
(2006) 04 AP CK 0077

In the Andhra Pradesh High Court

Case No : Appeal No's. 616 and 620 of 1995

Goli Nanoji Rao (D) by L.Rs. and Others

APPELLANT

Vs

Gudanti Kamala Devi and Others

RESPONDENT

Date of Decision : 03-04-2006

Acts Referred:

Hindu Adoptions and Maintenance Act, 1956 — Section 12, 18, 27, 4

Citation : AIR 2007 AP 6 : (2007) 1 ALD 21 : (2006) 4 ALT 11

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

Bench : Single Bench

Advocate : V. Srinivasa Rao, for the Appellant; VLN Gopala Krishna Murthy, for Respondents 2 and 3, for the Respondent

Judgement

P.S. Narayana, J.—Brief facts:- Goli Nanoji Ra, the plaintiff in O.S. No. 121/80 filed the suit for specific performance of contract of sale dated 10.5.1980 and in the alternative for damages of Rs. 1,30,000/- against defendants 1 and 2 in the said suit. O.S. No. 24/81 was originally filed as O.P. No. 47/80 by Guddanti Kamala Devi, widow of late Guddanti Sessaiah, who was shown as 3rd defendant in O.S. No. 121/80 against her sons, daughters and tenants and also the plaintiff in O.S. No. 121/80 praying for partition and separate possession of her 1/6th share in the plaint schedule building or in the alternative for maintenance at the rate of Rs. 1,000/- per month and also for creation of a charge over the plaint schedule building for securing the payment of maintenance. Both the suits were decided together though evidence was recorded independently. In O.S. No. 121/80 P.W. 1 to P.W. 3, D.Ws. 1 and 2 were examined, Exs. A. 1 to A. 20 were marked. Likewise, in O.S. No. 24/81 P.W. 1, D.Ws. 1 and 2 were examined and Exs. A. 1 to A.3 and Ex. B. 1 were marked. On appreciation of evidence, the learned Judge after recording certain findings, the relief of specific performance was negatived and alternative relief of refund of Rs. 30,000/- received as earnest money from the plaintiff in O.S. No. 121/80 with interest at 18% per annum from the date of suit till the date of payment was ordered and it was further directed that they shall also pay a sum of Rs. 1,000/- being the costs of

execution of the agreement of sale and the costs to the plaintiff as damages and they shall also pay the earnest money and damages to the plaintiff on or before 18.6.1993. As far as O.S. No. 24/81 is concerned, some quantum of maintenance had been awarded and charge was created over the property. It is not in controversy that the plaintiff in O.S. No. 24/81 is no more and hence the claim of maintenance at present doesn't survive. Goli Nanoji Rao, the plaintiff in O.S. No. 121/80 died and the legal representatives of deceased appellant in A.S. No. 620/ 95 were brought on record by order dated 24.1.2006 in A.S.M.P. No. 168/06.

2. A.S. No. 620/95 is preferred as against the judgment and decree made in O.S. No. 121/80. A.S. No. 616/95 is filed as against the Judgment and decree made in O.S. No. 24/81 by the self-same Nanoji Rao. It is no doubt true that on record the death of Guddanti Kamala Devi had not been recorded but the Death Certificate would evidence the death of Guddanti Kamala Devi on 16.10.2004. It is stated that all the legal representatives already are on record in A.S. No. 616/95 and in the connected appeal in A.S. No. 620/95 certain legal representatives are already on record, representing the estate. At any rate, inasmuch as both the appeals are preferred as against the common judgment inasmuch as all the legal representatives are already on record in A.S. No. 616/95, the rest of the legal representatives whether brought on record or not in A.S. No. 620/95, it would not seriously alter the situation.

3. Contentions of Sri V. Srinivasa Rao :- The learned Counsel representing the legal representatives of the appellants in both the appeals would submit that the learned Judge having recorded positive findings in relation to agreement of sale in question negated the relief on the ground that the plaintiff in the other suit O.S. No. 24/81 had right of maintenance and on that ground the main relief of specific performance was negated and the alternative relief of refund was ordered. The learned Counsel also would maintain that not only that the said maintenance holder the plaintiff in O.S. No. 24/ 81 is no more but also in view of the fact that the original plaintiff is ready and willing to take the property even if it is annexed with such an obligation if any refusing the relief of specific performance cannot be sustained. Hence, the learned Counsel would maintain that the appeals are to be allowed decreeing the suit for specific performance O.S. No. 121/80 as prayed for and inasmuch as the maintenance claim came to an end, the other appeal preferred A.S. No. 616/95 also to be allowed.

4. Contentions of Sri V.L.N.G.K. Murthy :- On the contrary Sri V.L.N.G.K. Murthy, the learned Counsel representing the contesting respondents in both the appeals would maintain that it may be true that the legal representatives inasmuch as they are on record in the other connected appeal and even in the other appeal A.S. No. 620/95 the estate of the mother is being duly represented by Rule 1 and Rule 2 in A.S. No. 620/95, the appeals can be heard on merits. The learned Counsel also would submit that in a suit for specific performance when alternative relief was granted the Appellate Court to be slow in disturbing such

findings recorded by the learned Judge and hence negating the relief of specific performance need not be disturbed.

5. Heard the counsel on record and perused the oral and documentary evidence available on record.

6. For the purpose of convenience inasmuch as both these appeals arise out of common judgment though separate evidence was recorded, these appeals are being disposed of by this common judgment. For the purpose of convenience the parties hereinafter would be referred to as plaintiff and defendants as arrayed in O.S. No. 121/80 - the suit for specific performance. It is needless to say that the other suit O.S. No. 24/81 which was filed as O.P. No. 47/80 was no doubt filed for the relief of partition, the alternative relief of maintenance alone had been granted.

7. Pleadings of the parties:

Plaint in O.S. No. 121/80 :- It was pleaded by the plaintiff in O.S. No. 121/80 as hereinunder:

Defendants 1 and 2 who are the sons of the 3rd defendant representing that they are the owners of the suit schedule property offered to sell the same to the plaintiff for Rs. 1,30,000/-. They also represented that they got the suit property from their father under a will dated 14.1.1954. Thereupon the plaintiff entered into a contract of sale with them on 10.5.80 for purchase of the property for a total consideration of Rs. 1,30,000/- and on the date of agreement, he paid Rs. 5,000/- as earnest money and as agreed in the contract he paid Rs. 25,000/- on 22.5.1980, to them. The payment was endorsed on the back of the agreement by the defendants stating that the said amount shall carry interest at 24% per annum, in case the defendants 1 and 2 failed to get the tenants evicted from the suit property and deliver vacant possession of the same to the plaintiff on or before 30.9.1980 and should obtain a sale deed from D. 1 and D. 2.

While the plaintiff has been ready and willing to perform his part of the contract and expecting D. 1 and D. 2 to co-operate with him, he received a lawyer's notice from the 3rd defendant on 31.5.1980 claiming a right to a share or maintenance in the suit property. She challenged the genuineness of the will dated 14.1.1958. The plaintiff issued a reply notice to her and he also issued a notice to defendants 1 and 2 to execute a proper sale deed after clearing the mist created by their mother. The 3rd plaintiff (defendants) filed a suit in forma pauperis in O.P. No. 47/80 (O.S. No. 24/80) on the file of this Court impleading the plaintiff, defendants 1 and 2 and the persons in occupation of the suit house claiming partition and separate possession of her share in the alternative maintenance. Thereupon the plaintiff issued a notice to defendants 1 and 2 on 27.9.1980 calling upon them to perform their part of the contract within the time stipulated in the agreement, but they sent a notice dated 26.10.1980 terminating the contract of sale dated 10.5.1980 without valid reason enclosing crossed bank drafts for the advance amount of Rs. 30,000/- received by them

under the agreement. They disowned their liability to pay interest. The plaintiff gave reply notice on 7.11.1980 refuting the allegations and returning the bank drafts. They have no right to terminate the contract unilaterally. They are under duty to prove their title to the property sold and deliver vacant possession of it to the plaintiff by executing a registered conveyance deed. There are laches on third party. They cheated the plaintiff by making fraudulent representation. The contract dated 10.5.1980 may be read as part of this plaint. The plaintiff has been ready and willing to perform his part of contract at all times. It is false to state that at the instance of this plaintiff, the 3rd defendant filed O.P. No. 47/80 and that the suit schedule property is kept vacant after evicting the persons in possession. Hence the suit for specific performance.

In case the defendant create such conditions which make the specific performance of the contract impossible, the plaintiff, will stand to suffer heavy damages because by relying upon the contract of sale he has given up purchasing similar other properties. The damage he is likely to suffer is equal to purchase consideration according to his estimate. The defendants have to account for the interest for the amount paid to them according to law. D. 3 is a proper party since she filed O.P. No. 47/80.

Averments made in the written statement in O.S. No. 121/80 :- Defendants 1 and 2 filed written statement denying the allegations. It was pleaded as hereunder:

The father of these defendants died on 11.2.1958 having executed a registered will dated 14.1.1958 in favour of these defendants while in sound and disposing state of mind for the suit property and some other properties. He clothed the 1st defendant who written statement (sic) in major by then with the responsibility of the discharging the debts and looking after the welfare of the 3rd defendant. As per the said will the 1st defendant has to maintain his mother. Subsequent to the father's death the will was acted upon and the suit house was kept intact as the 3rd defendant is residing in the same. The suit house is not fetching income and it became old. Hence these defendants thought of disposing it and take away their mother from Chirala along with them and look after her needs. These defendants are collecting the rents and handing over the same to the 3rd defendant. She is substantially rich with her liquid cash and gold Ornaments still these defendants allowed her to live in the suit house and enjoy the income.

On 10.5.1980 these defendants sold away the suit house to the plaintiff who is a close relative of the family and who was looking after the 3rd defendant in their absence. The 3rd defendant was present and she is aware about the suit contract and she agreed for the selling away of the house. These defendants fairly conceded her request to send Rs. 200/- every month from their salaries towards her maintenance and further invited her to come and settle with them as and when she wishes. Having satisfied with all these settlements, the plaintiff entered into the contract of the sale and paid Rs. 25,000/- by which time these defendants started vacating the existing tenants. The 3rd defendant was not

faithful to her husband during his life-time. After his death she is not faithful to these defendants. Having been ill-advised by the vested interest including the plaintiff who is her close relative, she got a notice issued on 31.5.1980 to these defendants and plaintiff with all false allegations. These defendants immediately approached her and the plaintiff in the presence of elders. As the negotiations proved futile these defendants gave suitable reply through their counsel on 15.7.1980 with all their fair mind being responsible officers. The plaintiff issued a reply notice accepting the title of this defendant to the suit property. The 3rd defendant filed O.P. No. 47/80 on 17.7.1980 against the plaintiff, these defendants, their sisters and some other tenants at the instance of the plaintiff. The question of partition or the maintenance does not arise as the right of the 3rd defendant is barred under law, except it is beneficial to the plaintiff who was unable to raise funds to get a regular sale deed. Had this O.P. not been filed, these defendants would have registered a regular sale deed in favour of plaintiff. Taking advantage of the innocence of the 3rd defendant the plaintiff dragged these defendants to the Court to have wrongful gain. The remaining tenants are also in the control of the plaintiff and 3rd defendant, they did not choose to pay rents either in the-Court or to the defendants. The conduct of the plaintiff resulted in heavy damage and loss to the defendants monetarily and mentally. The value of the house is diminished and these defendants reserve right to claim damages.

Being fair minded these defendants sent D.D. for Rs. 30,000/- in favour of the plaintiff with a registered notice to avoid unpleasantness and further complications in the matter terminating the contract. But for the reasons best known to him, he returned that money and filed this suit to have wrongful gain. These defendants repeatedly shouted that they are ready and willing to perform their part of contract and the present suit is filed to harass them. The plaintiff is not entitled either for specific performance or for damages since the granting of the relief is discretionary one, the Court should take into consideration the plaintiffs conduct.

The plaintiff is not entitled for interest basing on the later clause in the agreement as the main agreement superseded the later clause. These defendants always co-operated with the plaintiff and in his interest only they sent the amount. In fact, till recently all the rooms in the suit house were kept vacant and these defendants were put to loss of Rs. 10,000/-. The 3rd defendant is neither a necessary party nor a proper party to the suit. Hence, the suit may be dismissed.

The 3rd defendant filed a written statement denying the plaint allegations. It was pleaded as hereunder:

The suit house is the self-acquired property of her husband. The will dated 14.1.1958 is not a true and valid document. The testator was not in sound and disposing state of mind at that time due to illness. Hence it is not binding upon her. The testator had no testamentary capacity.

The testator had no other property except the suit schedule property. He incurred (loss) in his business. After his death this defendant sold away her ornaments and discharged his debts. She brought up the children and provided Engineering education to the 1st defendant and medical education to the 2nd defendant apart from performing the marriage of the daughters. As per the Hindu Succession Act, 1956, she is entitled to 1/6th share in the suit property. The defendants 1 and 2 who are employed elsewhere entertained an evil idea to alienate the suit property in favour of the plaintiff to deprive her share in it and defeat her right of maintenance. They refused to provide maintenance to her. Under the above circumstances she filed O.P. No. 47/80 (O.S. No. 42/82) against the plaintiff 1 and D. 1, her daughters and tenants on the file of this Court for the relief of partition and in the alternative maintenance at the rate of Rs. 1,000/- per month. The suit contract is not binding upon her since she is not a party to it. To oust her from possession of the suit building, the defendants entered into maintain her. She has a statutory charge over the said schedule building towards her maintenance under law. Hence, a charge may be created on the suit schedule building In her favour.

The 3rd defendant in O.S. No. 121/80 filed O.P. No. 47/80 which was numbered as O.S. No. 24/81 against her sons, daughters and tenants and also the plaintiff in O.S. No. 121/80 praying for partition and separate possession of her 1/6th share and in the alternative for maintenance. The allegations made in the plaint and also the written statement of the respective defendants need not be repeated again since substantially the same stands which had been taken in the main suit O.S. No. 121/80 had been repeated again.

8. Issues settled in O.S. No. 121/80 :? The following issues were settled:

- (1) Whether the plaintiff is ready and willing to perform his part of the contract dated 10.5.1980?
- (2) Whether the plaintiff is not entitled for specific performance?
- (3) Whether the plaintiff is not entitled alternatively for damages.
- (4) Whether the plaintiff is not entitled to interest as claimed in the plaint?
- (5) Whether the defendants are willing and ready to perform their part of contract dated 10.5.80?
- (6) Whether the 3rd defendant has any interest, title in the suit schedule property?
- (7) Whether the 3rd defendant is not a proper party to the suit?
- (8) Whether the defendants are entitled for damages?
- (9) To what relief?

Issues settled in O.S. No. 24/81:- The following issues were settled:

(1) Whether the plaintiff is entitled to ask for partition the plaintiff schedule property into 6 equal shares and ask for separate possession of 1/6 share from (or) whether the plaintiff is entitled to ask for Rs. 500/- (Rs. 1,000/- now) per month towards her maintenance against D. 1 and D. 2?

(2) Whether the plaintiff is entitled to ask for creation of charge for the above payment as maintenance over the plaintiff schedule property?

(3) Whether the plaintiff's suit against the defendant is barred by limitation?

(4) Whether the defendants 3 to 9 are not necessary parties to the suit?

(5) Whether the suit is bad for misjoinder and non-joinder of parties?

(6) Whether the suit property is correctly shown?

(7) To what relief?

9. As already referred to supra, though separate evidence was recorded in both the suits, in view of the fact that the 6th defendant filed an application in O.S. No. 24/81 to pronounce the common judgment along with O.S. No. 121/80, inasmuch as the said application was allowed, both the matters were heard at a time and the learned Judge had pronounced a common judgment in both the suits.

10. Evidence available on record:

Oral evidence in O.S. No. 121/80:

For plaintiff:

P.W. 1:- Goli Nanoji Rao

P.W. 2:- Rajupalem Anjaneyulu

P.W. 3:- Yatam Ananda Rao

For defendants:-

D.W. 1:- G. Sree Krishna Murthy

D.W. 2:- Guddanti Kamala Devi

Documentary evidence in O.S. No. 121/80:

For plaintiff:

Ex. A. 1 dt. 10.5.80:- Stamped agreement executed by G. Sri Krishna Murthy and 2 others

Ex. A. 2 dt. 22.5.80:- Endorsement of part payment of Rs. 25,000/- made under Ex. A. 1 by G. Sri Krishna Murthy and 2 others

Ex. A. 3 dt. 22.5.80:- Endorsement made under Ex. A. 2 to the effect that defendants 1 and 2 failed to execute a registered sale in favour of P.W. 1 within

the stipulation period, defendants 1 and 2 to pay interest at 24% p.a., for the payment made under Ex. A.2.

Ex. A. 4 dt. 14.1.58:- Photostat copy of registration extract of will executed by Guddanti Sessaiah

Ex. A. 5 dt. Nil:- Demand notice issued by Commissioner, Chirala Municipality in favour of G. Sri Krishna Murthy for Rs. 755-30 ps.

Ex. A. 6 dt. 31.5.80:- Lawyer notice got issued by D.W. 2 in favour of D.W. 1 and D. W. 2.

Ex. A. 7 dt. 16.6.80:- Reply notice issued by P.W. 1 in favour of D.W. 1 and her 2 sons. Ex. A. 8 dt. 26.6.80:- Postal acknowledgment served on G. Mani for G. Sri Krishna Murthy sent from P.W. 1's Counsel.

Ex. A. 9 dt. 19.6.80:- Postal acknowledgment served on G. Srinivasa Rao of Guntakal sent from P.W. 1's Counsel.

Ex. A. 10 dt. 18.6.80:- Postal acknowledgement served on B. Seshagiri Rao, Advocate, Chirala, sent from P.W. 1's Counsel.

Ex. A. 11 dt. 15.7.80:- Lawyer notice got issued by G. Sri Krishna Murthy and another in favour of Counsel for P.W. 1.

Ex. A. 12 dt. 27.9.80:- Lawyer notice issued by P.W. 1's Counsel in favour of G. Sri Krishna Murthy and another.

Ex. A. 13 dt. Nil:- Postal acknowledgment served on G. Sri Krishna Murthy sent from P.W. 1's Counsel.

Ex. A. 14 dt. Nil:- Postal acknowledgment served on G. Srikrishnarao sent from P.W. 1's Counsel.

Ex. A. 15 dt. 26.10.80:- Lawyer notice issued by Counsel for G. Sri Krishna Murthy and another in favour of the Counsel of P.W. 1.

Ex. A. 16 dt. 19.7.80:-Original notice in O.P. 47/80 on the file of Sub Court, Chirala in favour of P.W. 1.

Ex. A. 17 dt. 7.11.80:- Reply lawyer notice issued by P.W. 1 in favour of the Counsel for G. Sri Krishna Murthy and another.

Ex. A. 18 dt. Nil:- Postal acknowledgment served, on Sri P. Venkatadri, Advocate, Chirala, sent from the Counsel for P.W. 1.

Ex. A. 19 dt. 26.7.58:- Registration extract of sale deed executed by Guddanti Sri Krishna Murthy and his brother and another in favour of Annadati Subbarao for Rs. 2,000/-.

Ex. A. 20 dt. 7.1.72 :-? Registration extract of registered sale deed executed by Guddanti Lakshmi Narasimha Murthy and another in favour of Annadata

Subbarao for Rs. 27,000/-.

For defendants: Nil.

Oral evidence in O.S. No. 24/81:-

For plaintiff:

P.W. 1:- Guddanti Kamala Devi

For defendant:

D.W. 1:- G. Sreekrishna Murthy

D.W. 2:- Goli Nanoji Rao

Documentary evidence in O.S. No. 24/81:-

For plaintiff:

Ex. A. 1 dt. 31.5.80:- Notice given by G. Kamaladevi in favour of defendants 1, 2 and 6

Ex. A. 2 dt. 16.6.80:- Reply notice issued by D. 6 to the plaintiff and D. 1 and D.2.

Ex. A. 3 dt. 7.7.80:- Office copy of notice issued by the plaintiff to defendant 7 to 9.

For defendant:

Ex. B. 1 dt. 14.1.58:- Will executed by the father of 1st defendant by name Guddanti Sessaiah.

11. Findings recorded by the learned Judge:

The learned Judge recorded positive findings in relation to the agreement of sale in question - Ex. A. 1 but however had taken note of the maintenance claimed by the mother of parties and came to the conclusion that this may not be a fit case to grant the main relief of specific performance and negated the same but however ordered refund of the amount and also in the other suit granted the relief of maintenance. Aggrieved by the same, these appeals are filed by the unsuccessful plaintiff in O.S. No. 121/80.

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

(1) Whether negating the relief of specific performance and granting the alternative relief of refund of advance amount can be said to be just and proper in the facts and circumstances of the case?

(2) Whether the relief of partition and in the alternative the relief of maintenance claimed by the 3rd defendant (plaintiff in O.S. No. 24/81) and the findings recorded by the learned Judge to be confirmed or to be disturbed in the facts and circumstances of the case?

(3) Whether the legal representatives of the plaintiff are entitled to the principal relief of specific performance in the facts and circumstances of the case?

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

13. Points 1 to 3:- Though separate evidence was recorded inasmuch as the recording of findings would be overlapping, all these points in both the suits are dealt with in common.

14. In O.S. No. 121/80 P.Ws. 1 to 3 were examined and Ex. A.I to Ex. A.20 were marked and on behalf of the defendants D.Ws. 1 and 2 were examined and no documents as such were marked. In O.S. No. 24/ 81 P.W. 1 was examined and Ex. A. 1 to Ex. A.3 were marked. Likewise on behalf of the defendants D.Ws. 1 and 2 were examined and Ex. B. 1 was marked.

15. Goli Nanoji Rao, the plaintiff in O.S. No. 121/80 was examined as P.W. 1 in O.S. No. 121/80 and as D.W. 2 in O.S. No. 24/81. The plaint schedule property is a terraced building. It is not in serious controversy that this building originally belonged to one Guddanti Sessaiah, the father of defendants 1 and 2 and the husband of D. 3 and it is his self acquired property. It is stated that he executed a registered will on 11.2.1958 in favour of his two sons in relation to the building in question, the vacant site and also a tiled house. It appears that he had also given a tiled house and vacant site adjacent to the suit building to his son through his third wife and he bequeathed his jewellery upon his wife who is the 3rd defendant. By the time of the execution of the will, the 1st defendant was a major and as such he had entrusted the responsibility of celebrating the marriages of his daughters and maintenance of his widowed wife to him. After his death, the first defendant sold away tiled house and vacant site along with second defendant in favour of one Subba Rao under sale deed - Ex. A. 19. The sale consideration was utilized for the purpose of discharging the debts left behind him by the father and also for meeting the other obligations of the family like the marriages of the sisters etc. The son of the testator through his third wife also had disposed of the property bequeathed upon him by his father. The said bequeath was made under a will and the said registration extract of the registered sale deed was marked as Ex. A. 20. It is not in serious controversy that except the plaint schedule building, all other properties covered by the will were disposed of long ago. The first defendant at the relevant point of time was working as Engineer in Baba Atomic Research Centre, Bombay, since more than 20 years. The second defendant had been working as Doctor in Railways at the relevant point of time and subsequent thereto migrated to gulf countries and has been residing there. The marriages of the daughters also were celebrated long back and they are well settled in life. The 3rd defendant at the relevant point of time had been residing in a portion of the plaint schedule property ever since the date of the death of her husband and certain details had been given relating to letting out of the portions on rent and the tenants who had been in occupation. There is some evidence available on record that she has been collecting rents and had been appropriating the same towards her maintenance. Soon after

execution of Ex. A. 1 -, agreement of sale by defendants 1 and 2 in favour of the plaintiff, the third defendant issued a notice to them and also to the plaintiffs stating that the will executed by her husband is not a genuine one and she is entitled to 1 /6th share in the plaint schedule property and in the alternative she claimed for maintenance at the rate of Rs. 500/- per month and a charge over the property. It appears from record that the plaintiff had parted with the amount of Rs. 30,000/- in favour of the 1st and 2nd defendants who had undertaken to execute registered sale deed in his favour by 30.9.1980 by evicting the tenants and delivering vacant possession to him. Having received notice from 3rd defendant, the plaintiff called upon defendants 1 and 2 to clear off the problem relating to the title, evict the tenants from building in question and execute a registered sale deed in his favour as stipulated in the agreement of sale aforesaid. In view of these happenings, it appears the 3rd defendant filed O.P. No. 47/80 which was numbered as O.S. No. 24/81 claiming the relief of partition and separate possession and in alternative praying for the relief of maintenance and creation of charge over the property. In the said suit, the daughters were also added as parties. Sub-sequent thereto, tenants, the plaintiffs also were brought on record. There appears to be some controversy between the parties relating to the readiness and willingness of the plaintiff to perform his part of the contract. The stand taken by the plaintiff was that to avoid the agreement of sale, defendants 1 and 2 had set up the 3rd defendant to file the suit for partition or in the alternative for maintenance. The stand taken by the 3rd defendant is that the plaintiffs, defendants 1 and 2, colluded with a view to defraud her right of maintenance and had thought of Ex. A. 1 - agreement of sale. The stand taken by defendants 1 and 2, the vendor, was that the plaintiff was unable to raise the balance of sale price and only with a view to gain some more time, he had set up the 3rd defendant, a close relative of him, to file the suit for maintenance. The claim made by the 3rd defendant in O.S. No. 121/ 80, the plaintiff in O.S. 24/81, appears to be the most crucial aspect of controversy in both these appeals. The 3rd defendant examined herself as D. W2 in O.S. No. 121/80 and P. W. 1 in O.S. No. 24/81. She had deposed about the entering into the agreement of sale and the family circumstances and had taken a specific stand that only with a view to defraud her right of maintenance the plaintiff and her two sons entered into Ex. A. 1 transaction and at that stage she had issued a notice dt. 31.5.1980 which was marked Ex. A. 1 in O.S. No. 24/81 and she had also deposed about the other facts of the case, daughters and the tenants being impleaded as parties. She also deposed that she has no other property and she has no capacity to maintain herself and she was not getting any amount even from her sons for maintenance and she is suffering from Blood Pressure and other ailments.

16. Guddanti Sreekrishna Murthy was examined as D.W. 1 in O.S. No. 121/80 and D.W. 1 in O.S. No. 24/81 also. The specific stand taken by this witness that this building became very old and it was not fetching any income to this witness and his brother and with the consent of their mother only they wanted to sell

away the property to the plaintiff and the plaintiff had entered into Ex. A. 1 agreement of sale. He had also taken a specific stand that they have been always ready and willing to provide maintenance and in fact they requested her to come over to their place and stay with them. It is also stated that in view of the relationship, she was won over by the plaintiff in O.S. No. 121/80 and this false notice has been thought of. He had also deposed about several other facts.

17. The learned Judge had discussed in detail the other evidence available on record, the evidence of P.Ws. 2, 3 apart from P.W. 1 in O.S. No. 121/80 and also appreciated the documentary evidence available on record, Ex. B. 1-Will executed by the father of first defendant, Seshiah, dt 14.1.1958, the notice, reply notice and office copy of notice - Ex. A. 1, Ex. A. 2 and Ex. A. 3 marked in O.S. No. 24/81 also had been considered. Several of the details which had been deposed by P.W. 1 in O.S. No. 121/80 also was examined as D.W. 2 in O.S. No. 24/81 also had been discussed at length. The learned Judge was more guided away by the fact that D. 3 has taken a stand that she had no capacity to maintain herself and she had no other property and the learned Judge also had discussed in detail Sections 4, 12, 18 and 27 of the Hindu Adoptions and Maintenance Act and ultimately came to the conclusion that the 3rd defendant is entitled to the relief of maintenance and in view the fact that she is entitled to the relief of maintenance and consequently a charge to be created over the property. The learned Judge instead of decreeing the suit for specific performance, negated the relief of specific performance and ordered refund. It is no doubt true that before filing of the suit for specific, performance, the plaintiff received the notice from 3rd defendant claiming partition or in the alternative for maintenance. There was creation of some cloud over the clear title. The peculiar stands taken by the respective parties in the light of the close relationship between these parties also may have to be taken into consideration. The subsequent event of the death of the maintenance holder also may be taken note of by this Court. However, the very fact that Ex. B. 1 - will dt. 14.1.1958 was placed before this Court by defendants 1 and 2 would go to show that the stand taken by the plaintiff that they have set up the mother may not be a just or acceptable contention. It may be that the mother may be a relative of the plaintiff. The fact now remains that the said mother - the 3rd defendant is no more, equally the plaintiff also is no more.

18. While answering the issues, the learned Judge recorded positive findings relating to Ex. A. 1 - agreement sale, Ex. A. 2 and Ex. A. 3 - the endorsements, and also had taken note of the exchange of notices and the claim of partition or in the alternative the maintenance made by the mother and all other aspects and ultimately negated the relief of specific performance only on the ground that the relief of maintenance claim of the mother to be upheld and hence the relief of specific performance cannot be granted and only the alternative relief of refund can be granted. In the light of the changed circumstances, especially in the light of the findings recorded by the learned Judge inasmuch as that obligation annexed to the property in question no longer survives by virtue of the death of

the 3rd defendant and also taking into consideration the positive findings recorded by the learned Judge upholding the execution and the validity of Ex. A, 1, this Court is of the considered opinion that negating the relief of specific performance and ordering the refund of amount may not be just and proper in the facts and circumstances of the case. It is no doubt true that specific performance always need not be granted merely because it is lawful to do so for the Court while exercising the discretion. It is also true that the learned Judge exercised the discretion in a particular way and ordered refund only but this Court had taken note of the subsequent event, the death of the maintenance-holder and the result thereof would be clearing the cloud over the title and also in addition thereto removing the obligation annexed to the property by virtue of the death of the maintenance holder. If these aspects are taken into consideration then the only conclusion at which this Court can arrive is that the present legal representatives of the deceased original plaintiff in the suit for specific performance are bound to succeed. No further findings need be recorded as far as the relief of maintenance claim of 3rd defendant-mother is concerned. It is needless to say that the question of arrears of maintenance if any already accrued may be worked out separately if the legal representatives of the 3rd defendant, the mother, choose to exercise the option of putting forth such claim if any inclusive of the daughters. Subject to the above observation, the maintenance decree granted in O.S. No. 24/81 may not further survive by virtue of the death of 3rd defendant mother.

19 Point No.4:- In the light of the foregoing discussion, the legal representatives of the plaintiff in O.S. No. 121/80, the present appellants in A.S. 620/95 are bound to succeed and accordingly the appeal is hereby allowed. Subject to the observations made supra, in view of the death of maintenance holder - the 3rd defendant-the mother in O.S. No. 121 /80 - the plaintiff in O.S. No. 24/81 (O.P. No. 47/81), no further orders need be passed and accordingly the same is hereby closed. The legal representatives of the plaintiff in O.S. No. 121/80 to deposit the rest of the amount by the end of June, 2006. The parties to the litigation to bear their own costs.