
(2007) 08 AP CK 0033

In the Andhra Pradesh High Court

Case No : Appeal Suit No. 2638 of 1993 and C.M.P. No. 7692 of 2003

Beemaneni Mahalakshmi

APPELLANT

Vs

Gangumalla Apparao

RESPONDENT

Date of Decision : 06-08-2007

Acts Referred:

Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Act, 1973 — Section 11, 16, 17, 7, 7(1)
Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Rules, 1974 — Rule 16, 4(2), 7(4), 8(3), 8(4)
Evidence Act, 1872 — Section 145, 33, 63, 91, 92

Citation : (2008) 1 ALD 375 : (2007) 6 ALT 401

Hon'ble Judges : C.Y. Somayajulu, J

Bench : Single Bench

Advocate : T. Durga Prasad Rao, for the Appellant; Koka Raghava Rao, for the Respondent

Judgement

C.Y. Somayajulu, J.—Defendant in a suit for specific performance of an agreement of sale dated 30-12-1985, executed by her in favour of the respondent, for sale of Ac. 17-39 cents within the boundaries mentioned in the schedule appended to the plaint (the suit land) is the appellant.

2. The case of the respondent is, as the appellant agreed to sell the suit land to him or his nominee for Rs. 2,45,00(3/- he paid Rs. 55,000/- to her on the date of agreement as advance whereupon she executed Ex. A-1 agreement dated 30-12-1985 for sale of the suit land in his favour. As per the said agreement he has to pay the balance sale consideration before the Sub registrar at the time of registration of the sale deed in respect of the suit land within three months from the date of agreement. It is also agreed that the appellant has to execute the sale deed after measuring the suit land for arriving at the actual sale consideration payable. Though he is always ready and willing to perform his part of the contract, as the appellant was not ready with the original title deed in respect of the suit land, and did not obtain a clearance certificate from the

income tax department, and was not ready to perform her part of the contract, he got issued the original of Ex. A-2 notice dated 6-4-1987 to the appellant seeking specific performance of the agreement for which the appellant sent Ex. A-3 reply dated 14-4-1987 with some false and untenable allegations, and so he got issued the original of Ex. A-4 rejoinder notice dated 13-5-1987 denying those allegations made in Ex. A-3 reply notice and called upon the appellant to produce all the documents of her title to the suit land. As the appellant failed to comply with his request, the suit for specific performance of the agreement of sale in respect of the suit land, or in the alternative for refund of the advance of Rs. 55,000/- paid by him to the appellant with interest at 12 1/2% from 30-12-1985 till date of payment.

3. The case of the appellant is that she executed Ex. A-1 agreement in favour of the respondent agreeing to the terms mentioned therein. But the appellant (sic. respondent), who was not having the balance sale consideration payable to her under the said agreement, with a view to gain time, was calling upon her to produce the order passed in the land ceiling proceedings of her vendor Somayya Chowdary, though he entered into the agreement after taking a copy of the order in that land ceiling proceedings and after he was informed that the original sale deed in respect of the suit land, which was filed in the land ceiling proceedings, would be taken return of after termination of the said proceedings, and so the appellant (sic. respondent), who is not ready and willing to perform his part of the contract, as per the terms agreed, is not entitled to the relief of specific performance sought.

4. In support of his case the respondent examined himself as P.W.1 and marked Exs. A-1 to A-4. In support of her case appellant examined herself as D.W. 1 and four other persons as D.Ws. 2 to 5, but did not adduce any documentary evidence. Ex.X-1 was marked through witness.

5. The trial Court, on issue Nos. 1 and 2 relating to the question whether the respondent is ready and willing to perform his part of contract and is entitled to seek relief of specific performance, or the alternative relief of refund, held that he is entitled to the relief of specific performance and so question of granting alternative relief of refund does not arise and consequently on issue No. 3 relating to the relief, decreed the suit for specific performance directing the appellant to execute the sale deed in respect of the suit land in favour of the respondent within 30 days from the date of judgment. Hence this appeal by the defendant in the suit.

6. The point for consideration is

Whether the respondent is entitled to the relief of specific performance of Ex. A-1 agreement of sale in his favour?

7. The contention of Sri T. Durga Prasad, learned Counsel for the appellant, is that as the trial Court did not properly consider the evidence adduced and the contentions raised by the appellant that the respondent was never ready and

wiling to perform his part of the contract and that he came to Court with a false case and hence is not entitled to the relief of specific performance, it passed a decree for specific performance in favour of respondent. It is his contention that the respondent, who stated in Ex. A-2 notice that possession of the suit land was delivered to him, did not stick to the said stand and alleged in the plaint that the suit land has to be delivered to him after registration of the sale deed, and so the trial Court was in error in observing that the said statement made by the respondent in Ex. A-2 notice is an inadvertent mistake or a typographical error. It is his contention that the trial Court erred in not taking into consideration the evidence of D.Ws.3 to 5 that the suit land was measured in the presence of the respondent and so question of measuring the land again does not arise. His next contention is that inasmuch as all the terms to the contract have been reduced into writing, in view of Section 91 and 92 of the Evidence Act, any oral agreement regarding terms of that contract ought not to be admitted in evidence and relied on Sait Bolumal Dharmdas Firm, Bankers Vs. Gollapudi Venkatachelapathi Rao and Another, and Tyagaraja Mudaliyar v. Vedathanni AIR 1936 P.C. 170 in support of the said contention. His next contention is that since the respondent, as P.W. 1, admitted that he does not remember receipt of Ex. A-3 reply and if he got Ex. A-3 read over to him, question of his sending a rejoinder through his counsel in respect of the averments made in Ex. A-3 would not arise and so the trial Court should have accepted the contention of the appellant that no rejoinder to Ex. A-3 was sent. It is his contention that since the appellant purchased the suit land from Somayya Chowdary on 16-10-1971, i.e., after 24-1-1971, in view of the provisions of Section 7 and 11 of the A.P. Land Reforms (Ceiling on Agricultural Holdings) Act, 1973 (the Act), though the primary Tribunal did not believe the said sale, as the appellate Tribunal constituted under the Act had, in the appeal preferred by Somayya Chowdary, clearly held that the sale of the suit land in favour of the appellant by Somayya Chowdary is a genuine transaction, and since that finding of the appellate Tribunal became final, as the State did not question the said finding of the appellate Tribunal in revision, and it is Somayya Chowdary that preferred a revision to this Court questioning the order of the appellate Tribunal rejecting some of his contentions relating to some of the exemptions sought by him, the original title deed relating to the suit land is held up in High Court in the revision preferred by Somayya Chowdary and as copies of all the documents relating to the title of the appellant to the suit land were perused by the respondent prior to his entering into the agreement with the appellant, question of appellant producing any record relating to the Land Ceiling case or her vendor's Land Ceiling case would be redundant, but the trial Court, without keeping in view the fact that the appellant is an old and sickly woman, who cannot recollect all the events that took place several years prior to her giving evidence, misread her evidence for holding in favour of the respondent and contended that the trial Court should have held that the appellant not producing her original title deed relating to the suit land cannot be a ground for the respondent delaying the payment of the amount payable by him under Ex. A-1, and should have held that

only because he was not having sufficient funds with him, respondent could not pay the amount due and payable by him under Ex. A-1 agreement within the stipulated time and was trying to take shelter under the appellant not producing her original title deed and the order in the land ceiling proceedings for his failure to pay the balance due and payable under Ex. A-1 agreement within the time stipulated or within a reasonable time. Relying on P.S. Rathna Bai v. Mrs. A.R. Barrass and Anr. AIR 1943 Madras 593 he contended that respondent cannot compel the appellant to produce the documents which are not in her possession and since the original sale deed, admittedly, was not in the custody of the appellant, the respondent cannot insist on its production as a condition precedent for payment of the balance due under Ex. A-1 because handing over of the original title deed relating to the suit land arises only at the time of registration, and so non production of original sale deed relating to the suit land by the appellant is not a ground for respondent to delay the payment of money payable by him under Ex. A-1 and since the evidence of the respondent as P.W.1 during cross-examination establishes that he was not having sufficient funds with him within the time stipulated, it is easy to see that he was not ready and willing to perform his part of contract within the time fixed or within a reasonable time. It is his contention that since the respondent, as P.W. 1, during his cross-examination stated that he was having the money to pay the balance amount payable to the appellant, as he sold Ac.1-01 cents of Thimmapuram wet land to one Kshatriya person for Rs. 1,65,000/- and as that statement of his stands belied by the fact that the vendee of the land agreed to be sold by the respondent filed O.S. No. 236 of 1994 on the file of the Court of Subordinate Judge, Kakinada for specific performance of agreement of sale dated 2-9-1993 entered into by the respondent with him, and the respondent as D.W. 1 in that suit admitted that he deposited the money in this suit out of the sale consideration paid by the plaintiff in that suit, there can be no two opinions about the fact that the respondent was not having the money due and payable under Ex. A-1 with him within the time stipulated therein, and contended that inasmuch as the apex Court and a division bench of this Court in Jugraj Singh v. Labh Singh AIR 1995 SC 945 N.P. Thirugnanam (D) by L.Rs., Vs. Dr. R. Jagan Mohan Rao and others, , His Holiness Acharya Swami Ganesh Dassji Vs. Shri Sita Ram Thapar, an Bolisetti Venkateswara Rao and Others Vs. Nadakuditi Venkateswara Rao, held that a plaintiff in a suit for specific performance of agreement of sale must aver and prove that he is ready and willing to perform his part of contract from the date of agreement till the date of hearing of the suit, and inasmuch as the evidence of the respondent as P.W.1 clearly shows that he is not ready and willing to perform his part of contract as he was not having the necessary money payable by him under Ex. A-1 agreement, within the time stipulated therein, the trial Court was in error in decreeing the suit for specific performance. It is his contention that since the additional evidence sought to be introduced by the appellant through CMP No. 7692 of 2003 demolishes the case of the respondent about his readiness and willingness to perform his part of contract, and as those documents could not be produced before the trial Court, as they came into

existence subsequent to the disposal of the suit by the trial Court, and as those documents would help this Court in coming to a just conclusion, those documents may be received as additional evidence and relied on K. Venkataramiah Vs. A. Seetharama Reddy and Others, and Subba Naidu v. Ethirajammal AIR 1916 Mad. 966 in support of the contention that those documents can be received as additional evidence in the appeal. Relying on K. Narendra Vs. Riviera Apartments (P) Ltd., Smt. Chand Rani v. Smt. Kamal Rani AIR 1993 SCW 1371 and Suryadevara Satyanarayana (died) by L.Rs Vs. Hirachand, he contended that inasmuch as the respondent was not ready and willing to pay the balance sale consideration within the time stipulated and did not fulfill the conditions in Ex. A-1 agreement he is not entitled to the relief of specific performance and contended that though time is not the essence of the contract in suits relating to immovable property, having regard to the terms of Ex. A-1 agreement, the respondent, who has to perform his part of the contract by paying the balance consideration payable to the appellant within a reasonable time, had failed to perform his part of the contract, he is not entitled to the relief of specific performance and relied on Smt. Chand Rani case AIR 1993 SCW 1371 and K.S. Vidyanadam and Others Vs. Vairavan, and Veerayee Ammal Vs. Seeni Ammal, and Lourdu Mari David and others Vs. Louis Chinnaya Arogiaswamy and others, in support of the said contention and further contended that inasmuch as the respondent did not either orally, or in writing, express his willing to perform his part of the contract prior to issuance of Ex. A-2 notice about 15 months after Ex. A-1, though the time stipulated in Ex. A-1 is only 3 months, and as the suit is filed just before the expiry of the period of limitation, the trial Court was in error in decreeing the suit for specific performance. His next contention is that inasmuch as the respondent did not pay the balance amount due under Ex. A-1 agreement within the time stipulated, appellant made several improvements to the suit land and sunk a borewell in the existing well and installed an electric motor and raised plantain garden after cutting away the mango trees, which had fallen down due to cyclone, under an impression that Ex. A-1 stood cancelled for the respondent's failure to perform his part of the contract as per its terms, and as the appellant who agreed to sell the suit land for the purpose of purchasing lands elsewhere would be put to any amount of inconvenience if the relief of specific performance is granted to the respondent, the respondent is not entitled to the relief of specific performance since the respondent did not come to Court with clean hands.

8. The contention of Sri Koka Raghava Rao, learned Counsel for the respondent, is that inasmuch as the appellant purchased the suit land under a registered sale deed dated 6-10-1971 from Somayya Chowdary, that sale comes within the purview of Section 7(1) of the Act, and so until the Tribunals constituted under the Act clears that sale appellant's title to the suit land would/be under cloud and so the order of the Tribunals clearing the sale in favour of the appellant is relevant, and as the original sale deed in favour of the appellant in respect of the suit land, admittedly, was not produced by the appellant for inspection at the

time of Ex. A-1, and as the appellant also did not obtain the income tax clearance certificate, and as the actual price payable in respect of the suit land can be determined only after measurements are taken, respondent through the original of Ex. A-2 notice, requested the appellant to produce the original sale deed and the land ceiling clearance certificate under the provisions of the Act, with a request to get the suit land measured, and as the appellant, who alleged in her Ex. A-3 reply that she is ready to execute the sale deed and deliver possession of the suit property, failed to comply with the demands/requests made by the respondent in Ex. A-2, it is clear that the delay in performance of the contract is only on the part of the appellant and not on the part of the respondent, and since the evidence on record clearly establishes the readiness and willingness of the respondent to perform his part of contract and in any event since the respondent already deposited the balance sale consideration payable by him under Ex. A-1 into court as per the directions of the trial Court, and as the trial Court gave cogent reasons for its conclusion that the respondent is entitled to the specific performance sought by him the decree and judgment of the trial court need no interference in this appeal. It is his contention that inasmuch as two of the documents sought to be introduced as additional evidence came into existence long subsequent to the filing of the suit, they have no relevance to decide the point for consideration in the appeal, and as the reasons for not filing the order dated 20-11-1976 of the Land Reforms Tribunal Peddapuram are not properly explained, that document also need not be received as additional evidence in the appeal.

9. Here I feel it relevant to refer to some important facts, which have a bearing on the merits of this appeal. This suit was instituted as O.S. No. 89 of 1988 on the file of the court of Subordinate Judge, Peddapuram. Later it was transferred to the court of Principal Subordinate Judge, Kakinada, and was renumbered as O.S. No. 31 of 1993, and was again transferred to the Court of Subordinate Judge, Pithapuram and was re-numbered as O.S. No. 16 of 1993. So it is clear that the suit was instituted in the year 1988. During the course of trial of the suit, the trial Court, in order to test the bona fides of the respondent, directed him to deposit the balance sale consideration payable under the agreement into Court. The docket order of the trial Court dated 30-7-1993 reads.

P.W. 1 recalled and examined in full. As the contention of the defendant is that the document was not executed, as the plaintiff was not ready with the balance sale consideration, as a major portion of the cross examination is on that aspect to test the bona fides the plaintiff is directed to deposit the balance of sale consideration to the credit of the suit by 16-8-1993. For further evidence call on 9-8-1993.

The entry dated 6-9-1983 on the docket of the trial Court shows that the balance sale consideration was deposited on 30-8-1993 as per the orders in I.A. No. 327 of 1993. So it is clear that in pursuance of the order of the trial Court to deposit the balance sale consideration into Court, the respondent deposited the entire

balance sale consideration due and payable by him under Ex. A-1 agreement into the Court within the extended time granted by the trial Court on 30-8-1993. So it is clear that the appellant (sic. respondent) performed his part of the agreement as per the directions given by the trial Court, within the extended time granted by it. Power of the Court to extend time for deposit of the sale consideration due under an agreement, granted by it earlier even after decree cannot be disputed. See K. Kalpana Saraswathi Vs. P.S.S. Somasundaram Chettiar, .

10. Before considering the merits of the contentions raised by the learned Counsel on the point for consideration in the appeal, I feel it appropriate to dispose of CMP No. 7692 of 2003 filed by the appellant to receive certain documents as additional evidence.

CMP No. 7692 of 2003

11. The documents sought to be introduced as additional evidence are Xerox copies of the certified copies of the agreement of sale dated 30-8-1993 executed by the respondent in favour of one Vegisina Venkata Satya Ananda Gajapathi Raju, deposition of the respondent as D.W. 1 in O.S. No. 236 of 1994 on the file of the Principal Senior Civil Judge, Kakinada and the proceedings of the Land Reforms Tribunal-II Peddapuram in C.C. No. 1551/PRP/75, dated 20-11-1976.

12. This petition deserves to be dismissed in limine because the documents filed with the petition are Xerox copies of certified copies and hence are copies of certified copies, but not certified copies. It is well known that copies of copies are not admissible in evidence because they do not satisfy any of the requirements of Section 63 of the Evidence Act. Even then without dismissing the petition on that ground. I would like to dispose of the petition on its merits.

13. The agreement of sale dated 2-9-1993, which is the subject matter of O.S. No. 236 of 1994, was executed by the respondent in favour of a third party long subsequent to the filing of this suit. As stated above inasmuch as the respondent deposited the balance amount due under Ex. A-1 into Court on 30-8-1993 as per the order of the trial Court, the agreement dated 2-9-1993 executed by him in favour of another person has no relevance for deciding the question about his readiness and willingness to perform his part of contract. If I may say so, the fact that respondent could deposit the balance amount payable under Ex. A-1 even before he entered into an agreement to sell his property on 2-9-1993 in favour of the plaintiff in O.S. No. 236 of 1994, positively establishes the capacity of the respondent to raise the money payable under Ex. A-1. This fact itself belies the contention of the appellant that respondent delayed payment due to lack of funds.

14. The deposition of the respondent as D.W.1 in O.S. No. 236 of 1994 filed against him by the purchaser of his land, cannot be received in evidence, as it can only be used for contradiction, as per Section 145 of the Evidence Act. That deposition would be relevant only if it satisfies the requirements of Section 33 of the Evidence Act. Since the requirements in Section 33 of the Evidence Act are

not satisfied, question of marking the entire deposition of the respondent as D.W.1 in O.S. No. 236 of 1994 does not arise. So the first two documents i.e. the agreement of sale executed by the respondent dated 30-8-1993 (sic. 2-9-1993) and his deposition in O.S. No. 236 of 1994 need not and cannot be received as additional evidence in this appeal. However, the proceedings of the Land Reforms Tribunal dated 20-11-1976 can be received as additional evidence, since it is a public document, which requires no further proof.

15. Hence CMP No. 7692 of 2003 is partly allowed and the proceedings of the Land Reforms Tribunal dated 20-11 -1976 only is received as additional evidence and marked as Ex.B-1 on behalf of the appellant.

Point:

16. The recitals in Ex. A-1 show that inasmuch as the appellant is not realizing sufficient income from the suit land and is unable to cultivate it personally as it is situated far away from her place of residence, she agreed to sell the unencumbered suit land, which was purchased by her from Somayya Chowdary on 6-10-1971, for Rs. 2,45,000/-, to the respondent after receiving Rs. 55,000/- as advance and the balance amount of Rs. 1,90,000/- has to be paid by the respondent within three months therefrom whereupon she has to execute a sale deed in respect of the suit land either in favour of the respondent or his nominee and register the same. There is nothing in Ex. A-1 to show that the suit land was measured prior to, or at the time of Ex. A-1, or that the suit land has to be measured before execution of a regular sale deed, for determination of price payable by the respondent to the appellant therefor. In Ex. A-2 notice sent by him to the appellant through his advocate, the respondent clearly got it mentioned that, as per the agreed terms, the sale deed would be executed after measuring the land agreed to be sold for arriving at the sale consideration payable thereunder. In her Ex. A-3 reply, to the original of Ex. A-2 notice, appellant admitted the said fact. The contention of the learned Counsel for the appellant that in view of the ratio in Sait Bolumal Dharmdas Firm, Bankers Vs. Gollapudi Venkatachelapathi Rao and Another, and Tyagaraja Mudaliyar case AIR 1936 Privy Council 170 and Sections 91 and 92 of the Evidence Act, the case of the respondent that the suit land has to be measured for determination of the price payable cannot be taken into consideration, does not have any force and cannot be accepted because the appellant in para 1 of Ex. A-3 reply admitted.

...it is also true that the sale deed should be executed after measuring the land and after arriving at the consideration for the land that was arrived at on measurement.

And in para 3 thereof stated

My client has got the least objection for getting the land measured

In fact the appellant as D.W.1 during cross-examination stated

At the time of execution of the agreement it was settled to get the land

measured and to arrive at the consideration and to deliver original sale deed and also to tender the land Ceiling papers.

The said admission of the appellant in Ex. A-3 and as D.W.1 clearly shows that a term, which was agreed between her (the appellant) and respondent and which is not inconsistent with the terms mentioned in Ex. A-1, is also in existence. So neither Section 91 nor Section 92 of the Evidence Act apply to the facts of this case because what is mandated by Section 91 of the Evidence Act is that contents of the documents should be proved only by the primary evidence, except in cases in which secondary evidence is admissible and as Section 92 of the Evidence Act deals with exclusion of extrinsic evidence to contradict, vary, add to or subtract from the terms of such document. The second proviso to Section 92 of the Evidence Act clearly lays down that separate oral agreement as to any matter on which a document is silent, and which is not inconsistent with its terms, can be proved. In this case the admission by the appellant in Ex. A-3 notice and during her cross-examination as P.W.1 regarding the measurements of the suit land being taken for determination of the price payable, are binding on her. So it is clear that the price payable to the appellant by the respondent for the suit land can be known only after measurements of the suit land are taken, but not before. Therefore, respondent tendering the balance consideration payable by him under Ex. A-1 to the appellant arises only after the suit land is measured but not before.

17. The evidence of D.W.2, the brother of the appellant in his chief-examination is that more than one year after Ex. A-1, respondent, after repeated demands to pay the balance sale consideration, demanded measurement of the suit land and so he got the suit land measured through the village Karnam. The evidence of D.W.4 is that Somayya Chowdary got the suit land measured in 1986 in the presence of respondent and others. During cross-examination he admitted that no measurements of the suit land with reference to FMB were taken, and stated that the respondent gave out that the measurements taken without FMB cannot be taken as the correct measurements. D.W.5, the former village Karnam, stated that measurements of suit land were taken about 6 years prior to his giving evidence (he gave evidence on 17-9-1993) in the presence of the respondent, D.W.4 and Somayya Chowdary. During cross-examination he stated that he does not remember the year in which the suit land was measured and admitted that the suit land was not measured with reference to FMB and that he did not verify whether the survey stones were correct or not and that he does not know the extent of the land as per F.M.B. In view of the above evidence adduced by the appellant also it is clear that measurement of the suit land was contemplated even at the time of Ex. A-1, for the purpose of ascertainment of the price payable to the appellant. Otherwise there would not have been a need for the alleged taking measurements of the suit land, spoken to by D.Ws.2, 4 and 5.

18. Be that as it may, the evidence of D.Ws. 2, 4 and 5 relating to the measurement of the suit land being taken cannot be true because the appellant

in her Ex. A-3 reply dated 14-4-1987 did not even whisper about the suit land being measured at any time after Ex. A-1 agreement. If the measurements of the suit land, in fact were taken after Ex. A-1 agreement and before Ex. A-3 reply, appellant would not have got it mentioned in para 3 of her Ex. A-3 reply that she has no objection for getting the suit land being measured. It was not even suggested to the respondent, during his cross examination when he was in the witness box as P.W.1, that the suit land was measured in the presence of D.Ws.2, 4 and 5. It is not the case of the appellant that measurements of the suit land were taken after Ex. A-2 notice. All the above apart, the appellant did not even allege in her written statement that the suit land was measured at any time after Ex. A-1 or Ex. A-2 notice. Therefore the evidence of D.Ws.2, 4 and 5 cannot also be taken into consideration as it is well known that no amount of evidence in respect of a plea, which is not taken in the pleadings can be taken into consideration.

19. I am unable to agree with the contention of the learned Counsel for the appellant that inasmuch as the respondent in Ex. A-2 notice mentioned that the suit property was delivered possession of to him, it should be treated that he did not come to Court with clean hands, because as rightly observed by the trial Court the said averment in Ex. A-2 notice that possession of the suit land was delivered on the day of agreement obviously was a typographical error or an accidental slip, because when it is the specific case of the appellant herself that the suit land has to be measured before delivery and when it is the specific case of the respondent in plaint also that the suit land has to be delivered after measurement, it cannot be said that the respondent came to Court with a false case. It I may say so, it is the appellant that set up a false case, because she, having admitted in Ex. A-3 reply notice that she is prepared to execute the sale deed after getting the suit land measured, adduced evidence to mislead the Court that the suit land was measured and that she made improvements to the suit land immediately after the expiry of the three months period and so she is not prepared to sell the suit land to the respondent, because the admission in Ex. A-3 reply relating to her preparedness to execute the sale deed within one month from that date belies her making improvements to the suit land on the assumption that Ex. A-1 stood cancelled. Question whether the respondent sent Ex. A-4 rejoinder to Ex. A-3 or not is not very relevant for deciding the point for consideration because Ex. A-4 has no bearing for deciding the point for consideration. So no finding on whether Ex. A-4 rejoinder was sent or not need be given.

20. The contention of the learned Counsel for the appellant that inasmuch as the appellant made several improvements to the suit property subsequent to the expiry of the stipulated period of 3 months, she would be put to a great hardship if specific performance of the agreement is ordered at this stage, cannot be accepted because in Ex. A-3 reply dated 14-4-1987 which is more than 16 months after Ex. A-1 agreement it is stated "kindly advise your client to obtain sale deed and pay the balance of sale consideration to my client within one

month from the date of receipt of this notice". If the appellant really made improvements to the suit land three months after Ex. A-1 under the impression that Ex. A-1 stood cancelled and was not prepared to part with the suit land because of those improvements, she would not have got it mentioned in Ex. A-3 reply that she is willing to execute a sale deed in favour of the respondent after one month from the date of Ex. A-3.

21. As the appellant purchased the suit land from her vendor Somayya Chowdary on 6-10-1971, that sale comes within the purview of Section 8 of the Act, which lays down that every person, whose holding on the notified date together with any land transferred by him on or after the 24th January, 1971, whether by way of sale etc., exceeds the specified limits, shall have to file a declaration within thirty days from the notified date or within such extended period as the Government may notify in that behalf "Specified limit", as per Explanation III to the Section, is 10 acres in case of wet land and 25 acres in case of dry land. The extent of the suit land is more than 17 acres. Apart from the suit land Somayya Chowdary, the vendor of the appellant admittedly has some other land because the appellant and her vendor Somayya Chowdary also admittedly, filed declarations under the Act. Inasmuch as Section 17 of the Act prohibits alienation of land by any person holding land in excess of the ceiling area as on 24-1-1971, till he furnishes a declaration u/s 8 and the extent of the land, if any, to be surrendered in respect of his or that of his family unit has been determined by the Tribunal and an order has been passed by the Revenue Divisional Officer under this Act taking possession of the land in excess of the ceiling area and a "notification is published", the sale of the suit land by the appellant to respondent would be under cloud till "notification" u/s 16 of the Act is published.

22. Appellant examined D.W. 3 to show that she, after finalisation of her ceiling area under the Act, surrendered Ac.0-05 cents held by her in excess of the ceiling area and that public notice in respect thereof was given as per Ex. XI. Here it should be stated that Ex. XI is the notice issued in Form No. 4 under Rule 4(2) of the Rules framed under the Act (hereinafter referred to as "the Rules") which relates to the public notice issued prior to the determination of the holding of a declarant. As per Rule 8(3), (4) and (5) of the Rules, notice under Rule 16 of the Rules will be in Form No. X, after issuing a public notice under Rule 7(4) of the Rules in Form No. VIII. Neither the appellant nor D.W. 3 produced the certificate under Form No. X or public notice in Form No. VIII. Even Ex.B-1 produced by the appellant as additional evidence in this appeal is only a copy of the order accepting the surrender of the land proposed by the appellant but not Form VIII or form X notice. Therefore, it is not known if "notification" as contemplated by Section 16 of the Act is published or not. So, in order to protect his interest, respondent seeking a clarification from the appellant relating to clearance in the land ceiling declaration filed by her, before he pays the balance due under Ex. A-1, cannot be said to be an unreasonable request. Here I should state that the appellant cleverly produced only Ex. B-1 a Xerox copy of a certified copy of the order dated 20-11-1976 of the Land Reforms Tribunal. The relevant

portion of the certified copy, which contains the details relating to date when the copy application was filed, and when the stamps were called for and when the copy was made ready, are not available in Ex. B-1. If they are available the date on which the copy application was made would have known. Due to absence of the said seal Ex.B-1 cannot but be said to be an incomplete document devoid of relevant details. The possibility of the appellant obtaining the original of Ex. B-1 is (original certified copy) after the filing of this appeal cannot be ruled out. Probably with a view to screen that fact only, a Xerox copy of the certified copy, in the front page, without relevant dates of filing of copy application etc is produced as additional evidence in this appeal. So it cannot positively be said that the original of Ex. B-1 was available with the appellant by the date of Ex. A-1. So the contention of the appellant that the respondent was shown the documents relating to land ceiling clearance at the time of Ex. A-1 cannot be believed or accepted.

23. In re the contention relating to production of the original title deed relating to the suit land, the case of the appellant is that she could not produce the original title deed as it was filed in the land ceiling declaration filed by her vendor Somayya Chowdary, which is pending in revision in the High Court and that the respondent was shown a copy of her title deed at the time of Ex. A-1. When it is the case of the appellant that the Land Reforms Appellate Tribunal, while reversing the finding of the Land Reforms Tribunal, held that the sale of the suit land by Somayya Chowdary in her favour is a bona fide transaction, and deleted that extent from the holding of her vendor Somayya Chowdary, and that it is Somayya Chowdary that preferred a revision to the High Court seeking further exemptions, nothing prevented the appellant or Somayya Chowdary from taking return of the sale deed in respect of the suit land from the Tribunal or the appellate Tribunal or the High Court, and showing the same to the respondent for his inspection. Pendency of the revision, said to have been preferred by Somayya Chowdary, which is said to be unconnected with the sale of the suit land, is not a valid ground for the appellant not producing the original sale deed relating to the suit property for inspection by the respondent, because that document admittedly has no connection with the revision filed by Somayya Chowdary allegedly pending in this Court by the time of Ex. A-1.

24. Rathna Baicase AIR 1943 Mad. 593 relied on by the learned Counsel for the appellant is of no help to the appellant. In that case the buyer insisted on the seller producing all the documents necessary for making out the complete chain of his title and also to obtain a probate of the Will relied on by him. It was held that though some of the documents of title may not be in the possession of the seller, as they may be with the mortgagee or a trustee etc., they could be procured for inspection by the buyer. As stated earlier nothing prevented the appellant from taking return of her title deed immediately after the sale in her favour was upheld by the appellate Tribunal constituted under the Act. If I may say so, production of the original sale deed relating to the property agreed to be sold by the vendor is for the benefit of the purchaser to satisfy himself that the

vendor did not create any equitable mortgage over the property agreed to be sold by depositing the title deeds relating to that property with any creditor. So merely because a copy of the title deed was shown to the respondent, and merely because delivery of the original sale deed arises only at the time of execution of the sale deed, respondent (sic. appellant) cannot be heard to say that inasmuch as she produced a copy of the title deed relating to the land at the time of agreement she need not show the original sale deed relating to the suit land to the respondent, for his paying the balance due to her under Ex. A-1. In the above circumstances, appellant filing her title deed in the land ceiling declaration of her vendor, Somayya Chowdary, which according to her became final in respect of the sale in her favour even long time prior to Ex. A-3 notice, cannot be a ground for her not producing the same for inspection by the respondent. Therefore, respondent has a right to withhold the balance payable by him under Ex. A-1 till the original title deed in respect of the suit land is produced before him for his inspection.

25. Inasmuch as the balance sale consideration due under Ex. A-1 has to be paid three months after the date of its execution, at the time of execution of the sale deed, it is clear that payment of the balance sale consideration and execution of the sale deed by the appellant, either in favour of the respondent or his nominee, are simultaneous. So till the appellant is ready to execute the sale deed in his favour respondent need not pay the balance sale consideration. As stated earlier inasmuch as the suit land was not measured, the amount actually payable to the appellant by the respondent is not known. It is not the case of the appellant that she obtained income tax clearance certificate from the income tax department. Both of the above apart, as stated above, till the original title deed is shown to him to satisfy himself that the appellant did not create any equitable mortgage on the suit land by depositing the original title deed, respondent need not pay the balance sale consideration. In the above circumstances, it is prima facie clear that it is that the appellant, but not the respondent that did not perform her part of the contract in terms of Ex. A-1.

26. It is not in dispute that appellant has to obtain an income tax clearance for registration of the sale deed in favour of the respondent, it is not the case of the appellant that she obtained income tax certificate. So appellant who was not in a position to execute and register the sale deed in favour of the respondent even by the date of respondent filing the suit, cannot be heard to say that she was ready and willing to perform her part of the contract as per Ex. A-1 agreement by the date of the filing of the suit.

27. Coming to the other decisions relied on by the learned Counsel for the appellant, in Jugraj Singh case AIR 1995 SC 945 and N.P. Thirugnanam case 1995 SCC 115 it is held that in a suit for specific performance of contract, the purchaser must show his readiness and willingness to perform the contract at all stages from the date of agreement till the date of hearing of the suit and that the readiness and willingness of the purchaser is a condition precedent to grant the

relief of specific performance. In *His Holiness Acharya Swami Ganesh Dassji Vs. Shri Sita Ram Thapar*, the vendor agreed to sell 500 sq. yards of land in Delhi city to meet the marriage expenses of his daughter. As per the terms of the said agreement the draft sale deed has to be finalized, and the sale deed has to be registered, within seven days from the date of agreement. The purchaser in that case, inspite of repeated requests by the vendor, failed to pay the amount due and payable by him. In the circumstances of that case the High Court of Delhi holding that the time for performance is the essence of the contract, dismissed the suit for specific performance filed by the vendor. That decree of dismissal was confirmed by the apex Court. In *Bolisetti Venkateswara Rao and Others Vs. Nadakuditi Venkateswara Rao*, the purchaser/tenant of the vendor, who was to pay the balance sale consideration of Rs. 6,000/- to the vendor, filed the suit as an indigent person alleging that he has no means to pay court fee of Rs. 1,600/-. His vendor Landlord filed a suit for recovery of possession of the said property from his tenant/purchaser. Both those suits were clubbed and common evidence was recorded and were heard together. The trial Court decreed the suit filed by the vendee/tenant for specific performance and dismissed the suit for relief of possession filed by the vendor/landlord. A learned single judge confirmed the said judgment of the trial Court, on which a letters patent appeal was preferred by the landlord/vendor. The division bench dismissed the suit for specific performance filed by the tenant/vendee holding that his filing suit for specific performance as an indigent person per se establishes his want of capacity to pay the balance amount due and payable under the agreement and remitted the case relating to recovery of possession filed by the vendor/landlord to the trial court for disposal on merits on the basis of the evidence adduced by the parties as the trial Court and appellate Court dismissed the suit without considering the evidence adduced in that respect, on the ground that the suit for specific performance filed by the vendee/tenant was decreed. The ratio in *Lourdu Mari David and others Vs. Louis Chinnaya Arogiaswamy and others*, is that if the person claiming specific performance does not come to court with clean hands he cannot be granted the said relief. In *Suryadevara Satyanarayana (died) by L.Rs Vs. Hirachand*, as per the terms of the agreement the Vendee has to pay 85% of the sale consideration within three months and get the land covered by the agreement, which is situated in Guntur town, measured. The vendee refused to pay the said amount till permission is obtained from Urban Land Ceiling Authority to alienate the land, and waited from Urban Land Ceiling Authority to alienate the land, and waited for several years and then filed the suit for specific performance. The trial Court decreed the suit. In the appeal preferred by the vendor relief of specific performance was negatived on the ground of laches, and the vendor was directed to refund the advance with interest. The said decision has no application to the facts of this case because the suit, admittedly, was filed within three years from the date fixed for performance in Ex. A-1, and as I held that the default was on the part of the appellant but not on the part of the respondent. The ratio in *K.S. Vidyanadam and Others Vs. Vairavan*, is that the Court should look into all the relevant circumstances including the time fixed to

perform in the agreement and determine whether its discretion to grant specific performance of the agreement should be exercised or not. In *Veerayee Ammal Vs. Seeni Ammal*, the trial Court decreed the suit for specific performance of an agreement of sale filed by the purchaser and that decree was confirmed by the first appellate Court. In second appeal the High Court set aside the concurrent finding and dismissed the suit. The apex Court reversed the decision of the High Court and restored the decree of the trial Court holding that time, in that contract, was not the essence of the contract. The ratio therein that the person seeking specific performance of a contract must approach the Court within reasonable time and the "reasonable time" means as soon as circumstances permit. The facts in *K. Narendra Vs. Riviera Apartments (P) Ltd.*, are different from the facts of this case. In that case relief of specific performance was refused because the agreement became incapable of performance and so the vendor was directed to pay the amount received by him to the vendee along with an amount equal as compensation to the vendee.

28. In *Govind Prasad Chaturvedi Vs. Hari Dutt Shastri and Another*, it is held fixation of a period within which the contract has to be performed per se does not make the stipulation, as to time, the essence of the contract. In para 24 of *Smt. Chand Rani* case AIR 1993 SCW 1371 relied on by the learned Counsel for the appellant, a constitution bench of the apex Court, after reviewing the case law, observing

From an analysis of the above case-law it is clear that in the case of sale of immovable property there is no presumption as to time being the essence of the contract. Even if it is not of the essence of the contract the Court may infer that it is to be performed in a reasonable time if the conditions are:

1. from the express terms of the contract";
2. from the nature of the property; and
3. from the surrounding circumstances, for example: the object of making the contract.

held that inasmuch as the evidence on record in that case shows that the vendee, who was to pay Rs. 98,000/- within 10 days from the date of agreement to the vendor to redeem the mortgage, was not willing to pay that amount unless vacant delivery of possession of one room in the ground floor was given and was insisting on production of the income tax clearance certificate, which has to be obtained after purchase of stamps, his negligence to pay Rs. 98,000/- within 10 days and his insisting on delivery of vacant possession of one room, and insisting of production of income tax clearance certificate which are not stipulated in the agreement, disentitled him to the relief of specific performance. In this case the actual price payable can be determined only after measurements are taken.

29. In this case appellant herself expressed her readiness to execute the sale

deed within one month after Ex. A-3 notice after taking measurements. So by no stretch of imagination can it be said that time of three months fixed in Ex. A-1 is the essence of contract.

30. After referring to the case law on the subject, at page 2534 of "Pollock and Mulla on Indian Contract and Specific Relief Acts, (12th edition) it is stated

Actual Tender of Money

In the absence of any contract to the contrary, the ordinary rule, governing sale of land, is that the payment of consideration money and the conveyance are simultaneous; and hence it is not necessary that price must be tendered as a condition precedent for specific performance.

It is also not necessary for the plaintiff to show that he had money to offer on date of filing the suit. The plaintiff does not have to go about jingling money to demonstrate his capacity to pay the purchase price.

Deposit in Court:

Where a contract involved the payment of money, it is not essential for the plaintiff to actually tender to the defendant or to deposit in court any money except when so directed by the Court. The court can direct the plaintiff to deposit the entire balance consideration in court so that it can be easily and readily available to the defendant at the time the contract is performed by execution of sale deed. But where the plaintiff has paid the amount into court without order from the court, this factor cannot be construed adversely against him.

In view of the terms stipulated in Ex. A-1, that payment of balance sale consideration due from the respondent, and execution of the sale deed by the appellant are simultaneous, and for the reasons mentioned above, I hold that it is the appellant that did not perform her part of the contract. In fact, the respondent, who as per the order of the trial Court, deposited into Court the amount payable by him as per Ex. A-1 specifically alleged in the plaint that he is always ready and willing to perform his part of the contract and demonstrated that fact by depositing the amount into Court as directed by the Court within the time granted by the Court. So his failure to "demonstrate" that he was having sufficient money with him to pay the balance sale consideration under Ex. A-1 by the date of his evidence is not much of consequence and the contention of the appellant that the respondent was not ready and willing to perform his part of the contract cannot be believed or accepted.

31. In view of the above it cannot but be said that the respondent is entitled to the relief of specific performance and so the trial Court rightly decreed the suit for specific performance of Ex. A-1. The point is answered accordingly.

32. In the result, CMP No. 7692 of 2003 is partly allowed and Ex. B-1 is marked. The appeal is dismissed, with costs.