

---

**(2006) 08 AP CK 0027**  
**In the Andhra Pradesh High Court**  
**Case No : SA No. 655 of 1994**

Jalla Bhadrayya

APPELLANT

Vs

Tatikonda Suryakanthamma and Another

RESPONDENT

---

**Date of Decision :** 29-08-2006

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Section 100

**Citation :** (2006) 6 ALD 327

**Hon'ble Judges :** L. Narasimha Reddy, J

**Bench :** Single Bench

**Advocate :** B.V. Krishna Rao, for M. Ravindranath Reddy, for the Appellant; V. Parabrahma Sastri, for the Respondent

**Final Decision :** Allowed

---

## Judgement

L. Narasimha Reddy, J.—The plaintiff in O.S. No. 69 of 1984 in the Court of the District Munsif, Chinthalapudi is the appellant. He filed the suit against the respondents for the relief of specific performance of agreement of sale, dated 5-12-1981. It was pleaded that the first respondent and her son, the second respondent, offered to sell the suit schedule property admeasuring Ac.0.10 cents, for a consideration of Rs. 1,150/-, at the rate of Rs. 115/- per cent and that on the date of agreement, a sum of Rs. 1,050/- was paid. The sale deed was to be executed as and when the balance of sale consideration is paid. Possession of the property was said to have been delivered to the appellant on the date of agreement itself. According to the appellant, he offered to pay the balance of consideration to the respondents, but they have refused to receive the same.

2. On behalf of the respondents, a common written statement was filed. They denied the very execution of the agreement of sale. It was pleaded that they neither received any consideration nor delivered possession of the suit schedule property, and that the agreement is as forged one.

3. On behalf of the appellant, P.Ws. 1 to 3 were examined as Exs.A1 to A4 were

marked. On behalf of the respondents, D.Ws.1 and 2 were examined and no documentary evidence was adduced. Through its judgment, dated 30-9-1986, the trial Court decreed the suit. Aggrieved thereby, the respondents filed A.S. No. 6 of 1987 in the Court of the Additional District Judge, West Godavari at Eluru. The lower appellate Court allowed the appeal and dismissed the suit, through its judgment, dated 18-7-1994. Hence, this second appeal.

4. Sri B. V. Krishna Rao, learned Counsel for the appellant submits that the appellant had proved to the satisfaction of the Courts below that the respondents have executed Ex.A1, received the consideration and delivered possession of the suit schedule property, and that there was no justification for the lower appellate Court in reversing the decree of the trial Court. He contends that D.W.I, the second respondent herein, was so untruthful that he has gone to the extent of denying his thumb impression on the vakalath and written statement filed in the trial Court. The learned Counsel points out that by examining the scribe and attester, the appellant proved the execution of Ex.A1 and that the decree passed by the trial Court, ought not to have been reversed. He submits that it was never the case of the respondents that they have not been read over the contents of Ex.A1, and in fact, the particulars of the land, etc., were furnished by the respondents themselves, and that there was no basis for the lower appellate Court in reversing the decree of the trial Court, only on the ground that the contents of Ex.A1 were not read over to the respondents.

5. Sri V. Parabrahma Sastri, learned Counsel for the respondents, on the other hand, submits that no substantial question of law falls for consideration in this second appeal and that no interference is warranted with the judgment and decree of the lower appellate Court. He further contends that when the parties to a document are illiterate, an obligation is cast upon the party, relying upon the document, to prove and establish that the contents thereof have been read over to such illiterate persons and the appellant had miserably failed on this count. He also relies upon the judgments of certain High Courts to support his contentions.

6. The trial Court framed only one issue, namely "whether the sale agreement is true, valid and binding on the defendants, and if so, whether the plaintiff is entitled for specific performance ?" on the basis of the assertions and denial by the parties herein.

7. The appellant pleaded that the respondents are owners and possessors of the suit schedule property and that they have offered to sell the same to him. An agreement of sale, dated 5-12-1981, is said to have been executed by the respondents, incorporating the terms and conditions of sale. The entire consideration, except an amount of Rs. 100/-, is said to have been paid and that possession was delivered on the same date. The respondents, on the other hand, flatly denied the very execution of the agreement of sale.

8. The appellant deposed as P.W.I and he reiterated the contents of the plaint. P.W.2 is the scribe. He stated that he was approached by the parties to scribe the

agreement. According to him, P.W.I and his son were present on their side and the respondents were also present. He stated that Sri Achari and Sri K. Satyanarayana attested the agreement. In the cross-examination he narrated the manner in which the consideration was paid. According to him, the son of the appellant brought the money and gave it to his father, and the latter in turn handed over the amount to him, and that he passed on the consideration to the first respondent, after counting it. He stated in the cross-examination that the boundaries of the land and survey number were furnished by the first respondent. Nothing was elicited through him, to suspect the trustworthiness of his deposition.

9. P.W.3 is one of the attestors. He has virtually repeated whatever was deposed by P.W.2. According to him, he was called by the second respondent herein to act as an attestor. It was stated that by the time he went there, P.W.2 was scribing the document and was holding the cash in his hand. He deposed that the respondents have put their thumb impressions on Ex.A1, in his presence.

10. The second respondent deposed as D.W.I. In his cross-examination he admitted that he has no enmity or strained relations with P.Ws.1 to 3. He has also admitted that he sold part of the land in the same survey number, to the daughter of P.W.I, through a registered sale deed. He denied the thumb impression not only on Ex.A.1, but also those on the vakalath and the written statement, when they were shown in the Court to him. It was elicited through him that himself and his mother sold certain other items of property also.

11. D.W.2 is another attestor to Ex.A1. He admitted that Ex.A1 bears his signature. He, however, stated that he had put his signature at his house, and the respondents were not present at that time. In the cross-examination he stated that he was not aware that he was signing as an attestor in the agreement. He has also stated that he did not know whether Ex.A1 was scribed by P.W.2, but he signed on it without knowing the contents. He denied the suggestion that he is deposing falsely to save the respondents.

12. The trial Court found that the evidence on record clearly established that Ex.A1 was executed by the respondents. Specific emphasis was placed by the trial Court on the trustworthiness of D.W. 1 in the context of his denial of thumb impression on the vakalath as well as the written statement. Ultimately, the suit was decreed.

13. The lower appellate Court basically did not disagree with the finding recorded by the trial Court that Ex.A1 is proved. However, it allowed the appeal and reversed the decree passed by the trial Court, mainly on the ground that the contents of Ex.A1 were not explained to the respondents herein.

14. In the instant case, the appellant as well as the respondents are illiterates. When the parties to a document are illiterates, depending upon the contents and consequences thereof, law recognizes the necessity to establish that the contents of such document were explained to the executants. Reference in this context

may be made to the judgments of the Madras High Court in Ramaswami Jadaya Gounder (Died) and Another Vs. V.T. Elaiya Pillai and Another, judgment of the Orissa High Court in Sri Kishore Ray Thakur Bije Vs. Smt. Basanti Kumar Das and Others, and the judgment of the Allahabad High Court in Ramdeo Vs. Smt Dulari Devi, . The precautions that are required to be taken in case of Paradanashin ladies were extended to the executants of documents, who are illiterates.

15. While the proposition, as such, does not leave any doubt, the application thereof warrants analysis of facts of the relevant case. In this regard, a distinction needs to be maintained among the categories of documents. For instance, where the disputed document is a promissory note, it is permissible for the defendants in a suit filed on the basis of the same, to deny the very execution, or in the alternative, to dispute the receipt of consideration, or other ingredients, touching upon the validity of the same. On the other hand, there are several categories of documents, where such a split approach becomes impermissible. For instance, if the disputed document is an agreement of sale, the defendant cannot say that he did not execute the document at all, and at the same time to further contend that he was not explained the contents. These contradictory pleas cannot go together.

16. Further, the requirement to explain the contents, and the manner in which the relevant facts need to be proved, in this regard, differ from case to case. If the transaction is such that every aspect of it is discerned and felt by the parties through their physical acts, the plaintiff may not be required to prove the fact that the contents were explained in a detailed manner. The burden upon the plaintiff to prove that he had explained the contents would be relatively less. On the other hand, in case of documents, like relinquishment deeds, where no tangible acts take place and the contents of the document operate to the detriment of the parties, the burden would be heavier, to demonstrate that the contents thereof have been explained to the illiterate executants. A third category of cases is where, both the plaintiff and the defendant are illiterates, as in the present case, and they are assisted by the third party in arranging the transaction.

17. Reverting to the facts of the case, the appellant specifically pleaded that the respondents executed Ex.A1 agreement of sale, received consideration of Rs. 1,050/- and delivered possession of the land. The respondents, on the other hand, flatly denied it. The evidence of P.Ws.1 to 3 is unequivocal and both the Courts have acted by it. Notwithstanding the fact that Ex.A-1 is not a document, which is to be attested, the appellants have examined the attesting witness. This Court does not find any basis to differ with the Courts below on this aspect. The evidence clearly demonstrates that the respondents have executed Ex.A.1.

18. In the context of examining the requirement as to whether the contents of Ex.A1 were explained to the respondents, it has already been pointed that P.W.I categorically stated that the boundaries of the land and survey number were furnished by the first respondent herself. The factum of payment of consideration

was also proved. Atleast these two tangible acts, namely, payment of consideration and description of the land in the context of delivery of possession, were elicited through the respective witnesses. Neither in the written statement nor in the suggestions put to P.Ws.I to 3, it was alleged that the respondents were not aware of the contents of Ex.A1. On the other hand, it was elicited through D.W.I that he executed a sale deed in favour of the daughter of the appellant and some other sale deeds were also executed by him. Under these circumstances, it cannot be said that the respondents were not aware of the contents of Ex.A1. Even though the respondents did not raise the plea that they were not explained the contents, the evidence on record clearly demonstrates that not only the contents were explained to the respondents, but in fact, Ex.A1 was prepared on the instructions issued and particulars furnished by the respondents. Therefore, the finding recorded by the lower appellate Court in this regard cannot be sustained.

19. As contended by the learned Counsel for the respondents, it is true that mere possibility of a different view being taken by the High Court on facts cannot, by itself, constitute a ground for interference u/s 100 of CPC. He places reliance on the judgments in (1) Hero Vinoth (minor) Vs. Seshammal, (2) Afsar Sheikh and Another Vs. Soleman Bibi and Others, and Madamanchi Ramappa and Another Vs. Muthalur Bojjappa, . In a way it can be said that the note of caution sounded by the Hon"ble Supreme Court, as to the restriction on the power of the High Court u/s 100 CPC is as old as that provision. It is renewed from time to time. It may not be necessary to reproduce the ratio laid down by the Supreme Court, in various decisions, in this regard. But this much can be said that while the High Court must be cautious and reluctant to interfere in a second appeal presented before it, u/s 100 CPC, it must not hesitate where the facts make out the case. Many attempts were made to define substantial questions of law. But they have only ended as descriptions. It is apt to refer to one of the facets attributed to this by the Hon"ble Supreme Court in Hero Vinoth v. Seshammal (supra). It was held that when the Courts below have wrongly construed the proved facts, and applied the law erroneously, the same can be corrected in a second appeal.

20. Reverting to the facts of the case, the lower appellate Court did not disagree with the finding of the trial Court that Ex.A1 is proved. However, it reversed the finding on the ground that the contents thereof have not been explained to the respondents herein. On this front, it wrongly applied certain principles, that too contrary to the evidence on record, and had drawn inference on its own. Thereby, it had denied the relief to the appellants, who had proved beyond reasonable doubt that he had paid almost the entire sale consideration and was delivered possession of the suit schedule property. Undoubtedly, this results in substantial injustice to the appellant and puts a seal of approval, on the unfair conduct and attitude of the respondents, who have gone to the extent of denying their thumb impressions on their own vakalath and written statement. This Court is of the view that this is a fit case for interference u/s 100 CPC.

21. Therefore, the second appeal is allowed and the judgment and decree, dated 18-7-1994, passed by the learned Additional District Judge, West Godavari at Eluru, in A.S. No. 6 of 1987, is set aside. Consequently, the decree and judgment, dated 30-9-1986, passed by the learned District Munsif, Chinthalapudi, in O.S. No. 69 of 1984, shall stand revived. There shall be no order as to costs.