
(2008) 07 AP CK 0082
In the Andhra Pradesh High Court
Case No : A.S. No. 143 of 1991

Akella Venkata Rama Subrahmanya Sarma	APPELLANT
Vs	
Annangi Sreeramamurti	RESPONDENT

Date of Decision : 16-07-2008

Acts Referred:

Specific Relief Act, 1963 — Section 15, 17, 22

Citation : (2008) 5 ALD 534 : (2008) 5 ALT 369

Hon'ble Judges : P.S. Narayana, J

Bench : Single Bench

Advocate : M.V. Suresh, for the Appellant; R.V. Prasad, for the Respondent

Final Decision : Dismissed

Judgement

P.S. Narayana, J.—The unsuccessful defendant in O.S. No. 51 of 1983 on the file of the Subordinate Judge, Amalapuram, had preferred the present appeal being aggrieved by the judgment and decree made therein directing the appellant-defendant to execute a regular registered sale deed and deliver possession of the plaint schedule property to the plaintiff within a period of three months granting relief of specific performance.

2. The said suit for specific performance was instituted on the strength of an agreement of sale dated 03.6.1982 executed by the appellant-defendant. The execution of the said agreement of sale dated 03.6.1982 marked as Ex.A-2 is not in serious controversy. However, the appellant-defendant had taken a specific stand that the said agreement of sale cannot be enforced, since the plaint schedule property is the joint family property of appellant-defendant and his sons and the sons are not parties to the said Ex.A-2 and, hence, the same is not enforceable and incidentally certain other pleas also had been raised. The trial court, on appreciation of the evidence of P.Ws.1 to 4, D.Ws.1 and 2 and also Exs.A-1 to A-17 and Ex.B-1 and Ex.B-2 came to the conclusion that in the light of the recitals in Ex.A-1 the plaint schedule property was the self acquired property of the appellant-defendant and hence non-joining of the sons in execution of

Ex.A-2 may not seriously alter the situation and accordingly decreed the suit. Aggrieved by the same, the present appeal was preferred by the unsuccessful defendant.

3. Contentions of Sri M.V. Suresh:

Sri M.V. Suresh, learned Counsel representing the appellant had taken this Court through the respective pleadings of the parties and the evidence available on record and would maintain that the circumstances under which Ex.A-2 was signed by the appellant-defendant had not been taken into consideration. The learned Counsel also would maintain that the theory of blending as laid down by the Hindu law had not been considered in proper perspective. The learned Counsel also would maintain that the conduct of the parties and also the documentary evidence apart from the oral evidence would clearly go to show that these properties were never treated as separate properties of the appellant-defendant, but always were treated as joint family members and, hence, without the sons being consenting parties to such transaction, the agreement of sale cannot be said to be binding on the other co-parceners of the joint family. While elaborating his submissions the learned Counsel also pointed out that Ex.B-1 and Ex.A-16 also had not been considered in proper perspective and the recitals of Ex.A-1 would go to show that it is not as though rights had been given only to the appellant-defendant and defendant alone, but the heirs and successors in interest also had been given the rights and this was not appreciated in proper perspective. The counsel also had taken this Court through the evidence of P.W.1, P.W.2, P.W.3 and P.W.4 and also D.W.1 and D.W.2 as well apart from the documentary evidence. While further elaborating his submissions the learned Counsel also would maintain that to substantiate the plea of blending, always documentary evidence is not necessary, even oral evidence may be sufficient. The learned Counsel laid emphasis on Ex.B-1 and Ex.A-2 and also pointed to Sections 17 and 22 of the Specific Relief Act, 1963, and would maintain that this is a case of absence of title and, hence, relief of specific performance cannot be granted. Certain admissions of P.W.1 also had been pointed out and the learned Counsel also relied on certain decisions to substantiate his submissions.

4. Contentions of Sri R.V. Prasad:

On the contrary, Sri R.V. Prasad, learned Counsel representing respondent-plaintiff would maintain that the parties are not strangers, but close relatives. The learned Counsel also laid emphasis on Ex.A-15 and Ex.A-17 as well. The learned Counsel also would point out that though the plea of blending had been taken, some positive evidence is necessary in this direction and in the absence of the same, the findings recorded by the trial court cannot be found fault. The learned Counsel also would comment on the conduct of the parties and would point out in the facts and circumstances of the case it cannot be held that Ex.A-2 is a nominal document. Though the defence taken and the evidence of D.Ws.1 and 2 is to the effect that except the executant, none else had been present, there is clear evidence on behalf of P.Ws. that the eldest son also present and

there was no protest and there was no notice. The learned Counsel also would comment that the tenancy is created only to defeat the rights of respondent-plaintiff under Ex.A-2. The sons of defendant are not necessary parties since the property is self acquired property and the learned Counsel in all thoroughness had taken this Court through the findings recorded by the trial court in this regard. Inasmuch as the plaintiff always has been ready and willing to perform his part of contract, the trial court arrived at correct conclusion in decreeing the suit.

5. Heard the counsel on record, perused the oral and documentary evidence available on record and also the findings recorded by the trial court as well.

6. In the light of the submissions made by the counsel on record, the following points arise for consideration in this appeal.

(1) Whether the findings recorded by the trial court relating to the nature of the plaint schedule property as self acquisition and not joint family property of the defendant be sustained or liable to be disturbed in the facts and circumstances of the case?

(2) Whether the relief of specific performance granted by the trial court to be confirmed or to be disturbed in the facts and circumstances of the case?

(3) Whether the findings recorded relating to the payment of Paddy by Karthika Bahula to be confirmed or to be disturbed in the facts and circumstances of the case?

(4) If so, to what relief the parties would be entitled to?

7. For the purpose of convenience, these points may be dealt together.

8. The parties hereinafter would be referred to as plaintiff and defendant as shown in O.S. No. 51 of 1983 on the file of the Subordinate Judge, Amalapuram.

9. Points 1 to 3:

The plaintiff pleaded in the plaint as hereunder:

The property described in the plaint schedule was the absolute and self- acquired property of the defendant. The said property and some other property originally belonged to the family of the defendant. The grandfather and father of the defendant partitioned their properties and the grandfather of the defendant got the suit schedule property towards his share of the family properties. Before the death of the defendant's grandfather, he executed and registered a Will dated 06.9.1956 in a sound and disposing state of mind bequeathing the schedule property to the defendant to be enjoyed by him as his self acquired and absolute property. Since then, the defendant had been in possession and enjoyment of the suit schedule property as his self acquired property. It is further averred that the defendant offered to sell the schedule property to the plaintiff and the plaintiff agreed to purchase the same for a sum of Rs. 38,000/-. As such the defendant

executed the said agreement of sale and the defendant received an advance of Rs. 10,000/- at the time of execution of the agreement. The plaintiff demanded for payment of 6 bags of paddy due by Kartika Bahula 30, but the defendant promised that it can be adjusted in the consideration to be paid to him by the plaintiff. For the second crop the defendant made the same promise. The plaintiff demanded the defendant personally and through mediators for completion of the transaction of the sale, but the defendant was postponing the same on some pretext or other. Then the plaintiff issued a telegram notice dated 02.4.1983 informing the defendant that he made ready with the balance consideration and ready to take a sale deed and also asking him to deliver possession of the property. The said telegram was returned with an endorsement that the addressee refused to receive it. Then the plaintiff got issued a notice through his advocate on 19.4.1983 informing him his readiness and willingness to take sale deed. The defendant even after receiving the notice kept quiet and did not give any reply. As the defendant was not cooperating in spite of the best efforts of the plaintiff, the plaintiff had no other option except to file the suit.

10. In the written statement filed by the defendant while denying several of the averments it was pleaded as hereunder.

The plaintiff's father-in-law Venkata Subbavadhanulu and the defendant's paternal grandfather Subbarayudu were brothers. The suit schedule property and some other property were the absolute properties of the defendant's paternal grandfather which he got the same in partition between himself and his son, the defendant's father. The grandfather of the defendant executed the will dated 06.9.1956 bequeathing his properties to the defendant. The defendant's father predeceased him. After partitioning the property in between the defendant's father and grandfather they were living together and enjoying the property jointly. The defendant was having three sons and they were members of Hindu joint family of which the defendant was the manager. The family of the defendant was having Acs.4-30 cents of property at Irusumanda besides the suit property and they had been enjoying all the properties jointly treating them as family properties. The defendant never enjoyed the schedule property separately or treated it as his separate property. He blended the said property with the joint family properties and the defendant and his sons had been enjoying the same as part of the joint family properties, as such not only the defendant but also his sons were having share in the schedule property. The plaintiff himself purchased Ac.0-61 cents in R.S. No. 117/3 of Nedunuru village which belonged to the defendant's grandfather under registered sale deed dated 04.7.1979 knowing fully that the defendant mixed the properties got by him from his grandfather with the joint family properties and treating those properties as joint family properties. But the defendant's sons, who were entitled to the property along with the defendant, did not agree for the said proposal. The plaintiff represented to the defendant that he would convince his sons to accept for the sale of the property and subscribed the signatures of the defendant to the document got prepared by him without knowing the terms and conditions therein. The

defendant did not agree for any of the terms of the agreement. The acceptance of the sons of the defendant was a condition precedent for enforcing the agreement. In spite of the attempts made by the plaintiff to make the defendant's sons agree for the sale of the property, they refused to comply on the ground that the family had no need or necessity to alienate the property. It is further stated that since the property was still in possession of the defendant, the plaintiff was not entitled to either profits or rent on the land agreed to be sold till the title was not conveyed to him by execution of a registered sale deed. The suit schedule property was not in possession of the defendant and it was in possession of the tenant Bonthu Surya Rao and the plaintiff was aware of the same. The plaintiff falsely got recited in the agreement that the defendant himself was in possession stating that if the name of the tenant was mentioned, the tenant acquires rights to purchase the property in preference to others and that he would tackle the tenant to deliver possession of the property. The tenant having come to know of the sale agreement, got issued a notice intimating his preferential right to purchase the property and demanding to sell the property to him and also filed A.T.C. No. 54 of 1983 before the Special Officer under the Tenancy Act impleading the plaintiff as a party to establish and enforce his right to purchase the property in preference to others. The defendant was not aware of the telegram notice issued by the plaintiff and he did not refuse any telegram. In spite of the notice, the defendant's sons did not agree for sale of the property, as such the agreement relied on by the plaintiff must be deemed to have been cancelled and returned to the defendant and the plaintiff should receive the advance amount of Rs. 10,000/-. The plaintiff postponed to return the agreement of sale and to receive the said amount on one pretext or other. The plaintiff himself committed breach of the terms of the agreement. The defendant also denied that the property was self-acquired of the defendant and that the defendant failed to execute the sale deed. The defendant did not agree to pay 6 bags for 1st crop or 2 bags for 2nd crop towards rent. When the land was in possession of the tenant, if really such condition was agreed, the tenant would have been atoned and the defendant would not have agreed to pay profits himself personally. The defendant's sons as well as the tenant were necessary parties to the suit. There was no cause of action to file the suit, therefore, the same is liable for dismissal.

11. A rejoinder was filed by the plaintiff with the following averments:

The defendant's father and grandfather partitioned and divided their properties and the defendant's grandfather executed a registered Will dated 06.9.1956 bequeathing his share of properties, which he got in division with his son, to the defendant to be enjoyed by him absolutely. The defendant's father predeceased his father. The allegations that the defendant's father and grandfather enjoyed the properties jointly after the division and the properties which the defendant got under the Will were not his separate properties were not correct and made for the purpose of dividing the valuable rights of the plaintiff. The plaintiff denied the allegations in paras 4 and 5 of the written statement. The defendant offered

the schedule property for sale, looked for bargains, much publicity was given and after coming to know of the intentions of the defendant to sell the property, the plaintiff approached the defendant with mediators and in the presence of mediators, the bargain was settled and some of the defendant's sons were also present at the time of bargain and voluntarily settled the bargain. The agreement was written and it was read over to the defendant and he agreed to the contents therein and after satisfying himself with the terms and conditions, including payment of 6 bags and 2 bags, he signed in the agreement. Though the plaintiff was interested to take sale deed within a short time and prepared to pay the entire consideration, the defendant wanted to take first and second crops of that year and then only agreed to deliver the property 10 months after the agreement of sale i.e., by 03.4.1983. The plaintiff insisted that he was going to pay the consideration immediately and the property should be delivered with crop. On that the mediators arranged for payment of 6 bags of paddy during the 1st crop and 2 bags of paddy for 2nd crop if raised which was accepted by the plaintiff and defendant voluntarily. It is also denied that the schedule property was in possession of the tenant by the date of agreement of sale. The defendant was personally cultivating the schedule property, he raised the crop and paying taxes and having a passbook in his name and the same passbook was given to the plaintiff which was filed along with the plaint. The plaintiff admitted that the tenant filed a petition A.T.C. No. 54 of 1983 adding the plaintiff also as a party to the petition and the same was allowed. The tenant clearly and categorically stated that he came into possession of the property during 1983-84 and he was not interested in purchasing the schedule property and he had no objection for the sale of the property in favour of the plaintiff. So, it is clear that the tenancy was set up by the defendant after execution of the sale agreement to somehow or other cause wrongful loss to the plaintiff. The agreement of sale was perfectly enforceable and the defendant was bound to execute and register the sale deed in favour of the plaintiff.

12. On the strength of these pleadings, the following issues and additional issues were settled.

- (1) Whether the plaint schedule property is the joint family property of the defendant and his sons?
- (2) Whether the sale agreement dated 03.6.1982 is not true and valid and it is not enforceable and the plaintiff is not entitled to the specific performance of the suit agreement?
- (3) Whether the defendant's sons and the tenant are necessary parties to this suit?
- (4) Whether the defendant is not liable to pay 6 bags of paddy for the 1st crop by Kartika Bahula 30 and 2 bags of paddy for the 2nd crop if raised until the sale deed is executed?
- (5) To what relief the plaintiff is entitled?

Additional issues:

(1) Whether there are any condition precedents for the enforceability of the suit agreement of sale as pleaded by the defendant?

(2) Whether the tenancy pleaded by the defendant is true and if so whether the tenant is entitled to preferential purchase and so the agreement is not enforceable?

(3) Whether the plaintiff was always ready and willing to perform his part of the contract?

13. The principal question which had been argued in elaboration is that the plaint schedule property cannot be treated as self acquired property of the defendant and it is to be taken as joint family property of the family and in the absence of the sons and without consent of the sons, Ex.A-2 cannot be enforced and the relief of specific performance cannot be maintained.

14. The plaintiff examined himself as P.W.1 who had deposed that the plaint schedule property is the self acquired property of the defendant which he got under a registered Will Ex.A-1. This witness also deposed that the defendant offered to sell the property and the plaintiff agreed to purchase the same for a total consideration of Rs. 38,000/- and paid an advance of Rs. 10,000/- and the defendant executed Ex.A-2 and it was also agreed that within ten months, the defendant to execute a sale deed after receiving balance of consideration and possession to be delivered at the time of registration of sale deed. P.W.1 also deposed that he was ready with the balance consideration and demanded the defendant to come forward and register the sale deed, but he had not chosen to do so. The plaintiff issued a telegraphic notice Ex.A-3 stating that he was ready and willing to pay the remaining consideration and also demanded for execution of the sale deed and he had refused to receive Ex.A-3 and Ex.A-4. Later P.W.1 got issued legal notice, Ex.A-5, through his advocate demanding the defendant to execute sale deed repeating the same stand. The defendant received the said notice under Ex.A-6 and had not chosen to give any reply to the said notice.

15. In support of the evidence of P.W.1, the evidence of P.W.2, P.W.3 the attestor and P.W.4 the scribe is also available on record. Though Ex.A-2 and the execution thereof not in serious controversy, by way of abundant caution the plaintiff examined himself as P.W.1 and also examined P.W.2, P.W.3 and P.W.4 as well. It is pertinent to note that these witnesses deposed that the eldest son of the defendant is also present during the transaction. However, the evidence of D.W.1 and D.W.2 appears to be otherwise.

16. Elaborate submissions were made on the aspect whether these are to be taken as self acquired properties or joint family properties of the defendant in the light of Ex.A-1, Ex.B-1, Ex.A-16 and Ex.A-17 as well. To prove the readiness and willingness, the plaintiff filed Ex.A-13 and Ex.A-14, the bank passbooks. On appreciation of the evidence available on record on the aspect of readiness and

willingness to perform his part of contract, the trial court came to the conclusion that the plaintiff has been always ready and willing to perform his part of contract.

17. The learned Counsel representing the appellant-defendant placed strong reliance on the decision of the Full Bench of Madras High Court in Baluswami Aiyar Vs. Lakshmana Aiyar and Others, wherein it was held as hereunder:

Where the managing member of a joint Hindu family enters into a contract to sell an item of family property and that contract is not proved to be binding on the other members specific performance cannot be granted so as to direct execution of a conveyance of the entire property but it is open to the purchaser to get specific performance so far as the share of the vendor is concerned on payment of the consideration agreed upon without any abatement.

Further reliance was placed on the decision in M. Veera Raghaviah Vs. M. China Veeriah and Another, wherein the Division Bench of the A.P. High Court held as hereunder.

Allowing the amendment is one thing and granting the relief therein is another. The first relief sought is in regard to specific performance of the agreement to the extent to which the 1st defendant is capable of. We cannot grant this prayer not only for the reason that Ex.A-1 is a collusive document brought into existence by the plaintiff and the 1st defendant, but also for the reason that even the four acres of the land is not the exclusive property of the 1st defendant. It is the joint property of the two defendants. Therefore, we reject this relief in regard to specific performance, even in respect of the four acres or even in regard to the share which the 1st defendant might get in the four acres if partition takes place.

Strong reliance was placed on the decision of the Apex Court in Balmukand Vs. Kamla Wati and Others, wherein at paras 6, 7, 9, 10 and 11 the Apex Court observed as hereunder.

In support of his contention he has placed reliance on three decisions. The first of these is Jagat Narain and Another Vs. Mathura Das and Others . That is a decision of the Full Bench of that High Court in which the meaning and implication of the term "benefit of the estate" as used with reference to transfers made by a Manager of a joint Hindu family was considered. The learned Judges examined a large number of decisions, including that in Hunooman Persaud Pandey v. Babooee Mundraj Koonweree 6 Moo Ind App 393 (PC); Sahu Ram Chandra v. Bhup Singh ILR 39 All 437 : AIR 1917 PC 61 and Palaniappa Chetty v. Daivasikamony Pandara Sannadhi 44 Ind App 147 : AIR 1917 PC 33 and held that transactions justifiable on the principle of benefit to the estate are not limited to those which are of a defensive nature. According to the High Court, if the transaction is such as a prudent owner of property would, in the light of circumstances which were within his knowledge at that time, have entered into, though the degree of prudence required from the Manager would be a little greater than that expected of a sole owner of property (sic). The facts of that

case as found by the High Court were:

...the adult managers of the family found it very inconvenient and to the prejudice of the family's interests to retain property, 18 or 19 miles away from Bijnor, to the management of which neither of them could possibly give proper attention, that they considered it to the advantage of the estate to sell that property and purchase other property more accessible with the proceeds, that they did in fact sell that property on very advantageous terms, that there is nothing to indicate that the transaction would not have reached a profitable conclusion.... (p. 979 of ILR All): (at pp. 457, 458 of AIR):

We have no doubt that for a transaction to be regarded as one which is of benefit to the family it need not necessarily be only of a defensive character. But what transaction would be for the benefit of the family must necessarily depend upon the facts of such case. In the case before the Full Bench the two managers of family found it difficult to manage the property at all with the result, apparently, that the family was incurring losses. To sell such property and that too on advantageous terms and to invest the sale proceeds in a profitable way could certainly be regarded as beneficial to the family. In the present case there is unfortunately nothing in the plaint to suggest that Pindidas agreed to sell the property because he found it difficult to manage it or because he found that the family was incurring loss by retaining the property. Nor again is there anything to suggest that the idea was to invest the sale proceeds in some profitable manner. Indeed there are no allegations in the plaint to the effect that the sale was being contemplated by any considerations of prudence. All that is said is that the fraction of the family's share of the land owned by the family bore a very small proportion to the land which the plaintiff held at the date of the transaction. But that was indeed the case even before the purchase by the plaintiff of the 23/120th share from Devisahai. There is nothing to indicate that the position of the family vis--vis their share in the land had in any way been altered by reason of the circumstance that the remaining 17/20th interest in the land came to be owned by the plaintiff alone. Therefore, even upon the view taken in the Allahabad case the plaintiff cannot hope to succeed in this suit.

The next case is Sital Prasad Singh and Others Vs. Ajablal Mander and Others, . That was a case in which one of the questions which arose for consideration was the power of a manager to alienate part of the joint family property for the acquisition of new property. In that case also the test applied to the transaction entered into by a manager of a joint Hindu family was held to be the same, that is, whether the transaction was one into which a prudent owner would enter in the ordinary course of management in order to benefit the estate. Following the view taken in the Allahabad case the learned Judges also held that the expression "benefit of the estate" has a wider meaning than mere compelling necessity and is not limited to transactions of a purely defensive nature. In the course of his judgment Harries, C. J. observed at. P. 311 (of ILR Pat): (at p. 372 of AIR):

...the karta of a joint Hindu family being merely a manager and not an absolute owner, the Hindu law has, like other systems of law, placed certain limitations upon his power to alienate property which is owned by the joint family. The Hindu law givers, however, could not have intended to impose any such restriction on his power as would virtually disqualify him from doing anything to improve the conditions of the family. The only reasonable limitation which can be imposed on the karta is that he must act with prudence and prudence implies caution as well as foresight and excludes hasty, reckless and arbitrary conduct.

After observing that the transaction entered into by a manager should not be of a speculative nature the learned Chief Justice observed:

In exceptional circumstances, however, the court will uphold the alienation of a part of the joint family property by a karta for the acquisition of new property as, for example, where all the adult members of the joint family with the knowledge available to them and possessing all the necessary information about the means and requirement of the family are convinced that the proposed purchase of the new property is for the benefit of the estate.

These observations make it clear that where adult members are in existence the judgment is to be not that of the Manager of the family alone but that of all the adult members of the family, including the manager. In the case before us all the brothers of Pindidas were adults when the contract was entered into. There is no suggestion that they agreed to the transaction or were consulted about it or even knew of the transaction. Even, therefore, if we hold that the view expressed by the learned Chief Justice is right it does not help the plaintiff because the facts here are different from those contemplated by the learned Chief Justice. The other Judge who was a party to that decision: Manohar Lal J., took more or less the same view.

Thus, as we have already stated, that for a transaction to be regarded as of benefit to the family it need not be of defensive character so as to be binding on the family. In each case the court must be satisfied from the material before it that it was in fact such as conferred or was reasonably expected to confer benefit on the family at the time it was entered into. We have pointed out that there is not even an allegation in the plaint that the transaction was such as was regarded as beneficial to the family when it was entered into by Pindidas. Apart from that we have the fact that here the adult members of the family have stoutly resisted the plaintiff's claim for specific performance and we have no doubt that they would not have done so if they were satisfied that the transaction was of benefit to the family. It may be possible that the land which was intended to be sold had risen in value by the time the present suit was instituted and that is why the other members of the family are contesting the plaintiff's claim. Apart from that the adult members of the family are well within their rights in saying that no part of the family property could be parted with or agreed to be parted with by the Manager on the ground of alleged benefit to the family without consulting them. Here, as already stated, there is no allegation of

any such consultation.

In these circumstances we must hold that the courts below were right in dismissing the suit for specific performance. We may add that granting specific performance is always in the discretion of the court and in our view in a case of this kind the court would be exercising its discretion right by refusing specific performance.

No doubt Pindidas himself was bound by the contract which he has entered into and the plaintiff would have been entitled to the benefit of Section 15 of the Specific Relief Act which runs thus:

Where a party to a contract is unable to perform the whole of his part of it, and the part which must be left unperformed forms a considerable portion of the whole or does not admit of compensation in money, he is not entitled to obtain a decree for specific performance. But the court may at the suit of the other party, direct the party in default to perform specifically so much of his part of the contract as he can perform, provided that the plaintiff relinquishes all claim to further performance and all right to compensation either for the deficiency, or for the loss or damage sustained by him through the default of the defendant.

However, in the case before us there is no claim on behalf of the plaintiff that he is willing to pay the entire consideration for obtaining a decree against the interest of Pindidas alone in the property. In the result the appeal fails and is dismissed with costs.

Further reliance was placed on the decision in *Khanderao Subbarao Nadagir v. Hulagavva and Ors.* AIR 2003 Kar 354 wherein it was held that where in relation to joint family property a sale agreement was executed by one co-sharer and the share of the co-sharer in property was very small, agreement though binding and enforceable to extent of his share, it was not feasible to direct specific performance of entire property as property could not be divided into such small portions and exercise of discretion by trial court in not decreeing suit even to extent of his share is therefore proper.

18. The recitals of Ex.A-1 being self explanatory need not be dealt with in elaboration. It is pertinent to note if the recitals of Ex.A-2 to be carefully examined, the nature of the property as self acquisition had been asserted by referring to how the defendant got the property. In the cross-examination of P.W.1 no doubt P.W.1 admitted that the defendant is having three sons and the properties of the defendant are joint and P.W.1 does not know whether the defendant and his sons are separated. This witness also deposed that defendant is the manager of the family by the date of Ex.A-2. This witness also deposed that he does not know the transaction covered by Ex.A-15. He was not present when Ex.A-15 was executed. This witness also deposed that it is true that he purchased Ac.0-60 cents of property at Nedunuru village from defendant and he obtained sale deed from the defendant and his sons in respect of the said property. The defendant got the property under Ex.A-1 which he purchased from

the defendant and obtained sale deed. The sale deed in his favour recites D-1 got the property under Ex.A-1 and his sons were entitled to the property and were enjoying. This witness denied certain suggestions. This witness also deposed that Ex.B-1 is the registration extract of the sale deed. This witness also deposed that he does not know the talks between the defendant and his sons in respect of Ex.A-2 transaction. Specifically D.W.1 deposed that it is not true to say that he was asked to advise as the sons of the defendant refused to sell the property under Ex.A-2 and it is not true to say that he obtained Ex.A-2 representing that he would get it cancelled if the sons did not agree for the sale of the property and that he will make use of Ex.A-2 to compel the sons to sell the property. It is not true to suggest that Ex.A-2 is nominal. This witness also denied several suggestions.

19. As also referred to supra, the execution of Ex.A-2 is not in serious controversy and how the bargain was settled and the earnest money was paid by P.W.1, this aspect had been deposed by P.W.2, P.W.3 and P.W.4 as well and there is no serious controversy relating to these aspects. No doubt, D.W.1 deposed about the sale deed executed in favour of the plaintiff, the original of Ex.B-1, and this witness deposed that the plaintiff is aware that the defendant and his sons are enjoying the property jointly. This witness specifically deposed that his sons were not present when he signed Ex.A2 and the suit property was in possession of Bonthu Surya Rao as a tenant and this witness deposed about filing of A.T.C. This witness also deposed that he did not give reply to the notice, as his sons had not agreed to sell the property and in 1980 the suit property worth Rs. 60,000/- per acre and Ex.A2 was nominally executed. In the cross- examination of D.W.1 this witness deposed that Ex.A-1 properties were given to him with all rights to gift, sell and enjoy even by the sons and also grandsons as per the wishes of the grandfather. This witness also deposed relating to Ex.B-1 and Ex.A-1. This witness further deposed that it is true that he sold Ac.0-60 cents of land to one Inappudi Rajakrishnararaju under a registered sale deed dated 04.7.1979 and the registration extract is Ex.A-16. It is true that the property covered under Ex.A-16 is the share of his father and inherited by him. P.W.1 insisted the signature of his sons in Ex.B-1 on the date of execution and registration as they were present at Sub-Registrar's office in connection with the execution of Ex.A-16. This witness also deposed that it is true that he sold the property covered by the will under Ex.A-15. This witness also deposed about P.W.2, P.W.3 and P.W.4 as well and he does not know P.W.4 is the scribe of Ex.A-15, Ex.A-16 and Ex.B-1 and he had got enmity with P.W.2 and P.W.3. This witness also deposed that it is not true to suggest that P.W.1 issued a telegram notice Ex.A-3 demanding execution of sale deed and he refused and he does not remember that he had issued any reply and he cannot give reasons also. This witness no doubt deposed that it is not true to say that he set up Bonthu Surya Rao after filing of the suit to give a go-bye to Ex.A-2.

20. D.W.2 is the eldest son of D.W.1 who no doubt deposed about Ex.B-1 and Ex.A-16 sale deeds and this witness also deposed that his father sold the

property under Ex.A-15 and they did not join execution of Ex.A-15, but the vendee obtained their consent by taking document on 5 rupees stamp paper. The suit property is also joint family property. There is no necessity to sell the property by D.W.1. This witness also deposed that P.W.2 is the viyanka of P.W.1 and brother-in-law. P.W.2 is not cordial with them. Ex.B-1 and Ex.A-16 were written and executed at the Sub-Registrar's office, Amalapuram, and he was not present when Ex.A-2 was executed. The stand taken by D.W.1 and D.W.2 to the effect that none else were present at the time of Ex.A-2 had not been accepted by P.W.1, P.W.2, P.W.3 and P.W.4 as well and the presence of the eldest son had been deposed. In the cross-examination this witness deposed that he does not know whether the property covered under Ex.A-2 is part of the property covered under Ex.A-1. This witness further deposed that it is true that Ex.A-16 property is the property fell to the share of his father in partition with his grandfather and it is true that D.W.2 and his brothers came to the Sub- Registrar's office for execution and registration of Ex.A-16 and Ex.B-1. This witness also deposed that he does not remember whether it is recited in Ex.A-15 that the property covered thereunder is self acquisition and he did not see who scribed Ex.B-1 and Ex.A-16. This witness also answered several other questions relating to Ex.B-1, Ex.A-1 and Ex.A-2 as well and denied certain suggestions.

21. In the light of the recitals of Ex.A-1 and Ex.A-2 wherein specifically the self acquisition of D.W.1 had been asserted coupled with Ex.A-15 and also several other circumstances relating to the partition and nature of the properties, especially in the light of Ex.A-16 and Ex.B-1, findings in detail had been recorded by the trial court and ultimately the trial court came to the conclusion that they are the separate self acquired properties of the defendant and having entered into the transaction for the reasons best known subsequent thereto the defendant had gone back. From the evidence available on record, this Court also is satisfied that this is not a case where Section 17 of the Specific Relief Act, 1963 can be made applicable.

22. The following under noted are certain of the essential aspects by virtue of which it cannot be said that the findings recorded by the trial court are unsustainable.

- a) The clear evidence of P.W.1 coupled with evidence of P.W.2, P.W.3 and P.W.4 as well and also the recitals of Ex.A1, Ex.A-2 and Ex.A-15.
- b) Further the recitals in Ex.A-16 and Ex.B-1 also to be considered and the nature of the properties, the properties which had fallen in partition and the properties got by virtue of Ex.A-1, the distinction shall be drawn.
- c) Further on the aspect of blending there is no acceptable evidence and, especially in the light of recitals of Ex.A-15 and also clear evidence of P.Ws.1 to 4, the stand taken by the defendant cannot be accepted.
- d) Apart from this aspect of the matter, non-reply on the part of the defendant, both to the telegraphic notice and also the advocate's notice, should be taken

into consideration.

e) Yet other important aspect is that D.W.1 and D.W.2 had taken a stand that none else were present at the time of execution of Ex.A-2, but, the evidence of P.Ws.1 to 4 being otherwise to the effect that the eldest son of D.W.1 also was present.

23. The conduct of the parties if carefully examined would go to show that having entered into Ex.A-2 transaction with a specific recital that the same as self acquisition of D.W.1, subsequently thought of going back on the agreement of sale Ex.A-2. Hence, in the light of the same, the findings recorded by the trial court cannot be found fault in any way and accordingly the said findings are hereby confirmed. However, it is pertinent to note that though certain findings had been recorded relating to the claim of the Paddy while answering issue No. 5, except decreeing the suit with costs as prayed for and directing the defendant to execute and register the sale deed and deliver possession of the suit property within a period of three months from the said date, no specific findings had been recorded relating to the payment of Paddy, though certain findings had been recorded at para 15 while answering issue No. 4. Hence, in the light of the facts and circumstances and also in the light of the evidence available on record, this Court is of the considered opinion that as far as the relief relating to the claim of Paddy is concerned since the relief was not granted by the trial court, though certain findings had been recorded in para 15, in the light of the relief granted in para 16, this Court is not inclined to grant the said relief. However, the findings relating to the granting of specific relief on the strength of the agreement of sale and direct to execute a registered sale deed and delivery of possession of the plaint schedule property, since the plaintiff is entitled for these reliefs the said findings are hereby confirmed.

24. Point No. 4:

In the result, the findings of the trial court are hereby confirmed and the appeal is dismissed to the extent confirming the decree made by the trial court directing the defendant to execute a registered sale deed and deliver possession of the plaint schedule property on compliance of the other terms and conditions of the contract and as far as the relief relating to the claim of Paddy is concerned since no relief as such had been granted by the trial court while decreeing the suit, this Court is not inclined to modify the same.

25. Subject to the above observation, the appeal being devoid of merit, the same shall stand dismissed, however, in view of the close relationship between the parties, the parties to the litigation to bear their own costs.