IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE SANJAY DWIVEDI

ON THE 18th OF JUNE, 2025

FIRST APPEAL NO. 536 OF 1997

ABDUL JABBAR (DEAD) THROUGH L.RS. SMT. SURAIYA BEGUM

Versus

BANI BAI (DEAD) THROUGH L.RS. SMT. SONI RAGHAV SAXENA

Appearance :

Shri R.K. Sanghi – Senior Advocate with Shri Raghav Sanghi – Advocate for the appellants.

None for respondent No.1.

Shri Ravish Agrawal – Senior Advocate with Shri Jaspreet Singh Gulati and Shri Kapil Rohra – Advocates for the respondent No.2.

Reserved on : 06/02/2025

Pronounced on : 18/06/2025

JUDGMENT

This appeal under Section 96 of Code of Civil Procedure, 1908 (in short 'CPC') has been filed challenging the impugned judgment and decree passed by the Trial Court on 24.10.1997 in Civil Suit No.25-A/1996 filed by the present appellants against the defendants/respondents for seeking decree of specific performance of contract. The suit was dismissed by the Court on the ground that the plaintiffs failed to prove readiness and

willingness to perform the contract and pay the remaining amount of sale consideration but granted decree of permanent injunction restraining defendants from dispossessing the plaintiffs from the disputed property without obtaining a decree of possession or eviction.

2. The appeal has been preferred by the plaintiffs/appellants challenging the findings given by the trial Court against them that they failed to prove their readiness and willingness to perform the contract and claimed that the suit be decreed *in toto* because the Court below has found that the agreement dated 27.11.1983 was a valid one and Rs.60,735/- was paid by the plaintiffs to the defendant/respondent No.1.

3. No one has appeared on behalf of defendant/respondent No.1.

4. Shri Ravish Agrawal, learned senior counsel appearing for respondent No.2 not only opposed the submissions made by learned counsel for the appellants but has also challenged the findings given by the Court below in favour of plaintiffs in respect of validity of agreement dated 27.11.1983 and also challenged the decree of permanent injunction granted in favour of the plaintiffs/appellants.

5. As per the facts of the case, a suit has been filed by the plaintiffs/appellants against the defendants for seeking decree of specific performance of contract stating therein that on 27.11.1983, the defendant/responded No.1 entered into an agreement for selling her land that is 21 ft. x 71 ft. and 10 ft. x 40 ft. to the plaintiffs who are the tenants

in the suit premise and possessing the land for the past 40 years and therefore, defendant/responded No.1 agreed to sell the land to the plaintiffs taking Rs.60,000/- in advance out of the total sale consideration of Rs.1,60,735/-. As per the agreement, the sale was to be executed within 12 years from the date of agreement by paying remaining amount of the sale consideration i.e. Rs.1,00,735/- and after selling the land, the plaintiffs would not be treated as tenant of defendant/respondent No.1. It is mentioned in the plaint that the plaintiffs were ready to pay the amount of Rs.1,00,735/- and to get the sale deed registered on their expenses but defendant No.1 was dilly-dallying to perform her part and not showing willingness to get the sale deed executed and as such suit has been filed for seeking decree of specific performance of contract.

6. The defendant/respondent No.1 remained *ex parte* and did not file any written statement. However, defendant/respondent No.2 filed her written statement denying the execution of agreement dated 27.11.1983 by defendant No.1 and also stated that the said agreement is a forged and fabricated document and the same was prepared with a fraudulent intention so as to execute the agreement between defendant No.1 and defendant No.2 on 25.12.1983 whereunder defendant No.1 agreed to sell the land i.e. 21 ft. x 71 ft. on an amount of Rs.1,00,000/- and out of which Rs.10,000/- has been paid in advance by the defendant No.2 to defendant No.1. As per the stand taken by defendant No.2, the plaintiffs and defendant No.1 colluded with each other so as to make the agreement dated 25.12.1983 redundant.

7. She has also denied the other averments made in the plaint. A suit has also been filed by the defendant No.2 against defendant No.1 for specific performance of contract and that suit was registered as 6-A/98 but by the judgment and decree dated 15.01.1997, though, the Court accepted the agreement dated 25.12.1983 as a valid one but refused to grant decree of specific performance of contract but directed defendant No.1 to refund the amount of Rs.10,000/- to defendant No.2 with an interest @ 6% against which an appeal was preferred before the High Court and that appeal is pending. It is stated by the defendant/respondent No.2 that plaintiffs and defendant No.1 colluded with each other and filed a false and fabricated suit so as to get the judgment and decree passed in favour of defendant No.2 and against defendant No.1 ineffective. Therefore, it is claimed that the suit be dismissed as that has been filed by the plaintiffs in collusion with defendant No.1 and plaintiffs have not approached the Court with clean hands and clean heart.

8. The trial Court framed as many as 09 issues and refused to grant decree of specific performance of contract mainly on the ground that the plaintiffs failed to prove any readiness and willingness to perform the contract and to pay the remaining amount of sale consideration and as such they have not complied with the requisite requirement of Section 16(c) of the Specific Relief Act, 1963 (hereinafter referred to as 'Act, 1963'). However, the Court granted decree of permanent injunction restraining defendants from getting the possession of the suit land without getting decree of eviction and possession against the plaintiffs. No appeal was preferred by defendant No.1. An appeal was preferred by the

plaintiffs/appellants challenging the impugned judgment and decree mainly on the ground that the Court erred in deciding the issue No.3 against plaintiffs whereas they have successfully proved their part and they were always ready and willing to execute the contract. On the other hand, the impugned judgment and decree was challenged by respondent No.2 on the ground that the finding with regard to validity of agreement dated 27.11.1983 is liable to be set aside and also that no decree of permanent injunction in the facts and circumstances of the case could have been granted in favour of the plaintiffs.

9. I have heard the rival contentions made by the learned counsel for the parties and also perused the record.

10. Shri Sanghi, learned senior counsel appearing for the appellants has raised a preliminary objection that the respondent No.2 has no right to challenge the finding given by the Court below in a suit preferred by the plaintiffs/appellants in absence of any appeal filed by them or any cross-objection filed under Order 41 Rule 22 of CPC.

11. On the other hand, Shri Agrawal, learned senior counsel has submitted that defendant/respondent No.2 has every right to challenge the findings recorded against her by the Court below even without filing any cross-objection.

12. This Court thinks fit to decide the objection raised by Shri Sanghi first so as to allow Shri Agrawal to attack the impugned judgment and

decree and therefore, this Court is deciding this objection first.

13. In support of his contentions, Shri Sanghi, learned senior counsel has relied upon the judgments pronounced by the Supreme Court in the cases of **Hardevinder Singh v. Paramjit Singh and others** reported in **(2013) 9 SCC 261**, **Hiriya Bai v. Butha and others, 2023 SCC OnLine MP 1214, Biswajit Sukul v. Deo Chand Sarda and others** reported in **(2018) 10 SCC 584** and **Laxman Tatyaba Kankate and another v. Taramati Harishchandra Dhatrak** reported in **(2010) 7 SCC 717** and **Nagar Palika Nigam, Gwalior through Commissioner, v. Motilal, 1977 SCC OnLine MP 19**.

14. Shri Agrawal, learned senior counsel appearing for the respondent No.2 has submitted that since she being the respondent in the appeal and also party in the civil suit and impugned judgment and decree directly affects her right therefore, she has every right to challenge the findings given by the Court against her even without filing any cross-objection. He has also relied upon the judgments of Supreme Court rendered in the cases of **Biswajit Sukul v. Deo Chand Sarda and others, (2018) 10 SCC 584** and **Laxman Tatyaba Kankate and another v. Taramati Harishchandra Dhatrak, (2010) 7 SCC 717**.

15. Considering the rival submissions made by learned counsel for the parties on this issue and cases relied upon by them, it is apt to mention the respective provision i.e. Order 41 Rule 22 of CPC which reads as under :-

> "**22. Upon hearing, respondent may object to decree as if he had preferred a separate appeal —**

(1) Any respondent, though he may not have appealed from any part of the decree, may not only support the decree [but may also state that the finding against him in the Court below in respect of any issue ought to have been in his favour; and may also take any cross-objection] to the decree which he could have taken by way of appeal provided he has filed such objection in the Appellate Court within one month from the date of service on him or his pleader of notice of the day fixed for hearing the appeal, or within such further time as the Appellate Court may see fit to allow.

Explanation—A respondent aggrieved by a finding of the Court in the judgment on which the decree appealed against is based may, under this rule, file cross-objection in respect of the decree insofar as it is based on that finding, notwithstanding that by reason of the decision of the Court on any other finding which is sufficient for the decision of the suit, the decree, is, wholly or in part, in favour of that respondent.

(2) **Form of objection and provisions applicable thereto —** Such cross-objection shall be in the form of a memorandum, and the provisions of rule 1, so far as they relate to the form and contents of the memorandum of appeal, shall apply thereto.

(4) Where, in any case in which any respondent has under this rule filed a memorandum of objection, the original appeal is withdrawn or is dismissed for default, the objection so filed may nevertheless be heard and determined after such notice to the other parties as the Court thinks fit.

(5) The provisions relating to appeals by indigent

persons shall, so far as they can be made applicable, apply to an objection under this rule."

16. Learned counsel for the appellants has placed reliance upon a decision in the case of **Hardevinder Singh (supra)** wherein the Supreme Court has observed as under :-

"**21.** After the 1976 Amendment of Order 41 Rule 22, the insertion made in sub-rule (1) makes it permissible to file a cross-objection against a finding. The difference is basically that a respondent may defend himself without taking recourse to file a cross-objection to the extent the decree stands in his favour, but if he intends to assail any part of the decree, it is obligatory on his part to file the cross-objection. In Banarsi v. Ram Phal [(2003) 9 SCC 606 : AIR 2003 SC 1989] , it has been observed that the amendment inserted in 1976 is clarificatory and three situations have been adverted to therein. Category 1 deals with the impugned decree which is partly in favour of the appellant and partly in favour of the respondent. Dealing with such a situation, the Bench observed that in such a case, it is necessary for the respondent to file an appeal or take cross-objection against that part of the decree which is against him if he seeks to get rid of the same though he is entitled to support that part of the decree which is in his favour without taking any cross-objection. In respect of two other categories which deal with a decree entirely in favour of the respondent though an issue had been decided against him or a decree entirely in favour of the respondent where all the issues had been answered in his favour but there is a finding in the judgment which goes against him, in the pre-amendment stage, he could not take any cross-objection as he was not a person aggrieved by the decree. But post-amendment, read in the light of the Explanation to sub-rule (1), though it is still not

> necessary for the respondent to take any cross-objection laying challenge to any finding adverse to him as the decree is entirely in his favour, yet he may support the decree without cross-objection. It gives him the right to take cross-objection to a finding recorded against him either while answering an issue or while dealing with an issue. It is apt to note that after the amendment in the Code, if the appeal stands withdrawn or dismissed for default, the cross-objection taken to a finding by the respondent would still be adjudicated upon on merits which remedy was not available to the respondent under the unamended Code."

17. Further, in the case of **Biswajit Sukul (supra)**, again the Supreme Court dealing with the issue with regard to the cross-objection provided under Order 41 Rule 22 of CPC, has observed as under :-

> "**14.** The plaintiff in his first appeal did not challenge the finding of the trial court recorded on the first part of Issue 4 and rightly so because it was already answered by the trial court in his favour. The first appellate court, therefore, could not examine the legality and correctness of this finding in the plaintiff's appeal unless it was challenged by the defendants by filing cross-objection under Order 41 Rule 22 of the Code in the appeal.
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> **19.** We, however, make it clear, that since the defendants did not file any cross-objection in the appeal under Order 41 Rule 22 of the Code, they are not allowed to file the cross-objection at such belated stage taking advantage of the remand of the appeal to the first appellate court by this Court."

18. In this judgment the Supreme Court has set aside the impugned judgment and decree and remitted the matter but not allowed the

respondents to file cross-objection because they did not file the same before the High Court and because of limitation the respondents were restrained to file cross-objection. This is a case in which impugned judgment and decree was set aside and matter was remanded back.

19. In the case of **Laxman Tatyaba Kankate (supra)**, the Supreme Court has observed as under:-

> "**16.** Coming to the other submission, that the land could not be transferred in favour of the respondent in view of the restriction contained in Section 12(1)(c) and Section 12(2) of the Resettlement Act, a bare reading of these provisions shows that the Government can grant permission for transfer of the property, subject to such conditions, as it may deem fit and proper."

Although the finding given by the Supreme Court in this case is *per incuriam* for the reason that the Supreme Court in the case of **Ravinder Kumar Sharma v. State of Assam and others, (1999) 7 SCC 435** dealing with the provisions of Order 41 Rule 22 CPC has observed very categorically that filing of cross objection after 1976 amendment is purely optional and not mandatory and observed as under :-

> "**23.** In our view, the opinion expressed by Mookerjee, J. of the Calcutta High Court on behalf of the Division Bench in Nishambhu Jena case [(1984-85) 86 CWN 685] and the view expressed by U.N. Bachawat, J. in Tej Kumar case [AIR 1981 MP 55] in the Madhya Pradesh High Court reflect the correct legal position after the 1976 Amendment. We hold that the respondent-defendant in an appeal can, without filing cross-objections attack an adverse finding upon which a decree in part has been passed against the respondent, for the purpose of

> sustaining the decree to the extent the lower court had dismissed the suit against the defendant-respondent. The filing of cross-objection, after the 1976 Amendment is purely optional and not mandatory. In other words, the law as stated in Venkata Rao case [AIR 1943 Mad 698 : ILR 1944 Mad 147 (FB)] by the Madras Full Bench and Chandre Prabhuji case [Sri Chandre Prabhuji Jain Temple v. Harikrishna, (1973) 2 SCC 665 : AIR 1973 SC 2565] by this Court is merely clarified by the 1976 Amendment and there is no change in the law after the amendment."

20. This view has also been followed in the latest decision of Supreme Court in the case of **Saurav Jain and another v. A.B.P. Design and another, (2022) 18 SCC 633** wherein the Supreme Court considered the requirement of filing cross-objection under Order 41 Rule 22 CPC and observed as under:-

> "**28.** Order 41 Rule 22(2)CPC states that a "cross-objection shall be filed in the form of a memorandum, and the provisions of Rule 1, so far as they relate to the form and contents of the memorandum of appeal, shall apply thereto". This Court in S. Nazeer Ahmed v. State Bank of Mysore [S. Nazeer Ahmed v. State Bank of Mysore, (2007) 11 SCC 75] elaborated on the form of objections made under Order 41 Rule 22CPC. In Nazeer Ahmed [S. Nazeer Ahmed v. State Bank of Mysore, (2007) 11 SCC 75], the respondent had filed a suit for enforcement of an equitable mortgage. In deciding the suit, the trial court rejected the argument of the appellant-defendant and held that the suit was not barred by Order 2 Rule 2CPC. However, the court dismissed the suit on grounds of limitation. On an appeal filed by the respondent before the High Court, the High Court observed [State Bank of Mysore v. S. Nazeer Ahmed, 2003 SCC OnLine Kar 928]

that although the suit was barred by Order 2 Rule 2CPC, the appellant had not challenged this finding of the trial court by filing a memorandum of cross-objection. Thus, the High Court granted the respondent a decree against the appellant. When this finding of the High Court was assailed before this Court, P.K. Balasubramanyam, J. held that a memorandum of cross-objection needs to be filed while taking recourse to Order 41 Rule 22 only when the respondent claims a relief that had been rejected by the trial court or seeks an additional relief apart from that provided by the trial court. The Court held that a memorandum of objection need not be filed when the appellant only assailed a "finding" of the lower court: (Nazeer Ahmed case [S. Nazeer Ahmed v. State Bank of Mysore, (2007) 11 SCC 75] , SCC p. 80, para 7)

> "7. The High Court, in our view, was clearly in error in holding that the appellant not having filed a memorandum of cross-objections in terms of Order 41 Rule 22 of the Code, could not challenge the finding of the trial court that the suit was not barred by Order 2 Rule 2 of the Code. The respondent in an appeal is entitled to support the decree of the trial court even by challenging any of the findings that might have been rendered by the trial court against himself. For supporting the decree passed by the trial court, it is not necessary for a respondent in the appeal, to file a memorandum of cross-objections challenging a particular finding that is rendered by the trial court against him when the ultimate decree itself is in his favour. A memorandum of cross-objections is needed only if the respondent claims any relief which had been negatived to him by the trial court and in addition to what he has already been given by the decree under challenge. We have therefore no

> hesitation in accepting the submission of the learned counsel for the appellant that the High Court was in error in proceeding on the basis that the appellant not having filed a memorandum of cross-objections, was not entitled to canvas the correctness of the finding on the bar of Order 2 Rule 2 rendered by the trial court."
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> (emphasis supplied)

29. It is apparent from the amended provisions of Order 41 Rule 22 CPC and the above authorities that there are two changes that were brought by the 1976 Amendment. First, the scope of filing of a cross-objection was enhanced substantively to include objections against "findings" of the lower court; second, different forms of raising cross-objections were recognised. The amendment sought to introduce different forms of cross-objection for assailing the findings and decrees since the amendment separates the phrase "but may also state that the finding against him in the court below in respect of any issue ought to have been in his favour" from "may also take any cross-objection to the decree" with a semi colon. Therefore, the two parts of the sentence must be read disjunctively. Only when a part of the decree has been assailed by the respondent, should a memorandum of cross-objection be filed. Otherwise, it is sufficient to raise a challenge to an adverse finding of the court of first instance before the appellate court without a cross-objection.

30. The applicability of the principle in Order 41 Rule 22 CPC to proceedings before this Court under Article 136 of the Constitution was considered by a Constitution Bench in the decision in Ramanbhai Ashabhai Patel v. Dabhi Ajitkumar Fulsinji [Ramanbhai Ashabhai Patel v. Dabhi Ajitkumar Fulsinji, 1964 SCC OnLine SC 29 : AIR 1965

SC 669] . J.R. Mudholkar, J. overruled the judgment of the three-Judge Bench in Vashist Narain Sharma v. Dev Chandra [Vashist Narain Sharma v. Dev Chandra, (1954) 2 SCC 32 : AIR 1954 SC 513] which had rejected the argument of the respondent that a party could raise arguments on the "findings" that were against him, while supporting the judgment. It was held that Order 41 Rule 22CPC does not have application to an appeal under Article 136. In Ramanbhai Ashabhai Patel [Ramanbhai Ashabhai Patel v. Dabhi Ajitkumar Fulsinji, 1964 SCC OnLine SC 29 : AIR 1965 SC 669] , this Court held that the provisions of Order 41 Rule 22CPC are not applicable to the Supreme Court and the rules of the Supreme Court do not provide for any analogous provisions. However, it was held that this deficiency must be supplemented by drawing from CPC : (Ramanbhai Ashabhai Patel case [Ramanbhai Ashabhai Patel v. Dabhi Ajitkumar Fulsinji, 1964 SCC OnLine SC 29 : AIR 1965 SC 669] , SCC OnLine SC para 18)

> "18. … Apart from that we think that while dealing with the appeal before it this Court has the power to decide all the points arising from the judgment appealed against and even in the absence of an express provision like Order 41 Rule 22 of the Code of Civil Procedure it can devise the appropriate procedure to be adopted at the hearing. There could be no better way of supplying the deficiency than by drawing upon the provisions of a general law like the Code of Civil Procedure and adopting such of those provisions as are suitable. We cannot lose sight of the fact that normally a party in whose favour the judgment appealed from has been given will not be granted special leave to appeal from it. Considerations of justice, therefore, require that this Court should in

appropriate cases permit a party placed in such a position to support the judgment in his favour even upon grounds which were negatived in that judgment."

(emphasis supplied)

31. Expanding on this further, a two-Judge Bench (R.C. Lahoti, J. speaking for himself and Brijesh Kumar, J.) of this Court in Jamshed Hormusji Wadia v. Port of Mumbai [Jamshed Hormusji Wadia v. Port of Mumbai, (2004) 3 SCC 214] , observed : (SCC pp. 245-46, para 35)

"35. A few decisions were brought to the notice of this Court by the learned Additional Solicitor General wherein this Court has made a reference to Order 41 Rule 22CPC and permitted the respondent to support the decree or decision under appeal by laying challenge to a finding recorded or issue decided against him though the order, judgment or decree was in the end in his favour. Illustratively, see Ramanbhai Ashabhai Patel [Ramanbhai Ashabhai Patel v. Dabhi Ajitkumar Fulsinji, 1964 SCC OnLine SC 29 : AIR 1965 SC 669] , Northern Railway Coop. Credit Society Ltd. [Northern Railway Coop. Credit Society Ltd. v. Industrial Tribunal, 1967 SCC OnLine SC 73 : AIR 1967 SC 1182] and Bharat Kala Bhandar (P) Ltd. [Bharat Kala Bhandar (P) Ltd. v. Municipal Committee, Dhamangaon, (1966) 59 ITR 73 : 1965 SCC OnLine SC 170 : AIR 1966 SC 249] The learned Additional Solicitor General is right. But we would like to clarify that this is done not because Order 41 Rule 22CPC is applicable to appeals preferred under Article 136 of the Constitution; it is because of a basic principle of justice applicable to courts of superior jurisdiction. A person who has entirely succeeded

before a court or tribunal below cannot file an appeal solely for the sake of clearing himself from the effect of an adverse finding or an adverse decision on one of the issues as he would not be a person falling within the meaning of the words "person aggrieved". In an appeal or revision, as a matter of general principle, the party who has an order in his favour, is entitled to show that even if the order was liable to be set aside on the grounds decided in his favour, yet the order could be sustained by reversing the finding on some other ground which was decided against him in the court below. This position of law is supportable on general principles without having recourse to Order 41 Rule 22 of the Code of Civil Procedure. Reference may be had to a recent decision of this Court in Nalakath Sainuddin v. Koorikadan Sulaiman [Nalakath Sainuddin v. Koorikadan Sulaiman, (2002) 6 SCC 1] and also Banarsi v. Ram Phal [Banarsi v. Ram Phal, (2003) 9 SCC 606] . This Court being a court of plenary jurisdiction, once the matter has come to it in appeal, shall have power to pass any decree and make any order which ought to have been passed or made as the facts of the case and law applicable thereto call for. Such a power is exercised by this Court by virtue of its own jurisdiction and not by having recourse to Order 41 Rule 33CPC though in some of the cases observations are available to the effect that this Court can act on the principles deducible from Order 41 Rule 33CPC. It may be added that this Court has jurisdiction to pass such decree or make such order as is necessary for doing complete justice in any cause or matter pending before it. Such jurisdiction is conferred on this Court by Article 142 of the Constitution and this Court is not

> required to have recourse to any provision of the Code of Civil Procedure or any principle deducible therefrom. However, still, in spite of the wide jurisdiction being available, this Court would not ordinarily make an order, direction or decree placing the party appealing to it in a position more disadvantageous than in what it would have been had it not appealed."
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> (emphasis supplied)

32. On a perusal of the above authorities, it is evident that the principle stipulated in Order 41 Rule 22CPC can be applied to petitions under Article 136 of the Constitution because of this Court's wide powers to do justice under Article 142 of the Constitution. Since the principle in Order 41 Rule 22CPC furthers the cause of justice by providing the party other than the "aggrieved party" to raise any adverse findings against them, this Court can draw colour from Order 41 Rule 22CPC and permit objections to findings.

33. From the above it has been established that it is not necessary that a challenge to the adverse findings of the lower court needs to be made in the form of a memorandum of cross-objection. In the present case, we note that the appellant had raised an objection to the jurisdiction of the trial court for entertaining the suit on the ground that an injunction and declaratory relief could not have been given. Although the trial court passed a decree in favour of the appellant, it had decided against the appellant on the question of jurisdiction. This finding was not challenged by the appellant before the High Court in the form of a memorandum of cross-objection. The judgment of the High Court makes no mention that a plea of lack of jurisdiction was taken by either the appellant or

> MDA. Before this Court, the appellant has not filed the counter-affidavit it had filed before the High Court. Thus, the conclusion that emanates from the record before us is that the ground of jurisdiction was only raised by the appellant before the trial court and not before the High Court. In effect then, this Court would have to adjudicate on a plea, which did not form a part of the decision of the High Court in challenge before us."

21. Likewise, in the case of **Prabhakar Gones Prabhu Navelkar v. Saradchandra Suria Prabhu Navelkar, (2020) 20 SCC 465**, the Supreme Court further observed the requirement of filing cross-objection in writing as per Order 41 Rule 22 of CPC and clarified that it should have been filed in writing and observed as under:-

> "**32.** In Banarsi v. Ram Phal [Banarsi v. Ram Phal, (2003) 9 SCC 606] , this Court dwelt upon the rights of a respondent in an appeal under Order 41 Rule 22 of the Code of Civil Procedure, 1908, inter alia : (SCC pp. 616-17, paras 10-11)
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> > "10. The CPC amendment of 1976 has not materially or substantially altered the law except for a marginal difference. Even under the amended Order 41 Rule 22 sub-rule (1) a party in whose favour the decree stands in its entirety is neither entitled nor obliged to prefer any cross-objection. However, the insertion made in the text of sub-rule (1) makes it permissible to file a cross-objection against a finding. The difference which has resulted we will shortly state. A respondent may defend himself without filing any cross-objection to the extent to which decree is in his favour; however, if he proposes to attack any part of the decree, he must take cross-objection. The amendment

inserted by the 1976 Amendment is clarificatory and also enabling and this may be made precise by analysing the provision. There may be three situations:

(i) The impugned decree is partly in favour of the appellant and partly in favour of the respondent.

(ii) The decree is entirely in favour of the respondent though an issue has been decided against the respondent.

(iii) The decree is entirely in favour of the respondent and all the issues have also been answered in favour of the respondent but there is a finding in the judgment which goes against the respondent.

11. In the type of case (i) it was necessary for the respondent to file an appeal or take cross-objection against that part of the decree which is against him if he seeks to get rid of the same though that part of the decree which is in his favour he is entitled to support without taking any cross-objection. The law remains so post-amendment too. In the type of cases (ii) and (iii) pre-amendment CPC did not entitle nor permit the respondent to take any cross-objection as he was not the person aggrieved by the decree. Under the amended CPC, read in the light of the explanation, though it is still not necessary for the respondent to take any cross-objection laying challenge to any finding adverse to him as the decree is entirely in his favour and he may support the decree without cross-objection; the amendment made in the text of sub-rule (1), read with the Explanation newly inserted, gives him a right to take cross-objection to a finding recorded against him either while answering an issue or while dealing with an issue. The advantage of

> preferring such cross-objection is spelled out by sub-rule (4). In spite of the original appeal having been withdrawn or dismissed for default the cross-objection taken to any finding by the respondent shall still be available to be adjudicated upon on merits which remedy was not available to the respondent under the unamended CPC. In the pre-amendment era, the withdrawal or dismissal for default of the original appeal disabled the respondent to question the correctness or otherwise of any finding recorded against the respondent."
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> (emphasis supplied and in original)

This position has been reiterated in Hardevinder Singh v. Paramjit Singh [Hardevinder Singh v. Paramjit Singh, (2013) 9 SCC 261 : (2013) 4 SCC (Civ) 309] .

60. We have already referred to the law laid down by this Court in regard to Order 41 Rule 22 of the Code of Civil Procedure. In an appeal if the respondent does not want any change in the decree of the lower court, it is not necessary for him to file an appeal or cross-objection to merely support the decree already passed without any variation in the decree but by challenging the correctness of the findings in the judgment. The appellants are correct in contending that if a challenge is made to a decree by a respondent then necessarily the respondent must file either an appeal or a cross-objection. In this case however, the suit filed by the appellants stood dismissed by the first appellate court. The two appeals which were carried by the appellant before the High Court were dismissed. Resultantly, the decree of the first appellate court dismissing the suit came to be confirmed. Before this Court the respondents are not seeking to challenge the decree. They do not wish any variation of the decree.

> They seek to have the decree confirmed. They support the decree entirely. The decree is one dismissing the suit. They are only seeking to support the said decree by challenging one of the findings, namely, the finding relating to title. For doing the same, it is not necessary for them to file an appeal or cross-objection as by having the finding overturned in regard to title they are not seeking to have a different decree passed in any manner. Hence, we reject the contention of the appellants that it is not open to the respondents to contest the finding on title without filing cross-objection."

22. In the case of **Gunamma v. Shevantibai, (2018) 15 SCC 599**, the Supreme Court relying upon the aforesaid judgment of **Ravindra Kumar Sharma (supra)** observed as under :-

> "**11.** An argument has been sought to be raised relying on the decision of this Court in Ravinder Kumar Sharma v. State of Assam [Ravinder Kumar Sharma v. State of Assam, (1999) 7 SCC 435 : AIR 1999 SC 3571] to contend that the filing of a cross-objection is an optional course of action and not mandatory. While the same may be correct, under Order 41 Rule 22 of the Code of Civil Procedure, 1908, a contest can also be made to a finding adverse to a party though the decree may be in his favour. No contest to the findings of the learned first appellate court was made by the present respondents in the second appeal before the High Court. We, therefore, do not consider it appropriate to go into the said question in the present proceedings under Article 136 of the Constitution of India. Even otherwise, on merits, for the reasons that we have indicated earlier, we find no error in the aforesaid view taken by the first appellate court."

23. In the case of **Hiriya Bai (supra),** the High Court has also

considered this aspect as to whether cross-objection is necessary to challenge the findings of the decree or not. The Court has observed that when decree needs to be modified then only cross-objection in writing is necessary otherwise adverse findings can be challenged by the respondent even without filing any cross-objection. The observation made by the High Court is as follows:-

> "**10.** The first question for consideration is as to whether in absence of written cross-objection a decree holder can verbally challenge the findings in an appeal filed by the judgment debtor or not?
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> **11.** Under Order 41, Rule 22 of CPC reads as under:—
>
> "22. Upon hearing, respondent may object to decree as if he had preferred a separate appeal—
>
> (1) Any respondent, though he may not have appealed from any part of the decree, may not only support the decree [but may also state that the finding against him in the Court below in respect of any issue ought to have been in his favour; and may also take any cross-objection] to the decree which he could have taken by way of appeal provided he has filed such objection in the Appellate Court within one month from the date of service on him or his pleader of notice of the day fixed for hearing the appeal, or within such further time as the Appellate Court may see fit to allow.
>
> Explanation—A respondent aggrieved by a finding of the Court in the judgment on which the decree appealed against is based may, under this rule, file cross-objection in respect of the decree insofar as it is based on that finding, notwithstanding that by reason of the decision of the Court on any other finding which is sufficient for the decision of the suit, the

decree, is, wholly or in part, in favour of that respondent.

(2) **Form of objection and provisions applicable thereto —** Such cross-objection shall be in the form of a memorandum, and the provisions of rule 1, so far as they relate to the form and contents of the memorandum of appeal, shall apply thereto.

(4) Where, in any case in which any respondent has under this rule filed a memorandum of objection, the original appeal is withdrawn or is dismissed for default, the objection so filed may nevertheless be heard and determined after such notice to the other parties as the Court thinks fit.

(5) The provisions relating to appeals by indigent persons shall, so far as they can be made applicable, apply to an objection under this rule."

12. A decree holder can assail the findings by filing cross-objection. However if the decree granted in favour of the decree holder is not liable to be modified even after setting aside the findings, the filing of cross-objection in writing is not necessary and the decree holder can always assail the findings by verbally challenging the same before the Appellate Court. However, where the decree is liable to be modified, then the cross-objection in writing is mandatory.

13. The Supreme Court in the case of *Hardevinder Singh v. Paramjit Singh* and others, reported in *(2013) 9 SCC 261 : (2014) 1 MP LJ (SC) 487* has held as under:—

"20. In *Sahadu Gangaram Bhagade v. Collector*, it was observed that : (SCC p. 689, para 8)

"8. … the right given to a respondent in an appeal is to challenge the order under appeal to the extent he is

aggrieved by that order. The memorandum of cross-objection is but one form of appeal. It takes the place of a cross-appeal."

In the said decision, emphasis was laid on the term "decree".

21. After the 1976 Amendment of Order 41, Rule 22, the insertion made in sub-rule (1) makes it permissible to file a cross-objection against a finding. The difference is basically that a respondent may defend himself without taking recourse to file a cross-objection to the extent the decree stands in his favour, but if he intends to assail any part of the decree, it is obligatory on his part to file the cross-objection. In Banarsi v. Ram Phal, it has been observed that the amendment inserted in 1976 is clarificatory and three situations have been adverted to therein. Category 1 deals with the impugned decree which is partly in favour of the appellant and partly in favour of the respondent. Dealing with such a situation, the Bench observed that in such a case, it is necessary for the respondent to file an appeal or take cross objection against that part of the decree which is against him if he seeks to get rid of the same though he is entitled to support that part of the decree which is in his favour without taking any cross-objection. In respect of two other categories which deal with a decree entirely in favour of the respondent though an issue had been decided against him or a decree entirely in favour of the respondent where all the issues had been answered in his favour but there is a finding in the judgment which goes against him, in the pre-amendment stage, he could not take any cross-objection as he was not a person aggrieved by the decree. But post-amendment, read in the light of the Explanation to sub-rule (1),

> though it is still not necessary for the respondent to take any cross-objection laying challenge to any finding adverse to him as the decree is entirely in his favour, yet he may support the decree without cross-objection. It gives him the right to take cross-objection to a finding recorded against him either while answering an issue or while dealing with an issue. It is apt to note that after the amendment in the Code, if the appeal stands withdrawn or dismissed for default, the cross-objection taken to a finding by the respondent would still be adjudicated upon on merits which remedy was not available to the respondent under the unamended Code."

> **14.** The Supreme Court in the case of *Prabhakar Gones Prabhu Navelkar (Dead) Through Legal Representatives v. Saradchandra Suria Prabhu Navelkar (Dead) Through Legal Representatives*, *(2020) 20 SCC 465 : 2019 MP LJ OnLine (S.C.) 177* has held as under:—

> "We have already referred to the law laid down by this Court in regard to Order 41, Rule 22 of the Code of Civil Procedure. In an appeal if the respondent does not want any change in the decree of the lower Court, it is not necessary for him to file an appeal or cross-objection to merely support the decree already passed without any variation in the decree but by challenging the correctness of the findings in the judgment. The appellants are correct in contending that if a challenge is made to a decree by a respondent then necessarily the respondent must file either an appeal or a cross-objection."

24. Thus in view of the aforesaid enunciation of law, it is clear that it is the consistent view of the Supreme Court and in the case of **Ravindra Kumar Sharma (supra)** that has been decided specifically on this issue,

very clearly provides the cross-objection after amendment of 1976 is necessary to be filed only when decree needs to be modified but findings can be challenged by the respondent orally without filing any cross-objection.

25. In the present case also, it is clear that the suit filed by the plaintiffs/appellants has been dismissed by the Court but finding with regard to the agreement dated 27.11.1983 holding the same as valid is being assailed by the respondents and therefore the said finding can be assailed by the respondents even without filing the cross-objection. According to the respondents, the suit has rightly been dismissed but finding with regard to validity of agreement dated 27.11.1983 is liable to be set aside. Accordingly, no modification is being sought in the impugned judgment and decree and therefore the preliminary objection raised by learned counsel for the appellants for not allowing the respondents to raise the findings given by the trial Court dismissing the suit being contrary to law and accordingly, it is rejected.

26. Now, the submission made by learned counsel for the appellants so far as challenging the impugned judgment and decree in respect of issue No.3 is concerned the finding given by the Court below about readiness and willingness is perverse and is liable to be set aside and the suit ought to have been decreed. Learned counsel for the appellants relying upon the averments made in para-2 of the plaint in which it is mentioned that the plaintiffs were ready and still they are ready to pay the remaining sale consideration. He has also relied upon the statement of PW-1, who in

para-11 and 17 of his statement has admitted that he asked the defendant No.1 Bani Bai for accepting the remaining amount and for getting the sale deed executed but she refused. According to the learned counsel for the appellants, the finding given by the Courts below in para-14 answering issue no.3 is therefore perverse.

27. Shri Sanghi, learned counsel for the appellants in respect of requirement of readiness and willingness relied upon a decision of this Court in the case of **Kalyan Singh and others vs. Sanjeev Singh** reported in **ILR 2018 MP 1523**.

> "(22) It is next contended by the counsel for the appellants that since, the plaintiff has not proved his willingness and readiness to perform his part of contract, and secondly, such pleading was incorporated by way of amendment in the plaint, therefore, the Trial Court should not have allowed the application for amendment. To buttress his contentions, the Counsel for the appellants has relied upon the judgment of the Supreme Court, passed in the case of *J. Samuel and others Vs. Gattu Mahesh and others* reported in (2012) 2 SCC 300. The submission made by the Counsel for the appellants cannot be accepted and hence, rejected. It is incorrect to say that the pleadings regarding readiness and willingness were incorporated by way of amendment. In the original plaint, there was a specific pleading with regard to readiness and willingness to perform the contract. The plaintiff has specifically stated in his evidence, that he was and is still ready to perform his part of contract. The evidence with regard to readiness and willingness was never challenged by the appellants by cross examining Sanjeev (P.W.1). When the evidence of

readiness and willingness was never challenged in the cross examination, then it was not necessary for the plaintiff to prove anything more in this regard. It was not necessary for the plaintiff to file proof that the remaining amount is ready with him. Once, it is claimed that the plaintiff is ready and willing to perform his part of contract, and if it is not challenged by the defendants, then it can be safely held that the plaintiff has proved his readiness and willingness to perform his part of contract.

(23) The Supreme Court in the case of *Ashar Sultana Vs. B. Rajamani*, reported in *(2009) 17 SCC 27* has held as under :-

"28. Section 16(c) of the Specific Relief Act, 1963 postulates continuous readiness and willingness on the part of the plaintiff. It is a condition precedent for obtaining a relief of grant of specific performance of contract. The court, keeping in view the fact that it exercises a discretionary jurisdiction, would be entitled to take into consideration as to whether the suit had been filed within a reasonable time. What would be a reasonable time would, however, depend upon the facts and circumstances of each case. No hard-and-fast law can be laid down therefor. The conduct of the parties in this behalf would also assume significance.

29. In Veerayee Ammal v. Seeni Ammal it was observed: (SCC p.140, para 11)

"11. When, concededly, the time was not of the essence of the contract, the appellant-plaintiff was required to approach the court of law within a reasonable time. A Constitution Bench of this Hon'ble Court in Chand Rani v. Kamal Rani held that in case of sale of immovable property there is no presumption as to time being of the essence of the contract. Even if it is not of the essence of

contract, the court may infer that it is to be performed in a reasonable time if the conditions are (i) from the express terms of the contract; (ii) from the nature of the property; and (iii) from the surrounding circumstances, for example, the object of making the contract. For the purposes of granting relief, the reasonable time has to be ascertained from all the facts and circumstances of the case."

It was furthermore observed: (Veerayee Ammal case, SCC pp. 140-41, para 13)

"**13.** The word 'reasonable' has in law prima facie meaning of reasonable in regard to those circumstances of which the person concerned is called upon to act reasonably knows or ought to know as to what was reasonable. It may be unreasonable to give an exact definition of the word 'reasonable'. The reason varies in its conclusion according to idiosyncrasy of the individual and the time and circumstances in which he thinks. The dictionary meaning of 'reasonable time' is to be so much time as is necessary, under the circumstances, to do conveniently what the contract or duty requires should be done in a particular case. In other words it means, as soon as circumstances permit. In P. Ramanatha Aiyar's Law Lexicon it is defined to mean:

"A reasonable time, looking at all the circumstances of the case; a reasonable time under ordinary circumstances; as soon as circumstances will permit; so much time as is necessary under the circumstances, conveniently to do what the contract requires should be done; some more protracted space than "directly"; such length of time as may fairly, and properly, and reasonably be allowed or required, having regard to the nature of the act or duty and to the attending circumstances; all these convey more

> or less the same idea."
>
> **30.** It is also a well-settled principle of law that not only the original vendor but also a subsequent purchaser would be entitled to raise a contention that the plaintiff was not ready and willing to perform his part of contract. (See: Ram Awadh v. Achhaibar Dubey, SCC p. 431 para 6.)
>
> **31.** We are, however, in agreement with Mr Lalit that for the aforementioned purpose it was not necessary that the entire amount of consideration should be kept ready and the plaintiff must file proof in respect thereof. It may also be correct to contend that only because the plaintiff who is a Muslim lady, did not examine herself and got examined on her behalf, her husband, the same by itself would not lead to a conclusion that she was not ready and willing to perform her part of contract."

28. Although, in the cross examination of PW1 Abdul Jabbar (plaintiff), he has admitted that when he asked Bani Bai (defendant no.1) to execute the sale deed then she said that it could be considered only after the case filed by defendant No.2 Champa Bai is resolved. In the notice (Ex.P/2), demand was made for executing the sale deed and stand has been taken by the defendant that (Ex.P/1) the agreement dated 27.11.1983 was forged and fabricated and they have also suggested about readiness and willingness and also cross-examined on this issue.

29. It is now apt to see what are the requirements to prove the readiness and willingness. The respective provision i.e. Section 16(c) of the Specific Relief Act, 1963 reads as under :-

> "**16. Personal bars to relief –** Specific performance of a contract cannot be enforced in favour of a person –
> (c) [who fails to prove] that he has performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him, other than terms the performance of which has been prevented or waived by the defendant.
>
> Explanation.—For the purposes of clause (c),—
>
> (i) where a contract involves the payment of money, it is not essential for the plaintiff to actually tender to the defendant or to deposit in court any money except when so directed by the court;
>
> (ii) the plaintiff [must prove] performance of, or readiness and willingness to perform, the contract according to its true construction."

30. From Ex.P/1 which is said to be an agreement executed between plaintiffs and defendant/respondent No.1, a long span of 12 years for executing the sale deed was given which clearly shows that the plaintiffs' financial status was very weak and they did not have sufficient funds to execute the sale deed and that is why they have sought and have been granted long span of time of 12 years to collect the remaining sale consideration of Rs. 1,00,735/-. PW1 in para-3 of his statement has admitted this fact that their financial position was not good and therefore they have been granted 12 years period. PW1 has also stated in his statement that in the year 1993, only first time he approached the defendant/responded No.1 for executing the sale deed meaning thereby from 1983 to 1993 for a long time of 10 years they could not arrange the money and in such a circumstance, as per the requirement of Section 16(c) of the Specific Relief Act, 1963, it is mandatory for the plaintiffs to show

their financial status by filing document and other cogent evidence so as to establish their readiness and willingness but there is nothing on record to indicate that any such evidence was produced except oral evidence and even at the time of recording the statement they did not produce any documentary evidence so as to show their financial condition.

31. Shri Ravish Agrawal, learned Senior Advocate has supported the finding given by the Court below so as to dismiss the suit on the ground that plaintiffs failed to prove their readiness and willingness by adducing cogent evidence. He has submitted that just to make an oral statement for establishing the fact with regard to readiness and willingness, the conduct of the parties is very material aspect which is required to be seen by the Court. He submits that Ex.P/1 itself is suspicious not only on the basis of stand taken by respondent/defendant No.2 that the Ex.P/1 dated 27.11.1983 is a forged and fabricated document prepared with an object to defeat the agreement executed between the defendant No.1 and defendant No.2 but it is also virtually unacceptable that for executing the specific performance of contract period of 12 years is provided. He submits that no material was produced by the plaintiffs to show that they could arrange the remaining sale consideration because as per their own showing and admission, their financial condition was very weak.

32. Shri Ravish Agrawal, learned Senior Advocate has also placed reliance upon a decision of Supreme Court in the case of **Ardeshir H. Mama vs. Flora Sassoon** reported in **1928 Privy Council** 953, wherein it has been observed as under :-

> "The amendment of the pleadings was not really necessary. Nor was the Defendant prejudiced by it. In an action for damages the Plaintiff has merely to show readiness and willingness up to the date of breach but for specific performance he must show his readiness and willingness to carry out the contract until the decree."

33. In the case of **Pydi Ramana alias Ramulu v. Davarasety Manmadha Rao, (2024) 7 SCC 515**, the Supreme Court considered the provision of Section 16(c) and observed as under:-

> "**17.** As rightly pointed out by the trial court, the respondent-plaintiff has not produced any satisfactory evidence to prove his readiness and willingness. As regards "willingness" of the plaintiff to perform his part of the contract, the conduct of the plaintiff warranting the performance has to be looked into. The following conduct of the plaintiff warrants consideration:
>
> (a) Plaintiff got issued legal notice nearly after two years after the expiry of one year period as prescribed in the agreement.
>
> (b) Plaintiff has not brought anything on record to prove that he contacted the defendant after the expiry of one year period and was interested in finalising the deed.
>
> (c) There was total inaction of the plaintiff from 6-6-1994 (expiry of one year period) to 30-5-1996 (date of issuance of legal notice)
>
> (d) Suit was filed on 9-6-1997 i.e. after a period of more than one year from the date of issuing of legal notice. Said delay has not been sufficiently explained by the plaintiff.
>
> **18.** The continuous readiness and willingness is a condition precedent to grant the relief of specific

> performance. [Vijay Kumar v. Om Parkash, (2019) 17 SCC 429 : (2020) 3 SCC (Civ) 480] The trial court has rightly held that the plaintiff has not sufficiently explained and proved that he was always ready and willing to perform his part of the contract. As such the High Court and the first appellate court had erred in holding that the plaintiff had proved his readiness and willingness."

34. Recently, the Supreme Court in the case of **R. Shama Naik vs. G. Srinivasiah** in **Special Leave Petition (Civil) No.13933 of 2021** with regard to the readiness and willingness, has observed as under:-

> "**11.** There is a fine distinction between readiness and willingness to perform the contract. Both the ingredients are necessary for the relief of specific performance.
>
> **12.** While readiness means the capacity of the plaintiff to perform the contract which would include his financial position, willingness relates to the conduct of the plaintiff.
>
> **13.** The High Court in first appeal upon appreciation of the evidence on record both oral and documentary has arrived at the conclusion that the plaintiff has failed to establish that he was always ready and willing to perform his part of the contract."

35. Considering the submission made by the parties and on perusal of respective provision of 16(c) of the Act, 1963, I am also of the opinion that the finding given by the Court below in para-14 of the impugned judgment in regard to issue no.3 does not call for any interference because the same is a reasoned one and based upon well appreciation of facts and since, in

any manner, it cannot be considered to be perverse, the same is not required to be disturbed. I am also of the opinion that *prima facie* the agreement giving 12 years for performance of contract is itself creating doubt and even otherwise, there is no material showing that the plaintiffs' readiness and willingness was continuous. No documentary evidence was produced before the Court so as to substantiate that aspect especially under the circumstances when they themselves have admitted their financial condition and for seeking decree of specific performance of contract they have to comply with this requirement by adducing not only oral but also the documentary evidence. However, they failed to do so and therefore, the finding in respect of issue no.3 is not required to be called for.

36. Now, this Court has to consider whether the finding with respect to the agreement (Ex.P/1) dated 27.11.1983 is proper or not because learned counsel for the respondent is challenging the said finding by making submission that the agreement produced before the trial Court dated 27.11.1983 (Ex.P/1), in the existing circumstances, is itself suspicious and finding with regard to its validity is unreasonable, unjustified and also perverse and therefore, that finding is liable to be set aside.

37. Shri Ravish Agrawal, learned Senior Counsel appearing for the respondent has submitted that even without filing the cross-objection under Order 41 Rule 22 of CPC, he can assail the said finding because ultimately if the said finding is disturbed or reversed that would not affect the nature of impugned decree and would also not modify or reverse the impugned decree. Shri Ravish Agrawal has further submitted that the Court has not

properly appreciated that the period of agreement, that too of 12 years, itself creates doubt because giving such a long period for performing the sale in a normal course is not acceptable and is beyond imagination. He has further submitted that there are two sets of plaintiffs in the plaint. One set of plaintiffs is having larger area of the suit land and second set of plaintiffs is occupying a very small portion of the said land but neither in the agreement nor in the pleadings or any evidence adduced, it has been specified what share actually they have given to the Bani Bai defendant/respondent No.1 said to be the owner of the land whereas in the statement of Abdul Majid (PW-4), he has stated that he and Jabbar both has paid Rs.30,000/- each, total Rs.60,000/- to Bani Bai as advance payment. Shri Agrawal has submitted that this statement itself creates doubt. When there is vast difference in their shares then as to how they were paying equal amount because agreement did not contain as to what payment had to be made by one set plaintiff having small share over the suit and another having larger share in the suit land. I find substance in his submission for the reason when there is vast difference in the shares over the suit land, parties cannot make equal payment and therefore, this situation makes the Ex.P/1 suspicious. According to him it is also pertinent to mention that in the statement of plaintiffs' witnesses they have disclosed the fact that respondent/defendant No.2 Champa Bai filed a suit against respondent/defendant No.1 Bani Bai for execution of sale deed pursuant to the agreement executed between them on 25.12.1983. When agreement of the plaintiffs was prior to the date of agreement executed by respondent/defendant No.1 Bani Bai with Champa Bai for the same land, in a pending litigation, they should have raised an objection and moved an

application for impleading them as a party or to file a suit challenging that the agreement dated 25.12.1983 was invalid in pursuance to their prior agreement dated 27.11.1983 but that was also not done and this itself creates doubt and certify the stand taken by the respondent that the agreement dated 27.11.1983 is a fabricated document executed in collusion between plaintiffs and respondent No.1 Bani Bai so as to make the subsequent agreement dated 25.11.1983 for which Champa Bai paid an amount to purchase the suit land, redundant.

38. As per the statement of Abdul Jabbar (PW-1), in para-5, he himself has admitted that when he approached Bani Bai for execution of sale deed then she apprised that Champa Bai has also filed a suit and after decision of the same, it would be seen whether sale deed had do be executed or not meaning thereby before filing the suit, he was aware about the fact that Champa Bai has also filed a suit against Bani Bai in respect of the suit land. In para-9 of his statement, on a suggestion made, he has denied any such agreement of Bani Bai and Champa Bai with regard to the suit land and he has also filed the judgment dated 15.01.1997 (Ex.P/11) which was passed in a Civil Suit filed by Champa Bai against Bani Bai.

39. Further, the statement of Bashir Mohammad (PW-2), the *Arji Naveesh* has admitted in his statement that agreement dated 27.11.1983 (Ex.P/1) does not contain any seal and even he has not made any entry in his Register. He has also admitted this fact that document must contain his seal but on Ex.P/1 there is no such seal meaning thereby the mandatory requirement to execute an agreement or to get it notified is not followed

which also creates suspicion and as such finding given by the Court below in respect of issue no.1 is not liable to be sustained as it is not a reasoned one and has been arrived at without proper appreciation of evidence and therefore, in my opinion, it deserves to be set aside and accordingly, it is set aside holding that the agreement (Ex.P/1) was not a valid agreement and in-fact it has not been executed on a given date but prepared and fabricated by the parties with some ill-intention.

40. The defendant witness i.e. DW-1 namely Laxmi Narayan Soni has very categorically stated that he could identify the signature of Bani Bai and has clearly stated that Ex.P/1 did not contain her signature. Even, in the said circumstance, plaintiffs did not call for any expert opinion about the signature of Bani Bai. Likewise, DW-2 namely Sanjeev Singh Thakur has stated that Bani Bai was his grandmother and he could identify the signature of Bani Bai and very categorically stated that in Ex.P/1 signature of Bani Bai from A to A is not the signature of his grandmother Bani Bai. Even otherwise, plaintiffs did not call any expert opinion about the signature and also did not file any material document so as to compare the signature of Bani Bai where there was a clear doubt raised by the defendants on her signature.

41. In view of the aforesaid facts and circumstances, I am of the opinion that this Court is not required to disturb the impugned judgment and decree, although, the finding with regard to issue no.1 about Ex.P/1 is not sustainable, therefore, it is set aside saying that Ex.P/1 is not a genuine agreement and therefore, it is invalid.

42. *Ex-consequentia*, in view of the aforesaid facts and circumstances of the case, the appeal fails and is hereby **dismissed**. However, impugned judgment is modified in respect of finding on issue no.1 that has been given in regard to agreement dated 27.11.1983 (Ex.P/1) and it is answered that no such agreement was executed on 27.11.1983.

Appeal dismissed.

(SANJAY DWIVEDI)
JUDGE

PK