

(2010) 07 AP CK 0040
In the Andhra Pradesh High Court
Case No : Appeal Suit No. 392 of 2001

Obulapuram Janardhana Reddy

APPELLANT

Vs

Obulapuram Venkata Subba Reddy

RESPONDENT

Date of Decision : 16-07-2010

Acts Referred:

Specific Relief Act, 1963 — Section 16, 20

Citation : (2010) 07 AP CK 0040

Hon'ble Judges : Vilas V. Afzulpurkar, J

Bench : Single Bench

Advocate : S.V. Bhatt, for the Appellant; C. Venugopal Reddy, for the Respondent

Final Decision : Allowed

Judgement

Vilas V. Afzulpurkar, J.—The unsuccessful plaintiff has filed this appeal aggrieved by the dismissal of his suit for specific performance.

2. Brief facts are as follows:

3. For the convenience, the parties are referred to as they are arrayed in the suit.

4. The defendant is the elder brother of the plaintiff. An agricultural land of an extent of Ac. 2.25 cents, out of a total extent of Ac. 7.71 cents from Sy. Nos. 576/1 and 576/4 in Ellareddipalle Village, Kamalapuram Mandal, Kadapa District, was agreed to be sold by the defendant to the plaintiff under an agreement of sale, Ex.A.1, dated 31.08.1991, which is in telugu, and the terms thereof which are not in controversy are as follows:

5. The total consideration for the said sale was Rs. 1,40,000/- and the plaintiff paid a sum of Rs. 40,000/- on the date of Ex.A.1 i.e. on 31.08.1991. The rest of the amount of Rs. 1.00 lakh was payable in two instalments of Rs. 50,000/- each on or before 20.02.1992 and on or before 31.08.1992 respectively. The agreement also provided that in the event of default being committed by the plaintiff the said agreement would stand cancelled and the defendant would be

entitled to forfeit the entire part consideration paid till then. The possession of the said property was not delivered to the plaintiff and continued to remain with the defendant.

6. From the pleadings and admitted case of both the parties, it is evident that the agreement of sale as well as the payment schedule as aforesaid is not in controversy and admittedly the defendant has received the second instalment of Rs. 50,000/- before 20.02.1992. According to the plaintiff, he purchased demand draft on 28.08.1992 to pay the last instalment of Rs. 50,000/- before 31.08.1992 and tendered the said amount to the defendant through PWs.2 and 3. It is, however, alleged by the plaintiff that the defendant deliberately did not receive the said demand draft and by claiming that there is default committed by the plaintiff in payment of the last instalment on 31.08.1992, the defendant issued a legal notice Ex.B.2, dated 01.09.1992, to the plaintiff informing him that on account of non-payment of last instalment, the agreement has been cancelled and the amount of Rs. 90,000 paid by the plaintiff stands forfeited. The said notice was replied to by the plaintiff under his reply notice, Ex.B.4, dated 04.09.1992, asserting that for payment of the last instalment of Rs. 50,000/- the demand draft payable in the name of the defendant was already obtained on 28.08.1992 from the State Bank of India, Kadapa and was tendered to the defendant through their sister, Smt. K. Lakshmi Narasamma and her son Sri K. Eswar Reddy (PW.2). It is alleged, however, that on the refusal of the defendant to receive the same, the plaintiff made another attempt and sent the demand draft along with one of their cousins, Sri Poli Venkata Subba Reddy (PW.3). It is mentioned, however, that the defendant did not receive the demand draft on the ground that the time under the agreement has expired and further alleging inter alia that the plaintiff is always ready and willing to perform his part of the contract and that cancellation of the agreement by the defendant is not justified as there is no default on the part of the plaintiff. The plaintiff also alleged that to avoid the legal proceedings against his own brother, the defendant was called upon to appear before the Sub-Registrar, Kamalapuram on 11.09.1992 and receive the demand draft. Along with the said notice, a photostat copy of the demand draft, dated 28.08.1992, was also sent. The defendant, however, under his reply notice, Ex.B.5, dated 13.09.1992, reiterated that the plaintiff has committed default in not paying the last instalment on the date fixed and he denied the allegations of the plaintiff that the demand draft was sent and tendered before the due date. The defendant also reiterated that since the agreement already stood cancelled, there is no question of refund of the amount paid by the plaintiff and the photostat copy sent with the notice being of no use, the said document does not amount to readiness and willingness. In that scenario, the plaintiff was left with no alternative but to file the suit for specific performance on 31.08.1992. In the plaint allegations, the plaintiff has reiterated the aforesaid events and has also stated that even after the said exchange of notices, at the intervention of elders, efforts to settle the matter were made and at the instance of Sri Gopala Reddy Raju, who is also an attestor to Ex.A.1, it was

agreed that the said Gopala Reddy Raju would execute a pronote for Rs. 50,000/- in favour of the defendant so that the balance amount stands paid to the defendant. It is stated, accordingly, on 09.12.1993 that the said Gopala Reddy Raju executed the pronote and the entire consideration stands paid to the defendant. It is also alleged that, for any reason, if the Court comes to the conclusion that the plaintiff has to pay the balance Rs. 50,000/-, covered under the pronote aforesaid, the plaintiff is ready and willing to deposit the said amount of Rs. 50,000/-, as and when directed by the Court, and as such, on refusal of the defendant to execute the sale deed, the present suit came to be filed.

7. As mentioned above, the basic suit agreement as well as payment of advance of Rs. 40,000/- and the second instalment of Rs. 50,000/- by 28.02.1992 is not disputed by the defendant. He, however, disputes that the last instalment payable by 31.08.1992 was not paid by the plaintiff within the time fixed and, consequently, Ex.A.1, agreement, stood cancelled and is not enforceable any more. It was also specifically denied that the demand draft was sent to the defendant as alleged by the plaintiff and it was claimed that instead of sending the original demand draft, the plaintiff played fraud by sending photostat copy thereof which shows that plaintiff is not ready and willing. The defendant further states that the suit is barred by time as the suit agreement being of 31.08.1992, the suit ought to have been filed within three years thereof and that the time, being the essence of the contract, the plaintiff has no cause of action.

8. The Court below had framed the following issues:

- i Whether the plaintiff is entitled for specific performance of contract?
- ii Whether the plaintiff is entitled for an alternative relief?
- iii Whether the time is the essence of contract as contended by the defendant?
- iv Whether the suit claim is barred by limitation?
- v To what relief?

9. The plaintiff has examined himself as PW.1 and PWs.2 and 3 were examined to support the plaintiff's case that the demand draft was tendered to the defendant before the due date. The plaintiff also marked the agreement of sale as Ex.A.1; the endorsement of payment of second instalment of Rs. 50,000/- as Ex.A.2 on the reverse of Ex.A.1; Valuation Certificate as Ex.A.3; Photostat copy of demand draft dated 28.08.1992 as Ex.A.4; Ex.A.5 is the lawyer notice, dated 08.02.1997, relating to pronote executed by Sri Gopala Reddy Raju referred to above; and Ex.A.6 is the certified copy of the order in I.A. No. 13 of 1990. The defendant examined himself as DW.1 and marked Ex.B.1, which is the acknowledgment of B.2, a copy of legal notice dated 01.09.1992. Ex.B.3 is a paper publication in Eenadu while Exs.B.4 and B.5 are copies of legal notices dated 04.09.1992 and 13.09.1992 respectively.

10. The Court below, after trial, came to the conclusion that the plaintiff failed to establish that he tendered the last instalment of Rs. 50,000/- within the time fixed and further found that the plaintiff has filed the suit on the last day of limitation and has not explained as to why he waited till the last date. The Court below also found that the plaintiff admittedly has encashed the demand draft and, thereby, the conclusion was drawn that the plaintiff was not ready and willing and had no interest in pursuing the agreement and that the plaintiff has failed to establish tendering of the last instalment by not examining his sister through whom the demand draft is said to have been sent. On the limitation aspect, though the trial Court claimed that the suit is within time as it is filed within three years from the payment of last instalment but, however, it was concluded that the plaintiff has waived his right to the suit agreement and the breach was committed as the time was the essence of the contract.

11. In this appeal, Sri S.V. Bhatt, Learned Counsel for the appellant, submits that the Court below has completely misdirected itself in not appreciating the conduct of the defendant in deliberately refusing the demand draft tendered within the time fixed and, on the very next day, sending the notice Ex.B.2, dated 01.09.1992, and canceling the contract clearly speaks of the intention of the defendant to deliberately avoid the obligation under Ex.A.1. Learned Counsel relies upon the evidence of DW.1 wherein he admitted that on 31.08.1992 itself he went and informed his advocate that he did not receive the balance consideration and, accordingly, got issued the notice, Ex.B.2, on the very next day i.e. 01.09.1992. Learned Counsel also relied upon the circumstances that the plaintiff did not send the demand draft by post or courier as the demand draft dated 28.08.1992 may or may not have reached the defendant by 31.08.1992 and, therefore, sent the same through his elder sister and her son. Learned Counsel states that though the Court below has drawn adverse inference for non-examination of his sister, the plaintiff had examined her son, PW.2, who accompanied his sister to the defendant's house. Further, even PW.3, who is also the cousin of the parties, was examined to establish that the plaintiff had tendered the last instalment within time. Learned Counsel states that the Court below was, therefore, wrong in thinking that there was no attempt by the plaintiff to pay the balance consideration and, thereby, the finding of default reached against the plaintiff is itself unjustified and, on the contrary, the default is that of the defendant in avoiding to receive the demand draft and claiming breach of contract on the part of the plaintiff. Learned Counsel further states that the suit was clearly within time as rightly found by the Court below but merely because he filed the suit on the last day is not a ground to disentitle specific performance as the defendant was already enjoying the possession as well as substantial part of consideration i.e. Rs. 90,000/- and it is not as if the plaintiff has avoided to pay the balance amount before the time fixed. Learned Counsel has relied upon a decision of the Supreme Court in *Motilal Jain Vs. Smt. Ramdasi Devi and Others*, for the proposition that when a major portion of consideration was paid at the time of execution of contract, the willingness to pay the

remaining amount is apparent, that the delay as a ground for waiver must be such third party rights have intervened and it would be inequitable to grant discretionary relief. He relied upon another decision of the Supreme Court in Smt. Swarnam Ramachandran and Another Vs. Aravacode Chakungal Jayapalan, for the proposition that, in a suit for specific performance, all that is necessary for the purchaser to show is that he is ready and willing to fulfill the terms of the agreement and that he had not abandoned the contract. He also relied upon a decision of the Supreme Court in Madamsetty Satyanarayana Vs. G. Yellogi Rao and Others, for the proposition that mere delay extending upto the period of limitation is not a sufficient ground to refuse the relief, in K. Sambasiva Rao Vs. P. Bangaru Raju,

12. Per contra, learned Counsel for the respondent supported the judgment under appeal by contending that the plaintiff failed to perform his obligation on or before 31.08.1992 as the payment of last instalment did not reach the defendant. Learned Counsel also stressed on the aspect of the first legal notice emanating from the defendant dated 01.09.1992 under Ex.B.2. Learned Counsel pointed out that there is no evidence of prior efforts by the plaintiff to pay the amount of last instalment before 31.08.1992 and the aforesaid conduct coupled with the fact that the plaintiff has waited till the last day of limitation to file the suit shows that the plaintiff had abandoned Ex.A.1, agreement. Further, as pointed out by the Court below, the plaintiff failed to examine his sister through whom he has alleged to have offered the last instalment. Learned Counsel submits that in a suit for specific performance, the conduct of the plaintiff being very relevant, the Court below has rightly appreciated the same and it calls for no interference by this Court. He also submitted that the decision of the Supreme Court in K.S. Vidyanadam and Others Vs. Vairavan, wherein the Supreme Court declined to grant specific performance when there was total inaction on the part of the purchaser for 2 1/2 years and the said delay coupled with substantial rise in prices of the properties would render the grant of specific relief inequitable. He also relied upon a decision of this Court in Pundi Govindarajan Vs. Subas Chandra Sahu, which dealt with a suit for specific performance where time was the essence of the contract and though the defendant was ready, the plaintiff was not ready to perform his part of the contract and in that view, cancellation of the suit agreement by the defendant was held justified. Another decision of this Court in T.V. Ratnakar Rao Vs. Hemantha Kumar and Another, was relied upon for the proposition that the plaintiff should establish that he was always ready and willing to perform his part of contract and the evidence adduced on behalf of the plaintiff in that regard being unsatisfactory and, if it falsifies his own contentions, decreeing specific relief was held inequitable. Another decision of this Court in Sardar Amarjeet Singh v. Smt. Nandu Bai 1998 (3) APLJ 440 was relied upon wherein this Court had followed the decision of the Supreme Court in K.S. Vidyanadam's case (supra) and in that case also even after issuing the legal notice for specific performance, the plaintiff had waited for nearly two years before filing the suit and the said long delay was held to be unexplained and

inaction on the part of the plaintiff held disentitles the relief of specific performance. Another decision of this Court in C. Manohar Reddy and Others Vs. Alopi Shanker and Others, was also relied upon for the proposition that merely because the plaintiffs are sound parties and capable of paying amounts, the mere claim of readiness and willingness is not sufficient when the part consideration agreed to be paid was not paid.

13. In the light of the above rival contentions, the issues that fall for consideration are:

1. Whether the plaintiff has tendered the balance consideration of Rs. 50,000/- on or before 31.08.1992?
2. If so, whether the plaintiff is entitled to specific performance?
3. Whether the plaintiff has established his readiness and willingness, as required u/s 16(c) of the Specific Relief Act?
4. If so, whether the discretion u/s 20 of the Specific Relief Act deserves to be exercised in favour of the plaintiff?

Issues 1 and 2:

14. In a suit for specific performance, the plaintiff must establish that he was at the relevant time ready and willing to perform and continues to be ready and willing to perform his part of the contract throughout.

15. The provision of Section 16 of the Specific Relief Act, 1963 (for short "the Act") and, particularly, Sub-section (c) is relevant. For convenience, Section 16 of the Act is extracted as hereunder:

16. Personal bars to relief:

Specific performance of a contract cannot be enforced in favour of a person:

- (a) who would not be entitled to recover compensation for its breach; or
- (b) who has become incapable of performing, or violates any essential term of the contract that on his part remains to be performed or acts in fraud of the contract, or willfully acts at variance with, or in subversion of, the relation intended to be established by the contract; or
- (c) who fails to aver and prove that he has performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him, other than terms the performance of which has been prevented or waived by the defendant.

Explanation: For the purpose of Clause (c):

- (i) where a contract involves the payment of money, it is not essential for the plaintiff to actually tender to the defendant or to deposit in court any money except when so directed by the Court;

(ii) the plaintiff must ever performance of, or readiness and willingness to perform, the contract according to its true construction.

17. Similarly, it is also well settled that even if the plaintiff establishes the contract, the enforcement thereof being discretionary u/s 20 of the Act, the Court exercises such discretion guided by judicial principles and not arbitrarily but in a sound and reasonable manner. In the present case, Ex.A.1, agreement, as well as payment of first instalment of Rs. 40,000/- and second instalment of Rs. 50,000/- is not in dispute and the only area of controversy between the parties is relating to the last instalment of Rs. 50,000/- payable on or before 31.08.1992. In order to establish that the plaintiff was ready and willing to pay the said last instalment, the plaintiff has stated that he obtained a demand draft for Rs. 50,000/- payable to the defendant. The photostat copy of the same is produced and marked as Ex.A.3. He, however, admits that when the defendant refused to receive the same, he has encashed the said demand draft on 12.09.1992. The plaintiff had also alleged and deposed that he had sent the said demand draft dated 28.08.1992 to the defendant through his elder sister and her son (PW.2) and, thereafter, again through Poli Venkata Subba Reddy (PW.3) who is also the son of the defendant's maternal uncle. It is the plaintiff's specific case, therefore, that in spite of tendering the said demand draft and requesting the defendant to accept the same, the defendant avoided to receive the demand draft and claimed breach of obligation by the plaintiff. The plaintiff examined PW.2 who stated in evidence in chief that he along with his mother took the demand draft to the defendant and requested the defendant to receive the same but the defendant refused. It is specifically deposed by him that he had taken the original demand draft to the defendant on the day they met the defendant. In the cross-examination also PW.2 maintained the said statement and except suggesting to him that he is speaking false there is not much of the cross-examination to discredit the said witness. In addition, PW.3, who is also the cousin of the parties and working as Executive Officer in the Endowments Department, also stated that on 29.08.1992 on the request of the plaintiff he took the demand draft to the defendant and requested him to execute the sale deed but the defendant is said to have informed him of holding of a panchayat which is pending with the elders and that the elders would come and meet him. His cross-examination also is not such as to discredit the said witness. We have thus only the evidence of DW.1 alone who is the defendant. He states that there is no dispute of the contents of Ex.A.1, agreement, and the last date for payment of last instalment. It was, however, suggested to him that 31.08.1992 was a public holiday and on 01.09.1992, the defendant issued the legal notice, Ex.B.2, cancelling the suit agreement, Ex.A.1. He admits that PWs.2 and 3 are his cousins but states that he is not on talking terms due to some differences. This was, however, not suggested to either PW.2 or PW.3. He denied the suggestion that the demand draft was sent to him through PWs.2 and 3 and he refused to receive the same. The evidence of DW.1 alone is, therefore, only rebuttal as against the evidence of plaintiff. A reading of the record further shows that the

relation between the plaintiff and defendant, though they are brothers, is not cordial and the plaintiff appears to have filed the suit for partition in O.S. No. 5 of 1992. In the cross-examination, PW.1 admits that he has mentioned in the plaint in the said suit that he holds an agreement of sale dated 31.08.1991 from the defendant. On account of the said relation being not cordial, it appears that the plaintiff had to rely upon his cousins and relatives for tendering the amount of last instalment to the defendant. PW.2, who is closely related to both the parties, has no reason to make a false statement before the Court that he along with his mother tendered the demand draft to the defendant before the due date. Similarly, PW.3, who is also closely related to both the parties and is also working as Executive Officer in Endowments Department, has also stated on oath of having tendered the demand draft to the defendant on 29.08.1992 itself. So, the fact that the plaintiff had paid first two instalments and had obtained demand draft covering the last instalment well before due date shows and establishes readiness and willingness on the part of the plaintiff, which is the first requirement for seeking the relief of specific performance. The refusal to receive the said demand draft, when tendered before the due date, by the defendant, therefore, clearly establishes that the plaintiff has not committed any breach of contract nor it can be said that the plaintiff has committed any default in discharge of his obligations in terms of Ex.A.1. Further the terms of Ex.A.1, agreement, does not stipulate that the last instalment is payable at the time of execution and registration of the sale deed which normally would be a term in any such agreement and as such what all the said agreement stipulates is that the last instalment must be paid before 31.08.1992. It is stated by the learned Counsel for the appellant that the said day happened to be Vinayaka Chaturdhi and was a public holiday and as such the amount was tendered before that date through PWs.2 and 3. In any case, the registration of sale deed cannot be on 31.08.1992 on account of the said day being a public holiday. The approach adopted by the Court below on issues 1 and 2, therefore, appears to be clearly erroneous and, on the facts and circumstances of the case, I am satisfied that the plaintiff has done everything within his command to ensure his obligation to pay the last instalment is fulfilled by him and on account of refusal by the defendant the present litigation ensued.

18. Issues 1 and 2 are, therefore, answered in favour of the appellant-plaintiff.

Issues 3 and 4:

19. It is not in dispute that the suit is within limitation having been filed on 31.08.1995. As the date for performance with respect to the last instalment was three years earlier thereto, the last date for payment of last instalment was 31.08.1992. Though the defendant resisted the suit on the ground that it should be within three years of Ex.A.1, agreement, the same was rightly not accepted by the trial Court and the trial Court also held that the suit is within time. However, in view of the fact that the said suit was filed on the last day of limitation, the contentions based on K.S. Vidyanadam's case (5 supra) as well as

Sardar Amarjeet Singh's case (1998(3) APLJ 440 (supra) are raised by the learned Counsel for the defendant. In K.S. Vidyanadam and Others Vs. Vairavan, the Supreme Court held that it is not a case of mere delay but a total inaction on the part of the plaintiff that had to be taken into consideration. It is, however, to be remembered that the Supreme Court had made a significant observation in paragraph 11 as follows:

...Sri Sivasubramaniam cited the decision of the Madras High Court in S.V. Sankaralinga Nadar Vs. P.T.S. Ratnaswami Nadar and Others, holding that mere rise in prices is no ground for denying the specific performance. With great respect, we are unable to agree if the said decision is understood as saying that the said factor is not at all to be taken into account while exercising the discretion vested in the Court by law. We cannot be oblivious to the reality - and the reality is constant and continuous rise in the values of urban properties - fuelled by larger scale migration of people from rural areas to urban centres and by inflation. Take this very case. The plaintiff had agreed to pay the balance consideration, purchase the stamp papers and ask for the execution of sale deed and delivery of" possession within six months. He did nothing of the sort. The agreement expressly provides that if the plaintiff fails in performing his part of the contract, the defendants are entitled to forfeit the earnest money of Rs. 5,000/- and that if the defendants fail to perform their part of the contract, they are liable to pay double the said amount. Except paying the small amount of Rs. 5,000/- (as against the total consideration of Rs. 60,000/-) the plaintiff did nothing until he issued the suit notice 2 ? years after the agreement. Indeed, we are inclined to think that the rigor 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. It is high time, we do so. Learned Counsel for the plaintiff says that when the parties entered into the contract, they knew that prices are rising; hence, he says, rise in prices cannot be a ground for denying specific performance. May be, the parties knew of the said circumstance but they have also specified six months as the period within which the transaction should be completed. The said time-limit may not amount to making time the essence of the contract but it must yet have some meaning. Not for nothing could such time-limit would have been prescribed. Can it be stated as a rule of law or rule of prudence that where time is not made the essence of the contract, all stipulations of time provided in the contract have no significance or meaning or that they are as good as non-existent? All this only means that while exercising its discretion, the Court should also 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)....

(emphasis supplied)

20. It would be immediately evident that the aforesaid observations of the Supreme Court were relevant with reference to urban immovable properties which escalate much faster whereby the delay on the part of the plaintiff would render the decreeing of specific relief inequitable. Similarly, Sardar Amarjeet Singh's case (8 supra) relied on by the learned Counsel for the defendant was also a case relating to urban immovable property where silence by the plaintiff for two years was held to be long and unexplained silence.

21. The rule enunciated by the Supreme Court in Mademsetty Satyanarayana's case (3 supra), to my mind, would be attracted to the facts and circumstances of this case. In the aforesaid decision the Supreme Court held in paragraph 11 as follows:

...The result of the aforesaid discussion of the case law may be briefly stated thus: 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"; (see AIR 1935 79 (Privy Council)) 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.

22. It is also to be noted that, in the present case, there has been no change in the situation with respect to land nor any third party interest has intervened. The defendant, admittedly, is enjoying the possession of the property and has also retained Rs. 90,000/- out of the total consideration of Rs. 1,40,000/-. As already held above, the plaintiff established that he tendered the amount of the last instalment within the time fixed under Ex.A.1 and, as such, even the discretion u/s 20 of the Act would not render specific relief inequitable. On the facts and circumstances of the case, the delay upto the period of limitation therefore cannot deny the right of the plaintiff. The plaintiff has established that he had made efforts to tender the amount well within time through PWs.2 and 3 and there is also evidence on record that even afterwards through the panchayat as well as through the common friend, Sri Gopala Reddy Raju, the plaintiff made efforts to convince the defendant to receive the balance consideration. The relationship between the parties being that of real brother and relation being not cordial and already the subject matter of litigation in the shape of partition suit, pending, it cannot be said that the non-filing of the suit by the plaintiff earlier

than 31.08.1995 is totally unexplained. It also cannot be said that the plaintiff had abandoned the contract or has waived his rights to seek specific performance as wrongly understood by the trial Court.

23. I may incidentally mention that the decree of the Court below mentions as if the suit is filed on 31.08.1997 but I have verified the original plaint which shows that it was presented on 31.08.1995 and there are atleast four endorsements by the office of the Court below raising objections regarding format, enclosures and representation of the plaint by the plaintiff in 1995 itself. Apparently, there is a mistake in the decree drafted by the Court below while mentioning the date of the presentation of the plaint.

24. Keeping in view all the facts and circumstances, I am inclined to agree with the learned Counsel for the appellant that the appeal deserves to be allowed by decreeing the suit as prayed for. So far as the balance Rs. 50,000/- payable by the plaintiff is concerned, irrespective of the controversy, with regard to tendering of the said amount in the shape of the pronote said to have been executed by the common friend of the parties, Sri Gopala Reddy Raju, I am of the view that, as pleaded by the plaintiff in paragraph 5 of the plaint, the plaintiff should be directed to pay Rs. 50,000/- to the defendant with interest at 6% thereon from 31.08.1992 till today. If the plaintiff deposits the said amount together with interest on or before 31.08.2010, the plaintiff shall be entitled to the decree of specific performance and on failure of the defendant to execute the sale deed, the Court below shall execute the decree on behalf of the defendant in accordance with law. On such deposit, the defendant shall be entitled to withdraw the said amount without furnishing any security.

25. Issues 3 and 4 are, accordingly, answered in favour of the appellant/plaintiff.

26. The appeal is accordingly allowed. In view of the close relationship between the parties, there shall be no order as to costs.