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T.G. ASHOK KUMAR

v.

GOVINDAMMAL AND ANR.

(Civil Appeal No.10325 of 2010)

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DECEMBER 8, 2010

[R.V. RAVEENDRAN AND A.K. PATNAIK, JJ.]

Transfer of Property Act, 1882: s.52 – Transfer of property by a defendant pending a partition suit – Partition suit found C *to be not collusive – Decree in partition suit – In terms of decree, the pendente lite transferor found to have only half share in the property and she was allotted only one fourth of the property purchased by the transferee – Suit by transferee for declaration of title and permanent injunction in regard to* D *transferred property – Courts below dismissed the suit – Held: Suit ought not to have been dismissed in entirety even if the sale was hit by the Doctrine of lis pendens – Transferee's title will be saved in respect of that part of the transferred property allotted to the transferor in the partition suit – Transfer in* E *regard to the remaining portion of the transferred property to which the transferor is found not entitled, will be invalid and the transferee will not get any right, title or interest in that portion.*

Transfer of Property: Suggestion to Law makers – F *Absence of a mechanism for prospective purchasers to verify whether a property is subject to any pending suit or a decree or attachment cause lot of hardship, loss, anxiety and leads to unnecessary litigation – All these inconveniences, risks and misery could be avoided and the property litigations* G *could be reduced to a considerable extent, if there is some satisfactory and reliable method by which a prospective purchaser can ascertain whether any suit is pending (or whether the property is subject to any decree or attachment)*

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before he decides to purchase the property – Law Commission and the Parliament much consider such amendment or other suitable amendment to cover the existing void in title verification or due diligence procedures – Also, registration of agreements of sale should be made compulsory to reduce property litigation – Registration Act, 1908 – Legislation.

Appeal: Appeal before Supreme Court – Concurrent findings of facts by the three courts below that the partition suit was not collusive – Interference with – Held: Not called for – Constitution of India, 1950 – Article 136.

The appellant filed a suit for declaration of his right and title and permanent injunction in regard to the suit property. The case of the appellant was that he purchased the suit property from the second respondent under sale deed dated 11.4.1990 and he was a *bona fide* purchaser and was unaware of the partition suit between the second respondent and the first respondent who was the step daughter of the second respondent. On 17.3.1994, the said suit for partition was decreed by preliminary decree whereby the two respondents were held entitled to half share each in the properties including the suit property. In the final decree proceedings, the Commissioner divided the suit property in such a manner that nearly three-fourth portion of the suit property was allotted to the share of the first respondent and only about a one-fourth portion was allotted to the share of the second respondent.

The first respondent resisted the suit contending that the appellant had purchased the suit property during the pendency of her suit for partition; and that being a purchaser *pendente lite*, the sale in his favour was hit by the doctrine of *lis pendens* and, therefore, he could not claim any right in the suit property; and she denied that there was any collusion between her

A and the second respondent. The second respondent did not contest the suit.

The trial court dismissed the suit on the ground that the sale in favour of the appellant was hit by the B doctrine of *lis pendens.* The appeal filed by the appellant was dismissed by the first appellate court. The High Court dismissed the second appeal. Aggrieved, the appellant filed the instant appeal.

Partly allowing the appeal, the Court

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HELD: 1. The trial court, the first appellate court and the High Court on appreciating the evidence have held that the partition suit was not collusive and that there was a valid reason for a larger portion of the suit D property being allotted to the first respondent, plaintiff in the partition suit as the portion allotted to the second respondent had a house therein and to equalize the value, a larger portion (vacant plot) was allotted to the first respondent. There is no reason to interfere on that E score. [Para 8] [570-C-D]

Jayaram Mudaliar v. Ayyaswami AIR 1973 SC 569; *Hardev Singh v. Gurmail Singh* (2007) 2 SCC 404 – relied on.

F 2.1. The principle underlying Section 52 of the Transfer of Property Act, 1882 is clear. During the pendency in a court of competent jurisdiction of any suit which is not collusive, in which any right of an immovable property is directly and specifically in G question, such property cannot be transferred by any party to the suit so as to affect the rights of any other party to the suit under any decree that may be made in such suit. If ultimately the title of the *pendente lite* transferor is upheld in regard to the transferred property, the transferee's title will not be affected. On the other H

hand, if the title of the *pendente lite* transferor is recognized or accepted only in regard to a part of the transferred property, then the transferee's title will be saved only in regard to that extent and the transfer in regard to the remaining portion of the transferred property to which the transferor is found not entitled, will be invalid and the transferee will not get any right, title or interest in that portion. If the property transferred *pendente lite*, is allotted in entirety to some other party or parties or if the transferor is held to have no right or title in that property, the transferee will not have any title to the property. Where a co-owner alienates a property or a portion of a property representing to be the absolute owner, equities can no doubt be adjusted while making the division during the final decree proceedings, if feasible and practical (that is without causing loss or hardship or inconvenience to other parties) by allotting the property or portion of the property transferred *pendente lite*, to the share of the transferor, so that the bonafide transferee's right and title are saved fully or partially. [Para 10] [571-C-H; 572-A]

2.2. In the instant case, a suit for partition filed by the first respondent against the second respondent in the year 1985 which included the suit property, was pending in a court of competent jurisdiction as on the date of sale (11.4.1990) by the second respondent in favour of the appellant. The partition suit was not collusive. Having regard to Section 52 of the Act, the sale by the second respondent in favour of the appellant did not in any way affect the right of the first respondent (plaintiff in the partition suit) or the decree made in her favour in the said partition suit. It is thus evident that the sale by the second respondent in favour of the appellant though not void, did not bind the first respondent. On the other hand, the sale in favour of

A appellant was subject to the right declared or recognized in favour of the first respondent-plaintiff under the decree passed in the pending partition suit. The sale *pendente lite* would, therefore, be subject to the decree in the partition suit. In the final decree passed in the B partition suit, the major portion of the suit property was allotted to the share of the first respondent and to that extent, the sale in favour of the appellant would be ineffective. But in regard to the remaining portion of the suit property which stood allotted to the share of C the second respondent in the final decree in the partition suit, the sale by the second respondent in favour of the appellant would be effective, valid and binding on the second respondent and to that extent, the appellant is entitled to a declaration of title and consequential D injunction. The suit ought not to have been dismissed in entirety even if the sale by the second respondent in favour of appellant on 11.4.1990 was hit by the doctrine of *lis pendens.* The second respondent cannot avoid the sale made by her on the ground that she was held to be not the exclusive owner, in the pending partition E suit. Therefore, the courts below ought to have decreed the appellant's suit in part, in regard to the portion of the suit property that fell to the share of second respondent instead of dismissing the suit. Therefore, the declaration of title with consequential permanent F injunction as prayed is granted in regard to that portion of the suit property that was allotted to the second respondent in the partition suit. [Paras 11, 12, 16] [572-B-H; 573-A-B; 576-B]

G A related suggestion to the Law makers

3.1. Absence of a mechanism for prospective purchasers to verify whether a property is subject to any pending suit or a decree or attachment cause lot of hardship, loss, anxiety and unnecessary litigation. At

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present, a prospective purchaser can find out about any existing encumbrance over a property either by inspection of the Registration Registers or by securing a certificate relating to encumbrances (that is copies of entries in the Registration Registers) from the jurisdictional Sub-Registrar under Section 57 of the Registration Act, 1908. But a prospective purchaser has no way to ascertain whether there is any suit or proceeding pending in respect of the property, if the person offering the property for sale does not disclose it or deliberately suppresses the information. The inconveniences, risks, hardships and misery as a result of such transfers could be avoided and the property litigations could be reduced to a considerable extent, if there is some satisfactory and reliable method by which a prospective purchaser can ascertain whether any suit is pending (or whether the property is subject to any decree or attachment) before he decides to purchase the property. A solution has been found to this problem in the States of Maharashtra by an appropriate local amendment to section 52 of the Act, by Bombay Act 4 of 1939. The Law Commission and the Parliament must consider such amendment or other suitable amendment to cover the existing void in title verification or due diligence procedures. Provision can also be made for compulsory registration of such notices in respect of decrees and in regard to attachments of immoveable properties. [Paras 13, 14] [573-C-H; 574-A-C; 575-C]

3.2. At present in most of the States, agreements to sell are not compulsorily registrable as they do not involve transfer of any right, title or interest in an immoveable property. Registration of agreements of sale will reduce property litigation. It will go a long way to discourage generation and circulation of black money in real estate matters, as also undervaluation of documents for purposes of stamp duty. It will also

A **discourage the growth of land mafia and muscleman who dominate the real estate scene in various parts of the country. [Para 15] [575-D-G]**

Case Law Reference:

B	**AIR 1973 SC 569**	**relied on** **Para 9**
	(2007) 2 SCC 404	**relied on** **Para 9**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 10325 of 2010.

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From the Judgment & Order dated 01.09.2009 of the High Court of Judicature at Madras in S.A. No. 1141 of 2008.

R. Balasubramaniam, B. Karunakaran, V. Balachandran for the Appellant.

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N. Shobha, Sriram J. Thalapathy, Adhi Venkataraman, S.P. Parthasarthy for the Respondents.

The Judgment of the Court was delivered by

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R.V.RAVEENDRAN, J. 1. Notice to respondents was issued limited to the question whether the High Court ought to have decreed the appellant's suit for declaration and consequential injunction at least in respect of the portion of the suit property which was allotted to the share of second

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respondent in the earlier partition suit filed by the first respondent. Leave is granted only in regard to that question.

2. The appellant was the plaintiff in a suit for declaration of title and permanent injunction in regard to the suit property,

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that is, a plot measuring East to West : 49 feet and north south 81 feet, total extent of 3969 sq.ft (forming part of Natham Survey No. 178 (New No. 137-138) of a total extent of 4 acres 25 cents situated at Kakkalur Village, Tiruvallur Taluk and District). The appellant filed the said suit in the year

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2000 in the court of Subordinate Judge, Thiruvallur (OS

No.68/2000) subsequently transferred and renumbered as OS No. 138 of 2004 on the file of the District Munsiff, Thiruvallur.

3. The case of appellant in brief is as under: that the suit property was purchased by the second respondent under sale deed dated 4.3.1957; that she was in possession and enjoyment of the suit property as absolute owner and had mortgaged it in favour of appellant's sister (T.N. Latha) on 30.6.1983; that second respondent sold the suit property in favour of the appellant under sale deed dated 11.4.1990 and delivered possession thereof to him in pursuance of the sale; that though the suit property was the self acquired property of the second respondent, the first respondent who is her step-daughter, filed a collusive suit against the second respondent in OS No. 8/1985 on the file of the Sub-ordinate Judge, Thiruvallur alleging that the suit property and several other properties belonged to her father Ekambara Reddy and that she and second respondent had each an half share in those properties; that the appellant is a bona fide purchaser of the suit property from second respondent and he was unaware of the pendency of the said suit for partition in O.S. No.8/1985; that subsequently the said suit for partition filed by the first respondent was decreed vide preliminary decree dated 17.3.1994 holding that the first respondent was entitled to half share in the properties described as Items 1 to 6 in the partition suit schedule (which included the suit property (as Item No.6); that in the final decree proceedings, a Commissioner was appointed to divide the properties; that on the basis of the Commissioner's report, a final decree was passed on 7.4.2000 dividing the properties; that on account of collusion between first and second respondents, the Commissioner's report divided the suit property in a manner that nearly three fourth portion of the suit property was allotted to the share of the first respondent and only about a one-fourth portion was allotted to the share of the second respondent; and that adversely affected his right and title to the suit property and therefore it became necessary

A for him to file a suit for declaration of his right and title to the suit property with a consequential permanent injunction.

4. The first respondent resisted the suit contending that the appellant had purchased the suit property during the B pendency of her suit for partition and that being a purchaser *pendente lite*, the sale in his favour was hit by the doctrine of *lis pendens* and therefore he could not claim any right in the suit property. She asserted that the suit property was not the self-acquired property of the second respondent, and that C the suit property was purchased by her father in the name of the second respondent. She denied that there was any collusion between her and the second respondent. The second respondent did not contest the suit.

5. The trial court by judgment dated 6.7.2005 dismissed D the appellant's suit. It held that the suit property was not the self acquired property of second respondent and that there was no collusion between first and second respondents; and that the appellant having purchased the suit property under sale dated 11.4.1990 during the pendency of the suit for E partition (OS No.8/1985) filed by the first respondent against the second respondent, the sale in his favour was hit by the doctrine of *lis pendens* and that therefore the appellant did not get any title to the suit property and he was not entitled to the relief of declaration and injunction sought by him. The F appeal filed by the appellant was dismissed by the first appellate court by judgment and decree dated 26.3.2008. The second appeal filed by the appellant was dismissed by the High Court by the impugned judgment dated 1.9.2009 by holding that appellant was a *pendente lite* purchaser, G attracting the doctrine of *lis pendens* under Section 52 of Transfer of Property Act, 1882 ('Act' for short) and therefore the courts below were justified in ignoring the purchase by appellant. Feeling aggrieved the appellant filed the present appeal.

H 6. The partition suit was decreed holding that the first

respondent was entitled to half share in the six properties which were the subject matter of partition suit including the suit property. In the final decree proceedings, an equitable division was made accepting the report of the Commissioner who had divided the suit property as per the sketch (Ex. C-5) resulting in approximately three-fourth of the suit property (vacant site portion) being allotted to the first respondent and only the remaining one-fourth of the suit property (site with house thereon) being allotted to the second respondent. The contention of the appellant that the partition suit by the first respondent against the second respondent was collusive, and that the suit property was the self acquired property of the second respondent and the first respondent did not have a share therein, have been concurrently negatived. The alternative contention of the appellant that even if the first respondent had a half share therein, the division and allotment of the properties in the partition suit ought to have been made in a manner that the entire suit property was allotted to the share of second respondent to work out equities, was also negatived by the courts below.

7. As per the Report of Commissioner, schedule Items 1 to 5 in the partition suit were agricultural lands in all measuring 44 cents (less than half an acre) and they were divided equally by allotting 22 cents to first respondent and 22 cents to second respondent. Item No.6 was a house site with a house in the north western portion. As per the Commissioner's sketch (Ex.C-5), it measured East to West, 48'3" on the northern side and 53'3" on the southern side and North to South : 53'9" on the eastern side and 60'3" on the western side. The entire plot was shown by the letters 'A, B, C, D, E, F, G, H, A' and as per the final decree based on the Commissioner's report, the North Western portion shown by the letters A, B, I, H, A measuring East to West: 24' on the north and 24'9" on the south, and North to South : 28'9" on the east and 29' on the west with the house thereon (measuring 16' x 27'3") was allotted to the share of the

second respondent; and the entire remaining portion which was of an inverted L shape shown by the letters B, C, D, E, F, G, H, I, B was allotted to the share of the first respondent. As Items 1 to 5 in the partition suit schedule were small agricultural lands, they were equally divided and it was not possible to allot Item No.6 in entirety to the second respondent.

8. The trial court, first appellate court and the High Court on appreciating the evidence have held that the partition suit was not collusive. There was a valid reason for a larger portion of Item No.6 being allotted to first respondent, as the portion allotted to the second respondent had a house therein and to equalize the value, a larger portion (vacant plot) was allotted to first respondent. Therefore this court found no reason to interfere on that score and issued notice in the special leave petition restricted to the question whether the appellant should have been granted a decree at least in regard to the one-fourth portion in the suit property that was allotted to the second respondent instead of non-suiting him in entirety. That limited issue alone arises for our consideration.

9. Section 52 dealing with *lis pendens* is relevant and it is extracted below :

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

In Jayaram Mudaliar v. Ayyaswami (AIR 1973 SC 569) this court held that the purpose of Section 52 of the Act is not to defeat any just and equitable claim, but only to subject them to the authority of the court which is dealing with the property to which claims are put forward. This court in *Hardev Singh v. Gurmail Singh* (2007) 2 SCC 404 held that Section 52 of the Act does not declare a *pendente lite* transfer by a party to the suit as void or illegal, but only makes the *pendente lite* purchaser bound by the decision in the pending litigation.

10. The principle underlying Section 52 is clear. If during the pendency of any suit in a court of competent jurisdiction which is not collusive, in which any right of an immovable property is directly and specifically in question, such property cannot be transferred by any party to the suit so as to affect the rights of any other party to the suit under any decree that may be made in such suit. If ultimately the title of the *pendente lite* transferor is upheld in regard to the transferred property, the transferee's title will not be affected. On the other hand, if the title of the *pendente lite* transferor is recognized or accepted only in regard to a part of the transferred property, then the transferee's title will be saved only in regard to that extent and the transfer in regard to the remaining portion of the transferred property to which the transferor is found not entitled, will be invalid and the transferee will not get any right, title or interest in that portion. If the property transferred *pendente lite*, is allotted in entirely to some other party or parties or if the transferor is held to have no right or title in that property, the transferee will not have any title to the property. Where a co-owner alienates a property or a portion of a property representing to be the absolute owner, equities can no doubt be adjusted while making the division during the final decree proceedings, if feasible and practical (that is without causing loss or hardship or inconvenience to other parties) by allotting the property or portion of the property transferred *pendente lite*, to the share of the transferor, so

A that the bonafide transferee's right and title are saved fully or partially.

11. In this case, a suit for partition filed by the first respondent against the second respondent in the year 1985 B which included the suit property, was pending in a court of competent jurisdiction as on the date of sale (11.4.1990) by the second respondent in favour of the appellant. The partition suit was not collusive. Having regard to Section 52 of the Act, the sale by the second respondent in favour of the C appellant did not in any way affect the right of the first respondent (plaintiff in the partition suit) or the decree made in her favour in the said partition suit. It is thus evident that the sale by second respondent in favour of the appellant though not void, did not bind the first respondent who was the plaintiff in the partition suit. On the other hand, the sale D in favour of appellant was subject to the right declared or recognized in favour of the first respondent-plaintiff under the decree passed in the pending partition suit. The sale *pendente lite* would therefore be subject to the decree in the partition suit. In the final decree passed in the partition suit, the major E portion of the suit property shown by the letters B, C, D, E, F, G, H, I, B in the Commissioner's sketch (Ex.C-5) was allotted to the share of the first respondent and to that extent, the sale in favour of the appellant would be ineffective. But in regard to the remaining portion of the suit property namely F the portion shown by the letters A, B, I, H, A in the Commissioner's sketch (Ex.C-5) which stood allotted to the share of the second respondent in the final decree in the partition suit, the sale by the second respondent in favour of the appellant is effective, valid and binding on the second G respondent and to that extent, the appellant is entitled to a declaration of title and consequential injunction.

12. We are therefore of the view that the suit ought not to have been dismissed in entirety even if the sale by the second respondent in favour of appellant on 11.4.1990 was H

hit by the doctrine of *lis pendens*. The second respondent cannot avoid the sale made by her on the ground that she was held to be not the exclusive owner, in the pending partition suit. Therefore the courts below ought to have decreed the appellant's suit in part, in regard to the portion of the suit property that fell to the share of second respondent instead of dismissing the suit.

A related suggestion to the Law makers

13. It is necessary to refer to the hardship, loss, anxiety and unnecessary litigation caused on account of absence of a mechanism for prospective purchasers to verify whether a property is subject to any pending suit or a decree or attachment. At present, a prospective purchaser can easily find out about any existing encumbrance over a property either by inspection of the Registration Registers or by securing a certificate relating to encumbrances (that is copies of entries in the Registration Registers) from the jurisdictional Sub-Registrar under Section 57 of the Registration Act, 1908. But a prospective purchaser has no way of ascertaining whether there is any suit or proceeding pending in respect of the property, if the person offering the property for sale does not disclose it or deliberately suppresses the information. As a result, after parting with the consideration (which is many a time the life time savings), the purchaser gets a shock of his life when he comes to know that the property purchased by him is subject to litigation, and that it may drag on for decades and ultimately deny him title to the property. The *pendente lite* purchaser will have to wait for the litigation to come to an end or he may have to take over the responsibility of conducting the litigation if the transferor loses interest after the sale. The purchaser may also face objections to his being impleaded as a party to the pending litigation on the ground that being a *lis pendens* purchaser, he is not a necessary party. All these inconveniences, risks, hardships and misery could be avoided and the property litigations could be reduced

A to a considerable extent, if there is some satisfactory and reliable method by which a prospective purchaser can ascertain whether any suit is pending (or whether the property is subject to any decree or attachment) before he decides to purchase the property.

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14. It is of some interest that a solution has been found to this problem in the States of Maharashtra by an appropriate local amendment to section 52 of the Act, by Bombay Act 4 of 1939. Section 52, as applicable in the Maharashtra and Gujarat, reads thus (the amendment is C shown in italics):

"52. (1) During the pendency in any court having authority within the limits of India excluding the State of Jammu and Kashmir established beyond such limits by the D Central Government, of any suit or proceeding which is not collusive and in which any right to immoveable property is directly and specifically in question, *if a notice of the pendency of such suit or proceeding is registered under section 18 of the Indian Registration Act, 1908,* E *the property after the notice is so registered* cannot be transferred or otherwise dealt with by any party to the suit or proceeding so as to affect the rights of any other party thereto under any decree or order which may be made therein, except under the authority of the court F and on such terms as it may impose.

(2) Every notice of pendency of a suit or proceeding referred to in sub-section (1) shall contain the following particulars, namely:-

G (a) the name and address of the owner of immoveable property or other person whose right to the immoveable property in question;

(b) the description of the immoveable property the right to which is in question;

(c) the court in which the suit or proceeding is pending; A

(d) the nature and title of the suit or proceeding; and

(e) the date on which the suit or proceeding was instituted.

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We hope that the Law Commission and the Parliament considers such amendment or other suitable amendment to cover the existing void in title verification or due diligence C procedures. Provision can also be made for compulsory registration of such notices in respect of decrees and in regard to attachments of immoveable properties.

15. We may also refer to another related area where registration should be made compulsory to reduce property D litigation. At present in most of the states, agreements to sell are not compulsorily registrable as they do not involve transfer of any right, title or interest in an immoveable property. Unscrupulous property owners enter into agreements of sale and take huge earnest money deposits/advances, and then E sell the property to others thereby plunging the original agreement holder and the subsequent purchaser into litigation. Registration of agreements of sale will reduce such litigation. It will also assist in putting an end to the prevalent practice of entering into agreements of sale showing the real F consideration and then registering the sale deed for only a part of the real consideration. If all agreements of sale are compulsorily registered, that will go a long way to discourage generation and circulation of black money in real estate matters, as also undervaluation of documents for purposes G of stamp duty. It will also discourage the growth of land mafia and muscleman who dominate the real estate scene in various parts of the country. Prevention of a malaise, is always better than allowing a malaise to develop and then trying to cure it. Be that as it may.

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A **Conclusion**

16. We accordingly allow this appeal in part and set aside that part of the judgment of the High Court holding that the appellant-plaintiff is not entitled to any relief. Instead, the suit is decreed in part and declaration of title with consequential permanent injunction as prayed is granted in regard to that portion of the suit property that was allotted to the second respondent in the partition suit, that is portion shown as A, B, I, H, A in Ex.C-5 (Commissioner's sketch) in O.S.No.8/1985. Parties to bear their respective costs.

D.G. Appeal partly allowed.