

(2007) 08 AP CK 0027

In the Andhra Pradesh High Court

Case No : Appeal Suit No's. 2106 of 1991 and 421 of 1993

Badiga Phanibhushana Rao and Another

APPELLANT

Vs

Mathi Venkata Krishna Kutumba Rao and Another

Talluri Nagaraju Vs Mathi Venkata Krishna Kutumba Rao and
Others

RESPONDENT

Date of Decision : 10-08-2007

Acts Referred:

Transfer of Property Act, 1882 — Section 41

Citation : (2007) 08 AP CK 0027

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

Bench : Single Bench

Advocate : T. Dasaratharamayya and Subba Rao, for the Appellant; O. Manohar Reddy, for the Respondent

Final Decision : Allowed

Judgement

P.S. Narayana, J.—These appeals had been preferred by the unsuccessful defendants 3 and 4 and unsuccessful 1st defendant respectively being aggrieved of the decree and judgment made in OS No. 281 of 1984 on the file of Subordinate Judge, Gudivada, dated 24.10.1991. The 1st respondent in both these appeals is the plaintiff in the said suit.

2. The suit was instituted praying for the relief of specific performance of contract of sale, for future profits and the other reliefs. Originally the suit was instituted as against defendants 1 to 3. 2nd defendant, the father of 1st defendant, being no more, and since he died during the pendency of the suit, 4th defendant was added as the legal representative of deceased-2nd defendant by an order dated 18.8.1986 in IA No. 889 of 1986. 4th defendant is the son of 1st defendant. 3rd defendant is the purchaser of the self-same property. In the light of the respective stands taken by the parties and having settled the issues, the learned Subordinate Judge, Gudivada having recorded the evidence of PWs.1 and 2, DWs.1 to 5, having marked the documents Exs.A1 to A6 and Exs.B1 to B30, after

recording certain findings on appreciation of evidence available on record, came to the conclusion that Ex.A1, the document in controversy, to be taken as an agreement of sale and the same is enforceable and accordingly decreed the suit with costs directing the defendants to execute the registered sale deed in pursuance of the agreement of sale Ex.A1 and the plaintiff to deposit the balance of sale consideration into Court within 3 months from the date of the said decree and however, the claim of the plaintiff for future profits had been dismissed. Aggrieved by the same, these two appeals had been preferred. Contentions of Sri Subba Rao Representing Sri. T. Dasaratha Ramayya

3. Sri Subba Rao, learned Counsel representing the appellants in these appeals had taken this Court through the respective pleadings of the parties and the evidence available on record and would maintain that even on a reading of Ex.A1 it is clear that it is not a concluded contract and on the strength of such document, the relief of specific performance cannot be granted. The learned Counsel also pointed out that even by a cursory glance of the said document Ex.A1 it is clear that Rs.800/- had been altered to Rs.8,000/- and the word "Krayam" also had been introduced and thus there is material alteration. The learned Counsel also pointed out that the alleged recital in Ex.A1 would go to show that definitely it is not a concluded contract since for finalisation of the same, 1st defendant to consult his father 2nd defendant and then take a final decision in this regard. The learned Counsel also while further elaborating his submissions pointed out that the evidence of PW.2 is more or less formal in nature and except the evidence of PW.1, there is no other evidence available on record in relation to Ex.A1. While further elaborating his submissions the counsel pointed out to the nature of the property involved and would maintain that this is a separate self-acquired property of 2nd defendant and 1st defendant had no authority to enter into the said transaction under Ex.A1 on behalf of 2nd defendant and at any rate 2nd defendant is not bound by the same. The learned Counsel also further explained relating to the other oral and documentary evidence available on record Exs.B1 and B19 and further the learned Counsel would maintain that at the best even if this receipt Ex.A1 to be taken as a contract, it would be a contingent contract and the same cannot be enforceable. The counsel also placed strong reliance on certain decisions to substantiate his submissions. CONTENTIONS OF SRI O.MANO HAR REDDY

4. Sri O.Manohar Reddy, learned Counsel representing 1st respondent-plaintiff in both these appeals would maintain that the sequence of events and the series of dates if carefully examined in the light of oral and documentary evidence available on record, it is clear that the 3rd defendant is not a bona fide purchaser at all and knowing fully well about Ex.A1 transaction, 3rd defendant entered into this speculative transaction. The counsel also pointed out the discrepancies in the oral evidence available on record in relation to Ex.B19. The learned Counsel also would submit that here is a case where literate 1st defendant entered into this transaction with the plaintiff-PW.1. The counsel also would maintain that the evidence of PW.1 is clear and categorical on the aspect that in the light of the

direction issued by 2nd defendant only, PW.1 approached 1st defendant and entered into Ex.A1 and in view of the same the implied agency to be inferred especially in the light of the close relationship between these parties, defendants 1 and 2 as such, and hence, it may have to be taken that the 1st defendant acted not only on his behalf but also on behalf of 2nd defendant and therefore Ex.A1 to be taken as binding as against the 2nd defendant also. The counsel also would maintain that the alleged relinquishment had not been established and this property being the ancestral property and 1st defendant who had been looking after the affairs of the family, he had a right to enter into Ex.A1 and 2nd defendant being an old man at the relevant point of time is also bound by the said transaction. The learned Counsel had taken this Court through the contents of Ex.A1 and would explain that absolutely there is no material alteration at all in Ex.A1 and an amount of Rs.8,000/- in fact had been paid and even if the word or expression "Krayam" to be disbelieved having been introduced subsequently, this would not seriously alter the situation and when that being so, Ex.A1 to be held to be binding at least to the extent of the share of the 1st defendant. At any rate the counsel would maintain that in a suit for specific performance the conduct of the parties also to be taken into consideration and the conduct of the defendants being totally not bona fide, the findings recorded by the trial Court to be confirmed.

5. Heard both the learned Counsel perused the oral and documentary evidence available on record and the findings recorded by the trial Court as well.

6. The parties hereinafter would be referred to as plaintiff and defendants hereinafter for the purpose of convenience. It is needless to say that the 2nd defendant is no more and the 4th defendant was brought on record as his legal representative and the respective appeals were preferred by defendants 1 and 4, and 3rd defendant as already specified above and 3rd defendant is a purchaser.

7. Before taking up the further discussion at the appropriate stage, it may be appropriate to have a look at the respective pleadings of the parties, the issues settled, the evidence available on record and the findings recorded by the learned Subordinate Judge, Gudivada in nutshell. PLEADINGS OF THE PARTIES

8. The averments made in the plaint are as hereunder:

The plaintiff is a resident of Kowtavaram village. The tiled house and shops situated in about 600 square yards of site and fully described in the schedule hereto at Kowtavaram belongs to defendants 1 and 2. The first and defendant is the only undivided son of the second defendant and they are members of the joint Hindu family. The 2nd defendant has become very old and the 1st defendant assumed management of all the family affairs. The 2nd defendant's wife died 4 years back and he has been staying at Chaitanyapuri, Hyderabad along with the family of the 1st defendant and the 1st defendant has been employed in Kurnool. The schedule property was let out to tenants and house portion and he was also inimically disposed towards the plaintiff. The said

transaction was not a real transaction and the plaintiff believes that it was a nominal and fraudulent one obtained by the 3rd defendant, with the full knowledge of the plaintiff's agreement of sale as per the letter dated 19.10.1984.

Thereupon the plaintiff came back and got issued a registered notice through his advocate at Gudivada to the defendants on 2.11.1984 demanding defendants 1 and 2 to execute a regular conveyance after receiving the balance of sale price and that the plaintiff is ready and willing to perform his part of the contract. The plaintiff also informed the 3rd defendant not to enter into any sale transaction in defiance of the plaintiff's agreement of sale and that his alleged agreement is a collusive one. The defendants received the notices and the 1st defendant got issued a reply notice on 16.11.1984 through his advocate at Kurnool to the plaintiff's advocate with false allegations. He falsely alleged that the schedule property was the self-acquisition of his father, the 2nd defendant, and that he has no right in the property and he also alleged that the 2nd defendant was quite hale and healthy. The 1st defendant admitted the execution of the letter dated 19.10.1984 but falsely alleged that the said letter is subject to acceptance of his father and that the plaintiff insisted to give such a letter and that only Rs.800/- was given as advance and not Rs.8,000/-. He also falsely alleged that some other officers were present when Rs.800/- was given. All such allegations are made to get over and to nullify the agreement validly entered into on 19.10.1984. The said letter shows that it is not subject to any acceptance of the 2nd defendant and that the details of the contract namely the time for performance and other things will be done after consulting with the 2nd defendant. Being a responsible government servant, the 1st defendant would not have accepted any amount if he had no authority to settle the price or receive the advance. As stated above, it is the 1st defendant alone that is managing the family affairs since 10 years as his father became debilitated and infirm due to old age. Under these circumstances, the plaintiff is obliged to file this suit for specific performance of the agreement of sale dated 19.10.1984 executed by the 1st defendant not only for himself but also on behalf of the 2nd defendant as the managing member of the joint family and also as the agent of the 2nd defendant. The said agreement is perfectly valid and binding on defendants 1 and 2 and the 3rd defendant, if he has agreed to enter into any bargain, it is only with full knowledge of the plaintiff's contract and he cannot validly obtain any registered sale deed from defendants 1 and 2. As the plaintiff's visit to Kurnool and purchase of the schedule property has become very well known in Kowtavaram village and in particular as the plaintiff also informed the fact to the 3rd defendant after his return from Kurnool, the 3rd defendant has got full knowledge of the plaintiff's agreement of sale dated 19.10.1984. Even if the 3rd defendant obtains any sale deed, all the defendants must execute a proper conveyance in favour of the plaintiff as per the agreement dated 19.10.1984. The plaintiff has been ready and willing to pay the balance of price and take a regular conveyance from defendants 1 and 2. The plaintiff owns 10 acres of wet land as well as a terraced house at Kowtavaram and he has got the capacity to pay the

entire consideration at any time. The plaintiff also claims delivery of vacant possession of the schedule property and future profits. If from any reason specific performance cannot be granted in the direction, plaintiff claims refund of Rs.8,000/- with interest and damages of Rs.20,000/-.

The plaintiff is not aware of the execution of the Will by the deceased D-2 in favour of D-4. Any how he is added as legal representative of 2nd defendant without prejudice to the contentions of the plaintiff. The plaintiff schedule property is not self-acquired property of 2nd defendant and it is joint property of defendants 1 and 2. If there is any bequest by way of Will in favour of 4th defendant by 2nd defendant, it will be effective only with respect to the half share of 2nd defendant and 2nd defendant is not entitled to bequest the entire plaintiff schedule property.

AVERMENTS MADE IN THE WRITTEN STATEMENT OF 1ST DEFENDANT

This defendant submits that the suit itself is not maintainable for reasons more than one. Plaintiff is not entitled either for specific performance of the alleged agreement of sale dated 19.10.1984 or for recovery of possession or for future profits or for any relief from this defendant.

This defendant submits that to the registered notice issued on behalf of the plaintiff on 2.11.1984, this defendant got a reply registered notice issued by his Advocate Sri K.V.Chalapathi Rao of Kurnool with a true statement of facts and this defendant prays that the contents of the said reply registered notice may be read as part of this written statement. This defendant also prays that the written statement filed by the defendants 2 and 3 may be read as part of this written statement.

It is absolutely false to state that the plaintiff schedule property is the joint family property of this defendant and the 2nd defendant. It is absolutely false to state that though the 2nd defendant is the father and Kartha of the joint family, this defendant alone has been managing the affairs of the joint family including the management of the plaintiff schedule house etc. This defendant submits that the plaintiff schedule property is the separate and self-acquired property of the 2nd defendant and was always treated as such by him. This defendant submits that the 2nd defendant worked as Homeo Physician at Kothavaram from the year 1930 and he earned a good lot of money on the said practice. He also did business in brick kiln i.e., manufacture and sale of bricks and in that business also he earned a satisfactory income.

With that income the 2nd defendant acquired properties at Korraguntapalem and by exchanging the said lands, the 2nd defendant acquired the plaintiff schedule house as well as 300 square yards relating to the said house. This defendant also submits that the northern 300 square yards of site out of the schedule property, though it was obtained in the partition between the 2nd defendant and his brother, was not income yielding and this defendant chose to relinquish his share in the said 300 square yards of site lying to the north of the tiled house in the

year 1972 in lieu of the 2nd defendant supplying his own self-acquired funds of nearly Rs.20,000/- to this defendant for the construction of a building of his own in Hyderabad-East in Survey No. 179, plot No. 2 of an extent of 500 square yards.

This defendant submits that the plaint schedule shops were constructed by the 2nd defendant with his own earnings and no portion of the joint family property or income was utilized by the 2nd defendant for the construction of the said shops. This defendant therefore submits that the entire schedule property is the separate and self-acquired property of the 2nd defendant and was treated as such by him and also by this defendant. This defendant has absolutely no share, right or interest in the schedule property.

It is absolutely false to state that this defendant is the manager of the joint family and that this defendant has been authorized to act on behalf of the 2nd defendant.

This defendant states that he is an employee in the State Government and joined in the service in the year 1966 in the Department of Bureau of Economics and Statistics and worked at various places far away from Kowtharam all these years from 1966. Whereas the 2nd defendant confined to stay at Kowtharam till about the end of 1982, this defendant humbly submits that he executed a General Power of Attorney in favour of 2nd defendant on 19.5.1976 enabling the 2nd defendant to execute sale deed in respect of 1 acre 14 cents in RS No. 79/5-A of Kowthavaram village. The above property was the last item of the joint family property of this defendant and the 2nd defendant and the same was sold to Sri Y.Pandu Ranga Rao by the 2nd defendant for himself and as the Power of Attorney Holder of this defendant under a registered sale deed dated 4.7.1977.

This defendant humbly submits that the 2nd defendant alone has been dealing with and managing the schedule property by leasing out portions of the same to the tenants, collecting rents from tenants and enjoying the rents. 2nd defendant alone has been paying house tax to the Gram Panchayat.

It is absolutely false to state that this defendant quoted a price of Rs.50,000/-, that the 2nd defendant directed the plaintiff and his mother to approach this defendant and that they accordingly went to Kurnool on 19.10.1984.

This defendant humbly submits that he was not informed by the plaintiff and his mother that they approached the 2nd defendant and the 2nd defendant was not inclined to sell the schedule property by that time. This defendant humbly submits that the plaintiff and his mother misrepresented the facts to this defendant, offering an amount of Rs.800/- (eight hundred only) tentatively and obtained a receipt subject to the approval, consent and ultimate decision of the 2nd defendant. This defendant humbly submits that the receipt itself clearly shows that the plaintiff tampered with the material portions of it by altering the figure 800 to 8000/- and words Enimivandalu to Enimidi Velu and inserting the letters Krayam in the said letter before the registered notice. Thus the fabricated

and forged and materially altered letter discloses the case of the plaintiff that this defendant clearly stated that the 2nd defendant is to be consulted and then only a decision with regard to the sale of the schedule property will be taken. It is futile for the plaintiff to fraud the said receipt as an agreement of sale which was never intended to be an agreement of sale and in fact this defendant was defrauded by the plaintiff and his mother.

This defendant humbly submits that as stated already, it was intended by both the plaintiff and this defendant, that this defendant should act only as get together or intermediary between the plaintiff and the 2nd defendant. It is absolutely false to state that the plaintiff went to Hyderabad on 28.10.1984 and brought an amount of Rs.20,000/-. This defendant submits that the 3rd defendant approached the 2nd defendant on 28.10.1984 offered a sale price of Rs.50,000/-.

This defendant humbly submits that he met his father at Hyderabad on 25.10.1984 and the 2nd defendant i.e., father of this defendant, categorically told that he had refused to sell the schedule property to the plaintiff. This defendant humbly submits that after the 2nd defendant refused to sell the house, this defendant immediately obtained an account payee demand draft on 26.10.1984 in Demand Draft No. 14915288 dated 26.10.1984 on Andhra Bank, Kowthavaram and sent the same to the plaintiff with a covering letter. This defendant submits that the plaintiff received the said demand draft and covering letter but he failed to mention the same in his registered notice as well as in the plaint. This defendant therefore submits that there is no agreement at all. Plaintiff suppressed the material facts.

AVERMENTS MADE IN THE WRITTEN STATEMENT OF DEFENDANTS 2 AND 3

9. The following averments were made in the written statement of defendants 2 and 3:

These defendants state that the suit itself is not maintainable for reasons more than one. Plaintiff is not entitled either for specific performance of the alleged agreement of sale dated 19.10.1984, or for recovery of possession or for future profits or for any relief from these defendants. To the registered notice issued on behalf of the plaintiff on 2.11.1984, the 2nd defendant got a reply registered notice issued by his advocate Sri T.Dasaradharamayya of Hyderabad with a true statement of facts and these defendants pray that the contents of the said reply registered notice may be read as part of this written statement.

The various allegations made by the plaintiff in the plaint that the plaint schedule property is the joint family property of 1st defendant and 2nd defendant, that though the 2nd defendant is the father and Kartha of the joint family, the 1st defendant alone has been managing the affairs of the joint family including the management of the plaint schedule house etc., are absolutely false and concocted by the plaintiff for the purpose of propping up the false claim, made in the plaint are not true and correct. These defendants humbly state that the plaint

schedule property is the separate and self-acquired property of the 2nd defendant and was always treated as such by him. These defendants state that the schedule property is not the joint family property of defendants 1 and 2. The 2nd defendant worked as Homeo Physician at Kotharam from about the year 1930 and he earned a good lot of money on the said practice. He also did business in brick kiln i.e., manufacture and sale of bricks and in that business also he earned a satisfactory income. With that income he acquired properties at Korraguntapalem by exchanging the said lands of Korraguntapalem village, the 2nd defendant acquired the plaint schedule house as well as 300 square yards relating to the said house. The northern 300 square yards of site out of the schedule property, though it was obtained in the partition between the 2nd defendant and his brother and allotted to the share of the 2nd defendant was not income yielding and the 1st defendant chose to relinquish and in fact relinquished his share in the said 300 square yards of site lying to the north of the tiled house in the year 1972 in lieu of the 2nd defendant supplying his own self-acquired funds of nearly Rs.20,000/- to the 1st defendant, for the construction of a building of his own, in his own site in Kothapeta, Hyderabad-East in S. No. 179 plot No. 2 of an extent of 500 square yards acquired by the 1st defendant with his own savings under a sale deed dated 8.11.1966. The four shops lying to the east of the northern 300 square yards of site, out of the schedule property, and the three shops on the eastern side of the tiled house, situated on the southern side of the schedule property were all constructed by the 2nd defendant with his own earnings and no portion of the joint family property or income was utilized by the 2nd defendant for the construction of the said shops. These defendants, therefore, state that the entire schedule property is the separate and self-acquired property of the 2nd defendant and was treated as such by 2nd defendant and 1st defendant. The 1st defendant has absolutely no share, right or interest in the schedule property and every one including the plaintiff knows about these significant facts.

The contentions raised by the plaintiff that the 1st defendant is manager of the joint family, that the 1st defendant has been authorized to act on his behalf, that in fact the 1st defendant was managing it etc., are equally false and set up by the plaintiff for the purpose of filing the suit.

These defendants state that the 1st defendant is an employee in the State Government and joined in the service in the year 1966 in the Department Bureau of Economics and Statistics and worked at various places in the state of Andhra Pradesh far away from Kowtharam all these years from 1966, whereas the 2nd defendant confined himself to stay at Kowtharam till about the end of 1982 and has been looking after his own affairs. In this connection it is submitted that an extent of 1 acre 14 cents in RS No. 79/5-A of Kowtharam village was a last item of the family properties of defendants 1 and 2 and the same was sold to Sri Y.Panduranga Rao by the 2nd defendant for himself and as the power of attorney holder of the 1st defendant under a registered sale deed dated 4.7.1977. The General Power of Attorney was executed by the 1st defendant in favour of 2nd

defendant on 19.5.1976 enabling the 2nd defendant to execute a sale deed on his behalf also for the reason that the 1st defendant has been living away from Kowtharam and has been working as a Government servant and will not be able to come to Kowtharam for the purpose of execution of a sale deed in respect of the said 1 acre 14 cents. In fact the 2nd defendant alone has been dealing with and managing the schedule property by leasing out portions of the same to tenants, collecting rents from them and enjoying the said rents from them. 2nd defendant alone has been paying the electricity, current charges as demanded by the A.P. State Electricity Board. In the year 1980-81 the 2nd defendant applied to Gram Panchayat, Kowtharam for granting him permission for the construction of a septic latrine in the schedule premises and in fact constructed the same in the year 1982. The wife of the 2nd defendant T.Rajya Lakshmi and the 2nd defendant together held an extent of 80 cents of Seri Wet land in RS No. 421/3 of Kowtharam village and the 2nd defendant obtained a special power of attorney from his wife on 5.2.1982 for the purpose of selling the said land and in fact executed a sale deed himself as Special General Power of Attorney of his wife in respect of the said land in favour of D.Lakshmi Narasamma under a registered sale deed dated 15.3.1982. Even after the year 1982, the 2nd defendant continued to live at Kowtharam, but as his wife died in June, 1982, he later on shifted to Hyderabad to the house of the 1st defendant in the year 1983. But even then the 2nd defendant alone used to get the rents from the tenants himself and used to enjoy the same for himself. These and most of other circumstances clearly demonstrate that the 2nd defendant alone acted as the manager of the joint family and never deprived himself of his authority to act as manager and never authorized the 1st defendant to act as manager and it is impossible in the circumstances narrated above that the 1st defendant who has been working in several places far away from Kowtharam, who could not have never acted as the manager of the joint family. These defendants further state that in respect of the joint family, this question as to whether the 1st defendant acted as manager would not at all arise as the schedule property is not the joint family property, but it is the separate and self-acquired property of the 2nd defendant alone. All the allegations in the plaint which are contrary to the aforementioned facts are not true and correct.

It is true that the plaintiff and his mother came to Hyderabad to the 2nd defendant on 15.10.1984 and told him that there are good bargains and willing purchasers for the schedule property at Kowtharam and offered to purchase the schedule property, but the 2nd defendant was not decided by that time and therefore informed the plaintiff and his mother, that he had no intention to sell the schedule property and thereafter they went away. Averments in the plaint that they were kept remain at Hyderabad by the 2nd defendant till 16.10.1984, that meanwhile the brother-in-law of the 2nd defendant contacted the 1st defendant by telephone that the 1st defendant quoted a price of Rs.50,000/-, that the 2nd defendant directed the plaintiff and his mother to approach the 1st defendant, that they accordingly went to Kurnool on 19.10.1984, that the 1st

defendant sealed the price Rs.45,000/- and the connected allegations are all false and invented by the plaintiff and his mother for the purpose of the suit. The 2nd defendant has nothing to do with the plaintiff and his mother after he stated to them that he had no intention to sell the schedule property by that time on 15.10.1984. The further allegations that an amount of Rs.8,000/- was received by the 1st defendant from the plaintiff on 19.10.1984 and that he issued a receipt to that effect is also not true. As it subsequently transpired and as it subsequently was informed by the 1st defendant to the 2nd defendant, the 2nd defendant submits that the 1st defendant was not informed by the plaintiff and his mother that they approached the 2nd defendant and that the 2nd defendant was not inclined to sell the schedule property by that time. On the other hand, it appears that the plaintiff and his mother misrepresented the facts to the 1st defendant offering an amount of Rs.800/- tentatively and obtained a receipt from him, subject of course to the approval, consent and ultimate decision of the 2nd defendant. A perusal of the alleged receipt clearly shows that the plaintiff tampered the material portions of it by altering the figure 800/- to 8000/- and the words "Enimidi Vandalu" to "Enimidi Velu" and by inserting the letters Krayam in the said letter before issuing the registered notice. This fabricated and forged letter disclose the case of the plaintiff that the 2nd defendant was alone the manager of the family and that the 1st defendant clearly stated that the 2nd defendant is to be consulted and then only a decision with regard to the sale of the schedule property will be taken. These defendants state that the plaintiff and his mother requested the 1st defendant to use his good offices in the settlement of the bargain, which is yet to come into effect between him and the 2nd defendant and they approached the 1st defendant because he is the only son of the 2nd defendant and they thought that they could approach the 2nd defendant through him and not because the 1st defendant is the manager of the joint family, not because he has any right, title and interest in the schedule property. It is futile for the plaintiff to brand the said receipt as an agreement of sale, which was never intended to be an agreement of sale and in fact the 1st defendant was defrauded by the plaintiff and his mother and some how obtained the said receipt, so as to use it as a weapon against the 2nd defendant and he is now doing so. As already stated assuming without conceding that the said receipt operates as an agreement of sale, still it does not bind the 2nd defendant as no portion of the A schedule property is effected by the said receipt. As stated already, it was intended both by the plaintiff and the 1st defendant that the 1st defendant should act only as get together or intermediary between the plaintiff and the 2nd defendant and the 1st defendant, who has absolutely no knowledge or legal affairs was completely defrauded by the plaintiff and his mother who are well versed in legal affairs.

It is false to state that plaintiff and his mother went to Hyderabad again on 28.10.1984 and brought an amount of Rs.20,000/- and that they offered to pay the same to the 2nd defendant. Plaintiff and his mother never did so and they never approached the defendant after 15.10.1984. On the other hand the 3rd

defendant approached the 2nd defendant at Hyderabad on 28.10.1984 offered a sale price of Rs.50,000/- in case the 2nd defendant agreed to sell the schedule property, but the 2nd defendant by that time wanted to sell away the schedule property if he got a fair price of Rs.55,000/-. After negotiations, it was decided that the sale price should be Rs.52,500/- and the 3rd defendant made a payment of Rs.10,000/- on that date towards earnest and obtained an agreement of sale from the 2nd defendant. Possession was also delivered to the 3rd defendant on that day, later on the 3rd defendant paid Rs.15,000/- by way of a Demand Draft on 24.11.1984 and Anr. amount of Rs.15,000/- by another demand draft on 26.11.1984 and subsequently paid the remaining balance of sale price of Rs.12,500/- to the 2nd defendant on 27.11.1984 and obtained a receipt for the later 3 payments on that day. Having come to know about the said agreement of sale etc., executed by the 2nd defendant in favour of the 3rd defendant, the plaintiff unlawfully came forward with this suit on the basis of fabricated, forged and materially altered letter and obtained ex parte order of temporary injunction misrepresenting to this Honble Court preventing the 2nd defendant from executing and registering the regular sale deed in favour of the 3rd defendant.

There is absolutely no tenable case for the plaintiff for obtaining the main reliefs claimed in the suit. There is no joint family as such between defendants 1 and 2 after 1977 when the last item of the joint family property was sold away. It is false to state that the 2nd defendant became very old and that the 1st defendant has been managing the alleged family affairs since last about 10 years. 1st defendant never acted as manager at any point of time. It is false to state that the plaintiff went to Hyderabad after coming to know that the schedule property is put up for sale. The 2nd defendant never asked the plaintiff to go to Kurnool and settle the bargain with the 1st defendant. 1st defendant never agreed to sell the schedule property for any price and has no authority to do so particularly because he has no interest in the schedule property. 1st defendant never told the plaintiff that he would visit Kotharam in 5 or 6 days. It is absolutely false to state that 1st defendant and the 2nd defendant told the plaintiff on 28.10.1984 that the property was agreed to be sold to 3rd defendant for Rs.48,000/-. In fact the schedule property was sold to 3rd defendant for Rs.52,500/- and possession was also given to 3rd defendant on the same day.

It is absolutely false to state as pleaded in para 1 of the plaint that the schedule house belongs to the joint family of defendants 1 and 2. It belongs only to the 2nd defendant. The business of the 3rd defendant is a very flourishing one and he had costly cool drinks and other costly materials in his business. 2nd defendant never told the plaintiff that he was not moving about and the 1st defendant alone is looking after the schedule house. 2nd defendant never gave the Kurnool address of the 1st defendant to the plaintiff. T.Mangapathi Rao was never addressed a letter by the 2nd defendant confirming the alleged agreement of sale and Mangapathi Rao told to the plaintiff and could not do so. Mangapathi Rao was never directed to ask the tenants to vacate and give the keys of the vacant house to the plaintiff.

It is absolutely false to state that the 3rd defendant has no capacity to purchase and that he was inimically disposed towards the plaintiff. 1st and 2nd defendants never entered into any agreement with the plaintiff. Neither the 2nd defendant nor 3rd defendant had knowledge of the alleged suit agreement of sale dated 19.10.1984. The agreement of sale dated 28.10.1984 executed by the 2nd defendant in favour of 3rd defendant is not nominal and fraudulent, but it is real. 3rd defendant is a bonafide purchaser for value without notice of any prior agreement of sale, either by 2nd defendant or on his behalf by 1st defendant to plaintiff. The 3rd defendant did not issue any reply because the 2nd defendant stated that he would get a detailed reply through his advocate. The 2nd defendant is though aged is not debilitated and infirm and has been looking after his own affairs. 1st defendant is not either the manager of the family or the agent of the 2nd defendant. Plaintiff's alleged visit to Kurnool and the alleged purchase of the schedule property was not known to anybody in Kowthavaram, much less to the 3rd defendant and the plaintiff and his mother never informed the same to the 3rd defendant. The 3rd defendant has no knowledge of the alleged agreement of sale dated 19.10.1984 by 28.10.1984 or before that date. These defendants need not execute any sale deed in favour of the plaintiff. These defendants do not admit that the plaintiff owns 10 acres of wet land and a terraced building and capacity to pay the money. Plaintiff alone has to prove that he has capacity to purchase the schedule property and that he had money on 19.10.1984 and on 28.10.1984.

10. 4th defendant filed a memo of adoption adopting the written statement of the 2nd defendant. It is needless to say that the 4th defendant being the legal representative of the 2nd defendant cannot put forth any further pleas apart from the stand taken by him in the written statement. ISSUES SETTLED BY THE TRIAL COURT

11. In the light of the respective pleadings of the parties, the following issues were settled by the trial Court.

1. Whether the plaintiff is entitled to specific performance of agreement of sale?
2. Whether the plaintiff is entitled to possession and future profits?
3. To what relief? ORAL AND DOCUMENTARY EVIDENCE AVAILABLE ON RECORD
Witnesses examined for Plaintiff Defendants PW.1. Mathi Venkata Krishna Rao. DW.1. Talluri Nagaraju. PW.2. Gullapalli Bhaskara Rao. DW.2. P.Venkata Naidu. DW.3. Badiga Phani Bhushana Rao. DW.4. T.Chandrasekhar. DW.5. Kanusu Rajendra Prasad.

Ex.A1. Letter executed by D1 in favour of PW.1, dt.19.10.1984. Ex.A2. Office copy of registered notice issued by plaintiff to Defendants dated 2.11.1984. Ex.A3. Postal acknowledgement of T.Nagaraju in receipt of Ex.A2. Ex.A4. Postal acknowledgement of T.Narayana Murthy in receipt of Ex.A2 dated 5.11.1984. Ex.A5. Postal acknowledgement of B.Phani Bhushana Rao in receipt of Ex.A2, dated 5.11.1984. Ex.A6. Reply registered notice given by T.Nagaraju, dated

16.11.1984.

DOCUMENTS MARKED FOR DEFENDANTS Ex.B1. A portion of registered G.P.A. executed by D1 in favour of Talluri Narayana Murthy, dated 19.5.1976. Ex.B2. Photostat copy of registered sale deed executed by Talluri Narayana Murthy in favour of Davuluri Lakshmi Narasamma, Dated 15.3.1982. Ex.B3. Photostat copy of Special Power of Attorney executed by Talluri Rajya Laxmamma in favour of Talluri Narayana Murthy, dated 5.3.1982. Ex.B4. Registration extract of partition deed entered into between (1) Talluri Durga Prasada Rao, (2) Narayana Murthy and (3) Rama- Chandra Rao, dated 16.6.1930. Ex.B5. Registration extract of sale deed executed by Talluri Narayana Murthy, G.P.A. of Talluri Nagaraju in favour of Yelamanchili Panduranga Rao, dated 4.7.1977. Ex.B6. Photostat copy of demand draft for Rs.800/- issued by Andhra Bank, Dilsukhnagar, Hyderabad, dated 26.10.1983 Ex.B7. Registered partition deed entered into between Talluri Narayana Murthy, Ramachandra Rao and others, dated 5.3.1941. Ex.B8. S. No. 227 in page 6 of the voters list of 1977 relating to Kowtharam village. Ex.B9. Certificate issued by Executive Officer of Gram Panchayat, Kowtharam, dated 17.12.1984. Ex.B10. True copy of revision petition filed by Talluri Narayana Murthy before Executive Officer, Gram Panchayat, Kowtharam, dated 17.12.1984. Ex.B11. Bill card for electricity charges issued by APSE Board. Ex.B12. Photostat copy of sale deed executed by Thota Kesavaiah and 5 others in favour of D1, dated 8.11.1966. Ex.B13. Registered notice issued by plaintiff's advocate to defendants, Dated 2.11.1984. Ex.B14. Photostat copy of reply registered notice issued by D1 to Plaintiff, dated 16.11.1984. Ex.B15. Copy of reply registered notice issued by D2 to plaintiff, dated.11.1984. Ex.B16. House tax demand notice, dated 21.9.1980. Ex.B17. House tax demand notice, dated 15.12.1983. Ex.B18. Registered Will executed by Talluri Narayana Murthy, dated 25.12.1984. Ex.B19. Agreement of sale entered into between Talluri Narayana Murthy and Badiga Phanibhushana Rao (DW.3), dt. 28.10.84. Ex.B20. Receipt issued by Talluri Narayana Murthy in favour of Badiga Phanibhushana Rao (DW.3) dated 27.11.1984. Ex.B21. Photostat copy of blank non-judicial stamps, dated 24.11.1984. Ex.B22. Bill card for electricity charges issued by APSEB in the name of Talluri Narayana Murthy. Ex.B23. Bill card for electricity charges issued by APSEB in the name of Talluri Narayana Murthy. Ex.B24. Discharged pronote executed by DW.3 in favour of M.Surya- narayana, dated 26.11.1984. Ex.B25. Discharged pronote executed by DW.3 in favour of K.Sankara Lingam, dated 26.11.1984. Ex.B26. Discharged pronote executed by DW.3 in favour of B.Sitaramaiah, dated 15.11.1984. Ex.B27. Discharged pronote executed by DW.3 in favour of Pandarathi Laxmi Amma, dated 14.11.1984. Ex.B28. Discharged pronote executed by DW.3 in favour of B.Rama Seshayya, dated 24.11.1984. Ex.B29. S.B. Account Pass Book bearing No.49 of DW.3 in Andhra Bank, Kowtharam. Ex.B30. Receipt for Rs.7,000/- issued to DW.3 by Andhra Bank at Kowtharam.

12. The trial Court on appreciation of the evidence available on record, came to the conclusion that in the light of the relationship between the parties and 2nd

defendant being an old man, 1st defendant entered into this transaction Ex.A1, which is in the own hand writing of the 1st defendant, and further came to the conclusion that when the earlier portion of the document specifically mentioned that 1st defendant agreed to sell the property, there is no necessity to interpolate and add the word Krayam and further observed that a villager and a ryot would not venture to meddle with the letter written by a District level Gazetted Officer in his own hand in green ink and in fact there is no necessity to add the word Krayam since the same will not in any way benefit the plaintiff. The evidence of DW.2 also was disbelieved on the ground that it is an interested testimony and the evidence of DW.1 on the aspect of payment of only Rs.800/- had been disbelieved only on that ground. A further finding had been recorded in relation to Ex.B6 and it was observed that it is not established that the demand draft, original of Ex.B6, was encashed in Kowtharam Andhra Bank and the Bank officials had not been examined and in view of the same and in the absence of filing a letter or postal receipt or postal acknowledgement in relation thereto, the said stand taken by the defendants also cannot be believed. Certain findings had been recorded in relation to Will-Ex.B18 which is said to have been executed by 2nd defendant and some comment was made in relation to the recitals in the said Will and the evidence of DW.4 also had been commented upon apart from the evidence of DW.3 in the context of Ex.B19 as well and ultimately taking the sequence of events into consideration, the learned Judge came to the conclusion that Ex.B1 is an enforceable contract and the same is binding on the defendants and since Exs.B19 and B20 are ante-dated and forged documents, they cannot be relied upon and further recorded a finding that the claim of future profits cannot be considered in the absence of delivery of possession in pursuance of agreement of sale and ultimately decreed the suit with costs directing the defendants to execute the registered sale deed in pursuance of Ex.A1 agreement of sale permitting the plaintiff to deposit the balance of sale consideration within three months and dismissing the claim for future profits. POINTS FOR CONSIDERATION

13. The following points arise for consideration in these appeals:

1. Whether the relief of specific performance granted by the trial Court on the strength of Ex.A1 to be confirmed or to be disturbed in the facts and circumstances of the case?
2. Whether Ex.A1 can be said to be binding on 2nd defendant also in the facts and circumstances of the case?
3. Whether the plea of material alteration put forth by appellants-defendants and the findings recorded in relation thereto by the trial Court to be confirmed or to be disturbed in the facts and circumstances of the case?
4. Whether the sale in favour of 3rd defendant to be confirmed or to be disturbed in the facts and circumstances of the case?
5. If so, to what relief the parties would be entitled to?

POINTS 1 to 4:

14. For the purpose of convenience, to avoid repetition in recording of findings, all these points being dealt with together.

15. The respective pleadings of the parties, the issues settled, the evidence available on record and the findings recorded by the trial Court in nutshell had already been specified above.

16. Before taking up further discussion, it may be appropriate to have a glance at the recitals of Ex.A1 and the said recitals read as hereunder:

17. The contents of Ex.A1 being self-explanatory, the further details need not elaborately be discussed. In the defence it was pleaded that Rs.800/- alone had been paid on the date of receipt of Ex.A1 and the same had been altered into Rs.8,000/-. Yet another specific plea taken was that the word or expression Krayam had been introduced with an ulterior motive and this would also amount to material alteration.

18. The execution of Ex.A1, the passing of the receipt by 1st defendant as such is not in serious controversy. The plaintiff as PW.1 deposed about the relationship between defendants 1 and 2 and also the relationship of 4th defendant with defendants 1 and 2 and this witness had taken a stand that the property is ancestral property of 2nd defendant and 2nd defendant got the same in partition and he got 300 square yards in partition and he purchased another 300 square yards from his younger brother and there is house and shops in the suit land. Apart from the suit land, 2nd defendant is having some more property also and the said property is his ancestral property. This witness also deposed that 2nd defendant left to Hyderabad to see his son. He went away due to old age even at the time when PW.1 was young. Talluri Mangapathi Rao was managing the properties in the village and 2nd defendant was offering the said property for sale. PW.1 also deposed that PW.1 and his mother went to Hyderabad on 15.10.1984 and then 1st defendant was employed at Kurnool and his parents and family were at Hyderabad. PW.1 further deposed that he had contacted 2nd defendant and he said that he gave the management to his son 1st defendant and asked him and further directed 4th defendant and his own brother-in-law to contact 1st defendant on phone. This witness also deposed that on 18th day 2nd defendant asked him to go to Kurnool and contact 1st defendant and they also said that 1st defendant was quoting Rs.50,000/-. Son of 1st defendant had taken them to bus stand and PW.1 and the mother had gone to Kurnool and they had contacted 1st defendant at his office and the rate was fixed at Rs.45,000/- and he paid Rs.8,000/- as advance. Defendant No. 1 promised to obtain power of attorney from 2nd defendant and come to the village within 4 or 5 days. He also promised to receive the balance and execute the sale deed. PW.1 also deposed that after receiving Rs.8,000/-, 1st defendant executed a receipt dated 19.10.1984. It is Ex.A1. As per the instructions of the 1st defendant, he informed the said transaction to Mangapathi Rao within 2 or 3 days. He also received a

letter from 1st defendant and he had taken him to the tenants and they were told to vacate the shops as he had purchased the property. 3rd defendant is one of the tenants. 1st defendant did not come to the village as promised. Then he went to Hyderabad on 28.10.1984 to pay some more amount and obtain regular document. 1st defendant and his wife told him that they got higher offer and therefore they sold away the property to somebody. Then he learnt that the 3rd defendant purchased the property for Rs.48,000/- and he had no capacity to purchase the property and in view of the same he had issued a notice, the office copy of which is Ex.A2. PW.1 also deposed that the property is not the self-acquired property of 2nd defendant and 1st defendant has been managing the properties on behalf of 2nd defendant. Just with a view to put an end to the transaction already entered into, 1st defendant brought into existence a Will in favour of 4th defendant. This witness also deposed that he had not received any draft from 1st defendant for the amount paid by him as advance and he was prepared to pay the remaining sale consideration and get a registered sale deed. Exs.A3 to A5 are the postal acknowledgements and Ex.A6 is the reply registered notice given by T.Nagaraju which were got marked through PW.1. This witness in cross-examination deposed several facts, no doubt several of the suggestions put to this witness also had specifically been denied. This witness deposed that it is said that 2nd defendant was working as Homeo Compounder and he does not know whether he was working as Homeo Doctor in the village. This witness also deposed that he purchased vacant site from his brother and 2nd defendant was paying Panchayat tax to the said property and Mangapathi Rao was managing the properties after 2nd defendant left the village in 1976 and Mangapathi Rao was collecting rents and he was sending the rents in the name of 1st defendant to Hyderabad. This witness also deposed that there is nothing in writing to show that he was having balance of consideration and expenses to obtain sale deed to perform his part of contract. This witness also deposed that 1st defendant alone was living in the office when he went to him at about 8 AM and it is not true that 1st defendant was living in the revenue guest house and it is not true that U.Narsimloo and P.Venkata Naidu were present when 1st defendant executed Ex.A1. After Ex.A1, PW.1 never went to 2nd defendant. This witness also deposed that while writing Rs.45,000/-, 1st defendant left some space after "third zero" and vertical line. It is not true that Ex.A1 originally contained 800/-. It is not true that another zero making 8,000/- and further Krayam also had been added.

19. Except the evidence of PW.1, there is no other evidence available on record. The evidence of PW.2 is more or less formal in nature. PW.2 deposed that he is a resident of Kowtharam and he knows PW.1 and defendants and also the plaint schedule property. One week or ten days prior to Deepavali, 1984, he was present when Mangapathi Rao and Anr. came and demanded the tenants to vacate the shop and they told that PW.1 purchased the shops. This witness was cross-examined and certain suggestions put to this witness had been denied.

20. DW.1 deposed that the 2nd defendant is his father and this witness also

deposed that the plaint schedule property is the self-acquired property of his father and not the ancestral property of the family and his father was managing the joint family property as well as self-acquired property. This witness also deposed that his father was working as Homeopathy Doctor from 1930 and he was also doing business and he was getting income and he is the only son of his father. This witness also deposed that he got the vacant site in partition with his brother and DW.1 relinquished his right in 300 square yards and 2nd defendant paid the amount from his self-acquired property and with that amount he had constructed a house at Hyderabad and his father constructed shops in the vacant site with his own money and he had nothing with the plaint schedule property and he never managed it. DW.1 also deposed that he joined Government service in 1966 and his father lived at Kowthavaram upto 1982 and his father sold one acre 14 cents to L.Panduranga Rao in 1966 and he gave General Power of Attorney to his father and after it was sold, the joint family had no other property and he had seen PW.1 for the first time when he came to Kurnool and it was on 19.10.1984. He was working as Assistant Director at that time and he was living in Revenue Guest House in Kurnool. This witness also deposed that PW.1 and his mother came to him and made him to believe that they met his father and consulted him and further made him to believe that they had consulted with his father relating to the sale of the house. Then he said that when he had no right in it, how can he sell. They said that DW.1 may consult with his father and finalise the same and requested him to accept Rs.800/- as advance. DW.1 also deposed that he assured to try and received Rs.800/- and issued Ex.A1. This witness also deposed that in Ex.A1 he had put 800 only and there is a gap in between they have inserted zero. He wrote Enimidi Vandalu. Further this witness deposed that something was written to make it eight thousand. Krayam in Ex.A1 was not written by him and it was inserted later. This witness also deposed that as far as he knows the plaintiff never met his father on 28.10.1984 and offered to pay the balance and this witness also deposed that the plaintiff has no capacity to purchase the property. Ex.B1 is a portion of registered General Power of Attorney dated 19.5.1976; Ex.B2 is the Photostat copy of the sale deed executed by 2nd defendant in favour of D.Laxmi Narasamma; Ex.B3 is the Special Power of Attorney given by his mother to his father, dated 5.3.1982; Ex.B4 is the registration extract of the partition deed between 2nd defendant and his brother; Ex.B5 is the registration extract of sale deed executed by 2nd defendant in favour of L.Panduranga Rao dated 4.7.1977; Ex.B6 is the Photostat copy of the demand draft sent to the plaintiff for Rs.800/-; Ex.B7 is the exchange deed; Ex.B8 is the voters list; Ex.B9 is the certified issued by Gram Panchayat; Ex.B10 is the revision petition filed by 2nd defendant; Ex.B11 is the electricity card; Ex.B12 is the sale deed; Ex.B13 is the notice issued by DW.1; Ex.B14 is the reply; Ex.B15 is the reply given by the father of DW.1 and Exs.B16 and B17 are the demand notices. In the cross-examination several of the suggestions put to this witness had been specifically denied. This witness deposed that it is not true to say that his father contacted him on phone through that Seshagiri Rao on 18th and informed him about the suit transaction and from that this witness asked

him to send the party to Kurnool on 19th. This witness also deposed that it is not true that his father offered Rs.50,000/- and then the plaintiff bargained for lesser amount.

21. Apart from the evidence of DW.1, the evidence of DW.2 is available on record. This witness deposed that he is working as Deputy Statistical officer, Kurnool and he knows DW.1, who was working as Assistant Director in District Planning Office, Kurnool in 1984. This witness specifically deposed that on one day PW.1 came to DW.1 and was talking with him and at that time DW.1 was staying at Revenue Guest House, Kurnool and when the plaintiff and his mother came, Statistical Officer Narsimloo was there. Plaintiff told the defendant that they contacted his father and he agreed to sell the house and therefore they came to Kurnool to meet the defendant. Thereupon 1st defendant replied that unless he discussed with his father, he would not do anything. PW.1 said that they have discussed with his father and therefore DW.1 may take advance and DW.1 received Rs.800/-. DW.1 issued a receipt. After he wrote the receipt, he asked this witness to read it. He read it. It is Ex.A1. This witness specifically deposed that 800/- was made as 8000/- in Ex.A1. The words "Vandalu" is now not visible to read. The word Krayam also was not written by DW.1. This witness also deposed that he can identify the handwriting of DW.1 and the word Krayam in Ex.A1 was not in the handwriting of DW.1. After the receipt was issued, plaintiff and his mother went away. Certain of the suggestions put to this witness in cross-examination had been denied.

22. DW.3 is the 3rd defendant in the suit. It is needless to say that he is the purchaser and DW.3 no doubt deposed that he was the tenant and this witness also deposed about the 2nd defendant agreeing to sell the plaint schedule property to him on 28.10.1984 for Rs.52,500/- and this witness paying advance of Rs.10,000/-. This witness also deposed that he being the tenant of the property in question and further deposed about the execution of agreement of sale Ex.B19. This witness also deposed that his grand son Chandra Sekhar and Gopala Krishna Murthy were present and they had attested Ex.B19 and he paid Rs.30,000/- by way of two drafts and he paid Rs.12,500/- in cash. They were paid on 24.11.1984, 26.11.1984 and 27.11.1984 respectively and he had obtained Ex.B20 dated 27.11.1984. This witness also deposed about the purchase of non-judicial stamps Ex.B21. In the meanwhile the plaintiff obtained injunction order and hence registered sale deed cannot be executed. After receipt of registered notice, he met 2nd defendant and enquired him and he said that he had given a reply and he need not bother about the same. This witness also deposed that prior to the registered notice, he was not aware of purchase by PW.1 of the said property. Ever since the date of Ex.B19, he has been in possession and enjoyment of the entire plaint schedule property. Exs.B22 and B23 are the electrical consumer cards. He borrowed money from third parties and paid Rs.30,000/- as mentioned in Ex.B20. This witness had taken a specific stand that he had no knowledge of the agreement of sale in favour of the plaintiff and further deposed that 1st defendant has no right, title or interest in the plaint

schedule property. In the cross-examination several suggestions put to this witness had been denied.

23. DW.4 is the 4th defendant in the suit. He deposed about the relationship and also the execution of agreement of sale Ex.B19 and also about the attesting Ex.B19. DW.5 is a resident of Kowtharam, who deposed that 3rd defendant purchased the plaint schedule property from the 2nd defendant on 28.10.1984 and this witness along with 3rd defendant and Kanuru Gangadhara Rao went to Hyderabad and contacted 2nd defendant. The 2nd defendant gave the price as Rs.60,000/- and they bargained and he had settled the price at Rs.52,500/-. It was also decided that the 2nd defendant should pay Rs.10,000/- on that day and balance in one month. This witness also deposed that he and the Sarpanch went to Bazar when the agreement of sale was executed by 2nd defendant in favour of 3rd defendant and this witness came to know about it subsequently. The suggestions put to this witness had been specifically denied. It is needless to say that this evidence of DW.5 is more or less formal in nature and most probably DW.5 was examined to support the version of DW.3. Exs.B24 to B28 are the discharged promissory notes. Ex.B29 is the SB Account pass book of DW.3 in Andhra Bank, Kowtharam and Ex.B30 is the receipt for Rs.700/- issued to DW.3 by Andhra Bank, Kowtharam.

24. This is the oral and documentary evidence available on record.

25. Certain submissions were made in relation to Section 41 of Transfer of Property Act, 1882. May be these submissions were made in the light of the death of the 2nd defendant and it is needless to say that the 4th defendant was brought on record as legal representative of the 2nd defendant. It may be that 4th defendant is no other than the grandson of the 2nd defendant.

26. On a careful analysis of the evidence available on record, DW.3 had taken a specific stand that it is the self-acquired property of 2nd defendant and he had never managed the same and on the contrary PW.1 had taken a stand that this property is the ancestral property of the family. Even if the property to be accepted as the ancestral property, though the evidence on record appears to be that at least a portion of the property is the self-acquired property of 2nd defendant, even then, in the facts and circumstances of the case, the plea of implied agency, which is being put forth that the son is entitled to be representing his father, cannot be sustained for the reasons which would be specified infra.

27. The recitals of Ex.A1 already had been specified above. On a careful reading of the recitals on Ex.A1, the last portion of the document would clearly go to show that the transaction would be finalized only after consultations to be made by DW.1 with his father, 2nd defendant. Apart from this aspect of the matter, even as per the evidence available on record, at any stretch of imagination, it cannot be said that 1st defendant was the exclusive owner of the property and was entitled to enter into this transaction as absolute owner thereof. Hence, even

if the recitals of the document Ex.A1 as they are to be taken into consideration, this cannot be taken as a concluded contract. Apart from this aspect of the matter, the evidence of DW.1 is clear and categorical well supported by the evidence of DW.2 relating to the aspect of material alteration 800/- into 8000/- and also introducing the word Krayam. The testimony of DW.2 had been discarded by the trial Court on the ground that DW.2 is an interested witness in DW.1. This reason cannot be accepted since merely because DW.2 was working in a particular office by that itself the evidence of DW.2 cannot be discarded and at the best the same can be carefully scrutinized. On a careful scrutiny of the evidence of DWs.1 and 2 and also on a careful examination of the document Ex.A1 as such, this Court is thoroughly satisfied that there had been material alteration of 800/- to 8000/- and also the word Krayam had been inserted subsequently for the reason best known to PW.1

28. The other questions whether 3rd defendant is a bona fide purchaser without notice of the prior agreement of sale or not and whether the property is the exclusive self-acquired property of 2nd defendant or the family property of both defendants 1 and 2 or not, need not detain this Court any longer since this is a suit for specific performance and the question to be decided is whether the relief of specific performance granted in favour of the plaintiff to be sustained or to be set aside.

29. It is pertinent to note that except the evidence of PW.1, there is no other evidence available on record. The evidence of PW.2 is more or less formal in nature. Even to establish the initial bargain, approaching 2nd defendant and the other episode, it is stated by PW.1 that his mother also accompanied him, but for the reasons best known to him, the mother was not examined. Mangapathi Rao, who played some role in asking the tenants to vacate the plaint schedule property also had not been examined.

30. Strong reliance was placed on the decision of the Apex Court in Ganesh Shet Vs. Dr. C.S.G.K. Setty and Others, on the aspect of "concluded contract", wherein the Apex Court held that the property owned jointly by three brothers and purchaser clearly stating that at their meeting with one of brothers, he told that he is yet to consult his two brothers about sale consideration and the tenor of several letters between parties showing that sale consideration was not finalized in their meeting and in such a case it cannot be said that there was concluded contract between the parties and a decree for specific performance cannot be made. Reliance also was placed on the decision reported in Janab M. H. M. Yakoob (died) and others Vs. M. Krishnan (died) and others, , wherein the Division Madras of the Madras High Court while dealing with the interpolation in agreement regarding recital as to passing of possession of property to purchaser and the purchaser thereby entitled to claim part performance of agreement, and when there is material alteration, the purchaser cannot enforce his right under agreement of sale. Reliance also was placed on the decision of the Division Bench of the Madras High Court in Nallaya Gounder and another Vs. P. Ramaswami

Gounder and another, , wherein the Division Bench while dealing with a delivery receipt of property which was found to be concocted and when a false case was put forward by the plaintiffs regarding convening of Panchayat for execution of sale deed, relief of specific performance to be negated as the plaintiffs did not come forward with clean hands while praying for equitable relief. Reliance also was placed on the decision of the Delhi High Court in Ramesh Kumar Vs. Chaman Lal and Another, .

31. Certain submissions no doubt were made not only on the strength of Section 41 of Transfer of Property Act, 1882, but also on the ground that equity would require while balancing the evidence available on record to be in favour of the plaintiffs since 3rd defendant having knowledge about the prior agreement of sale had not entered into this speculative litigation. This aspect whether 3rd defendant is a bona fide purchaser for consideration in good faith and without notice of the prior agreement of sale also need not detain this Court any longer in the light of the findings recorded by this Court supra in relation to the nature of Ex.A1 transaction and also the material alteration or interpolation in the said document Ex.A1. 32. On a careful analysis of the findings recorded by the trial Court, this Court is thoroughly satisfied that the trial Court erred in granting the relief of specific performance on the strength of a document of this nature Ex.A1. The findings recorded by the trial Court in granting the relief of specific performance cannot be sustained and the same to be negated for the under noted reasons:

1. In the light of the recitals on Ex.A1, it cannot be said that any concluded contract as such had been arrived at between DW.1 and PW.1.
2. Merely because of the fact that defendants 1 and 2 being the son and the father, the implied agency cannot be inferred.
3. At any rate it cannot be said that the 2nd defendant also is bound by Ex.A1.
4. It is also clear from the evidence of DWs.1 and 2 that only an amount of Rs.800/- was paid and not Rs.8,000/- and it is a clear alteration and also in the light of the clear evidence of DWs.1 and 2, the word Krayam had been introduced or inserted in Ex.A1, which is an interpolation.
5. It is needless to say that a person coming with a false plea praying for the relief of specific performance with unclean hands is not entitled to the discretionary relief of specific performance.
6. Thus, a person coming to Court on the strength of Ex.A1, an un-concluded contract, that too materially altered or interpolated, cannot get the relief of specific performance.

33. The non-examination of the mother of PW.1 and also Mangapathi Rao would assume some importance in the light of the facts and circumstances of the case. Hence, viewed from any angle, the findings recorded by the trial Court being totally unsustainable findings, the said findings are hereby set aside and the

relief of specific performance granted by the trial Court cannot be sustained and the same to be negatived.

POINT No. 4:

34. For the foregoing reasons, the appellants are bound to succeed. The appeals are accordingly allowed with costs throughout.

35. It is needless to say that if any deposits had been made in pursuance of the interim orders made by this Court, the successful parties would be at liberty to have those amounts.