of the transaction at least to the extent of his share. Owner nos. 1 and 3 failed to prove case of fraud and misrepresentation pleaded by them. Visar Pavati Exh. 189 is enforceable against owner no.1.

128] Owner no. 3 had executed Visar Pavati and agreement to sale in favour of purchasers and accepted various amounts time to time from them. Parvatibai had made application to Government for seeking permission to sale suit property-A with consent and knowledge of owners no.1 and 3. As owners no.1 to 3 had undivided share and suit property-A is their joint family property, sale deed executed by Parvatibai was valid for her 1/4th share. By that sale deed only 1/4th share was transferred in favour of purchasers. Therefore, said sale deed is not binding upon owners no. 1 and 3. However, they are not entitled for said declaration because of execution of Visar Pavati by owner no.1 and 3 and agreement by owner no. 3, specific performance of which is enforceable against them. Sons of Suresh i.e. owner no. 2 have ratified sale deed and confirmed transfer of right, title and interest in suit property-A to the extent of their share by sale deed dated 10/6/2010 in favour of purchasers. Purchasers have proved readiness and willingness to perform their part of Visar Pavati and agreement by offering to pay balance consideration to the extent of share of owners. 1 and 3 to them after receiving sale permission after execution of sale deed by Parvatibai. Visar Pavati and agreement to sale are enforceable against owners no.1 and 3. Purchasers are entitled for specific relief of these two documents. Merely because reference of Visar Pavati and agreement is not made in the prayer clause in the plaint in Spl.C.S. No. 2452/2010, specific performance cannot be refused. As purchasers are entitled for specific performance, they are not entitled for alternative claim of compensation of Rs.7,71,60,282/-.

129] Purchasers have asked relief of either of execution of consent deed or sale deed of the shares of owners no. 1 to 3. Learned Advocate Shri. Nikate submitted that, if the Court comes to conclusion that owners no. 1 and 3 have undivided share in the suit property, relief by way of execution of sale deed is required to be granted, otherwise, consent deed confirming the sale deed dated 10/6/2010 has to be granted. As I come to conclusion that, owners no.1 to 3 have undivided share in the suit property-A, therefore, mere execution of consent deed would not suffice purpose of transferring their right and interest in the suit property-A. Therefore, relief of specific performance directing owners no.1 to 3 to execute sale deed of their undivided shares is required to be granted. **In view of this findings, I answer issues no. 5 to 7 in Spl. C. S. NO. 2452/2010 accordingly**.

130] So far as reliefs claimed in Spl. C. S. No. 2030/2011 is concerned, owner no. 3 and his family members sought to declare sale deed not binding on his 1/4th share and to cancel the same. They also sought declaration of ownership to the extent of 1/4th share and permanent injunction restraining purchasers from disturbing possession over the suit property-A. Owner no. 3 and his family members failed to establish their possession over the suit property-A. Hence, they are not entitled for relief of permanent injunction as claimed. Though sale deed dated 10/6/2010 is not binding on owner no.3, but in view of granting specific performance based on Visar Pavati and agreement to the extent of his 1/4th share in favour of purchasers, owner no. 3 and his family members are not entitled for reliefs of declaration and cancellation in respect of sale deed dated 10/6/2010 and declaration of ownership in respect of his 1/4th share. Finally, owner no. 3 and his family members are not entitled for any relief claimed in Spl.C. S. No. 2030/2011. **Hence, I answer Issue no. 5 in Spl. C. S. No. 2030/2011 in the negative**.

131] Owners no.1 and 2 had sought relief of declaration that, sale deed dated 10/6/2010 is not binding on their respective 1/4th shares in suit property-A. They also sought to cancel agreement to sale dated 4/8/2008. They also sought to declare that, purchasers no. 1 and 2 have no right and interest in suit property-A to the extent of 1/4th share each of owners no.1 and 2. For the reasons noted above, though I have come to conclusion that, by way of sale deed dated 10/6/2010 right title and interest to the extent of 1/4th share of owner no.1 is not transferred and said sale deed is not binding upon him, but in view of granting specific performance based on Visar Pavati dated 8/11/2007 against owner no.1, he is not entitled for declaration that, the sale deed is not binding upon his 1/4th share. Similarly, his inaction and remaining silent in respect of having got knowledge of the agreement dated 4/8/2008, is acquiescence to the said agreement. Therefore, agreement dated 4/8/2008 cannot be cancelled as claimed by owner no.1.

132] Owner no.1 has also sought relief of partition, and separate possession of suit property-A to suit property-C described in plaint para 1(a) to 1(c) in spl.C.S. No. 1565/2010. Owner no.1 has relinquished his rights in joint family property described as suit property-D herein above, which is described in plaint para 1(c) in Spl.C.S. No. 1565/2010. It has come in the evidence that, there is constructed house standing in suit property-B belonging to owners no. 1 to 3 and Parvatibai. It is not disputed that, said house is their joint family property. Learned Advocate Shri. Deo for owner no.1 submitted that even though said house is not described in plaint, but court has power to grant relief of partition as land beneath to house is included as suit property. There is no dispute by owner no. 3 about effecting partition of suit property-B to D. Owners no. 1 and 3 have sought partition of their 1/4th shares in suit property-A. However, in my view, because of granting relief of specific performance to execute sale deed of their 1/4th share each in suit property-A in favour of purchasers, owners no.1 to 3 are not entitled for specific performance of their 1/4th share each in suit property-A.

133] Owners no.1 and 3 are entitled for partition and separation of their 1/4th shares each in suit property-B and C. 7/12 extracts of various landed properties described as suit property-D are placed on record at Exh. 171 to 179. It appears from said 7/12 extracts that, said landed properties are situated at village Wada, Taluka Khed. Uncles of owners no. 1 to 3 are co-owners in the ancestral property. Thereby it appears that, said landed properties are coparcenary joint family properties of owners no. 1 to 3 and their uncles. Said uncles are not joined as parties to the suit, hence relief of partition and separate possession of the share of owners no. 3 in said landed porperties at Wada (suit property-D) can not be granted. Moreover, owner no.1 who sought relief of partition in his suit, has not claimed share and relief of partition in the said landed properties described as suit property-D. Owner no. 3 has not sought relief of partition in his suit bearing Spl. C. S. NO. 2030/2011. Therefore, I am not inclined to grant relief of partition and separate possession in respect of suit property-D.

134] To sum up, relief of partition and separate possession can be granted to the extent of suit property -B and C only in Sp.C.S. 1565/2010. Legal heirs of Aruna Chavan have relinquished their rights in respect of suit property-B. In view of death of Parvatibai and relinquishment of share by legal heirs of Aurna Chavan, I hold that, owners no. 1 to 3 have undivided 1/3rd share each in suit property -B and C. Owners no. 1 to 3 are entitled for partition and separate possession of their 1/3rd share each in suit property-B and suit property-C which are described in plaint para 1 in Spl. C. S. No. 1565/2010. Hence, finally I come to conclusion that Spl. C. S. No. 1565/2010 deserves to be partly decreed to the extent of relief of partition and separate possession in respect of suit property-B and suit property-C only.

135] For the reasons noted above in respect of reliefs, I finally come to conclusion that Spl. C. S. No. 2452/2010 filed by purchasers deserves to be decreed. They are entitled for specific performance of 1/4th share each in suit property-A against owner no.1 and owner no. 3 and his family members. Spl. C.S. NO. 2030/2011 deserves to be dismissed in its entirety. Spl. C. S. No. 1565/2010 deserves to be decreed to the extent of relief of partition and separate possession only in respect of suit property-B and suit property-C. With these findings and conclusions, **I answer issues no. 4 and 5 in Spl. C. S. No. 1565/2010 and issues no. 5 and 6 in Spl. C. S. No. 2030/2011 accordingly. Issue no. 4 in partly affirmative and issue no. 5 in Spl. C. S. No. 2030/2011 in the negative**. In the result, Spl. C. S. No. 1565/2010 deserves to be partly decreed, Spl. C. S. No. 2030/2011 deserves to be dismissed and Spl. C. S. No. 2452/2010 deserves to be decreed. Accordingly, I proceed to pass following order.

ORDER

1] Spl. C. S. No. 2452/2010 is decreed.

2] Spl. C. S. No. 1565/2010 is partly decreed to the extent of relief of partition and separation of shares of owners no. 1 to 3 only in suit property-B and suit property-C as described in plaint para 1(b) and 1(c) in that suit.

3] Relief of partition in respect of suit property -D (landed properties situated at Wada described in plaint para 1(c) in Sp.C.S. No. 1565/2010) is rejected.

4] Spl.C.S. No. 2030/2011 is dismissed in its entirety.

5] Owner no.1, owner no. 3 and his family members i.e. defendants 1 to 6 in Spl. C.S. No. 2452/2010 are hereby directed to execute sale deed of 1/4th share each of defendants no.1 and 6 in suit property-A (property described in para 1 in Spl.C.S. No. 2452/2010) in favour of purchasers (Plaintiffs no. 1 and 2 in Spl. C. S. No. 2452/2010) by accepting balance consideration of their respective shares i.e. Rs.39,29,935 of owner no.1 and Rs. 16,99,935 of owner no. 3 from purchasers within two months.

6] It is ordered that if owner no.1 and owner no. 3 and his family members (defendants no. 1 to 6 in Spl.C.S. No. 2452/2010) failed to execute sale deed as mentioned above, within above mentioned period, purchasers (plaintiffs no.1 and 2 in Spl. C. S. No. 2452/2010) are entitled to get execute sale deed of the respective shares of owners no.1 and 3 through Court by following due process of law and depositing balance consideration of respective shares payable to owner no. 1 and owner no. 3 in the court within one month after the above mentioned period is over.

7] It is hereby declared that owner no.1, owners no. 2 jointly and owner no. 3 (plaintiffs no. 1 to 4 and defendant no. 4 in Spl. C.S. No. 1565/2010) each are entitled for partition and separation of 1/3rd shares each in suit property-B and suit property -C (suit property described in plaint para 1(b) and 1(c) in Spl.C. S. No. 1565/2010).

8] Decree be sent for effecting partition, separation and possession of 1/3rd share each of plaintiffs no.1, plaintiffs no. 2 to 4 jointly and defendant no. 4 in Spl. C. S. No. 1565/2010 to Collector, Pune for effecting partition of suit property described in plaint para 1(b) and 1(c) in that suit under section 54 of Civil Procedure Code.

9] Decree for partition of the house standing on Suit property-B (described in plaint para 1(b) in Spl.C.S. NO. 1565/2010 be effected by allotting 1/3rd share each by appointing Court Commissioner.

10] Original copy of this judgment be kept in Spl. C. S. No. 1565/2010 and true copies thereof be kept in Spl. C. S. No. 2452/2010 and Spl.C.S. No. 2030/2011.

11] In view of peculiar circumstances of the dispute, parties to bear their own costs.

12] Decree be drawn up accordingly.

(N.G.Shukla)
Dated:26.10.2016. 2nd Add. Judge, S. C. Court
& Jt. Civil Judge S. D.Pune.

I affirm that the contents of this PDF file Judgment are same word for word as per original Judgment.

Name of Steno : Shivaji N. Patil, Steno H.G.
Court Name : Shri. N.G.Shukla,
2nd Addl. Judge, Small Causes Court, Pune.
Date of Judgment : 26.10.2016
Judgment signed by presiding officer on : 8/11/2016
Judgment uploaded on : 18/11/2016