

(1993) 08 AP CK 0022
In the Andhra Pradesh High Court
Case No : Appeal No. 551 of 1980

Netyam Venkataramanna and others	Vs	APPELLANT
Mahankali Narasimhan (died)		RESPONDENT

Date of Decision : 18-08-1993

Acts Referred:

Andhra Pradesh (Andhra Area) Tenancy Act, 1956 — Section 16
Andhra Pradesh Agricultural Lands (Prohibition of Alienation) Act, 1972 — Section 18
Contract Act, 1872 — Section 23
Limitation Act, 1963 — Article 54, 5
Specific Relief Act, 1963 — Section 10, 16, 17, 20

Citation : AIR 1994 AP 244 : (1994) 1 ALD 699 : (1994) 1 ALT 185

Hon'ble Judges : Jagannadha Raju, J

Bench : Single Bench

Advocate : D. Vijaya Kumar, for the Appellant; T. Veerabhadrayya, for the Respondent

Judgement

1. This is appeal filed by the plaintiffs against the dismissal of the suit O.S. No. 43 of 1968 by the Additional Subordinate Judge, Ananthapur. The first plaintiff filed a suit for specific performance of the agreement of sale dated 8-4-1965 and during the pendency of the suit, the first plaintiff died and the present appellants were brought on record as plaintiffs 2 to 4. Subsequent to the filing of the appeal, the sole respondent-defendant died and respondents 2 and 3 S. Indira and G. Jayalakshmi were brought on record as L.Rs. of the first respondent. The averments in the plaint and the written statement are extracted in extenso in the judgment of the trial court. It would be unnecessary to produce the elaborate pleadings. It would be sufficient for the purpose of this appeal if a gist of the plaint and the written statement are set out.

2. The plaint schedule lands belonged to the defendant. They were originally inam lands and after the abolition of inams, ryotwari patta was granted to the defendant. The lands were always being leased out to tenants, as the defendant was residing at different places due to his service as a Government official. On

8-4-1965, the defendant entered into an agreement with the plaintiff to sell the plaint schedule lands for a proper and valid consideration of Rs. 20,500/-. The defendant received an advance of Rs. 1,000/- on the same day and executed the agreement. As per the terms of the agreement, the balance of consideration has to be paid and the defendant was obliged to execute a registered sale deed. The first plaintiff has always been ready and willing to perform his part of the contract. Several requests were made by the plaintiff to the defendant to carry out his part of the contract. The defendant was postponing matters. Then a registered notice was issued on 24-8-1965 informing the defendant that plaintiff was ready and willing to perform his part of the contract and he is ready to take a sale deed paying the balance of consideration. The defendant was requested to fix up a convenient date for execution of the sale deed. The defendant gave a reply notice dated 5-9-1965 with false and untenable allegations. Along with the reply notice, he sent a crossed Demand Draft for Rs. 1,000/-. This draft was again returned to the defendant and a reply was also sent stating that the plaintiff would be enforcing his rights in a court of law if a proper conveyance deed is not executed within a reasonable time. Subsequently plaintiff requested the defendant to perform his part of the contract. He denied to do it. Hence the suit. The plaintiff is ready and willing to perform his part of the contract. The defendant may be directed to execute the sale deed after receiving the balance of consideration of Rs. 19,500/-. He may also be directed to do all acts necessary to put the plaintiff in possession of the plaint schedule properties.

3. The defendant filed a written statement raising the pleas that the defendant is neither the owner nor is he in possession and enjoyment of the plaint schedule properties. Items 2 to 4 of the plaint schedule properties were originally inam lands. The defendant never applied for the grant of a patta after the inams were abolished. He was not aware of the proceedings under the Inams Abolition Act. He never applied for a grant of the ryotwari patta. The defendant was never in possession of the plaint schedule properties and the allegation that the defendant was leasing out the plaint schedule properties to tenant is false. The first plaintiff is fully aware that the defendant had neither title nor possession nor enjoyment of the suit property at any time. The property originally belonged to the family of the defendant. The defendant's father sold the properties during his lifetime to the family of Muthuluru Kondappa, Obanna and Pullappa of Raketla. They and their successors in interest have been in possession and enjoyment of these properties in their own right paying land revenue for over sixty years. This defendant has two brothers Dr. M. Krishna Rao and Dr. M.S. Rao. The family is a joint family and there was no partition. If the family has any title, the title belongs to the joint family. Neither the defendant nor his brothers have any right, title or interest or possession and enjoyment of the plaint schedule properties. The first plaintiff is a very big landlord in the village owning huge extents of landed property and he is opposed to the family of late M. Kondappa and his sons. Now Kondappa and his sons Obanna and Pullappa are dead and the family has no male assistance. Sons of Pullappa are young. Perhaps feeling that

it will be easy for him to occupy the suit properties, the first plaintiff hatched up a plan with the connivance of the Karnam of Raketla and got the agreement of sale executed. The plaintiff and the Karnam approached the defendant and requested him to sell the plaint schedule property. The defendant explained that neither he nor his family has title to or any interest in the plaint schedule properties. Then he was informed that the patta was in the name of the defendant for these lands and hence whatever rights he has under the patta may be sold to the plaintiff. He informed them that it is joint interest of his brothers and himself and that he has no legal competence to enter into any transaction on his own. He was then informed that he may contact his brothers and if they are also willing, than the property may be sold. Then Rs. 1,000/- was thrust into the hands of the defendant. He was informed that sale deed could be executed if the defendant's brothers agreed for the transaction. The Karnam Nagabhushana Rao wrote the document purporting to be a receipt for the sum of Rs. 1,000/- paid. It was tentatively a receipt and it was never intended to be an agreement. It could be enforced after it is found that the defendant had right to convey and further only after the brothers of the defendant agreed to join in executing the coveyance deed. No agreement on stamp paper was written. The agreement written on 8-4-1965 was not even attested. There is no completed contract.

4. The property was being enjoyed by the family of M. Kondappa and his sons and their successors openly and in their own right for the last sixty years. They perfected their title by adverse possession. The so-called agreement was obtained by playing fraud and misrepresentation on the defendant. It is a void agreement which is liable to be ignored. When the brothers did not agree for selling the property, the amount of Rs. 1,000/- was refunded by way of a draft. There is no liability for the defendant to execute a sale deed. That apart, after notice were exchanged in the last week of August and the first week of September, there was complete silence for three years. This is an indication that the plaintiff was ready to perform his part of the contract. Further as the plaintiff is a owner of a large extent of property, he is not entitled to acquire any other agricultural properties. The acquisition of properties by him is hit by Section 13 of Act 1 of 1973. The agreement is also not enforceable by reason of the provisions of A.P. Agricultural Lands (Prohibition of Alienation) Act (Act 13 of 1972). The enforcement of the agreement is opposed to public policy. Hence it is hit bit Section 23 of the Contract Act. The agreement is not enforceable and the plaintiff is not entitled for specific performance.

5 . On the above pleadings, the court framed the following issues:

- (1) Whether the agreement of sale dated 8-4-1965 was not executed by the defendant or whether it was executed under the circumstances mentioned in para 7 of the statement ?
- (2) Whether the suit agreement is vitiated by fraud and misrepresentation?
- (3) Whether the defendant had title and possession of the suit properties at any

time within the statutory period (deleted as per orders on I.A. No. 44/74 dated 1-5-2-1974).

(4) Whether there could be specific performance as against the defendant alone ?

(5) Whether the suit claim is barred and not enforceable under S. 23 of the Indian Contract Act ?

(6) Whether the suit agreement dated 8-4-1965 represents a completed contract and whether the plaintiff is entitled to specifically perform the same ?

(7) Whether the plaintiff is entitled to enforce the suit agreement in view of the A.P. Ceiling on Agricultural Holding Act X of 1961?

(8) To what relief?

Additional Issue framed on 21-12-1973

1. Whether the plaintiff is not entitled to the specific performance of contract in view of the A.P. Agricultural Lands (Prohibition of Alienation) Act 13 of 1972?

6. After a very elaborate consideration, the trial court recorded the following findings on the various issues:

On issue No. 1, the court found that the defendant executed the agreement Ex. A.4, but it was executed in the circumstances mentioned in Paragraph 7 of the written statement. On Issue No. 2, the court found that the suit agreement is vitiated by fraud and misrepresentation. Issue No. 3 was deleted as per orders on I.A. No. 44 of 1974 dated 15-2-1974. That issue relates to the title and possession of the defendant. On Issue No. 4, the court recorded a finding in the following terms: "From the discussions made by me above, it is clear that there is no evidence to show that the first plaintiff and after his death, plaintiffs 2 to 4, have been ready and willing to perform their part of the contract. Hence the plaintiffs are not entitled to the specific performance of the suit agreement." It was also held that as the relief of specific performance is the discretionary one and as decreeing the suit would affect the rights of the family of M. Pullappa and Ex. A.4 is hit by Section 23 of the Indian Contract Act, it cannot be enforced and thus the plaintiff is not entitled to the relief of specific performance. On Issue No. 5, the court recorded a finding to the effect that the suit is not barred by limitation. It further held that as enforcement of Ex. A.4 causes injury to the property of the family of Muthuluru Pullappa, Ex.A.4 is bit by Section 23 of the Contract Act and hence the agreement is not enforceable. On Issue No, 6, the court held that Ex. A. 4 is complete contract, but plaintiffs are not entitled to specific performance. On Issue No. 7, the court came to the conclusion that the plaintiffs are not entitled to enforce the suit agreement in view of the provisions of A.P. Ceiling on Agricultural Land Holdings Act X of 1961. It further held that it cannot be said that Act 13/ 1972is a bar for the enforceability of the contract. On the Additional Issue, the court held that Act 13/1972 is not a bar for the specific performance of the contract as Act 13/1972 was subsequently repealed by Act 1

of 1973. On the above findings, the court dismissed the suit for specific performance of the agreement, but granted a decree for the refund of Rs. 1,000/- with interest at 6% per annum from the date of the suit to the date of realisation.

7. In this appeal Sri D. Vijaykumar, appearing for the appellants, contends that a reading of the judgment clearly indicates that the judge was unable to appreciate the evidence in the correct perspective. He was unable to understand the legal implications involved in the suit. The judge should have known that in a suit for specific performance of an agreement of sale, the executenent of the agreement cannot plead want of title in himself as a defence. When Issue No. 3 relating to the title of the defendant was deleted as per order dated 15-2-1974 in I.A. No. 44 of 1977, the trial court is not justified in again coming to the conclusion that for want of title and for want of possession and enjoyment, the defendant could resist the suit for specific performance. In this particular transaction, there is nothing which offends Section 23 of the Indian Contract Act. The transaction cannot be said to be opposed to public policy. Mr. Vijay Kumar contends that the judgment indicates a strained and consistent reasoning meant to defeat the plaintiffs' suit. Several of the conclusions recorded by the judge are not justified by the evidence on record and the legal points involved. The mere fact that there is likely to be an injury to the property of some other party is no justification for the defendant not being compelled to execute the sale deed in terms of the agreement of sale. He further contends that the defendant is at pains to establish the interests of the third party, but at the same-time, the defendant does not have a consistent case as to whether N. Kondappa and his successors in interest are lessees of the property or whether they are purchasers of the property. Without a specific case being pleaded, the court came to the conclusion that they perfected their title by adverse possession. If they are lessees, there is no question of their perfecting title by adverse possession. Mr. Vijay Kumar contends that the judgment is unsustainable and hence the appeal should be allowed and the suit decreed.

8. On behalf of respondents, Mr. T. Veerabhadrayya appearing as senior counsel for Sri C. Kondanda contends that the plaintiff came to the court with unclean hands and the plaintiff being fully aware of the fact that M. Kondappa's family is in possession and enjoyment of the property for the last several years, he entered into Ex.A.4. Plaintiff was fully aware that the defendant is not the absolute or the sole owner of the suit property and that he was not in possession of the suit property, but still he entered into Ex. A. 4. He has obtained Ex.A.4 only to grind his axe against Pullappa's family and this was done in connivance with the Karnam who played a major part in execution of Ex.A.4. Hence the suit for specific performance is rightly dismissed. The relief is a discretionary remedy and the facts and circumstance fully justify the court dismissing the suit, because the plaintiff came to court with unclean hands. He also contends that plaintiff was not ready and willing to perform his part of the contract. This is indicated by the fact that he kept quiet from 5-9-1965 to 9-4-1968. No efforts were made by

the plaintiff to make any payments for execution of the sale deed. The suit itself was filed with deficit court-fees of the last date of limitation and subsequently only the deficit court of Rs. 1402/- was paid. This itself is a clear indication that on the date of presentation of the suit, the plaintiff was not ready and willing to perform his part of the contract. Hence he is not entitled to any relief. Mr. Veerabhadrayya further contends that having regard to the facts and circumstances of this particular case, as the enforcement of the contract gives rise to further litigation, the court is perfectly justified in denying the relief of specific performance. The court ought not to encourage litigation by granting a decree which is bound to generate further litigation.

9. The points that arise for determination in this appeal are:

- (1) Whether the defendant is entitled to raise the defence of lack of title in himself in the suit for specific performance of agreement Ex.A.4 executed by him?
- (2) Whether the trial court is justified in holding that Ex. A. 4 is hit by Section 23 of the Indian Contract Act ?
- (3) Whether the filing of the suit before the expiry of period of limitation amounts to delay in filing the suit for specific performance in this particular case and whether it disentitles the plaintiff to the relief of specific performance ?
- (4) Whether the plaintiff has been ready and willing to perform his part of the agreement from the time of the agreement to the date of the trial of the suit ?
- (5) Whether the possibility of injury to third parties' interests would disentitle the plaintiff from getting the relief of specific performance of Ex. A.4 ?

10. Before I deal with the specific points of controversy indicated above, it would be pertinent to remark that a reading of the judgment of the trial court indicates that the judge adopted a process of strained reasoning twisting all the relevant facts to support his conclusions and findings on the different issues. The way in which the evidence has been appreciated does not appear to be judicious. The cardinal facts of the case are ignored and the process of reasoning adopted to hold every possible issue against the plaintiff.

11. The cardinal facts of the case are as follows and they are not in dispute. The property agreed to be sold under Ex. A.4 agreement dated 8-4-1965 was originally the ancestral property of the defendant's family. Some of the lands were originally inam lands. Subsequently in or about 1953 and 1955, there appears to have been a sort of partition or division between the defendant and his brothers and the lands in Raketla were allotted to the share of the defendant. In the land revenue records, the lands covered by Ex. A.4 are shown in the name of the defendant. After the abolition of the inams, a ryotwari patta was granted in the name of the defendant. It now appears to be a certain fact that these lands were not in the actual physical possession of the defendant and his family, but they were under the possession and enjoyment of the Muthuluru family since a long time. Originally these lands were in possession of Muthuluru Kondappa

and subsequently they were in possession and enjoyment of Muthuluru Obanna and Muthuluru Pullappa and subsequent of the death of Pullappa, his widows Obulamma and Venkatamma have been enjoying the lands. It is not clearly stated as to whether they are purchasers of the property or whether they are lessees of the property. There appears to be certain evidence to show that these people were cultivating the lands on Sarikolu basis (share-cropping in equal shares). It is an admitted fact that on the date of Ex. A.4, the defendant was not in actual possession of land. This appears to be known even to the plaintiff and to the Karnam P.W. 2 who played an important role in bringing into existence of Ex. A.4. There is emphatic and clear-cut evidence to show that the defendant was wanting to sell these lands and the Muthuluru family was trying to obtain it at a cheap rate. The defendant was resisting it. The defendant informed the Karnam PW 2 to secure purchasers who would offer a good price. In that context, he wrote Ex. A.3 letter dated 23-3-1965. A few days later on 8-4-1965, the suit agreement Ex. A.4 was executed under which the first plaintiff agreed to purchase the land for Rs. 20,500/-. On 14-4-1965 i.e., six days after the execution of Ex. A. 4, the defendant wrote Ex. A. 5 letter to PW 2 which clearly indicates that the defendant was anxious to assert his rights and that he was wanting to sell the property to whoever offers a good price and he was prepared to face any trouble that may come. Subsequently the defendant was postponing matter when he was asked to receive the balance of sale consideration and execute the sale deed and register it. Then Ex. A. 1 notice was issued on 24-8-1965 indicating that the plaintiff is ready and willing to perform his part of the contract and that in spite of oral requests, the defendant was avoiding execution of the sale deed. In this notice Ex. A.1, the plaintiff threatened to file a suit if the defendant does not execute the sale deed. The defendant gave a prompt reply Ex. A.2 on 5-9-1965 and this reply notice indicates that the attitude of the defendant has completely changed and he was trying to plead various defences for-avoiding execution of the sale deed. He even returned the advance of Rs. 1,000/- received by him by sending a Demand Draft for Rs. 1,000/-. The plaintiff promptly returned it. Subsequent to the exchange of notices, there was a lull for a fairly long period. On 8-4-1968, the last day of limitation for Ex.A.4 agreement, the suit was filed with a deficit court-fees and a court-fee of only Rs. 24/- was paid. On 10-4-1968, the plaint was returned for payment of deficit court-fees. On 11-4-1968, the deficit court-fee of Rs. 1402/- was paid and the plaint was re-presented. In the background of the above undisputed cardinal facts, we have to see whether the plaintiff is entitled to the relief of specific performance of Ex.A.4.

12. As can be seen from the above narration of the cardinal facts, it is crystal clear that something happened between 14-5-1965 on which the defendant wrote Ex.A.5 letter and 5-9-1965 on which date the defendant gave a reply notice. What exactly happened and why exactly the defendant turned round and denied the execution of the agreement and refused to execute the sale deed on various pretexts is not completely revealed to the court. We have to cull it out

from the evidence on record.

13. Before the specific points in are discussed, it would be pertinent to refer to the evidence in brief.

14. Men may lie, but documents cannot lie. Hence greater importance has to be given to the version revealed by the documents compared to the oral evidence. Ex.A.3 a letter dated 23-3-1965, is the first important document. This is written by the defendant to PW 2, the Karnam. A reading of this letter indicates that the defendant complained about his not receiving any letters from the Karnam and that the Karnam promised to bring the persons who are willing to purchase the property. He requested the Karnam to bring them within a week. He specifically stated that Karnam should not delay the matters. This document clearly indicates an anxiety on the part of the defendant to sell the property. Immediately thereafter on 8-4-1965, Ex.A.4 agreement came to be executed in favour of the first plaintiff. This document clearly shows that the lands are recorded in the defendant's name in the revenue registers of Raketla village and that they are under his possession and enjoyment and that he is selling them for a consideration of Rupees 20,500/- and that he received an advance of Rs.1,000/-. The details of the lands are indicated and it is stated that the balance of sale consideration of Rs.19,500/- should be paid at the time of the registration, and that all expenses relating to execution and registration of the sate deed should be borne by the plaintiff. Except the defendant and the scribe signing the document, nobody attested this document and it was not executed on stamp papers. Subsequently stamp duty and penalty was paid. Six days after execution of Ex. A.4 agreement of sale, the defendant wrote Ex. A.5 letter to PW 2 Karnam on 14-4-1965. A reading of this letter clearly indicates that the defendant was anxious to sell the lands and that he was in a mood to face all troubles that may arise and the problems that may be created by Muthuluru family people. In the first paragraph, the defendant mentioned that people have come to know that he sold the lands and was paid advance. He then states that some others also from Raketla came to purchase the lands and that he informed them that the matter is already settled. He then mentions that two days earlier Pullappa's wife came and complained that he sold the lands without their knowledge and that he informed her that he can sell his lands as he likes. He further complained that when Vakil Kondaiah met him, he insulted him and said that the law will take its own course. Vakil Kondaiah wanted the lands to be sold to them (Obviously to Pullappa's family) at a cheap rate. The defendant further complained that the Pullappa's family having enjoyed the property and prospered by it for all these years, instead of helping him to get a good price, wanted to knock it away cheaply. He further states that they seem to have an impression that he will get frightened and they seem to have threatened to file a suit. He asserted that there is no written record to show that he leased out the lands to them, and it was on Sarikolu basis. They were giving a pittance now and then. He stated that Sarikolu basis was on the basis of a trust and if they now revolt, he would see. He requested the Karnam to inform the plaintiff who paid the advance and request

him to advance the registration of the sale deed and complete it quickly. He asserted that the land is in his name and that he is free to sell the land and none can prevent it. Thus it is clear that soon after Ex. A.4 was executed, the defendant was anxious to assert his rights and he wanted to execute the sale deed early and he was prepared to face any challenge from Muthuluru family.

15. The next document is Ex. A.1 notice issued on 24-8-1965. Before this notice was issued, there appears to have been efforts to persuade the defendant to execute the sale deed, but he was not complying with the plaintiffs requests. In Ex. A.4 notice dated 24-8-1965, it was clearly mentioned that oral demands were made several times and the defendant was requested to receive the balance amount and execute the sale deed and that he did not comply with it. The notice further states that the plaintiff is ready and willing to perform his part of the contract and the defendant was asked to fix a date within a month from the date of the receipt of the notice for execution of the sale deed. The notice further mentioned that in case the defendant does not comply with the request and execute a proper conveyance deed, a suit will be filed for specific performance of Ex. A.4. It was promptly replied under Ex. A. 2 on 5-9-1965.

16. A reading of Ex. A. 2 clearly discloses a total change in the attitude of the defendant. In the very first paragraph, he denies the execution of the agreement Ex. A. 4 and he claims that he did not execute any written agreement in favour of the plaintiff. In paragraph 2, he comes forward with a theory that though the land originally belonged to the family, it was sold away during the lifetime of his father to the family of Muthuluru Kondappa, Obanna and Pullappa of Raketla who have been in absolute, undisputed and undisturbed possession and enjoyment of the same in their own right for the past 60 years. It is also claimed that they were paying the land revenue. It is claimed that the defendant's family had no right, title or interest in the property. In paragraph 3, it is claimed that as the plaintiff has longstanding disputes and differences that the family of Kondappa and his sons, the plaintiff approached him at Anantapur and requested him to sell the schedule property offering a good price. He further states that he informed the plaintiff that the land does not belong to him and then he was informed that the patta to the land stands in the name of the defendant and therefore, the property can be sold by the defendant. He speaks about Rs.1,000/- being thrust into his hands in spite of his unwillingness and that he only passed a receipt for Rs. 1,000/-. He also brings in the theory that his brothers have rights and unless they consent it cannot be sold. In paragraph 5, he mentioned that as per the suggestion of his brothers, he is returning the amount of Rs. 1,000/- and in paragraph 6, he comes forward with a theory that there is no completed contract and that they are not in possession and enjoyment for the last 60 years. The theory of adverse possession of Muthuluru family is introduced in paragraph 6. In paragraph 7, it is claimed that the sale agreement was only tentative and that there is no completed contract and that the proposal of the plaintiff is vitiated by fraud and misrepresentation. He claims that he had no right to sell the property and that he is returning the amount of Rs.1,000/ - by way of a

Demand Draft.

17. Having dealt with the documentary evidence, it would now be pertinent to deal with each one of the issues in controversy making appropriate reference to the oral evidence on record. It would also be necessary to make reference to the documents as and when required.

POINT No. 1:

18. The trial court framed Issue No. 3 to the following effect:

"Whether the defendant had title and possession of the suit properties at any time within the statutory period."

Subsequently this issue was deleted, because the court knew that is a suit for specific performance, the defendant cannot plead defect in his title as a defence. This matter is concluded by a Division Bench judgment of this court in Abdul Hakeem Khan Vs. Abdul Mannan Khadri, . This Division Bench decision is binding on this court and the trial court judgment nowhere indicates how this judgment is not applicable to the facts of the case. In this decision, the Division Bench laid down that in a suit for specific performance by the purchaser, the vendor cannot put forward the defence that he had no title, but if the suit is by the vendor, the purchaser can plead that the vendor had no title or had defective title as a defence. In paragraph 10 at page 181, the court observed as follows:

"It is settled law that if a person executes an agreement to sell property, the vendor is not entitled to put forward, in a suit for specific performance by the purchaser the defence that the vendor had no title or has defective title in a suit for specific performance by the vendor. But the vendor cannot set up defect in his own title as a defence in a suit for specific performance by the purchaser."

The Bench decision follows the decisions Baluswami Aiyar Vs. Lakshmana Aiyar and Others, and C.V. Muni Samappa Vs. Kolala Gurunanjappa (dead) and Others, . This decision also dealt with the question of limination. In paragraphs 17 to 19 and held that when the suit is brought within three years from the stipulated date, the suit is within time. The Court observed that from a long delay without anything further, an abandonment of rights cannot be presumed. In the present case, the suit was filed on the last day of limitation. It can safely be said that there is no delay and that the plaintiff has not abandoned his rights for specific performance under the agreement. For the binding decision M.A.H. Khan v. A. M. Khadri (supra), the respondents' counsel has no answer. I hold Point No. 1 in favour of the appellants.

POINT No. 2:

19. The Court recorded a finding to the effect that Ex. A.4 agreement is hit by Section 23 of the Indian Contract Act and it is opposed to the public policy. Hence it is not implementable. The plea raised was that as the purchaser was owning a large extent of land, his purchasing the suit land is against the

provisions of A. P. Agricultural Lands (Prohibition of Alienation) Act, 1972. It should be remembered that the said Act has subsequently been repealed by virtue of passing of Act 1 of 1973 popularly known as Agricultural Land Ceilings Act which came into force on 1-1-1975. The judgment in the case was pronounced on 22-2-1979 by which date the law which originally opposed alienation ceased to exist. It should also be remembered that the agreement came into existence on 8-4-1965 long before the A. P. Agricultural Lands (Prohibition of Alienation) Act, 1972 came into force in 1972. On the date of execution of the agreement, there was no law prohibiting alienation. By the date of judgment i.e., 22-2-1979, the law which came in the meanwhile and which prohibited alienation of agricultural lands stood repealed. In these circumstances, it is quite clear that there is nothing in the agreement which is against public policy. It is not hit by Section 23 of the Indian Contract Act. It should also be remembered that under the scheme of Act 1 of 1973 which came into force on 1-1-1975, there is no prohibition against a declarant purchasing more property even if he is a surplus holder. But the only consequence is that u/s 18 of the Agricultural Land Ceilings Act, he would be bound to file a fresh declaration and his holding is liable to be redetermined and he may have to surrender the surplus land on re determination. I hold Point No. 2 in favour of the appellants.

POINT No. 3:

20. Mr. Veerabhadraiah contended that in view of certain observations made in Revenue Divisional Officer, Vijayawada Vs. T. Laxminarayana, and Kommiseti Venkatasubbayya Vs. Karamsetti Venkateswarlu and Others, , the filing of the suit on the last day of limitations amounts to delay in filing the suit for specific performance and that it would disentitle the plaintiff from seeking the discretionary relief of specific performance. Mr. Veerabhadraiah contends that after the exchange of notices Ex. A.1/24-8-1965 and Ex. A.2 dated 5-9-1965, there was a lull for nearly three years and on the last day of limitation 8-4-1968, the suit was filed with deficit Court-fees. Normal conduct expected of the plaintiff in this background is that he should file a suit promptly after he received Ex. A.2 reply 5-9-1965. From the long silence, Mr. Veerabhadraiah infers that after receiving Ex. A.2, the plaintiff must have made enquiries and realised that the defendant had no right to sell the property and hence he kept quiet and this is an indication that there is wanton delay on the part of the plaintiff. Thus he is disentitled from seeking the relief of specific performance. K. Sambasiva Rao Vs. P. Bangaru Raju, , is a direct authority for the proposition that a suit filed on the last date of limitation does not entitle the Court to refuse to exercise its discretion for giving the relief of specific performance. In that decision, a contract was entered into and the plaintiff was to select Acs. 1-00 within six months of the date of the agreement and the defendant was to execute the sale deed. There is a lull for a period often years after the execution of the agreement. In such a background, the Court held that the period of six months stipulated in the agreement cannot be considered as period fixed for the performance of the contract, and held that a suit filed within three years from the date of refusal to

execute the sale deed was within time. The various complicating factors, which were noticed in that suit, are totally absent in the present suit. In our case, as indicated by the reply notice Ex. A.2 dated 5-9-1965, the period of limitation from the date of refusal extends up to 5-9-1968. But the plaintiff filed this suit on 8-4-1968 on the last day of limitation from the date of the agreement. A suit within the period of limitation cannot be considered to be an instance of delay in filing the suit for specific performance and thus disentitle the plaintiff from getting the relief of specific performance. Madamsetty Satyanarayana Vs. G. Yelloji Rao and Others, authoritatively lays down that mere delay extending up to the period of limitation is not a sufficient ground to refuse the relief of specific performance. In paragraph 11, the Supreme Court summarised the law as prevailing in England and the law prevail in India and observed as follows:

"While in England mere delay or laches may be a ground for refusing to give a relief of specific performance, in India mere delay without such conduct on the part of the plaintiff as would cause prejudice to the defendant does not empower a Court to refuse such a relief. But as in England so in India, proof of abandonment or waiver of a right is not a pre-condition necessary to disentitle the plaintiff to the said relief, for if abandonment or waiver is established, no question of discretion on the part of the Court would arise. We have used the expression "waiver" in its legally accepted sense, namely, "waiver" is contractual, and may constitute a cause of action; it is an agreement to release or not to assert a right..... It is not possible or desirable to lay down the circumstances under which a Court can exercise its discretion against the plaintiff. But they must be such that the Representation by or the conduct or neglect of the plaintiff is directly responsible in inducing the defendant to change his position to his prejudice or such as to bring about a situation when it would be inequitable to give him such a relief."

In fact, the Court observed in paragraph as follows:

"But as stated earlier, the English principles based upon mere delay can have no application in India where the statute prescribes the time for enforcing the claim for specific performance."

The Court ultimately held that mere delay extending up to the period of limitation is not a sufficient ground to refuse the relief.

21. For the reasons given above and, considering the case law on this aspect, I hold that the trial Court committed a mistake in coming to the conclusion that the filing of the suit on the last date of limitation after a period of inaction from 5-9-1965 disentitles the plaintiff from seeking the relief of specific performance. I hold Point No. 3 in favour of the appellants.

POINT No. 4:

22. This point relates to the readiness and willingness of the plaintiff to perform his part of the agreement. As indicated earlier, the very first notice Ex. A.1 issued

within 4 1/2 months of the execution of the agreement clearly shows that in spite of oral demands made several times, the defendant refused to receive the balance amount and the defendant was asked to fix up a convenient date within a month from the date of the receipt of the notice for execution and registration of the sale deed. Thus there is proof of plaintiff pressing the defendant to execute the agreement and there is also proof of the plaintiff indicating his readiness to perform his part of the contract. In Ex. A.2 reply notice, there is no specific plea that the plaintiff was not willing to perform his part of the contract. The defendant was only trying to invent excuses to avoid the agreement and he started pleading that there is no completed contract, and that he has no rights to sell the property as it is joint family property, and he also brings in the theory of the Muthuluru family having rights in the property. He further contends that he was made to execute Ex. A.4 by fraud and misrepresentation. The defendant never disputed the readiness of the plaintiff to perform his part of the contract. In the., elaborate evidence given by D.W. 1 (who by occupation was a District Health Officer and a highly educated man who held important posts in the State Government service) he never stated that the plaintiff was not willing to perform his part of the conduct. He claims that he took the money with reluctance and that he executed Ex. A.4 thinking that it is a receipt and then states as follows:

"It was dragged on for nearly three years. During these three years, I was busy with the marriages of my daughters and bestowed no thought over this affair. The part reopened the matter with the lawyer's notice Ex. A.1. 1 sent reply under Ex. A.2 with a draft for Rs. 1,000/-. Then I left the matter in the hands of my advocate. The first plaintiff is a very rich landlord owning nearly 400 acres of land."

23. Considering the evidence given by D.W. 1, it cannot be said that at any point of time, the plaintiff was unwilling to perform his part of the contract. In his elaborate evidence, he referred to Mrs. Pullappa coming to him and finding fault with him for selling the lands without their knowledge. He made a reference to this aspect in Ex. A.5 also. He also mentions that Vakil Kondaiah mentioned in Ex. A.5 is the son-in-law of Pullappa and he is now a High Court Judge and he informed him that the tiller of the land is the owner of the land and also informed him that he had no right to sell the lands in possession of Pullappa. Now an effort is made to show that there were laches on the part of the plaintiff by relying upon certain statements of P.W. 2. P.W. 2, the Karnam stated in the course of the cross-examination that after he received Ex. A.5 letter from the defendant, he met the first plaintiff and then the first plaintiff informed him that he had no money at that time and after 20 days, he could secure the money and then himself, plaintiff and Narasanna went to the defendant at Ananthapur and asked him to take the money and execute the sale deed. This clearly indicates that within 20 days of Ex. A.5, plaintiff was tendering the money and requesting the defendant to execute the document. But on the pretext of illness, the defendant avoided executing the sale deed. The Karnam mentions that again after another 15 to 20 days, the plaintiff sent him to Ananthapur to find out the date for

execution of the sale deed. This is also proof of plaintiffs, readiness and willingness to perform his part, of the contract. The only thing that can be pointed out against the plaintiff is that after receiving Ex. A.2 reply notice, he kept quiet for some time and then filed the suit on the last date of limitation 8-4-1968. Mr. Veerabhadraiah contends that the filing of the suit with a deficit Court-fees is an indication that on the date of the filing of the suit, plaintiff was not ready to perform his part of the contract. Mr. Veerabhadraiah contends that the total conduct of the plaintiff should be seen in a suit for specific performance. It should be remembered that the plaint was presented on 8-4-1968 with a deficit Court-fees. On 10-4-1968, the plaint was returned for payment of D.C.F. On 11-4-1968, the entire deficit Court-fees of Rs. 1402/- was paid. Mr. Veerabhadraiah places reliance upon Revenue Divisional Officer, Vijayawada Vs. T. Laxminarayana, and Kommisetti Venkatasubbayya Vs. Karamsetti Venkateswarlu and Others, . Revenue Divl. Officer v. T. Laxminarayana (supra) is a decision where the Court condemned the practice of Government filing suits with token Court-fess. Dealing with a petition u/s 5 of the Limitation Act, the Court condemned the practice of seeking condonation of delay as a result of routine and leisurely interdepartmental consultations and filing time barred appeals. It also condemned the practice of filing appeals with token court-fees after the expiry of limitation period. That is a case where the deficit Court-fees was paid after nearly 400 days. The Court characterised the conduct as a case of coming to the Court with unclean hands. This decision cannot come to the rescue of the plaintiff. K. Venkatasubbayya v. K. Venkateswarlu (supra) is a case where the plaintiff coming to the Court with a false plea of payment of Rs. 1,500/- out of a total consideration of about Rs. 2,000/-. Then he filed the suit stating that he is willing to pay the balance of Rs. 270/- which alone is the balance of sale considerations payable. The Court found that the alleged payment of Rs. 1,500/- is false and the plaintiff had come to the Court with unclean hands. On that ground, the relief was denied to him. This principle cannot be extended to cases where a suit is filed with deficit Court fees. Filing a suit with deficit Court-fees is perfectly legal under the law, and it cannot be said that the plaintiff has come to the Court with unclean hands or that it is an indication of his unreadiness to pay the Court-fees. His paying the entire deficit Court-fees within one day after the return of the plaint is proof of his readiness. Considering the entire evidence and the contents of the plaint and Ex. A.1 notice, I hold that the plaintiff has always been ready and willing to perform his part of the agreement from the time of the agreement to the date of the trial of the suit.

POINT No. 5:

24. The trial Court held that the possibility of injury to third parties would disentitle the plaintiff from seeking the relief of specific performance. It is true that the land was in actual possession of Muthuluru family at the time of execution of Ex.A.4. The defendant asserted his possession and enjoyment in Ex. A.4. He asserted the same fact in Ex. A.5 letter also. Subsequently when he gave Ex. A.2 reply notice, he denied his rights in the property and started setting up

rights in the Muthuluru family, though earlier in Ex. A.5, he indicated that he is ready to face the challenges that may be posed by the Muthuluru family. In the evidence, D. W. I is not specific as to whether the property was sold to Muthuluru family or whether they were enjoying the property as lessees on Sarikolu basis. A reading of his deposition clearly indicates that it is a case of lease on sharing the crop basis. There is nothing to indicate that the Muthuluru family acquired title by adverse possession. In fact, in Ex. A.5 letter, he clearly indicates that Pullappa's wife and Vakil Kondaiah wanted the defendant to sell the lands to them at a cheap rate. At that stage, the defendant resented their attitude. The theory of adverse possession trotted out in Ex. A.2 is demolished by the evidence of D.W. 1. It clearly shows that they were cultivating as lessees. A lessee cannot plead adverse possession. If the Muthuluru family are tenants of the land, the utmost amount they are entitled to ask is for continuation of their rights as lessees. They cannot claim title to the land. A feeble argument was advanced to the effect that by an amendment of the Andhra Tenancy Act, Section 16 confers a right on the tenant to purchase the property. It should be remembered that this amendment came into existence in 1974. This particular right of the tenant was not in existence at the time of Ex. A.4 or at the time of filing of the suit. If the rights of Muthuluru family members are affected by the granting of the decree, the only consequence that might crop up is that there might be future litigation between the Muthuluru family, who are not parties to the suit, and the purchaser of the property, because the judgment in this suit and appeal are not binding on the Muthuluru family. There is also a remote possibility of the plaintiff facing litigation with defendant's brothers. But that by itself cannot disentitle the plaintiff from getting the relief of specific performance of Ex. A.4 agreement. I hold that the possibility of injury to third parties' interests would not disentitle the plaintiff from getting the relief of specific performance.

25. For the various reasons given above, the appeal is allowed. The decree and judgment of the trial Court are reversed. The plaintiffs' suit shall stand decreed for specific performance. The plaintiffs will be entitled to costs in the trial Court as well as in the appellate Court.

26. Two months' time is granted to the plaintiffs to deposit the balance of sale consideration under Ex. A.4 into the Court with intimation to the defendant-respondents. After depositing the amount, they can seek the relief of specific performance. If, within two months from the date of deposit, the defendant-respondents fail to execute the sale deed, the plaintiffs will be at liberty to get the sale deed executed through the Court.

27. Appeal allowed.