

GAHC010127842022



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

Case No. : RFA/26/2022

HERITAGE HOME AND REALITY DEVELOPERS PVT. LTD. AND ANR.
HAVING ITS REGISTERED OFFICE AT J. N ROAD, BELTOLA. KAMRUP M
GUWAHATI ASSAM 781008
REPRESENTED BY ITS MANAGING DIRECTOR SRI PRADEEP GOGOI

2: SRI PRADEEP GOGOI
MANAGING DIRECTOR OF HERITAGE HOME AND REALITY DEVELOPERS
PVT. LTD. J. N ROAD
BELTOLA. KAMRUP M GUWAHATI ASSAM 78100

VERSUS

CHERRIE KHOUND (BINDRA) AND ANR.
W/O I. SINGH BINDRA
RESIDENT OF 8, KUMAR PLAZA, GROUND FLOOR, M.G ROAD, PUNE
411001

2:MRS. BARBIE KHOUND (BORA)
W/O DEBASHISH BORA
RESIDENT OF PRAGJYOTISH APARTMENT
SEC. 10
PLOT NO. 7
7TH FLOOR
FLAT NO. B706
DWARKA DELHI 11007

Advocate for the Petitioner : MR. R ALI, MR M BORO,M KALITA

Advocate for the Respondent : MR. S K GOSWAMI (R1, R2), MR. R SHARMA (R1, R2)

**BEFORE
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND**

Date of Hearing : 06.05.2025

Date of Judgment : 06.08.2025

JUDGMENT & ORDER (CAV)

1. Aggrieved by the judgment and order dated 11.04.2022, the appellants, M/S Heritage Home Reality Developers Pvt. Ltd. and Shri. Pradeep Gogoi, Managing Director of M/S Heritage Home Reality Developers have preferred this appeal against the impugned judgment and decree passed by the learned Civil Judge No. 1, Kamrup (M), Guwahati.

2. The principal respondents, Mrs. Cherrie Khaund Bindra and Mrs. Barbie Khaund Bora have instituted the Title Suit No. 436/2011 before the Court of the learned Civil Judge No. 1 seeking a decree of realization of Rs. 21 lacs, compensation of Rs. 3 lacs, and permanent injunction etc. on the basis of the deed of agreement dated 24.02.2009.

3. The plaintiffs are sisters and at present the plaintiff No. 1 is a resident of Pune whereas the plaintiff No. 2 is a resident of Delhi. The owner and managing director of defendant No. 1 is the defendant No. 2.

4. The genesis of the case is that, being absolute owners of a parcel of land admeasuring 1 Bigha appertaining to DAG number 79 covered by patta No. 3 at revenue village, Dwarandha under Beltola Mouza in the district of Kamrup, the plaintiffs executed an agreement on 12.06.2008 prior to the agreement between

the plaintiff and the defendant with respect to the same subject matter. However, owing to certain inconveniences regarding the mode of payment, both the plaintiffs and the defendants cancelled the agreement dated 12.06.2008 on mutual consent and entered into a fresh agreement dated 24.02.2009. The subject matter is the aforementioned land which is described in the schedule of the plaint. It was agreed between the plaintiff and the defendants that the defendants would construct three (3) residential buildings on the same plot of land after laying down certain terms and conditions.

5. Now in the appeal, the appellants are the defendants No. 1 and No. 2 respectively and will be referred to as defendants whereas the plaintiffs are arrayed as respondent No. 1 and 2 and will be referred to as plaintiffs No. 1 and 2 respectively.

6. As per the agreement dated 24.02.2009, the defendants were supposed to pay Rs. 72 lacs to the plaintiffs under the following conditions:-

That under the terms and conditions of the agreement dated 24.02.09 the defendants were supposed to pay to the plaintiffs an amount of Rs. 72,00,000/- (Rupees seventy two lacs) in the manner as herein below verbatim.

“(a) The defendants were supposed to pay an amount of Rs. (Rupees six lakhs) on the month of April, 2009 to the plaintiffs.

(b) The defendants were supposed to pay an amount of Rs. 12,00,000/- (Rupees twelve lakhs) to the plaintiffs in equal instalments on the month of July, 2009, October, 2009 and January, 2010 and lastly on April, 2010.

(c) The remaining balance of Rs. 14,00,000/- (Rupees fourteen lakhs) was supposed to be payable by the defendants to the plaintiffs on the month of July, 2010.

(d)The defendants were supposed to pay the aforesaid instalments as per post dated cheques to the plaintiffs. As per the agreement dated 24.02.09 and more particularly the Deed No. 2451 of 2009. It is laid down that if the defendants fail to pay or default in paying the aforesaid amounts within the specific time mentioned therein, then the defendants were liable to pay an interest at the rate of 18% per annum.”

7. It was also agreed that the defendant shall transfer the right over the existing building to the intending purchasers and they shall have the right to sell parts of the scheduled land to prospective purchasers to realize the sale proceeds thereof and the plaintiffs were supposed to execute a power of attorney reflecting the aforementioned terms and conditions in the Power of Attorney (POA for short) in favour of the defendants. As per the agreement, the defendants issued four cheques to the plaintiffs. Out of the four cheques, two cheques were in favour of plaintiff No. 1 and the other two cheques were in favour of the plaintiff No. 2 which is mentioned herein below:-

Sl. No.	Particulars	Cheques dated	Remarks
1	Account payee cheque no. 007898 in the name of Cherrie Khaund (Bindra) amounting to Rs. 7,00,000/-	30.07.2010	Dishonoured
2	Account payee cheque no. 007897 in the name of Cherrie Khaund (Bindra) amounting to Rs. 6,00,000/-	30.04.2010	Dishonoured
3	Account payee cheque no. 510549 in the name of Barbie Khaund (Bora)	30.04.2010	Dishonoured

	amounting to Rs. 6,00,000/-		
4	Account payee cheque no. 510550 in the name of Barbie Khaund (Bora) amounting to Rs. 7,00,000/-	30.07.2010	Dishonoured

8. The total amount of the cheques were valued at Rs. 26 lacs but when the plaintiffs presented the cheques before the bankers, all the cheques were dishonoured. However, the defendants paid an amount of Rs. 5 lacs to the plaintiff No. 2, Mrs. Barbie Khaund Bora and as such the outstanding amount was at Rs. 21 lacs. The defendants assured that they would deposit the outstanding amount but after a prolonged period, as no amount was deposited by the defendants in their bank account, the plaintiffs were impelled to issue notices on 13.06.2011 and on 09.07.2011 to the defendants for violation of the terms and conditions of the agreement. No case under Section 138 of the Negotiable Instruments Act, (N.I. Act for short) was brought up against the defendants by the plaintiffs due to the assurances of the defendants to clear the balance.

9. The defendants forwarded their reply to the notice on 25.07.2011 and acknowledged the receipt of the notice so sent by the plaintiffs on 13.06.2011 and 09.07.2011. Through their reply, the defendants stated that pursuant to the agreement dated 24.02.2009, they have already completed payment through various cheques and they were taken aback to receive such notice.

10. It was amply clear that the defendant had no intention to clear the dues. The plaintiffs further issued two individual notices to the defendants to clear the dues to the tune of Rs. 24 lacs along with compensation and interest @ Rs.

18%.When the defendants failed to clear the dues, this suit was brought up against them with prayer for:-

(i) realization of Rs. 21 lakhs.

(ii)with an interest of rupees 18% per annum.

(iii) compensation @ Rs 3 lacs, and

(iv) for permanent injunction restraining the defendants from alienating the property/ apartment/flat as per the Power of Attorney dated 24.02.2009 with other reliefs.

11. It is contended by the defendants/appellants herein that the plaintiffs/respondents have suppressed that as per revenue records only, 10.72 Ares land stands in the names of the plaintiffs, out of which they have already sold out 1 katha 9 lechas of land in favour of another person. They have also suppressed the fact that out of permission to construct three buildings mentioned in the agreement, one permission was subsequently cancelled by the concerned authority and out of the two remaining buildings/apartments, permission for one enclosure was obtained in the name of Sri Hiranya Khaund who is not a party to the suit and therefore this suit is bad for non-joinder of necessary party.

12. The defendants/appellants have hereby denied the correctness of the statements made in Paragraph-3 of the plaint and have specifically denied that the plaintiffs/respondents are owners of the parcel of land described in the plaint. Out of 10.72 Ares of land, 1 katha 9 lechas has been sold to Abdul Hanan and the remaining part of land has been transferred to respective flat owners as per the proportion of their share of land. The appellants/defendants have

denied that the plaintiffs are the owners of the plot of land described in the plaint and out of 10.72 Are of land, it is submitted that 1 katha 9 lechas of land has been sold by the plaintiffs/respondents in favour of Abdul Hannan.

13. The terms and conditions of the agreement dated 24.02.2009 was subsequently and amicably modified by both the parties in view of the facts that less area of land was available under physical possession of the plaintiffs. As the area of land shown was relating to permission for three building/enclosures, but as land available was less than 1 Bigha, permission relating to one building was cancelled by the concerned authorities.

14. It is contended that the plaintiffs at the time of executing the agreement allowed the defendants to construct three multi-storied buildings in their names and in the name of their father. However, on finding less land under the possession of the plaintiffs construction of one building out of three, was cancelled by the concerned authorities.

15. It is contended that as the land was transferred in favour of Abdul Hanan on 12.08.2010 after the execution of the agreement dated 24.02.2009, the agreed terms and conditions were no more binding on the defendants. The defendants have vehemently denied that they are yet to pay Rs. 21 lacs to the plaintiffs.

16. It is contended that the defendants have already complied with their part of the agreement and the defendant company has already completed construction and sold out the units of residential flats to respective flat owners with proportionate share of land thereon and thereby an order of injunction will result in chaos. It is further contended that at no point of time the plaintiffs have ever visited Guwahati and they are not entitled to any compensation of Rs.

3 lacs.

17. It is contended that when the plaintiffs who have obtained building permission failed to construct three-storied residential apartments in their name, they approached the defendant company to take over the construction. Accordingly, an agreement was entered into as has been mentioned in the foregoing discussions. It is contended that the defendants are yet to receive payment relating to 1 katha 9 lechas of land which was transferred against the terms and conditions and in violation thereto.

18. As construction of the third building was not physically viable after alienation of 1 katha 9 lechas of land out of 10.72 Are, the amount of Rs.2,90,000/- received by the plaintiffs is also to be deducted. As only two buildings were allowed to be constructed, the defendant company was required to pay only Rs. 48 lacs to the plaintiffs. The defendant company also paid another amount of Rs. 3 lacs towards the value of the land sold to Mr. Abdul Hannan. Three permissions were obtained in respect of the plot of land of the plaintiffs and two permissions were obtained in the name of plaintiff Nos.1, 2 and a third individual i.e. plaintiff's father Mr. Hiranya Khaund. The plaintiff's father Hiranya Khaund also executed a power of attorney in favour of the defendant company and entered into an agreement dated 21.02.2009. Subsequently building permission obtained in the name of plaintiff No. 2, Barbie Khaund, was cancelled by the concerned authority.

19. Thereafter, after subsequent developments and cancellation of construction of one building, it was agreed that the plaintiffs would not use the cheques issued by the defendants after receiving the subsequent agreed amount of Rs.48 lacs and return the unused cheques to the defendant company, but the plaintiffs never returned the unused cheques to the defendant company

and has brought up this false and fabricated case against the defendants.

20. The appellants/defendants are aggrieved by the judgment and order impugned by them. They have emphasized upon the W.S. filed against the plaint in Title Suit No. 436/2011.

21. Heard Mr. Mr. R. Ali, learned counsel for the appellants and Mr. S. K. Goswami, learned counsel for the respondents.

22. I have considered the submissions at the bar with circumspection.

23. It is contended that the Learned Trial Court has erred both in law and in facts while deciding the aforementioned Title suit as the Trial Court ignored the real facts in issue while deciding the suit and the judgment and order dated 11.04.2022 has been arbitrarily and hurriedly passed. It is contended that this case was fixed for judgment and order on 25.01.2022 but the judgment was not delivered on that day.

24. The defendant was not apprised of the status of the suit nor any date was fixed further for judgment but suddenly on 28.04.2022, the defendants learnt about the judgment and order dated 11.04.2022 which was passed without hearing the suit afresh after 07.01.2022 or 25.01.2022 and this order was thus passed in violation of Order 20, Rule 1 of the Code of Civil Procedure, 1908 (the CPC for short). It is further contended by the defendants that the Trial Court did not consider the Exhibit-B, Patta of the Plaintiffs and Exhibit-C, Sale Deed No.4944/2010 dated 12.08.2010, where it is manifestly clear that the defendants have proved suppression of material facts by the plaintiffs regarding ownership over 10.72 Are of land only, and not 1 bigha as claimed by the plaintiffs, as well as transferring by sale 1 katha 9 lechas of land to Abdul Hannan, who also adduced evidence as DW-2. The transfer of land was

subsequent to the execution of the deed of agreement dated 24.02.2009, (Exhibit-1&A) and the cheques dated 30.04.2010 and 30.07.2010.

25. Per contra, the learned counsel for the appellants/defendants has submitted that the present suit is not a suit for part performance of contract but for injunction and recovery of 24 lacs. No counter claim was filed by the defendants that they are not entitled to pay the aforementioned amount with interest @ 18%. Moreover, the written statement has not been supported by evidence relating to this fact. Both the plaintiffs reside outside Assam. It is admitted that the plaintiffs were paid only Rs. 51 lacs. Out of Rs. 26 lacs, the plaintiffs have received only Rs. 5 lacs and when the cheques were presented, and after the cheques were returned owing to insufficiency of funds, notices were issued and replies were forwarded by the defendants.

26. The cross-examination of DW-1 clearly reveals that out of the total amount of Rs. 26 lacs, Rs. 5 lacs was paid after negotiation between the plaintiffs and the defendants. The defendant/appellant through his pleadings and W.S. has failed to prove concealment of a case under the N.I. Act.

27. Learned counsel for the respondents/plaintiffs has drawn the attention of this court to Exhibit- 6 & 7 which are replies to the notice where the defendants have not mentioned that owing to land which now appears to be less than one bigha, the agreement is not maintainable and the defendants are not liable to abide by the terms and conditions of the agreement. This plea is an afterthought as DW-1 has mentioned in his cross-examination that he sold one katha of land constricting the land to an area less than one bigha. He is the one responsible for constriction of the area of the land and not the plaintiffs. As the plaintiffs have not admitted of selling a part of the land, there is nothing on record to prove that 2,90,000/- was paid to the plaintiffs, after sale of land.

28. Now, the question that falls for consideration is (i)whether the deal was to construct 3 multi-storied buildings and as sufficient land was not available as proclaimed by the plaintiffs, construction of only 2 multi-storied buildings was allowed and,

(ii)whether the plaintiffs do not deserve the entire amount of Rs. 72 lacs as agreed upon by both the parties.

29. A close scrutiny of the evidence on record and the documents reveal that, out of the subject land, 1 katha 9 lechas of land was sold to the purchaser Abdul Hannan with the knowledge of the plaintiff No. 2, Smt. Barbie Khaund Bora and DW-1. Exhibit-C is a copy of the sale deed identified by Abdul Hannan, DW-2. This deed was not proved in original.

30. The defendant failed to prove the Exhibit-C in original even after producing DW-3, Mrs. Anima Thakuria, who is an employee of the office of the Sub-registrar, Kamrup (M).She has testified that Exhibit-C is the authority letter authorizing her to depose in the Court and Exhibit-D is the copy of the sale deed. She has admitted of producing the file with documents which is not relevant to the subject matter of this suit as she had produced the certified copy of deed No. 494 dated 18.01.2010, marked as Exhibit-13. A close scrutiny of Exhibit-13 reveals that it is not relating to sale of the relevant plot of land. Thus, Exhibit-C, a copy of the sale deed could not be proved by producing the original sale deed relating to transfer of 1 katha 9 lechas of land in favour of DW-2, Abdul Hannan. Thus the copies of documents were referred to in a very clumsy manner without producing the originals. The argument of the learned counsel for the appellant/defendant that as no objection was raised when the documents were exhibited cannot be accepted.

31. Another witness who was also examined as DW-3, Hitesh Sarma Medhi deposed that Exhibit-C is the authority letter issued by the GMDA. He is an Assistant Executive Engineer of the GMDA. He further deposed that Exhibit-D is the letter No. GMDAB/VP/476/06032008/36 dated Wednesday, September 3rd, 2008, which was issued to Barbie Khaund in connection with land appertaining to DAG No. 79, patta No. 3 admeasuring 1 katha 10 lechas granting no objection. He deposed that in relation to the no objection, their office has no record about construction. He also deposed that he brought the record of permission for construction, but failed to produce the document which was called for by the Court, and he brought a different document. He also deposed that no order was issued after granting NOC and if no orders are issued, the validity of the NOC expires after a year, but it can be renewed up to 3 years. He further deposed that as per the land document given with the application for permission, the measurement of land was 2 kathas 10 lechas. As per NOC, the land is 1 Bigha.

32. After scrutinizing these documents, it can be safely held that the defendant has indeed failed to prove through valid documents, that the construction of one building was cancelled, allowing construction of only two buildings owing to constriction of land. Transfer of land in favour of Abdul Hannan after the agreement, was also not proved by the defendant.

33. Learned counsel for the appellant has heavily relied on the decision of the Hon'ble Supreme Court in ***S.P. Chengalvaraya Naidu (dead) vs. Jagannath (dead)*** reported in ***1994 1 SCC 1***, wherein it has been observed that:-

“ 7. The High Court, in our view, fell into patent error. The short question before the High Court was whether in the facts and circumstances of this case, Jagannath obtained the preliminary decree by playing fraud on the court. The High Court, however, went haywire and made observations which are wholly

perverse. We do not agree with the High Court that there is no legal duty cast upon the plaintiff to come to Court with a true case and prove it by true evidence" The principle of "finality of litigation cannot be pressed to the extent of such an absurdity that it becomes an engine of fraud in the hands of dishonest litigants. The courts of law are meant for imparting justice between the parties. One who comes to the court, must come with clean hands. We are constrained to say that more often than not, process of the court is being abused. Property-grabbers, tax-evaders, bank-loan-dodgers and other unscrupulous persons from all walks of life find the court process a convenient lever to retain the, illegal-gains indefinitely. We have no hesitation to say that a person whose case is based on falsehood, has no right to approach the Court. He can be summarily thrown out at any stage of the litigation.

8. The facts of the present case leave no manner of doubt that Jagannath obtained the preliminary decree by playing fraud on the Court A fraud is an act of deliberate deception with the design of securing something by taking unfair advantage of another It is a deception in order to gain by anothers loss. It is a cheating intended to get an advantage. Jagannath was working as a clerk with Chunilal Sowcar. He purchased the property in the court auction on behalf of Chunilal Sowcar. He had, on his own volition, executed the registered release deed (Exhibit B-15) in favour of Chunilal Sowcar regarding the property in dispute. He knew that the appellants had paid the total decretal amount to his master Chunilal Sowcar Without disclosing all these facts, be filed the suit for the partition of the property on the ground that he had purchased the property on his own behalf and not on behalf of Chunilal Sowcar. Nonproduction and even non-mentioning of the release deed at the trial tantamounts to paying fraud on the Court We do not agree with the observations of the High Court that the appellants-defendants could have easily produced the certified registered copy of Exhibit B-15 and non-suited the plaintiff. A litigant, who approaches the court, is bound to produce all the documents executed by him which are relevant to the litigation If be withholds a vital document in order to gain advantage on the other side than he would be guilty of playing fraud on the Court as well as on the opposite party. "

34. Reverting back to this case, it is held that the ratio of the decision of the Hon'ble Supreme Court in ***S.P. Chengalvaraya Naidu (dead)*** (Supra), is not applicable to this case. In the instant case, the defendant cannot level allegation against the appellants that they have surreptitiously alienated 1 katha 9 lechas of the suit land as the evidence of Abdul Hannan, DW-2 clearly reveals that the aforementioned 1 katha 9 lechas of land was not alienated in a clandestine

manner by the plaintiffs but DW-2 was also involved in the alienation of 1 katha 9 lechas of land out of the suit land to DW-2. No fraudulent act of the plaintiffs could be proved as no case record of N.I. Act or any other certified copies relating to this case under the N.I. Act has been produced or proved by the defendants.

34. Not a single document relating to area of the land has been produced or proved by the defendants. Copies were furnished but these documents were not proved by the defendants even after sufficient opportunity was accorded to the defendants to prove these documents.

35. Even after producing 2 (two) official witnesses, the defendant has failed to prove that the area of the suit land was less than 1 Bigha. On the contrary, the evidence of another witness, DW-3, Sri Hitesh Sarma Medhi clearly reveals that as per no objection, the land is 1 Bigha. After producing DW-3 as a witness, the defendant has failed to prove cancellation for construction of one building as less land than 1 Bigha was revealed through the documents.

36. The argument of the learned counsel for the appellant that the defendants were not accorded sufficient opportunity to prove the case cannot be accepted. 4 (four) DWs were examined. The evidence was also recorded in a slipshod and haphazard manner. 2 (two) witnesses Smt. Anima Thakuria and Sri Hitesh Sarma Medhi were identified as DW-3 each. Both the witnesses have stated that they have brought wrong files and thus the copies relating to land documents and sale of land admeasuring 1 katha 9 lechas to Abdul Hannan could not be proved by producing original documents of the same.

37. The submission of the learned counsel for the appellant that this case was suddenly truncated and the defendants were not accorded an opportunity to

place their submission after conclusion of argument can be safely brushed aside. No prejudice to the defendants is discernable, but it can be held that the defendants failed to substantiate their pleadings with proper evidence.

38. Exhibit-3 series are the dishonoured cheques. The original deed of agreement has been proved by PW-4, Imran Hussain, employee of Sub-registrar, Kamrup as agreement number 2451/09 dated 24.02.2009 along with the POA No. 724/09 dated 24.02.2009, and Exhibit-2 is a certified copy of the General Power of Attorney and Exhibit-1 is a certified copy of the deed of agreement, whereas, Exhibit-11 is the original deed of agreement and Exhibit-12 is the original POA. The cross-examination of this witness was declined. It is needless to mention that the deed of agreement and the POA have not been disputed by the defense.

39. The appellant/defendant as DW-1 has admitted that as per agreement, he is liable to pay Rs. 72 lacs. Through his evidence, he has also reiterated that as 1 katha 9 lechas of land out of the total plot of land has been sold by the plaintiff and amount has been paid to the plaintiff, it was decided between the parties verbally that the plaintiffs are to pay only Rs. 48 lacs against the construction of two buildings instead of three buildings over the aforementioned plot of land. This has been vehemently denied by the plaintiffs. They have also denied that the area of the subject land was less than 1 Bigha. On the basis of submission of the defendant, the cancellation by the authorities to construct the third building cannot be accepted without substantiating proof.

40. The POA, Exhibit-12 was executed appointing DW-1 as the attorney by the plaintiffs and their father.

41. It is in the evidence of DW-1 that before execution of the agreement, he

had verified the land documents, possession and measurement of the plot of land. He has not disputed and issued any notice that he had accepted less than the land as per agreement which debarred him from constructing three multi-storied buildings and he was able to construct only two multi-storied buildings instead of three. Although DW-1 has denied his signatures on the cheques i.e., Exhibit-3 series, yet he has not denied the same through his written statement. Thus the cheques issued by DW-1 i.e. Exhibit-3 series is not disputed. The dishonour of cheques has been affirmed by PW-3. As DW-1 has not exhibited the building permission as well as the drawing or the blueprint of the buildings, the learned Trial Court held that the defendant failed to rebut the plaintiff's claim.

42. Merely on the submission of the learned counsel for the appellants/defendants, the argument that there was a modification of the power of attorney when less land was found to be in possession of the plaintiffs cannot be accepted.

43. The submission on behalf of the appellants, that when less land was found in possession of the plaintiffs, which was not equivalent to 1 Bigha as 10.72 Are land was found in possession, both the parties agreed and settled to accept only Rs. 48 lacs instead of payment of Rs. 72 lacs for construction of 2 buildings only, cannot be accepted. No substantiating evidence has been produced by the appellants that the construction of 1 building was cancelled and the appellants were allowed to construct only 2 buildings and thus the plaintiffs are not entitled to Rs. 72 lacs, but they are entitled for payment of only Rs. 48 lacs which has already been paid to the appellants. The agreement and the power of attorney has been proved in original. The

defendant has already paid Rs. 48 lacs to the plaintiffs. If the construction was cancelled, why would the defendants pay Rs. 5 lacs against the dishonoured cheques?

44. On the contrary, the deposition and the pleadings of the appellants/defendants gets entangled in their own web of lies, as the defendant has failed to substantiate his pleadings and evidence with proper documents. The dispute between the defendants and the plaintiffs is only relating to remaining part of the payment to be received by the plaintiffs out of Rs. 72 lacs. The plaintiffs have not denied that they have already received Rs. 48 lacs (Forty eight lacs). Rs 26 lacs was supposed to be paid by the defendants and the defendant have allegedly issued 4 cheques which were dishonoured.

45. Contrary to the submission of the plaintiffs, the defendants have stated that these cheques were supposed to be returned to the defendants but the plaintiffs have misused the cheques. If the plaintiffs have misused the cheques, why did the defendants pay the extra Rs. 5 lacs to the plaintiffs. This question remains
unanswered.

46. After carefully scrutinizing the evidence and pleadings, I record my concurrence to the decision of the learned Trial Court. It is held that the learned Trial Court has correctly held that the defendant/appellant has failed to substantiate his contentions with proper documentary evidence.

47. Injunction order stands vacated and the order of payment for compensation to the tune of Rs. 3 lacs is set aside. No reasons have been recorded on what basis the compensation has been directed to be paid by the appellants to the defendants. Moreover, this is a case relating to handing over the entire plot for construction of 3 buildings to construct flats and sell the same to the prospective purchasers. The deal was sealed and injunction order is not

necessary as the land has already been handed over to the defendants by the plaintiffs. Thereby, there appears to be no justified ground for a direction of permanent injunction restraining the defendants from further selling of or disposing of the flats or apartments in the land described in the schedule of the plaint.

48. The defendants are directed to pay the remaining amount of Rs. 21 lacs which has been dishonoured through Exhibit-3 series to the plaintiffs and complete the payment within 6 months from the date of this order.

49. In terms of the above order, this appeal stands disposed of.

50. Send back the Trial Court Records.

51. No order as to costs.

JUDGE

Comparing Assistant