
(2009) 10 AP CK 0008
In the Andhra Pradesh High Court
Case No : A.S. No. 178 of 1994

Lagula Narayana (Died) per L.Rs.

APPELLANT

Vs

T. Venkateshwar Rao and Others

RESPONDENT

Date of Decision : 23-10-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 58, Order 41 Rule 22
Specific Relief Act, 1963 — Section 16(2), 20
Transfer of Property Act, 1882 — Section 52

Citation : (2010) 2 ALD 708 : (2010) 3 ALT 458

Hon'ble Judges : G. Bhavani Prasad, J

Bench : Single Bench

Advocate : N.V. Suryanarayana Murthy, for S. Krishna, in A.S. No. 178 of 1994, for the Appellant; N.V. Suryanarayana Murthy, for S. Krishna, for Respondents 3 to 10 in Cross-Objections, Koka Raghava Rao, for Respondent No. 1, K. Mahendra Reddy, for Respondent No. 2, K. Jawahar, for Respondents 3 to 5 in A.S. No. 178 of 1994 and Respondents 11 to 13 in Cross-Objections, Srinivas Velagapudi, in A.S. No. 178 of 1994 and Respondent No. 14 in Cross-Objections, for the Respondent

Final Decision : Allowed

Judgement

G. Bhavani Prasad, J.—The appeal originally filed by the Is" defendant and the cross-objections filed by the plaintiff on 04-04-2006 and 15-12-2006 respectively arose out of the judgment and decree in O.S. No. 15 of 1985 on the file of the Subordinate Judge's Court, Vikarabad, Ranga Reddy District, dated 10-12-1993.

2. The factual back drop of the case is that the plaintiff filed the suit originally against the 1st defendant alone for specific performance of an agreement of sale dated 27-10-1982 in respect of Ac.18-09 guntas in S. Nos. 306 and 310 of Sankarapally. The plaintiff claimed that the 1st defendant already sold away the remaining land of Ac.2-00 in S. Nos. 306 and 310 and the plaintiff, who desired to have an agricultural farm and who already purchased lands nearby from others, paid Rs. 5,000/- as earnest money. The 1st defendant told that E.P. No.

43 of 1981 on the file of V Additional Judge, City Civil Court, Hyderabad for recovery of more than Rs. 25,000/- and O.S. No. 81 of 1981 on the file of the District Munsif Court, Chevella filed by his brothers for partition, were pending. The partition suit was subsequently dismissed and the said cases were specifically referred to in the agreement. E.P. No. 43 of 1981 could not be finalized due to establishment of separate Courts in Ranga Reddy District and transfer of pending proceedings, though the plaintiff was demanding to finalise the sale and was ready and willing to pay the amount required for closing the execution proceedings. The 1st defendant was explaining the delay to be due to dislocation of pending cases, which the plaintiff believed and as the 1st defendant was trying to negotiate with third parties, the plaintiff sent a legal notice on 30-01-1985, which was avoided by the 1st defendant. Then the plaintiff gave a public notice in Deccan Chronicle dated 03-02-1985 and Eenadu dated 04-02-1985. The plaintiff paid Rs. 5,000/- out of Rs. 1,09,350/- at Rs. 6,000/- per acre and the details of E.P. No. 43 of 1981 would be known to the 1st defendant alone. The plaintiff was willing and ready to pay the balance to the 1st defendant or to deposit into Court and hence, he filed the suit for specific performance and if for any reason the same could not be granted, he was claiming damages estimated at Rs. 50,000/-.

3. The suit was subsequently amended impleading the 2nd defendant and contending that the 1st defendant sold Ac.4-00 out of the suit land to the 2nd defendant under a registered sale deed No. 8466, dated 24-12-1985 during the pendency of the suit. The sale is hit by lis pendens and hence, the alienation be declared as null and void. The 2nd defendant and any third party-alienees from or through him get no title or interest in respect of the suit schedule.

4. The 1st defendant resisted the suit contending that the 1st defendant's brothers never filed a suit for partition against him and the 1st defendant himself filed injunction suit in respect of the suit survey numbers against his brothers in the Court of Munsif Magistrate, Chevella, which was decreed. The plaintiff did not pay the balance of sale consideration in spite of demands to meet the family needs and necessities of the 1st defendant, who met him along with Papi Reddy and Sudhakar Reddy, in whose presence the plaintiff had, in fact, demanded to return the earnest money of Rs. 5,000/- and committed breach of contract claiming that the suit property was involved in multifarious litigations and the 1st defendant is not competent to execute an agreement. The plaintiff failed to discharge the execution petition debt as agreed and as the plaintiff did not meet the 1st defendant's family expenses as promised, the 1st defendant suffered loss and misery, more so, as his wife was suffering with heart disease. E.P. No. 43 of 1984 is pending in Principal Subordinate Judge's Court, Ranga Reddy District and the plaintiff can file a suit only after the closure of the execution petition. The 1st defendant was unaware of any newspaper publication being a remote villager. The plaintiff is a wealthy and perpetual litigant grabbing others' lands by entering into agreements of sale paying disproportionately meagre amounts and the plaintiff forfeited his right to file any suit by not complying with

the conditions of the agreement of sale and has no right to claim any damages. In fact, the 1st defendant is entitled to claim damages from the plaintiff who has no cause of action. The plaintiff has to pay Court fee on the present market value of Rs. 5,00,000/- and hence, the 1st defendant sought for dismissal of the suit with costs.

5. The 2nd defendant resisted the suit contending that the 1st defendant sold Ac.6-00 in S. Nos. 306 and 310 under an agreement of sale to the 2nd defendant on 11-02-1982 at the rate of Rs. 5,800/- per acre and also delivered possession much prior to the suit agreement. The 2nd defendant paid the amount due under the execution petition by filing a claim petition, out of the sale consideration for Ac.6-00. The 1st defendant executed a sale deed in favour of the 2nd defendant as per the orders of the Court. The plaintiff was never ready and willing to pay the balance sale consideration, even according to the plaint. The 1st defendant received Rs. 5,000/- as earnest money on 11-02-1982 itself under the agreement and executed the registered sale deed for Ac.4-00 only on 24-12-1985 in pursuance of the orders of the District Judge in I.A. No. 24 of 1985 in E.P. No. 41 of 1984. The possession was delivered on the date of the agreement itself and the 2nd defendant is in continuous possession and enjoyment. The 2nd defendant immediately moved the executing Court when the suit land was attached in E.P. No. 41 of 1984 by way of a claim under Order XXI Rule 58 of the CPC and the 2nd defendant is taking steps to recover the remaining Ac.2-00 of land also. The plaintiff cannot, hence, claim the said Ac.6-00 sold to the 2nd defendant and in fact, the 2nd defendant sold some plots made out of this land to third parties, who are in possession. The plaintiff is not entitled to the suit reliefs and hence, the 2nd defendant desired the suit to be dismissed with costs.

6. The trial Court settled the following issues on such pleadings.

1. Whether the plaintiff is entitled for the specific performance of agreement?
2. Whether the plaintiff is (has) not fulfilled the conditions of the agreement?
3. Whether the plaintiff is entitled for damages of Rs. 50,000/-?

4. To what relief?

7. P.W.1 and D.Ws. 1 to 3 were examined and Exs.A.1 to A.5 and B.1 to B.8 were marked during trial.

8. The trial Court rendered the impugned judgment observing that it is admitted that Ex.A.1 agreement of sale was executed receiving Rs. 5,000/- as earnest money and referring to E.P. No. 43 of 1981, the trial Court observed that the 1st defendant did not state in his written statement about the agreement of sale with the 2nd defendant earlier and noted Clause 3 of Ex.A.1 obligating the plaintiff to pay the decree debt to the decree holder in the execution petition, while there was no condition to pay the balance of sale consideration for performing the marriage of the 1st defendant's daughter. The trial Court also

noted that the execution proceedings were closed by the time of filing of the suit and that the 1st defendant sold the suit land to the 2nd defendant under Ex.A.5 on 24-12-1985 subsequent to receiving the orders of interim injunction in the suit. The trial Court also noted the claim of the 2nd defendant about his claim petition and the orders thereon, in pursuance of which, Ex.B.8 sale deed was executed by the 1st defendant, after the 2nd defendant satisfied the decree in the execution proceedings. However, the trial Court disbelieved Ex.B.4 agreement and Ex.B.5 receipt being anterior to Ex.A.1 due to the silence of the 1st defendant in his written statement and his not filing any additional written statement even after the 2nd defendant was impleaded. The trial Court also noted that the stamps of Ex.B.4 do not bear the treasury stamp. The 2nd defendant tried to deny Ex.A.1, which was admitted by the 1st defendant and hence, the trial Court concluded that the plaintiff is entitled to specific performance and it cannot be said that the plaintiff did not fulfill his part of the contract. However, the trial Court noted that as the 2nd defendant made his Ac.4-00 into plots and sold to different persons who are in possession, the 2nd defendant cannot execute a sale deed for this Ac.4-00 and the third party purchasers are not parties to the suit. Hence, the trial Court decreed the suit for Ac.14-09 guntas and dismissed it for the remaining Ac.4-00 concerning specific performance and also concluded that the plaintiff is not entitled to the damages of Rs. 50,000/-. The plaintiff was directed to deposit the balance sale consideration within one month and the 1st defendant was granted two months to execute a sale deed and deliver possession. Accordingly, a partial decree against the 1st defendant with costs and dismissal of the suit against the 2nd defendant with costs followed.

9. The 1st defendant filed the appeal contending that the plaintiff did not pay any amount in spite of several demands and failed to meet the personal requirements including the marriage of the 1st defendant's daughter, for which the property was sold. The plaintiff rescinded the agreement in 1983 itself by demanding refund of the earnest money and the evidence of D.W.2 was positive on these aspects. The legal notice issued by the plaintiff was not received by the 1st defendant, on which an endorsement of absence for 15 days was made and the plaintiff has no right to file any suit without paying anything in E.P. No. 43 of 1981. If the plaintiff fulfilled his obligations, he would not have prayed for alternative relief of damages and the suit ought to have been dismissed as without cause of action, as condition No. 5 of Ex.A.1 clearly stipulates execution of a registered sale deed only after closure of the execution proceedings and after payment of full consideration amount. The execution proceedings were pending by the time of the suit and hence, the 1st defendant sought for dismissal of the suit.

10. The 1st defendant died pending the appeal and appellants 2 to 9 were brought on record as his legal representatives as per orders in A.S.M.P. No. 593 of 2006, dated 10-03-2006.

11. Respondents 3 to 6, the subsequent purchasers during the pendency of the litigation, were impleaded as per the orders in A.S.M.P. No. 2431 of 2006, dated 19-01-2007.

12. The plaintiff filed cross-objections on 04-04-2006 claiming that when he was found entitled to specific performance and the 2nd defendant was found to have purchased Ac.4-00 under Ex.B.8 during the pendency of the suit and subsistence of the interim injunction, the Court ought to have held the alienation in favour of the 2nd defendant to be hit by Section 52 of the Transfer of Property Act and when the trial Court found the sale deed to be hit by lis pendens, Ex.B.8 should have been declared to be liable for cancellation, more so, in the absence of any details of the documents under which any alleged third parties purchased and possessed the land. Such third parties need not be impleaded as parties to the suit and hence, the plaintiff sought for decree of the suit in whole.

13. As per the orders in A.S.M.P. No. 232 of 2007 dated 01-03-2007 permitting him to raise further grounds in his cross-objections, the plaintiff filed further cross-objections on 15-12-2006 after impleading respondents 3 to 6 in the appeal contending that the alienations made by the deceased 1st defendant by three registered sale deeds dated 12-03-1998 in favour of respondents 3 to 5 during the pendency of the appeal are also hit by Section 52 of the Transfer of Property Act and even the legal representatives of the deceased 1st defendant impleaded as appellants 2 to 9 executed another sale deed dated 19-01-2006 in favour of the 6th respondent for Ac.0-32 guntas, which is vitiated for the same reasons. Hence, the plaintiff desired the sale deeds in favour of respondents 3 to 6 to be set aside as illegal and unenforceable.

14. The plaintiff filed A.S.M.P. No. 2511 of 2006 requesting to receive three sale deeds in favour of respondents 3 to 5 and the sale deed in favour of respondent No. 6 as additional evidence and to mark them as Exs.A.6 to A.9. In the absence of any objection for the other side, the said petition was allowed and the four documents were received as Exs.A.6 to A.9 and admitted into evidence as such, as per the orders dated 01-03-2007.

15. Sri N.V. Suryanarayana Murthy, Teamed senior counsel for the appellants, Sri B. Mahendra Reddy, learned Counsel for the 2nd defendant/2nd respondent, Sri K. Jawahar, learned Counsel for respondents 3 to 5 and Sri Srinivas Velagapudi, learned Counsel for the 6th respondent on one side and Sri Koka Raghava Rao, learned senior counsel for the 1st respondent/cross-objector/plaintiff on the other, advanced extensive arguments reiterating their respective contentions and referring to various precedents.

16. The points that arise for consideration herein are:

1. Whether the plaintiff is entitled to specific performance or alternative relief of damages?

2. Whether defendants 2 to 6 also are liable to the claim of the plaintiff against

the 1st defendant under the agreement of sale?

3. To what relief? Points 1 and 2:

17. Ex.A.1 agreement of sale is in respect of Ac.18.09 guntas in S. Nos. 306 and 310 of Sankarapally, Chevella Taluk, Ranga Reddy District owned and possessed by the 1st defendant with the 1st defendant having sold the remaining Ac.2-00 earlier. The sale consideration agreed was Rs. 6,000/- per acre and an advance of Rs. 5,000/- was recited to have been paid under the agreement. Ex. A. 1 itself recites that the 1st defendant undertook to take necessary action in E.P. No. 43 of 1981 and OS. No. 81 of 1981 regarding this land at his expense for resolution of the cases in his favour. He also undertook that if necessary, as per the request of the plaintiff, he will authorize the plaintiff to conduct the cases through the plaintiff, while bearing the expenses for the same by him. The plaintiff was obliged by the agreement to pay any sums payable in the cases or any expenses to be incurred and deduct the same from the balance payable to the 1st defendant. The plaintiff was also obliged to pay the amount payable in E.P. No. 43 of 1981 on behalf of the 1st defendant and to get the execution petition closed. While the 1st defendant assured that there were no other cases concerning the land and agreed to register the land after the finalization of the cases and after the balance after deducting the expenses incurred towards the cases, is paid, the 1st defendant also stated in Ex.A.1 agreement that if OS. No. 81 of 1981 is not completed by the time of registration, he has no objection to keep Rs. 5,000/- as deposit with the plaintiff towards the expenses for completing the said case and register the land by receiving the balance. The 1st defendant also stated in Ex.A.1 that the land was not sold or mortgaged to anybody earlier.

18. The agreement was attested by two witnesses and after the agreement, dated 27-10-1982, the plaintiff issued Ex.A.2 notice on 30-01-1985 after about 2 years 3 months, in which the plaintiff alleged about repeatedly reminding the 1st defendant and the 1st defendant stating that due to transfer of E.P. No. 43 of 1981 to one of the Courts in Ranga Reddy District, further proceedings could not be taken up due to dislocation. The plaintiff claimed to have pooled his resources to be ready to pay the balance consideration and also stated that he is prepared to keep the amount covered by E.P. No. 43 of 1981 and O.S. No. 81 of 1981 in deposit in the Courts concerned or otherwise as agreed from out of the balance sale consideration and pay the balance. He demanded the 1st defendant to execute a registered sale deed accordingly subject to the outcome of the legal proceedings and also alleged that he came to know about the attempts of the 1st defendant to negotiate with third parties to sell the land. On the same day 30-01-1985, he gave a public notice by publication in Deccan Chronicle and Eenadu about Ex.A.1 agreement of sale and warning all others not to enter into any transaction. The notice Ex.A.2 is claimed to have been returned unserved in Ex.A.4 and under Ex.A.5 registered sale deed, the 1st defendant alienated Ac.4.00 out of the suit land to the 2nd defendant after he filed the suit for

specific performance and subsequently the 1st defendant himself alienated portions of the land in favour of respondents 3 to 5, while his legal representatives impleaded as appellants 2 to 9 sold Ac.0.32 guntas to the 6th respondent. The sale deeds in favour of respondents 3 to 5, dated 12-03-1998 are Exs.A.6 to A.8 and the sale deed by appellants 2 to 9 in favour of the 6th respondent is Ex.A.9.

19. The plaintiff as P.W.1 stated that it was stipulated in Ex.A.1 agreement that he should discharge the execution petition liability to a third party and pay the balance to the 1st defendant. He also admitted that after Ex.A.1, the 1st defendant approached him several times requiring him to pay the amount of consideration, though he claimed the same to be without settling the amount to be paid under the execution petition to third parties. He also claimed about the 2nd defendant approaching him after 2 or 3 months after he obtained interim injunction in this suit for specific performance and his showing a Xerox copy of Ex.A.1 agreement of sale to him and also a copy of injunction obtained against the 1st defendant. The plaintiff claimed that the registered sale deed in favour of the 2nd defendant has to be cancelled.

20. The plaintiff admitted that he did not even verify the documents of title of the property or the pahanies relating to the property and does not even know whether the 1st defendant has any children. He also admitted that he did not ascertain from any Court as to the liability under the execution petition with reference to the particulars furnished relating to the execution petition in the agreement. However, he admittedly learnt from the 1st defendant that the execution petition was filed for Rs. 27,000/-. Though the 1st defendant allegedly told the plaintiff that he need not pay the said amount, Ex.A.1 agreement specifically stipulated about discharge of the execution petition liability. The plaintiff admitted as P.W.1 that he did not verify about the liability under the execution petition even after the 2nd defendant met him after the suit and his admission in the cross-examination that he came to know 2 or 3 years earlier about the execution petition claim being realized by attaching and disposing of the properties, was never specified earlier. While admitting that he did not pay anything except Rs. 5,000/- to the 1st defendant, P.W.1's claim that he offered the 3rd defendant several times the residuary amount of consideration and that he mentioned the same in his notice, is not corroborated by either the notice or the plaint. He conveniently claimed loss of memory whether he mentioned the same in the plaint and P.W.1 also does not know whether the 1st defendant executed an agreement of sale in favour of the 2nd defendant on 11-02-1982 itself earlier to Ex.A.1 and whether the 2nd defendant purchased the land through the Court proceedings by depositing the execution petition amount. P.W.1 also admitted that he learnt from the 1st defendant that his brothers filed partition suit alleging Ex.A.1 property to be joint property, but he did not claim that he took any steps with reference to that suit i.e. O.S. No. 81 of 1981.

21. The plaintiff did not examine any other witness including the attestors or

scribe of Ex.A.1 agreement of sale and his evidence does not disclose any effort by him at any point of time after Ex.A.1 agreement to intervene in E.P. No. 43 of 1981 or O.S. No. 81 of 1981 or pay the amounts or incur the expenses in respect of the said two cases or to pay the amount payable by the 1st defendant in E.P. No. 43 of 1981 on his behalf and get the execution petition closed or to keep Rs. 5,000/- in deposit with him towards O.S. No. 81 of 1981 and get the land registered by paying the balance of consideration. He appeared to be just waiting for the 1st defendant to come back to him with the result of the two cases before he takes any further step.

22. As against this evidence of the plaintiff, the 1st defendant as D.W.1 referred to his filing O.S. No. 81 of 1981 for a perpetual injunction against his brothers in respect of the suit property, which ended in his favour and he filed Ex.B.1 certified copy of the decree and Ex.B.2 certified copy of the judgment in the said suit, dated 28-12-1983. Ex.B.2 shows that the 1st defendant specifically pleaded the land of Ac.20.09 guntas to be his self-acquisition, while he and his brothers partitioned even during the life of their father twenty years prior to the suit. The trial Court held on contest that the land is the self-acquired property of the 1st defendant and granted perpetual injunction in his favour against his brothers. As such, in so far as the stipulations concerning O.S. No. 81 of 1981 in Ex.A.1 agreement are concerned, there was nothing which disabled the plaintiff from performing his part of the contract since 28-12-1983, the date of the decree in O.S. No. 81 of 1981 in favour of the 1st defendant long prior to Ex.A.2 notice of demand from the plaintiff, still vaguely referring to O.S. No. 81 of 1981 and the readiness of the plaintiff to deposit any amounts in connection with it.

23. The 1st defendant claimed that he requested the plaintiff to pay Rs. 30,000/- out of the sale consideration in connection with the marriage of his daughter on 05-06-1983, the wedding invitation card for which is Ex.B.3, but the plaintiff did not pay any amount even then. Though the same was not specifically suggested to P.W.1 or stated in the written statement, there is nothing unnatural in the 1st defendant approaching the plaintiff for financial assistance from out of the balance sale consideration in connection with the marriage of his daughter. The 1st defendant claimed that the very offer by him to sell the suit property to the plaintiff was for clearing the decree debt under E.P. No. 43 of 1981 and for performing the marriage of his daughter, but the plaintiff was stated to have not paid the amount due under E.P. No. 43 of 1981 on the file of V Additional Judge, City Civil Court, Hyderabad in spite of the request by the 1st defendant. Though the 1st defendant admitted that his daughter's marriage was not referred to in Ex.A.1, he denied not informing the plaintiff about the pendency of the execution petition and the payments made by him. While the 1st defendant also admitted that he did not mention in his written statement or in Ex.A.1 about the earlier sale of Ac.6.00 of land to the 2nd defendant and that he also received the order of injunction not to alienate, he admittedly executed a registered sale deed in favour of the 2nd defendant on 24-12-1985. The 1st defendant also stated that the 2nd defendant made the land as plots and sold to various persons with the

purchasers being now in possession and that it is the 2nd defendant who paid the decree debt under the execution petition. The claim of the 1st defendant that the plaintiff did not pay the consideration in spite of demands, is not inconsistent with the ordinary and natural course of human events, as the 1st defendant was obviously in necessity of money to discharge the decree debt and perform his daughter's marriage.

24. D.W.2, who was referred by D.W.1 for the first time in the evidence, also claimed to have accompanied the 1st defendant to the plaintiff for demanding the balance of consideration to perform the marriage of the 1st defendant's daughter in May, 1983 and the claim of D.W.2 that the plaintiff demanded return of the earnest money paid under the suit agreement was, of course, not the specific pleading or evidence of the 1st defendant. D.W.2 claimed that he and the 1st defendant again went to the plaintiff after one year demanding the consideration when the 1st defendant's wife fell sick; then also the plaintiff refused to pay and demanded the earnest money. He claimed that the 1st defendant's wife died later. D.W.2 was only 22 or 23 years old at the time of the alleged visit and his claims are uncorroborated by any document or by any reference to his presence earlier. But the nature of the evidence of D.W.2 will not detract from the natural probabilities that may be deduced from the evidence of D.W.1, as it is the duty of the Court to separate the acceptable and unacceptable portions of the evidence.

25. The 2nd defendant as D.W.3 claimed that he entered into Ex.B.4 agreement of sale, dated 11-02-1982 with the 1st defendant for purchase of Ac.6.00 out of the suit land at Rs. 5,800/- per acre. He claimed to have paid an advance of Rs. 5,000/- for the purchase at Rs. 5,800/- per acre. The advance and the consideration alleged are more or less similar to those under Ex.A.1 suit agreement. D.W.3 stated that it was stipulated in Ex.B.4 that he shall discharge the decree debt in E.P. No. 43 of 1981 and he stated that due to some delay in verification and settlement of the amount, the lands were brought to auction in the execution petition, in which he immediately filed E.A. No. 24 of 1985 claiming the land and paid the entire decretal amount. Ex.B.6 is the certified copy of his claim petition, in which it was specifically stated about Ex.B.4 agreement. While the payment of advance of Rs. 5,000/- as per Ex.B.4 is evidenced by Ex.B.5 receipt, Ex.B.7 copy of the order of the Principal Subordinate Judge's Court, Ranga Reddy District in E.A. No. 24 of 1985 in E.P. No. 41 of 1984 shows that in view of the payment of the amount by the 2nd defendant under an agreement of sale on behalf of the judgment debtor for satisfying the decree, the matter was posted for execution of a sale deed by the judgment debtor. Ex.B.8 sale deed (Ex.A.5) in favour of the 2nd defendant, of course, states about the agreement of sale being for Ac.4.00 of land. But it was clearly recited about the payment of entire balance of consideration into Court in pursuance of the directions by the Court and the sale deed being executed in respect of Ac.4.00 in pursuance of the said directions of the Court. It was clearly stated in the sale deed that Rs. 23,200/- were already paid by the purchaser by depositing into Court in E.P. No.

41 of 1984. If the 2nd defendant could know about the execution proceedings and the suit land being brought to sale therein and if he could intervene and pay the amount to protect the agreement of sale in his favour, the plaintiff could also have done so, had he been reasonably diligent and ordinarily vigilant, but he did not do so. The 2nd defendant further claimed as D.W.3 that he converted Ac.4.00 into plots and sold to third parties, while he is still in possession of Ac.2.00, though Ex.B.8 was executed only for Ac.4.00 and not Ac.6.00 covered by Ex.B.4. D.W.3 denied being informed by the plaintiff about the suit transaction and even if some doubts can be raised against Ex.B.4, no such doubts can be sustained against Ex.B.8 and the very manner in which the 2nd defendant intervened in the execution proceedings and paid the execution petition debt to avoid Court sale and got the sale deed registered in his favour with the intervention of the Court orders, may tend to indicate the reliability of Ex.B.4 also and D.W.3, who was unaware of any prohibitory order in this suit against alienation, not being informed by the 1st defendant about the same also, is not unnatural and as an injunction does not run with land and the 2nd defendant was not a party to the suit or the interim injunction by the date of Ex.B.8, he need not suffer any prejudice due to the litigation between the plaintiff and the 1st defendant. Though it is true that the 1st defendant assured in Ex.A.1 that he did not alienate or mortgage the property, in any manner, to anybody else prior to Ex.A.1, that assurance cannot erase Ex.B.4 or the rights of the 2nd defendant, if Ex.B.4 was already in existence.

26. Ex.B.4 was entered into for the specific purpose of meeting family expenses of the 1st defendant and dire necessities for his daughter's marriage. It was also endorsed therein on 15-10-1982 that the agreement was being extended for three years due to unavoidable circumstances and Court cases. The agreement specifically recited that the purchaser undertakes to discharge the decree debt of Ramesh in E.P. No. 43 of 1981 from out of the balance consideration after the payment of earnest money of Rs. 5,000/- and delivery of possession to the 2nd defendant. Exs.B.4 to B.8 coupled with the evidence of D.W.3 present an acceptable and natural course of conduct with no traces of the transaction in favour of the 2nd defendant being only to avoid Ex.A.1.

27. The plaintiff even after filing of the suit on 28-03-1985 did not obviously make any attempt to know the stage of O.S. No. 81 of 1981 or E.P. No. 41 of 1981 recited in Ex.A.1, though Exs.B.1 and B.2 decree and judgment in O.S. No. 81 of 1981 in favour of the 1st defendant were on 28-12-1983 long prior to the suit and Ex.A.2 notice and though the claim petition and payment to decree holder in E.P. No. 41 of 1984 by the 2nd defendant were much later to the suit followed by Ex.B.8 sale deed on 24-12-1985.

28. Sri Koka Raghava Rao, learned senior counsel for the plaintiff referred to some precedents laying down the principles governing the discretionary relief of specific performance.

29. In Amit Kumar Shaw and Another Vs. Farida Khatoon and Another, , it was

held that the transferee pendente lite can be added as a proper party, if his interest in the subject matter of the suit is substantial and the Court has discretion in the matter to be judicially exercised and the alienee would ordinarily be joined as a party to enable him to protect his interest. The proposition is not in dispute and that was why the transferees pendente lite are present before this Court as respondents 2 to 6, while the 2nd respondent was already a party to the suit even before the trial Court.

30. In *Mst. Sugani Vs. Rameshwar Das and Another*, , the Apex Court pointed out that Section 16(2) of the Specific Relief Act involves the basic principle that any person seeking the benefit of specific performance of contract must manifest that his conduct has been blemishless throughout entitling him to the specific relief. The provision mandates the plaintiff to aver in the plaint and establish as a fact by evidence that he always has been ready and willing to perform his part of the contract. The Apex Court found it improper to interfere with the concurrent finding of fact about the readiness and willingness of the plaintiff. The principle is unexceptionable and unlike the case under consideration before the Apex Court being in respect of a second appeal against concurrent findings of fact by the two Courts below, the present first appeal necessarily casts a duty on this" Court to analyze the oral and documentary evidence and the facts and circumstances to come to a conclusion on facts on merits on its own and consequently, agree or disagree with the trial Court. The analysis and reasons given by the trial Court for its conclusions, of course, will have to receive their due weight in coming to any such independent conclusion.

31. In *Om Prakash Srivastava Vs. Union of India (UOI) thr. C.B.I. and Others* , the Apex Court considering the meaning and purport of the word "cause of action" laid down that cause of action means the bundle of facts, which give cause to enforce a legal enquiry for redress in a Court of law. The controversy herein does not, of course, much revolve on the question of cause of action, as any success of the plaintiff will be on proving the facts alleged by him which would have, undoubtedly, given him the cause of action to sue.

32. *Syed Dastagir Vs. T.R. Gopalakrishnasetty*, is again about the question of readiness and willingness of the plaintiff and the Apex Court held that in construing a plea in any pleading, Courts must keep in mind that a plea is not an expression of art and science, but an expression through words to place fact and law of one's case for a relief. Holding that no specific phraseology or language is required, the Supreme Court cautioned Courts from drawing any inference in an abstract or giving any hypo-technical interpretation to defeat a claim of specific performance, which defeats the very objective for which the Specific Relief Act was enacted. The Apex Court also noted that money need not be actually tendered or paid or deposited to show readiness and willingness and thus, the decisions relied on speak against adoption of any straight jacket formula in this regard.

33. Similarly, in *Vajrala Ramesh and Another Vs. Vajrala Narayana Setty and*

Another, , the Supreme Court held that where the purchaser has done everything, which is possible, no equity is left in favour of the seller. That was also a case where the plaintiff issued advertisement in the press about his purchase and the subsequent purchaser, therefore, could not be treated as bona fide purchaser for value. The 2nd defendant herein stands on a totally different footing with an agreement of sale in his favour earlier to the agreement of sale in favour of the plaintiff and his payment of consideration was mostly in execution proceedings against the 1st defendant through Court and his obtaining the sale deed, though subsequent to this suit, was through the intervention of the executing Court and mere paper publications by the plaintiff on 3rd or 4th February, 1985 about his agreement, dated 27-10-1982 may not suffice to non-suit the 2nd defendant and the plaintiff is not one who has done everything which is possible to be done in performance of his part of the contract.

34. *Manzoor Ahmed Margray Vs. Gulam Hassan Aram and Others*, is for the principle that any penalty clause in an agreement for recovery of damages could not mean that the contract is not to be performed. Thus, mere claim of the plaintiff in the alternative for damages in the suit may not disentitle him for the relief of specific performance, but the question in controversy is whether he is entitled to such specific performance at all and as held by the Apex Court, readiness and willingness have to be made out from the evidence led by the parties.

35. *P. Lakshmi Ammal Vs. S. Lakshmi Ammal and others*, is a case where the written statement or the evidence of the seller did not specifically deny the readiness and willingness of the purchaser unlike the present case and there is, of course, no doubt, as held therein, that the doctrine of *lis pendens* incorporated in Section 52 of the Transfer of Property Act applies to suits for specific performance also. It is equally true that mere escalation in prices cannot be a defence to a suit for specific performance.

36. In *Aniglase Yohannan Vs. Ramlatha and Others*, , it was pointed out that the Court has to grant relief on the basis of the conduct of the person seeking relief. Hence, it is clear that the pleadings must manifest that the conduct of the plaintiff entitles him to get the relief and the pleadings or the evidence in the present case do not appear to present such a picture of clarity.

37. In *KM. Madhavakrishnan v. S.R. Swami* AIR 1995 Madras 318, the conduct of the purchasers was found to disclose their readiness and willingness to perform their part of the agreement. The purchasers were found to have issued a notice followed by a publication in a newspaper. The necessity to sell the property, was proved. The sale consideration was found to be reasonable and adequate. The purchasers had adequate means and possession was taken by the purchasers by paying substantial amounts to the tenants. Hence, it was concluded that mere increase in price of property cannot be a ground for refusing specific performance of the contract. In the present case, the agreement did not meet any necessity of the 1st defendant either with reference to two Court cases or with reference to

the marriage of his daughter. Having agreed to purchase Ac.18.09 guntas at Rs. 6,000/- per acre, what the plaintiff paid was Rs. 5,000/- as advance and nothing else till now. The conduct of the plaintiff is not such as would indisputably indicate his readiness and willingness to perform his part of the contract. Mere registered notice and publication in newspaper 2 years 3 months after the agreement cannot by itself lead to any positive conclusions in his favour under the circumstances.

38. Sri N.V. Suryanarayana Murty, learned senior counsel for the legal representatives of the deceased 1st defendant referred to the following precedents in defence.

39. Parakunnam Veetil Joseph's Vs. Nedumbara Kuruvila's and Ors, referred to the preservation of judicial discretion of Courts in decreeing specific performance u/s 20 of the Specific Relief Act. The duty of the Court to meticulously consider all facts and circumstances of the case was emphasized and it was held that the motive behind the litigation should also enter into the judicial verdict and the Court should take care to see that it is not used as an instrument of oppression to have an unfair advantage to the plaintiff. It was pointed out that the Court is not bound to grant specific performance merely because it is lawful to do so.

40. In Smt. Chand Rani (dead) by LRs. Vs. Smt. Kamal Rani (dead) by LRs., , it was held that there is a presumption against the time being the essence of the contract in the case of sale of immovable property and an intention to make time the essence of the contract must be expressed in unequivocal language. With reference to the earlier decisions of the Supreme Court on the subject, it was pointed out that even if time 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 discernible:

(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. The agreement before the Apex Court was considered to have intended to make time as the essence, as payment of a specified sum was stipulated within the specified period, till compliance with which the obligations under the agreement on the part of the defendant could not be insisted upon. As the vendee did not pay in spite of being put on notice as to the stand of the vendor, the Apex Court concluded that the vendee was never willing to make the payment as per the agreement.

41. In K.S. Vidyanadam and Others Vs. Vairavan, , it was held that it does not follow that any and every suit for specific performance of an agreement (which does not provide specifically that time is of the essence of the contract) should be decreed provided it is filed within the period of limitation notwithstanding the time-limits stipulated in the agreement for doing one or the other thing by one or

the other party and that would amount to saying that the time-limits prescribed by the parties in the agreement have no significance or value and that they mean nothing. Following *Chand Rani v. Kamal Rani* (11 supra), it was observed that the Court should look at all the relevant circumstances including the time-limit(s) specified in the agreement and determine whether its discretion to grant specific performance should be exercised. The Apex Court took note of the prices of urban properties in India going up sharply over the last few decades and when the plaintiff was sitting quiet without taking any steps to perform his part of the contract under the agreement for a period of more than two and half years, though the agreement specified a period of six months within which he was expected to purchase stamp papers, tender the balance amount and call upon the defendants to execute the sale deed and deliver possession of the property, he must have been induced to wake up after two and half years and demand specific performance due to the values of the house properties rising fast. The Apex Court even observed that the rigour of the rule evolved by Courts that time is not of the essence of the contract in the case of immovable properties evolved in times when prices and values were stable and inflation was unknown - requires to be relaxed, if not modified, particularly in the case of urban immovable properties. The Apex Court pointed out that the Court should bear in mind that when the parties prescribe certain time-limit(s) for taking steps by one or the other party, it must have some significance and that the said time-limit(s) cannot be ignored altogether on the ground that time has not been made the essence of the contract (relating to immovable properties). The Supreme Court felt that the delay coupled with substantial rise in prices between the date of the agreement and the date of the suit notice has brought about a situation where it would be inequitable to give the relief of specific performance to the plaintiff. The true principle governing such situation is reiterated to be one laid down in *Chand Rani v. Kamal Rani* (11 supra).

42. In *Lourdu Mari David v. Louis Chinnayya Arogiaswamy* 1997 (1) ALT 29 (SC) : AIR 1996 SC 28147 it was pointed out that the discretion u/s 20 of the Specific Relief Act should be exercised on sound principles of law capable of correction by an appellate Court and the party who seeks to avail of the equitable jurisdiction of a Court like specific performance must come to the Court with clean hands. In that case, the plaintiff was found to have come with a positive case of incorrect and false facts disentitling him to the equitable relief.

43. In *Jugraj Singh v. Labh Singh* AIR 1995 SC 945 (1), it was held that the continuous readiness and willingness of the plaintiff to perform his part of the essential terms of the contract at all stages from the date of the agreement till the date of the hearing of the suit need to be proved and the substance of the matter and surrounding circumstances and the conduct of the plaintiff must be taken into consideration in adjudging readiness and willingness to perform the plaintiff's part of the contract.

44. Even though time was, thus, not the essence of the contract ordinarily in the

agreements relating to sales of immovable property, still the Court has to be cautious and careful in avoiding any oppression to the defendant or unfair advantage to the plaintiff by ordering the discretionary relief of specific performance. There can be no doubt that the contract is supposed to be performed within a reasonable time and absolute inaction on the part of the plaintiff in respect of the two litigations referred to in Ex.A.1 agreement and the absence of any assistance to the 1st defendant, which appeared the primary consideration for the sale and his registered notice Ex.A.2 and paper publications after 2 years 3 months after allegedly knowing about the attempts of the 1st defendant to sell the property to others, cannot be considered as reflecting any reasonable reaction within a reasonable time. The pleadings and evidence of the plaintiff are as though he was coolly waiting for the 1st defendant to come to him with the details of the two cases to enable him to intervene with the necessary amount and merely because a suit for specific performance is within limitation, such other relevant circumstances could not have been ignored including, of course, any rise in prices, which is not a specific ground for consideration in the present case. Silence without action for a considerable period without the benefit of the payment of balance consideration to the seller for no strong reason, presents a situation which " will make compelling performance of the contract inequitable to the 1st defendant, more so when the 2nd defendant under an earlier agreement of sale acted promptly to come to the aid of the 1st defendant to avoid execution and sale of the properties by paying the decree debt.

45. While the alleged demands by the plaintiff for finalization of the sale transaction are uncorroborated except by Ex.A.2, the avoidance or postponement by the 1st defendant are equally unsubstantiated. The alleged failure of the 1st defendant to furnish the details of the Court cases, is unnatural and the advance of Rs. 5,000/- paid is an insignificant fraction of the total consideration of Rs. 1,09,350/-. Irrespective of the other allegations of the 1st defendant about his demands to the plaintiff for balance of consideration and concerning the Court cases and the plaintiff seeking refund of the earnest money, etc, the balance sale consideration was deposited by the plaintiff only after the impugned judgment and decree, on 17-01-1994. Though the conduct of the 1st defendant and his legal representatives in executing Exs.A.6 to A.9 in favour of respondents 3 to 6 respectively is reprehensible indicating scant respect for the pendency of the appeal before this Court, such subsequent misconduct will have no bearing on the entitlement of the plaintiff to the discretionary relief of specific performance by the date of the suit. The judicial discretion is about granting or not granting of relief of specific performance and even if the attitude and actions of the 1st defendant and his successors do not make them deserve any concessions in equity, the plaintiff has to succeed or fail on the strength of his own entitlement to the equitable relief of specific performance. It is also true that the 1st defendant did not state all the facts about the events leading to Ex.B.8 in favour of the 2nd defendant since inception up to the end of the trial. But it is the plaintiff who has to take steps for performance of the contract by acting in both

Court cases and making payments for and on behalf of the 1st defendant if necessary and getting a sale deed executed and registered by paying the balance of consideration. While the absence of details of payment in execution proceedings in the docket order of the Court is not very relevant when the executing Court has recorded such payment by the 2nd defendant, the events in the execution petition being subsequent to the appearance of the 1st defendant in the suit, may indicate the conduct of the 1st defendant to be not free from blame in respect of his transaction with the plaintiff, but the same is no explanation for total inaction on the part of the plaintiff in respect of the two Court cases before or after the suit also. The financial strength of the plaintiff is no indication of any offer by him to pay the amount in the execution proceedings and there is no material on record to indicate that transfer of pending proceedings from the City Civil Court, Hyderabad to Ranga Reddy District Court resulted in any delay in finalization of the execution proceedings. Even along with Ex.A.2, the plaintiff did not keep the balance of sale consideration in deposit anywhere as to be readily available to the 1st defendant if he were to accept to perform his part of the contract. The decree in O.S. No. 81 of 1981 even by 28-12-1983 in the Court of District Munsif, Chevella could have been easily ascertained by the plaintiff at any time after Ex.A.1 when the number of the suit and the Court, in which it was pending, were evident from the agreement itself.

46. The averments in the written statement of the Is" defendant might not have specifically traversed every allegation made by the plaintiff in the suit and the suit may not be premature notwithstanding the execution proceedings not having been terminated by the time of the suit, but the disentitlement of the plaintiff to specific performance is on other considerations.

47. Irrespective of the discrepancies between D.Ws.I to 3 and any deficiencies in the pleadings of defendants 1 and 2, the facts and circumstances, thus, do not appear to justify the exercise of the judicial discretion in favour of the plaintiff for grant of the equitable relief of specific performance. Sound and reasonable exercise of discretion guided by judicial principles could not have been in favour of the plaintiff, under the circumstances and even the trial Court noted that third party purchasers are in possession of Ac.4.00 of the land covered by Ex.B.8, which cannot be conveyed by the 2nd defendant back to the plaintiff, as he was no more the owner. The trial Court also noted that the third party purchasers were not parties to the suit and obviously in view of the factual and legal complications and the possibility of multiplicity of proceedings, the trial Court refused to grant any relief in respect of the said Ac.4.00 of land covered by Ex.B.8. Even concerning the remaining extent of Ac. 14.09 guntas, the present situation is the further involvement of respondents 3 to 6, the subsequent purchasers, and there is no material on record to show that respondents 3 to 6 were not bona fide purchasers for value without notice of the pendency of this litigation. Though the conduct of the 1st defendant and his legal representatives, as already stated, in indulging in such alienations in favour of respondents 2 to 6 after the suit and after the appeal is blameworthy, in considering whether the

primary relief or alternative relief should be granted to the plaintiff, the involvement of interests of third parties, who purchased their respective lands for valuable consideration will, undoubtedly, be a relevant consideration. The trial Court while appreciating the oral and documentary evidence had stated first rightly that the burden of proof to establish his entitlement to specific performance was on the plaintiff, but ultimately concluded that the defendants have not proved that the plaintiff has not fulfilled the conditions of the agreement of sale. Such factual conclusions by appreciating the material on record from the perspective of the success or failure of the defendants to prove or disprove the entitlement of the plaintiff to specific performance cannot be concurred with and have to be reversed.

48. While the discretionary and equitable relief of specific performance is, therefore, unavailable to the plaintiff in the light of his total inaction for 2 years 3 months, the involvement of the rights and interests of third parties and other circumstances pointed out above in detail, the absence of subsequent purchasers from respondents 2 to 6 on record is also another relevant circumstance and hence, notwithstanding the fact that the conduct of the 1st defendant and his legal representatives is not exemplary, the primary relief should be denied to the plaintiff.

49. The plaintiff did not state in the plaint or the evidence as to on what basis the alternative relief of damages was measured at Rs. 50,000/-. While the plaintiff is also not entitled to have the sale deed in favour of the 2nd defendant set aside or cancelled in view of his non-entitlement to the primary relief itself, grant of any damages against appellants 2 to 9 also may not arise as it is the cumulative effect of the conduct of both parties that led to collapse of the agreement but not one sided breach by the 1st defendant alone. Further the suit agreement of sale did not make any reference to any liquidated sum of damages or any other penalty in case of breach of contract by either party. Absence of proof of justification for the claim for damages and the quantum thereof makes the plaintiff disentitled to that relief also. But appellants 2 to 9 as legal representatives of the deceased 1st appellant/1st defendant are bound to refund a sum of Rs. 5,000/- received as advance from the plaintiff with reasonable interest thereon. Interest at 12 per cent per annum simple from the date of Ex.A.1 agreement under which the amount was paid till today, the date of the first appellate decree, with future interest at 6 per cent per annum till the date of payment, will be in tune with the provisions and principles of law and interests of justice.

50. It is to be noticed that the 2nd respondent was not given notice of cross-objections till this Court had noticed that it was he who will be affected by consideration of the cross-objections and hence, ordered notice on 15-11-2006. The objections of respondents 2 to 6 to the claim of the plaintiff in the suit and in the cross-objections with particular reference to the scope and content of Order XLI Rule 22 of the CPC need no further examination in view of the conclusion

that the plaintiff is not entitled to the primary relief of specific performance, but is only entitled to the refund of advance amount with interest from appellants 2 to 9. Hence, points 1 and 2 re answered accordingly.

51. In view of the peculiar facts and circumstances of the case, the parties can be directed to bear their own costs throughout.

Point No. 3:

52. In the result, the judgment and decree in O.S. No. 15 of 1985 on the file of the Subordinate Judge's Court, Vikarabad, Ranga Reddy District, dated 10-12-1993 are set aside and the said suit O.S. No. 15 of 1985 is dismissed in respect of the relief of specific performance and damages, but is decreed in favour of the plaintiff against appellants 2 to 9 herein directing appellants 2 to 9 herein to refund the advance of Rs. 5,000/- with interest thereon at 12 per cent per annum from 27-10-1982 till today and at 6 per cent per annum from today till the date of payment. The parties shall bear their own costs throughout. The appeal is allowed and the cross-objections are dismissed accordingly.

Documents received as additional evidence and marked as exhibits as per order in A.S.M.P. No. 2511 of 2006. dated 01-03-2007

Ex.A-6/12-03-1998/ Registered sale deed executed by Lagula Narayana in favour of B. Kesava Rao (3rd respondent in the appeal), bearing document No. 405/98. Ex.A-7/12-03-1998/ Registered sale deed executed by Lagula Narayana in favour of B. Ratnam (4th respondent in the appeal), bearing document No. 406/98. Ex.A-8/12-03-1998/ Registered sale deed executed by Lagula Narayana in favour of K. Lakshmi (5th respondent in the appeal), bearing document No. 407/98.

Ex.A-9/19-01-2006/ Registered sale deed executed by Lagula Sadguna and others in favour of Balaji Vallabhaneni (6th respondent in the appeal), bearing document No. 646/2006.