

Judgment Sheet

**IN THE HIGH COURT OF SINDH AT KARACHI**

Suit No. 641 of 2006

Before :

Mr. Justice Nadeem Akhtar

Date of hearing : 27.11.2012.

Plaintiff : Muhammad Shoaib through  
Mr. Muhammad Sadiq Advocate, along with the plaintiff.

Defendants : Mst. Jamila Khatoon and others through  
Chaudhary Abdul Rasheed Advocate, along with all the  
five defendants.

**J U D G M E N T**

**Nadeem Akhtar, J.** – This Suit for specific performance, declaration and permanent injunction has been filed by the plaintiff against the defendants in respect of Plot No.162-O, being 3/5<sup>th</sup> share measuring 1.020 sq. yds. out of the total area measuring 1,960 sq. yds., Block No.3, P.E.C.H.S., Karachi, with a double storey bungalow constructed thereon, hereinafter referred to as “the Suit Property”.

2. The defendants are the co-owners of the suit property having their undivided respective shares therein. Defendant No.1 is the real mother of defendants 2 to 5, who are real sisters. The defendants and the plaintiff entered into an Agreement to Sell dated 27.05.2005 (**the Agreement**), whereby the defendants agreed to sell the suit property to the plaintiff and the plaintiff agreed to purchase the same from the defendants. Defendants 1 to 4 executed the Agreement personally, and on behalf of defendant No.5, the Agreement was executed by defendant No.4 as her attorney. The total sale consideration was agreed at Rs.16,320,000.00. It was agreed by the parties that at the time of execution of the Agreement, the plaintiff shall pay to the defendants a sum of Rs.1,632,000.00 being 10% of the total agreed sale consideration. It was further agreed by the parties that the balance sale consideration of Rs.14,688,000.00 will be paid by the plaintiff to the defendants at the time of execution of the sale deed of the suit property in his favour, and the delivery of peaceful, vacant and physical possession thereof to him. The documents and clearance certificates mentioned in the Agreement were also to be completed before completion of the sale in favour of the plaintiff. It is an admitted position that in part performance of his agreed part of contract, the plaintiff paid the 10%

amount of Rs.1,632,000.00 to the defendants on 27.05.2004 at the time of execution of the Agreement.

3. Vide Clause 2 of the Agreement, it was agreed that a public notice will be published in newspapers inviting objections regarding the sale of the suit property. The plaintiff got published public notices on 17.06.2004 in the English daily 'Dawn' and the Urdu daily 'Jang'. No objection whatsoever was received from any quarter. Vide Clause 3 of the Agreement, it was specifically agreed that the sale of the suit property shall be finalized in favour of the plaintiff on or before 30.07.2004 subject to completion of the relevant documents, including mutation in favour of the defendants from the Ministry of Works, Islamabad, and clearance of all dues and taxes. In Clause 10 of the Agreement it was mentioned that the Agreement was irrevocable and that none of the parties had the right to vary, revoke or cancel the same. It was specifically mentioned in this Clause that, if the Agreement is varied, revoked or cancelled by any of the parties, the other party shall be entitled for the specific performance of the Agreement through the court of law.

4. It is the case of the plaintiff that he has always been ready and willing to perform his agreed part of the contract as he requested the defendants many times to accept from him the balance amount of the agreed sale consideration. However, the defendants kept on avoiding to complete the sale of the suit property in his favour on one pretext or the other. Finally, the plaintiff was constrained to send a legal notice dated 14.07.2004 to the defendants, calling upon them to perform their agreed part of the contract. This legal notice was sent by the plaintiff before the date of completion of the sale, that is, 30.07.2004 agreed by the parties through the Agreement. The defendants neither responded to the legal notice, nor did they complete the sale in favour of the plaintiff. In the above background, this Suit has been filed by the plaintiff praying for a declaration that the Agreement is liable to be specifically performed by the defendants ; for specific performance of the Agreement against the defendants ; for permanent injunction restraining the defendants from creating any type of third party interest in the suit property ; and for compensation and mesne profits.

5. Along with the plaint, the plaintiff filed an injunction application praying that the defendants be restrained from creating third party interest in the suit property till the disposal of the Suit. An ad interim injunction Order to the above effect was passed on 22.05.2006. By Order passed on 17.11.2008, the plaintiff's injunction application was allowed by this Court with the consent of the defendants, subject to deposit of the balance sale consideration by the plaintiff with the Nazir within four weeks. Thereafter, as the plaintiff did not

deposit the amount within the time allowed to him or within the two subsequent extensions in time allowed to him, the stay was vacated by this Court vide Order dated 06.04.2009. During the course of hearing, the parties confirmed that no third party interest has been created in the suit property after vacation of the stay Order.

6. Three separate written statements were filed by the defendants, one jointly by defendants 1 and 3, the second jointly by defendants 2 and 4, and the third by defendant No.5. The contents and averments of the written statements of defendants 1 to 4 are the same. By stating that defendant No.5 did not sign the Agreement, they have alleged that defendant No.4 had no authority to sign the Agreement on behalf of defendant No.5. They have stated that defendant No.4 signed the Agreement in good faith, but subsequently defendant No.5 did not agree to sell her share to the plaintiff. Defendants 1 to 4 have alleged that they had informed the plaintiff about the cancellation of the Agreement, and had asked him to collect his 10% amount, but the plaintiff failed to do so. At the same time, defendants 1 to 4 have claimed in their written statements that they were ready to perform their contractual obligations, but the plaintiff never showed his willingness to perform his contractual obligations by offering or paying to them the balance sale consideration on or before the agreed date, that is, 30.07.2004. These defendants have alleged that, upon failure of the plaintiff to perform his contractual obligations, the Agreement became non-existent and inoperative. They have prayed that the Suit be dismissed with compensatory costs.

7. In her written statement, defendant No.5 has stated that she did not sign the Agreement, and has alleged that she never authorized defendant No.4 in writing to sign the Agreement on her behalf, nor did she agree to sell her share to the plaintiff. She has alleged that she is a permanent resident of Canada, and that she had no personal knowledge about the payment made by the plaintiff. She has stated that she came to know about the Agreement on 22.05.2006 when she came to Pakistan, and as soon as this fact came to her knowledge, she requested the other defendants (her mother and sisters / signatories to the Agreement) to cancel the Agreement. Defendant No.5 has alleged that the Agreement is illegal and unlawful, as it was signed by defendants 1 to 4 / the other co-owners without her consent. She has also prayed that the Suit be dismissed with compensatory costs.

8. In view of the pleadings of the parties, the following six issues were settled by the Court on 17.11.2008 :

*“ 1. Whether there is a concluded agreement dated 27.05.2004 between the parties capable of specific performance ?*

2. *Who has committed the breach of terms and conditions of the agreement ?*
3. *Whether the time is the essence of Sale Agreement ? If yes, what is its effect ?*
4. *Whether the defendant No.5 executed general power of attorney in favour of the defendant No.4 ? If yes, what is its effect ?*
5. *To what relief the plaintiff is entitled ?*
6. *What should the Decree be ? ”*

9. In support of his case, the plaintiff examined himself and produced the public notices published on 17.06.2004 in the English daily 'Dawn' and the Urdu daily 'Jang', as Exhibits P/1 and P/1-A, respectively. He also produced the copy of the legal notice dated 14.07.2004 as Exhibit P/1-B, and the copies of TCS receipts as Exhibits P/1-C and P/1-D. The plaintiff produced in original the Agreement along with the receipt executed by defendants 1 to 4, and insisted that the originals thereof be returned to him after examination and copies thereof be retained. Accordingly, the originals of the Agreement and the receipt were seen and returned, and copies thereof were retained as Exhibit P/1-E. The same procedure was adopted in respect of the two TCS receipts (Exhibits P/1-C and P/1-D). The learned counsel for the defendants objected to the return of the originals of the Agreement and TCS receipts. However, the said objection was left to be decided by the Court. At the time of recording of his evidence, the plaintiff also produced a copy of the general power of attorney executed at Ontario, Canada, on 04.05.2004 by defendant No.5 in favour of defendant No.4. This general power of attorney, which is available at page 27 of the evidence file, was duly attested by the Consulate General of Pakistan, Toronto on 05.05.2004, and was registered at No.4252. Through this general power of attorney, defendant No.5 had authorized defendant No.4 inter alia to sell or dispose of any land, house, building, or other property belonging to her. However, the said general power of attorney was not exhibited.

10. On behalf of the defendants, only defendant No.2 came into the witness box and produced as Exhibit DW-1/1 a special power of attorney dated 22.06.2009 in her favour by defendants 1, 3 and 4, to represent them in this Suit. She also produced record of Rent Case No. 310/2004 ; namely, ejectment application, written statement, affidavit-in-evidence of the applicant (defendant No.1 herein), and order dated 30.09.2006 of its dismissal, as Exhibits DW-1/2, DW-1/3, DW-1/4 and DW-1/5, respectively. It is important to note that defendant No.5 filed her affidavit-in-evidence, but she never came into the witness box for her evidence.

11. Mr. Muhammad Sadiq, the learned counsel for the plaintiff submitted that, by paying the 10% amount of the agreed sale consideration at the time of the Agreement and by repeatedly requesting the defendants to accept the balance 90% amount before 30.07.2004, the plaintiff successfully performed his agreed part of the contract. He submitted that defendants 1 to 4 have admitted the execution of the Agreement in favour of the plaintiff, and they have also admitted that the Agreement was indeed signed by defendant No.4 on behalf of defendant No.5. He further submitted that defendants 1 to 4 have also admitted having received 10% amount of the agreed sale consideration from the plaintiff at the time of the Agreement, and the said amount paid by the plaintiff is still lying with them. He contended that under Clause 1 of the Agreement, it was specifically agreed by the parties that the plaintiff was obliged to pay the balance sale consideration to the defendants at the time of execution of the sale deed of the suit property in his favour on or before 30.07.2004, subject to the delivery of peaceful, vacant and physical possession thereof. The learned counsel argued that the breach of the Agreement was committed by the defendants and not by the plaintiff, as they failed to execute the sale deed in favour of the plaintiff and to handover to him the peaceful, vacant and physical possession of the suit property. He further argued that the main reason for committing the breach of the Agreement was that the defendants were in possession of only the first floor of the suit property, whereas the entire ground floor was and is still in possession of a tenant who is running a school therein in the name and style of Happy Home School. In the end, the learned counsel submitted that the plaintiff has always been and is still willing to perform his agreed part of the contract. He prayed that the Suit may be decreed as prayed by the plaintiff.

12. On the other hand, Chaudhry Rasheed Ahmed, the learned counsel for the defendants submitted that the plaintiff had no intention to pay the balance sale consideration to the defendants, as he never offered the said amount to the defendants on or before 30.07.2004, nor did he deposit the same with the Nazir despite the Orders passed by this Court. He further submitted that specific performance cannot be claimed as a matter of right, as it is a discretionary relief that the Court grants by exercising its discretion keeping in view the conduct of the plaintiff and his willingness to perform his agreed part of the contract. He argued that the plaintiff's willingness to perform the contract is missing in this case, and his conduct of not depositing the balance sale consideration with the Nazir despite Court's Order has disentitled him from seeking the discretionary relief of specific performance. The learned counsel reiterated the stand taken by defendant No.5 that she did not sign the Agreement, nor did she authorize defendant No.4 to sign the Agreement on her

behalf. He contended that on this ground also, the Agreement cannot be specifically enforced. Regarding the delivery of vacant and physical possession of the suit property to the plaintiff, the learned counsel submitted that the plaintiff was fully aware of the fact that the entire ground floor was occupied by a tenant, and the plaintiff even offered to help the defendants in getting the ground floor vacated. For this purpose, defendant No.1 filed Rent Case No.310/2004 against the tenant, for which all the arrangements were made by the plaintiff. He contended that the said rent case was dismissed for non-prosecution due to the lack of interest by the plaintiff.

13. After perusing the pleadings of the parties, examining the evidence on record and hearing the learned counsel, my findings on the issues involved in this Suit are as under :

**ISSUE NO.1 :**

14. This is the main issue which goes to the root of this case, that is, whether there is a concluded agreement dated 27.05.2004 between the parties capable of specific performance. Not only the Agreement has been admitted by Defendants 1 to 4, but they have also admitted receipt of the 10% amount of the agreed sale consideration from the plaintiff at the time of execution of the Agreement. The defense that has been set up by these defendants is that defendant No.4 signed the Agreement in good faith, but subsequently defendant No.5 did not agree to sell her share to the plaintiff. They have alleged that they had informed the plaintiff about the cancellation of the Agreement, and had asked him to collect the 10% amount paid by him, but the plaintiff failed to do so. However, their written statement clearly shows that no notice was sent or issued by them to the plaintiff for the alleged cancellation of the Agreement. In her cross examination, defendant No.2, who was the sole witness of the defendants, admitted that no such notice for the alleged cancellation was sent to the plaintiff. She further admitted in her cross examination that *“It is correct to suggest that neither the Sale Agreement was cancelled in writing nor we have shown our willing (!) to return the earnest money payment of Rs.16,32,000/=”*. In any event, if the Agreement had been actually cancelled as alleged by the defendants, they would have certainly taken some steps to return the 10% amount to the plaintiff, either through a cheque / pay order, or at least by writing to the plaintiff calling upon him to collect the said amount. The above admissions made by defendant No.2 prove that the defendants neither cancelled the Agreement, nor did they ever attempt to return the 10% amount to the plaintiff.

15. A completely new stand was taken by defendants 1 to 4 in their evidence produced through defendant No.2. It was alleged by defendant No.2 for the first time in her evidence that it was agreed that the defendants will hand over to the plaintiff the vacant and physical possession of only the first floor of the suit property which was in their possession, and that they were not obliged to hand over the vacant and physical possession of the ground floor to the plaintiff as the same was occupied by a tenant. Defendant No.2 further alleged for the first time in her evidence that it was also agreed that the plaintiff would make efforts to get the ground floor vacated from the tenant, and the defendants had agreed to cooperate with him. In her affidavit-in-evidence, defendant No.2 has stated that a counsel was engaged for this purpose by the plaintiff who filed the rent case, which was signed by her mother / defendant No.1. In her cross examination, defendant No.2 admitted that her mother / defendant No.1 used to attend the rent case before the Rent Controller. The record of the said rent case was produced by defendant No.2 in her evidence. In the above background, it may be noted that the rent case was filed by defendant No.1 on 18.08.2004, and she filed her affidavit-in-evidence therein on 10.02.2005. The date of completion of the sale in favour of the plaintiff, as stipulated in the Agreement, was 30.07.2004. Admittedly, the rent case was filed and prosecuted by defendant No.1 after 30.07.2004, and according to the defendants' own case, all this was done by them with the assistance of the plaintiff after 30.07.2004. This admitted position further proves that the Agreement had not been cancelled by the defendants.

16. There are serious contradictions in the pleadings and the evidence of defendants 1 to 4. On the one hand, they have alleged that the Agreement was cancelled by them under the instructions of defendant No.5, and they had asked the plaintiff to collect from them the 10% amount paid by him. On the other hand, they have alleged in paragraphs 4 and 5 of their written statement that the plaintiff was required to pay the balance sale consideration to them on or before 30.07.2004, but he never offered the same to them in order to show the performance of his contractual obligations ; and that defendants 1 to 4 were ready to perform their contractual obligations pertaining to their respective shares. Similarly in paragraph 7 of their written statement, defendants 1 to 4 have again alleged that upon the plaintiff's failure in performing his contractual obligations, the Agreement became non-existent and inoperative. Both the above stands taken by these defendants are self-contradictory, as they have taken two opposite stands. The first, that the Agreement was cancelled by them because of the reason that defendant No.5 had not signed the Agreement and had asked them to cancel the same ; and the second, that the Agreement became non-existent and inoperative because the plaintiff failed to offer to them

the balance sale consideration on or before 30.07.2004 although they were ready to perform their contractual obligations. The above again proves that defendants 1 to 4 did not cancel the Agreement, but in fact they were ready to perform their contractual obligations.

17. The overall effect of the above discussion is that, execution of the Agreement and receipt of 10% amount of the agreed sale consideration by defendants 1 to 4 is admitted by them, the filing and prosecution of the rent case after 30.07.2004 with the assistance of the plaintiff is also admitted by defendants 1 to 4, there are serious contradictions in the defense setup by these defendants, and defendants 1 to 4 have also admitted that they were ready to perform their contractual obligations. They have not been able to prove that there was any delay or breach on the part of the plaintiff. On the contrary, the plaintiff has proved that he offered the balance sale consideration before 30.07.2004. There is no contradiction on this point in his plaint and evidence, and his stand has all along remained the same. The evidence produced by the plaintiff in order to show that he was ready to pay the balance sale consideration on or before 30.07.2004, has remained unshaken. The issue No.1 is, therefore, answered in the affirmative by holding that the Agreement was/is a concluded agreement between the parties, and that the same is capable of specific performance.

18. With respect to the learned counsel for the defendants, his contention that the plaintiff is not entitled for specific performance as he failed to deposit the balance sale consideration with the Nazir despite Court's Order, does not appear to be correct. The Order to deposit the balance sale consideration was passed on 17.11.2008 on the injunction application filed by the plaintiff. It was specifically mentioned in the said Order that the defendants had no objection to the grant of the plaintiff's injunction application subject to the deposit of the balance sale consideration with the Nazir of this Court. This clearly means that the condition to deposit the balance sale consideration was imposed on the plaintiff because of the no objection given by the defendants to the grant of the plaintiff's injunction application. It also means that the said condition was imposed only in relation to the injunction application. As the plaintiff did not deposit the amount, the stay granted to him was vacated vide Order dated 06.04.2009. Thus, the plaintiff has already faced the consequences for not depositing the amount. In my humble opinion, non-deposit of the amount by the plaintiff has not disentitled him from seeking the main relief of specific performance in this Suit. Even otherwise, there is no provision in the Specific Relief Act, 1877, that makes it mandatory for the plaintiff / vendee to deposit the balance sale consideration in Court to become entitled or eligible for specific performance of contracts of immovable or movable properties.



**ISSUE No.2 :**

19. For deciding this issue, the contents of paragraph 1 of the written statements filed by defendants 1 to 4 are relevant and important. The relevant portion is reproduced below for convenience and ready reference :-

*“The Defendant No.4 in good faith had signed on behalf of the Defendant No.5 **but subsequently the Defendant No.5 had not agreed to sell out her share to the Plaintiff** who was duly informed by the Answering Defendants for cancellation of the Sale Agreement and refund of the money paid by him as signing amount ”*

The words “*but subsequently the defendant No.5 had not agreed*” appearing in the written statements of defendants 1 to 4 are of great significance, and the same cannot be ignored. The above quotation clearly shows that initially defendant No.5 had agreed to sell her share, but subsequently she decided not to do so. Since this is a part and parcel of the pleadings of defendants 1 to 4, they are bound by it. In view of the above, and also in view of the finding on issue No.1, issue No.2 is decided by holding that the defendants committed the breach of the terms and conditions of the Agreement.

**ISSUE No.3 :**

20. It has now been well settled that time is not of the essence of the contract in the cases of sale of immovable properties. As observed above, defendants 1 to 4 filed and prosecuted the rent case after 30.07.2004 with the assistance of the plaintiff. This issue is, therefore, answered in the negative by holding that time was not of the essence of the Agreement.

**ISSUE No.4 :**

21. This issue relates to the general power of attorney, that is, whether or not it was executed by defendant No.5 in favour of defendant No.4. While dealing with issue No.2, I have already discussed the effect of the contents of paragraph 1 of the written statement filed by defendants 1 to 4, which clearly show that initially defendant No.5 had agreed to sell her share, but subsequently she decided not to do so. In paragraph 1 of her written statement, defendant No.5 has stated that she is not the signatory of the Agreement nor did she authorize defendant No.4 “*in writing*” to enter into the Agreement pertaining to her share. This means that defendant No.5 had authorized defendant No.4, but in writing. However, the plaintiff produced a copy of the general power of attorney (available at page 27 of the evidence file) executed at Ontario, Canada, on 04.05.2004 by defendant No.5 in favour of defendant No.4, duly attested by the Consulate General of Pakistan, Toronto on

05.05.2004, and registered at No.4252. Through this general power of attorney, defendant No.5 had authorized defendant No.4 inter alia to sell or dispose of any land, house, building, or other property belonging to her. The said general power of attorney was not exhibited. In his evidence, the plaintiff has strongly asserted that defendant No.5 had executed the power of attorney in favour of defendant No.4, and that defendant No.4 was fully authorized and competent to sign the Agreement on behalf of defendant No.5. All the suggestions by the defendants that were contrary to this stand of the plaintiff, were specifically denied by the plaintiff in his cross examination. It is a settled principle of law that when a defendant does not come into the witness box to rebut the case of the plaintiff, the contents of his written statement are of no value, and that pleadings cannot be the substitute of evidence. The entire evidence of the plaintiff against defendant No.5, particularly relating to the power of attorney executed by her in favour of defendant No.4, has remained unchallenged and unrebutted as defendant No.5 did not appear in the witness box to rebut the assertions made by the plaintiff. Moreover, defendant No.4 also did not come into witness box to rebut the plaintiff's assertions regarding the power of attorney in her favour, or to deny the execution of the power of attorney in her favour by defendant No.5. Therefore, the averments and contentions of the plaintiff with regard to the said power of attorney stand proved.

22. As noted above, the general power of attorney was not exhibited. However, the same can be examined and looked into by the Court if it is necessary for the just decision of this Suit. This view is fortified by the case of *Khurshid Ali and 6 others V/S Shah Nazar*, **PLD 1992 Supreme Court 822**, wherein Hon'ble Supreme Court was pleased to hold that mere failure to exhibit a document formally would not make any difference, and if it was necessary for the just decision of the case, the material relied upon by the party should be summoned and treated as evidence in the matter without any formalities. The general power of attorney on record clearly shows that it was not only executed by defendant No.5 in favour of defendant No.4 at Ontario, Canada, but was also attested by the Consulate General of Pakistan, Toronto, on 05.05.2004, and was registered at No.4252. This issue is, therefore, decided in the affirmative.

23. Defendant No.5 has alleged that she was not aware of the Agreement dated 27.05.2004 or about the 10% sale consideration paid by the plaintiff on the same day. She has further alleged that she came to know about the Agreement on 22.05.2006 when she came to Pakistan, and as soon as this fact came to her knowledge, she requested the other defendants (her mother and sisters / signatories to the Agreement) to cancel the Agreement. It is not the case of any of the defendants that they were not in contact with each other or they were not on talking terms. It is hard to believe that for two years, that is,

from May 2004 till May 2006, defendants 1 to 4 did not inform their daughter and sister (defendant No.5) about the sale of the suit property, especially when defendant No.5 was one of the co-owners. There was no reason for concealing this important fact from defendant No.5. If all the above aspects are examined collectively, the conclusion would be that defendant No.5 was all along aware of the Agreement.

**ISSUE No.5 :**

24. In view of the findings on the first four issues, it is held that the plaintiff is entitled to the Specific Performance of the Agreement.

25. The learned counsel for the defendants cited and relied upon the case of Saeed Naseem Cheema V/S Mrs. Rukhsana Khan, 2005 YLR 1905, wherein the Suit for specific performance was dismissed on the ground that the plaintiff had approached to Court with unclean hands. The said case is not applicable to the case in hand as it has already been held that the breach of the agreement was committed by the defendants and not by the plaintiff. The learned counsel also relied upon the cases of Muhammad Hussain and others V/S Dr. Zahoor Alam, 2010 SCMR 286, and Mst. Mehmooda Begum V/S Syed Hassan Sajjad and 2 others, PLD 2010 Supreme Court 952, in support of his submission that Suits for specific performance were decreed, but the amount of sale consideration was increased either because of passage of considerable time, or due to devaluation of currency. The learned counsel and the defendants, who were present in Court in person, submitted that because of the alleged breach committed by the plaintiff and passage of time, the sale consideration should be increased. This submission and reliance on the above authorities show that the defendants are contesting the Suit only with one objective, that is, to fetch more price than the agreed sale consideration.

26. No doubt the agreed sale consideration has been increased and revised in a number of cases, but I am not inclined to do so in this case for many reasons. It has been established that the breach of the Agreement was committed by the defendants by delaying the completion of the sale in favour of the plaintiff. The amount of Rs.16,320,000.00 paid by the plaintiff to the defendants on 27.05.2004 was a substantial amount, that is lying blocked with the defendants since 27.05.2004. While the plaintiff has lost a considerable amount that he could have earned as profit on the said amount since 27.05.2004, the defendants have been using and enjoying the entire said amount and have been earning profit thereon since then. The most important factor that has to be seen is that the defendants are receiving rent for the entire

ground floor of the suit property since 27.05.2004. Thus, the defendants have been adequately compensated for the losses alleged by them.

27. During the course of hearing, while the defendants were requesting that the amount of sale consideration may be increased, the plaintiff undertook to deposit the entire balance sale consideration with the Nazir within fifteen (15) days. The plaintiff also submitted that he is ready to accept the peaceful, vacant and physical possession of the first floor of the suit property from the defendants, and will accept the suit property along with the tenant on the ground floor.

**ISSUE No.6 :**

28. In view of the above discussion, the Suit is decreed against the defendants jointly and severally in the following terms :

- A. The plaintiff shall deposit the balance sale consideration of Rs.14,688,000.00 (Rupees fourteen million six hundred and eighty eight thousand only) with the Nazir of this Court within fifteen (15) days.
- B. The defendants shall deposit all the original title documents of the suit property with the Nazir within fifteen (15) days.
- C. Within fifteen (15) days from the date of deposit of the balance sale consideration by the plaintiff with the Nazir, the defendants shall execute a Sale Deed in respect of the suit property in favour of the plaintiff before the Sub-Registrar concerned in the presence of the Nazir. Simultaneously, the Nazir shall hand over all the original title documents of the suit property to the plaintiff, and disburse the balance sale consideration to the defendants after deduction of all the outstanding taxes, charges, bills, cesses, etc.
- D. In case the defendants fail to execute the Sale Deed in favour of the plaintiff within the stipulated period, the Nazir shall execute the same in favour of the plaintiff. In such an event, all the outstanding taxes, charges, bills, cesses, etc. shall be paid by the Nazir out of the amount deposited by the plaintiff.
- E. The parties shall bear their own costs.

J U D G E