
(2005) 07 AP CK 0042
In the Andhra Pradesh High Court
Case No : CCCA No. 223 of 2001

P. Pandit Rao (died) by LRs. and Others	APPELLANT
Vs	
K. Damodar Rao and Another	RESPONDENT

Date of Decision : 08-07-2005

Acts Referred:

Contract Act, 1872 — Section 11
Evidence Act, 1872 — Section 114, 62, 92, 92(1)
Hindu Minority and Guardianship Act, 1956 — Section 8
Specific Relief Act, 1963 — Section 16, 20, 21, 31

Citation : (2005) 5 ALD 646 : (2005) 6 ALT 140

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : V. Parabrahma Sastry, for Dhanajaya, for the Appellant; P. Yadagiri Rao, for the Respondent

Final Decision : Allowed

Judgement

L. Narasimha Reddy, J.—Defendants in O.S. No. 1138 of 1991 on the file of the II Senior Civil Judge, City Civil Court, Hyderabad, preferred this appeal, aggrieved by the judgment and decree dated 17-9-2001 passed by the trial Court.

2. The 1st respondent is the husband of the 2nd respondent. They filed the suit against the appellants for the relief of specific performance of an agreement of sale dated 20-3-1989, marked as Ex.A-1. Respondents pleaded that in the month of June, 1988, the appellants offered to sell the suit schedule property, bearing Municipal Nos. 1-2-65, 1-2-65/1 and 1-2-65/2, admeasuring about 300 Sq. yards, situated at Domalguda, Hyderabad, for a consideration of Rs. 2 lakhs. A sum of Rs. 1,00,000/- is said to have been paid on the date of agreement, and a sum of Rs. 96,000/- on several dates, prior to that. It was alleged that the agreement was entered through their Special Power of Attorney. They pleaded that though they made several requests to the appellants, for execution of the registered sale deed, they did not come forward, and left with no alternative, they filed the suit for specific performance. It was stated that they are ready and

willing to pay the balance consideration of Rs. 4 lakhs.

3. The 1st appellant is the father, and appellants 2 to 7 are his children. All of them have filed a common written-statement. At a later point of time, the written statement was amended, by including certain paragraphs. The gist of the defence is that they never agreed to sell the suit schedule property to the respondents, nor they received a sum of Rs. 96,000/-, as pleaded. It was urged that the 6th appellant, by name P. Satyam, was a minor, and that Ex.A-1 is invalid in law. They pleaded that the 1st appellant used to have money transactions with one Sri K. Laxmaiah, who is the brother-in-law of the 1st respondent, and a sum of Rs. 1 lakh was borrowed from the said Laxmaiah, with a promise to repay the same after two years, and taking advantage of the need of the 1st appellant, Laxmaiah, got Ex.A-1 executed, with an object to secure repayment of Rs. 1 lakh, after 2 years, with interest at 48% per annum. Rs. 96,000/-, mentioned in Ex.A-1, is stated to be the interest portion. Appellants pleaded that the suit agreement was nominal and executed for the purpose of repayment of the amount. They denied any privity of contract with the respondents. It was also alleged that the respondents neither issued any notice, nor requested for execution of sale deed, because they were very much aware of the nominal nature of the document.

4. The trial Court held that the execution of the agreement of sale is proved. It rejected the plea of the appellants and decreed the suit as prayed for.

5. Sri V. Parabrahma Sastry, learned Counsel for the appellants submits that Ex.A-1 is not enforceable in law, since the 6th appellant was a minor, as on the date of agreement. According to him, it is contrary to the provisions of Contract Act and Section 8 of the Hindu Minority and Guardianship Act, 1956 (for short "the Act"). He submits that the agreement was nominal in nature, and executed with an object of securing repayment of Rs. 1 lakh with interest, and it was never intended to be for sale of the property. By referring to the various documents filed in the suit, he submits that, even by the year 1983, the value of the property was more than Rs. 3 lakhs, and it is quite unnatural that it is agreed to be sold 6 years thereafter, at 2/3rd of that price, when, in fact, the prices in the area have increased manifold.

6. Learned Counsel further submits that the terms of Ex.A-1 are vague, and that it does not provide for proportionment to the respective owners, and, or for the consequences of non-compliance with the conditions. He draws the attention of this Court to the clause, under which, the possession of the property was agreed to be delivered, two years after the agreement, particularly in the context that the alleged leftover consideration was only Rs. 4,000/-. Sri Sastry, submits that the respondents failed to prove their rights under Ex.A-1, and that the evidence of PW-1 proves that he is an utter stranger to it. He contends that though a sentence was incorporated in the plaint to the effect that the respondents are ready and willing to perform their part of contract, the same was not even spoken to, in the evidence, much less, substantiated. Placing reliance upon the

provisions of Sections 20 and 21 of the Specific Relief Act, he submits that the suit was a clear case for rejection of the equitable relief of specific performance, and that the decree had resulted in great hardship to the appellants.

7. Sri P. Yadagiri Rao, learned Counsel for the respondents, on the other hand, submits that once the appellants have admitted the execution of Ex.A-1, grant of relief for specific performance, is almost a matter of course. He submits that though several contentions were raised by the appellants/defendants in their written statement, DW-1 alone was examined, that too, not in entirety. He states that the recitals of Ex.A-1, clearly disclose that the 6th appellant was a major, by the date of execution, and at any rate, he did not enter the witness box, to prove that he was a minor as on that date. Learned Counsel submits that an adverse inference needs to be drawn, as regards the failure of the appellants to examine the other witnesses, who are said to have been acquainted with the various aspects of Ex.A-1.

8. Learned Counsel further submits that in case the appellants were of the view that Ex.A-1 is vitiated, either on facts or in law, the only course open to them was to file a suit u/s 31 of the Specific Relief Act, and that not having been done, they cannot escape from the consequences flowing from the document. He submits that the appellants have not chosen, at least, to come forward with a counter-claim, and in that view of the matter, their plea cannot be accepted. As regards the plea of hardship taken by the appellants, particularly, in the context of value of the property, etc., he submits that the same was not substantiated and that consideration being a matter of mutual agreement between the parties, its inadequacy does not constitute a ground for denying the relief of specific performance.

9. Learned Counsel submits that certain steps taken by the trial Court are contrary to law. According to him, DW-1 was not available, till the completion of cross-examination, and as such, his evidence, as a whole, ought to have been eschewed. Another objection raised by the learned Counsel is, as to the admissibility of Ex.B-1, dated 16-12-1983, the copy of an agreement of sale, in respect of a larger extent of property, including the one, covered by Ex.A-1, in the year 1983. He further submits that the various contentions raised by the appellants were inconsistent with each other, and at any rate, none of the contentions were proved by adducing evidence.

10. Both the learned Counsel have relied upon number of decisions, in support of their contentions. They shall be referred to, at the relevant stages.

11. On the basis of the pleadings before it, the trial Court framed the following issues:

1. Whether the suit agreement was executed by the defendants 2 to 7 under undue influence and coercion of first defendant and as such is not binding and enforceable as against the defendants 2 to 7?

2. Whether the suit agreement is not supported by consideration?
3. Whether the suit against the 6th defendant is premature?
4. Whether the plaintiff is entitled to a decree for specific performance as prayed for?
5. To what relief ?

12. On behalf of the respondents PWs. 1 and 2 were examined. While documents marked through PW-1 were identified as Exs.A-1 to A-3, those marked through PW-2 are shown as Exs.X-1 to X-12. 5th appellant was examined as DW-1. Through him, Exs.B-1 to B-6 were marked. The trial Court answered all the issues in favour of the respondents, and ultimately decreed the suit.

13. In view of the submissions made by the learned Counsel for the appellants and learned Counsel for the respondents, the following points arise for consideration in this appeal:

- (1) Whether the respondents established their claim for the relief of specific performance of Ex. A-1.
- (2) Whether the 6th appellant was a minor, when Ex. A-1 was executed, and if so, the consequences thereof.
- (3) Assuming that Ex. A-1 is held to be legal and proved, whether there exist any circumstances to deny the relief of specific performance to the respondents.

14. A reading of the plaint, which is very brief, in its content; presents a picture, as though it is a simple case, where the appellants agreed to sell the property under Ex.A-1, and the relief claimed in the suit is the one for specific performance. However, the material that was placed by the parties before the Court discloses that the case has certain other ramifications also. In fact, this appeal, and C.C.C.A. No. 224 of 2001, arising out of O.S. No. 1139 of 1991, in which the appellants herein and the sisters of the 2nd respondent, are parties; were heard together. But for the fact that there exist certain aspects, which are typical to each case, this Court would have disposed of both the appeals, through a common judgment

Point No. 1:

15. Before referring to the other facets of the case, it is essential to see as to what exactly the case presented in the plaint was, and to what extent the suit claim was proved. The plaint averments are to the effect that the appellants offered to sell the suit schedule property in June, 1988 for a total consideration of Rs. 2 lakhs and that the respondents have paid an amount of Rs. 96,000/-, on several dates and on 20-3-1989. Ex.A-1 was entered into by the appellants, on the one hand, and the "Special Power of Attorney", of the respondents, on the other hand. A sum of Rs. 1 lakh is said to have been paid on the date of agreement. The respondents did not sign Ex.A-1. They were represented by their

Special Power of Attorney, Sri K. Laxmaiah. Clauses 4 and 5 of Ex.A-1, deal with the obtaining of permission for registering the sale deed, and delivery of possession. They read as under:

Clause-4: The vendors shall obtain the necessary permission within the period of the two years for registering of sale deed in favour of the purchasers.

Clause-5: The vendors shall deliver the vacant possession of the building to the purchasers within two years on registration of sale deed and that the vendors shall not raise any objection whatsoever including the validity of this agreement on any ground.

16. The chief-examination of PW-1 is very brief. . The gist of it is that the appellants offered to sell the property to him for Rs. 2 lakhs; he paid Rs. 96,000/- to the 1st appellant, on various occasions before 28-3-1989; and on the day Ex.A-1 was executed, another sum of Rs. 1 lakh was paid. He said that the appellants evaded to execute the regular sale deed, and therefore, he filed the suit for specific performance. He did not refer to the factum of himself and the 2nd respondent executing any Special Power of Attorney in favour of PW-2, or that they were presented in Ex.A-1, through PW-2. He said that he knew the respondents, two or three years earlier to the execution of Ex.A-1. He did not utter a word about his readiness and willingness to perform his part of the contract. He did not state as to when he demanded the appellants to execute the sale deed.

17. The facts elicited through him, in the cross-examination, are very vital and important. The 1st sentence in Para 2 of the plaint is that the appellants offered to sell him the property in June 1988. The 2nd sentence in the chief-examination of PW-1 is that he knows all the appellants from two to three years earlier to the execution of Ex.A-1. In the cross-examination, he stated:

"I have seen Pandit Rao in the year 1989 for the first time when he offered to sell the plaint schedule property. Prior to that I had no occasion to see the plaint schedule house or to meet Pandit Rao."

18. As regards the payment of amounts, PW-1 said that he paid a sum of Rs. 50,000/-, as advance, to the 1st appellant and obtained a receipt. But, he did not produce the same into the Court. He said that he paid a further sum of Rs. 46,000/-, when requested by the 1st appellant, through telephone, and that a receipt was issued therefor. He admitted that he did not file the receipt. As regards his knowledge and concern about execution of Ex.A-1, he stated as under:

"I do not know and remember about the nature of permission to be obtained as per Clause-4 of Ex. A-1. I have no personal knowledge about Ex.A-1. My brother-in-law got prepared Ex.B.1 elsewhere. I do not know where Ex.A-1 was drafted. I do not know where Ex.A-1 was registered. I do not know the contents of Ex.B.1."

These statements can be countenanced to certain extent, if PW-1 executed a

Special Power of Attorney in favour of PW-2, as mentioned in Ex. A-1, itself. However, this is what PW-1 said in his cross-examination:

"I have not executed any G.P.A., in favour of my brother-in-law, Laxmaiah".

With this statement, it emerges that PW-1 is an utter stranger to Ex.A-1, because he is neither a signatory to it, nor executed the power of attorney in favour of PW-2. On facts also, he stated that he is not aware of the contents of Ex.A-1; the place where it was drafted or registered, much less, as to why it was brought about. An endeavour is possible to extricate PW-1 from such a factual and fatal admission, if there exists ample evidence to suggest that PW-1, in fact, executed a G.P.A., in favour of PW-2.

19. PW-2 is the said G.P.A. As observed earlier, he gave totally a different picture to the entire case.

20. He deposed that he purchased an item of property in the immediate neighbourhood of the plaint schedule from the appellants in the name of his wife. He stated that, the respondents herein executed a Special Power of Attorney, Ex. X-12, in his favour on 10-4-1987, and that he signed on Ex.A-1, on behalf of the respondents. A sum of Rs. 1 lakh was said to have been paid to the appellants, on the date of execution of Ex.A-1, and that the respondents paid Rs. 96,000/- on two occasions "in his presence". He said that two receipts were issued for payment of Rs. 96,000/-, on different dates, and that they were handed over to the appellants, at the time of execution of Ex.A-1. This version is totally different from the one spoken to by PW-1.

21. In his cross-examination, PW-2 stated that he introduced the respondents to the 1st appellant in the year 1987. This totally contradicts with what PW-1 himself said about his acquaintance with the 1st appellant. A specific suggestion was made to PW-2 by the appellants that the G.P.A. was brought into existence long after execution of Ex.A-1. He admitted that some letters were erased with white fluid on the top of Ex.X-12. PW-2 sought to offer an explanation by stating that he sent his clerk to purchase the stamps, on which Ex.X-12 was written, and that he does not know what transpired at the time of purchase of the same.

22. It has already been observed that PW-1 categorically stated that he knew the 1st appellant for the first time in the year 1989, when the latter offered to sell the suit schedule property. The plaint started with an assertion that the offer to sell the property, was made in June 1988. However, in Ex.X-12, which is said to have been executed on 10-4-1987, extensive reference is made to the transaction for purchase of the property from the 1st appellant. Therefore, on the face of it, Ex. X-12 cannot be said to be true and valid. Once the denial of execution of Ex.X-12 came from, none other than PW-1, the plaintiff, it was impermissible to lead any evidence contrary to it. Even otherwise, no effort was made to overcome such fatal admission, by examining the witnesses or the persons connected to Ex. X-12.

23. Once it has emerged that Ex. A-1 is not proved and power of attorney, Ex.X-12 was not executed by PW-1 in favour of PW-2, it is not necessary to discuss the other points. However, in view of the extensive submissions made by the parties, it is proposed to discuss them.

24. Ex.B-1, dated 16-12-1983, is the copy of an agreement of sale, executed by the appellants herein in favour of Smt. Lalitha, wife of PW-2 and her two brothers, by name, Harinarayana and Muralidhar. An area of 902 Sq. yards, with several buildings thereon, including the subject-matter of this appeal, was agreed to be sold for a consideration of Rs. 10,75,000/-, through Ex.B-1. Placing reliance upon this, DW-1 stated that a sum of Rs. 3 lakhs was paid as advance and the balance was agreed to be paid at the time of registration. Appellant No. 6 figured as one of the parties to the document. He was aged 9 years at that time. DW-1 pleaded that with a view to secure permission of the Court under the provisions of the Act, O.P.No. 136 of 1984 was filed in the Court of Chief Judge, City Civil Court, Hyderabad, and it became necessary to file the original of Ex.B-1, before the Court. It is alleged that Ex.B-1 was in the custody of PW-2 and in spite of notices in Exs.B-2 to B-6, it was not furnished and ultimately, the transaction could not be proceeded with. It was also his case that the vendors under Ex.B-1 expressed their inability to proceed with it, and agreed to take refund of Rs. 3 lakhs. According to the witness, taking advantage of their inability to pay Rs. 3 lakhs, PW-2 got executed a sale deed for 1/3rd of the property for a consideration of Rs. 2 lakhs, and brought into existence two agreements of sale in Ex.A-1 and another document, marked as Ex.X-11. His effort was to impress upon the Court that a property, which was agreed to be sold in 1983 for Rs. 10,75,000/-, was sought to be knocked away for a sum of Rs. 6 lakhs.

25. It is true that Ex.B-1 is not an original document. However, it answers the description of the counter-part agreement, as mentioned u/s 62 of the Evidence Act. It was pleaded by the appellants that, while the original of Ex.B-1 was retained by the purchasers thereunder, a copy signed by them, being Ex.B-1, was delivered to them. The honesty on the part of the appellants is evident from the fact that they presented the same copy, which contained an endorsement "cancelled", and which was in a torn condition and contained the signatures of the purchasers. They left the places meant for their signatures, vacant. The objection raised on behalf of the learned Counsel for the respondents that it does not contain the signature of the appellants, cannot be sustained. It was not at all difficult for the appellants to put their signatures, if they so wanted. A counterpart agreement is valid and admissible in evidence, if it contains the signatures of those against whom it is sought to be enforced.

26. If Exs.B-1 and Ex.X-11 are read together, it becomes clear that Ex.A-1 was executed only with a view to secure repayment of Rs. 1 lakh, paid to the 1st appellant. The very fact that the possession of the property was scheduled to be delivered two years thereafter, supports the contention of the appellants, that Rs.

96,000/-, which is said to have been paid in advance, represents the interest at 48% per annum, for a period of two years. Therefore, Ex.A-1, even assuming that it was validly executed, is nominal, not an agreement of sale. It is only an instrument, to ensure repayment of a sum of Rs. 1 lakh, received by the 1st appellant.

27. By placing reliance upon the judgment of the Supreme Court in *S. Saktivel (dead) by Lrs. Vs. M. Venugopal Pillai and Others*, learned Counsel for the respondents submitted that no oral evidence can be allowed, to contradict the terms of a written document. Section 92 of the Evidence Act deals with such contingencies. The section per se, prohibits oral evidence to contradict the terms of written documents. However, the section contains as many as 6 provisos. Each proviso creates an exception to the principle contained in the body of the section. Proviso (1) enables a party to lead evidence to the effect that the document in question is vitiated by factors such as, fraud, misrepresentation, coercion, lack of consideration etc. The effort of DW-1 was to convince the Court that no consideration as such was paid under Ex.A-1, for purchase of the suit schedule property. This comes clearly within the proviso (1) of Section 92. Therefore, the objection raised by the learned Counsel for the respondents, cannot be entertained.

28. The result of the discussion on this point is that the respondents failed to prove and establish their rights under Ex.A-1, and as such are not entitled for any specific performance.

29. Ex.A-3 is the receipt executed on the same day. According to this, a sum of Rs. 96,000/- was received on different dates, and on the date of issuance of the receipt, i.e. 20-3-1989, a sum of Rs. 1 lakh was paid through the Special Power of Attorney.

30. In the first spell of the trial, the 1st respondent alone was examined as PW-1, and their evidence was closed. 5th appellant was examined as DW-1. He was extensively cross-examined. He was required to attend the Court at a later date, for further cross-examination. The docket of the trial is verified, in the context of the submission made by the learned Counsel for the respondents, that the evidence of DW-1 ought to have been eschewed. It reveals that neither any request was made for such a course, nor the Court passed an order to that effect. The further interesting part of the matter is that, at a subsequent stage, PW-2, the alleged Special Power of Attorney, of the respondents, was permitted to be examined. The text and content of the deposition of PW-2 is such that, it has overshadowed the entire evidence that was placed before the Court, upto that stage. It is not known as to how such evidence was permitted to be adduced after the evidence of the respondents herein was closed. Further, after the cross-examination of PW-2 was closed, the trial Court made an endorsement to the effect that the appellants cannot be permitted to adduce any evidence, since their evidence was closed already.

31. In this context, it needs to be noticed that, once the evidence on the part of the plaintiffs or defendants is closed, it can be permitted to be re-opened, only in a limited context. By re-opening the evidence on its side, a party cannot be permitted to present altogether a new and elaborate version. If, for any reason, the trial Court accords permission for reopening of evidence and introduction of a version, not presented in the evidence so far, fairness and basic tenets of law of evidence mandates that an opportunity be given to the other party, to lead its evidence, to deal with the version introduced after reopening the evidence. Any lapse in this regard, would have the effect of vitiating the trial, to a substantial extent.

32. Learned Counsel for the respondents submits that an altogether a new defence was introduced through the amendment to the written statement, and in view of the judgment of the Supreme Court in *Modi Spinning and Weaving Mills Co. Ltd. and Another Vs. Ladha Ram and Co.*, and the judgment of this Court in *N. Ramachandra Reddy (died) G.S. Veeraraghava Reddy Vs. K. Raghunatha Reddy and Others*, , such an amendment was liable to be eschewed.

33. The appellants got amended their written statement by elaborating the plea, which is already taken by them. Except supplementing certain facts, they did not plead anything new. Even otherwise, it is permissible for the parties to take inconsistent pleas. At any rate, the objection was not raised, when the amendment was effected. On the basis of the amendment, the parties have gone for trial. In case, the amendment was found to be impermissible at that stage, the appellants would have chosen their own avenues, to put forward their case. Hence, the contention of the learned Counsel for the respondents, cannot be accepted.

34. The submission made on behalf of the respondents to the effect that the evidence of DW-1 ought to have been eschewed, in view of the judgment of the Supreme Court in *Gopal Saran Vs. Satyanarayana*, , would have appealed to this Court, had that witness did not offer himself for cross-examination at all. It has come on record that he was extensively cross-examined and when he did not turn up, at a later point of time, no grievance was made out by the respondents. It implies that they did not want to cross-examine the witness any further. Therefore, the principle laid down by the Supreme Court, in this regard, does not apply.

Point No. 2:

35. The appellants raised a specific plea that as on the date of Ex.A-1, the 6th appellant was minor and as such the document is contrary to Section 8 of the Act. The trial Court repelled this contention by referring to the contents of Ex.A-1. In Ex.A-1, the age of the 6th appellant is shown as 18 years. Ex.B-1 was filed on behalf of the appellants into the trial Court. Though an attempt was made by the respondents, to pretend ignorance of Ex.B-1, they could not continue it, once PW-2 was examined. PW-2 admitted not only his knowledge

about Ex.B-1, but also the various recitals in it. In fact, he stated in his chief-examination itself that the original of Ex.B-1 was filed in O.P.No. 136 of 1984 on the file of the Chief Judge, City Civil Court, Hyderabad. He admitted that the consideration under Ex.B-1 is Rs. 10,75,000/-, and the vendors under it are his wife and brothers-in-law. He did not depose that the description of the parties, particularly, with reference to their ages in Ex.A-1; does not represent the correct state of affairs. In Ex.B-1, the 6th appellant is described as under:

"P. Satyam, son of P. Pandit Rao, Hindu, aged about 9 years, R/o.1-2-65, Domalguda, Hyderabad."

36. The Vendors 5 and 6, being minors, were represented by their natural father and guardian, the 1st vendor. If for any reason Ex.B-1 is eschewed from consideration, it is not as if there was no material before the trial Court, throwing light upon the age of the 6th appellant. PW-2 filed Ex.X-11, an agreement of sale dated 4-1-1986, executed by all the appellants herein in favour of his wife, K. Lalitha, in relation to the property, which is in the neighbourhood of the suit schedule house. In this, the 6th appellant is described as under:

"P. Satyam s/o. P. Pandit Rao, Hindu, aged about 11 years, R/o.1-2-65, Domalguda, Hyderabad."

37. The respondents cannot disown their documents, since it was filed through a witness examined by them. This agreement totally accords with Ex.B-1, as to the age of the 6th appellant. If by January 1986, the 6th appellant was 11 years old, by 4-1-1989, on which date Ex.A-1 was executed, his age would be 14 years. The recital in Ex.A-1, depicting the age of the 6th appellant as 18 years, indicates nothing, but another facet of concoction of that document. In view of this clear evidence emanating from the respondents/plaintiffs themselves, it was not necessary either for the 6th appellant to come to the witness box, or to lead any other evidence. Once it has emerged that the 6th appellant was a minor as on the date of Ex.A-1, any transaction to which, he is a party, is voidable in law u/s 11 of the Contract Act. Further, such a transaction is vitiated by operation of Section 8 of the Act.

38. It is possible to argue that even if the 6th appellant was a minor, the transaction can be separated only to the extent of his share. However, it is a matter of record that the suit schedule property was held by DI, D-2 and D-6, and that in Ex.A-1 or in the schedule attached to it, the extents of individual interests or shares of the concerned vendors are not shown. That being the case, their interests are indivisible and the transaction gets vitiated, as a whole.

Point No. 3:

39. Section 16 of the Specific Relief Act requires that a party seeking the relief of specific performance of agreement, shall plead that he is ready and willing to perform his part of the contract. Form 41, which is the proforma of plaint in a suit for specific performance, contains such a clause. It is true that, in the instant

case, the respondents incorporated a clause to that effect in the plaint. As in the case of any fact pleaded in the plaint, the plea as to readiness and willingness was required to be spoken to, by the respondents. In his evidence, PW-1 did not utter a word about his readiness and willingness, to perform his part of the contract, under Ex.A-1. In fact, he has gone to the extent of saying that he does not know its contents, much less about the permission to be obtained in that regard.

40. Section 20 is another important provision, under the Specific Relief Act. It delineates the jurisdiction of the Court, in the matter of granting the relief of specific performance of a contract. According to this provision, the jurisdiction to grant such a relief is discretionary and the Court is not bound to grant such a relief, merely because it is lawful, to do so. A note of caution is added to the effect that the discretion shall not be exercised in an arbitrary manner, but on sound and reasonable manner, guided by judicial principles. The other provisions and explanations incorporated in it, provide an ample guidance in this regard. One of the known principles is that the grant of relief of specific performance must not result in an unfair and undue advantage to the plaintiff.

41. Interpreting Section 20, Courts held from time to time that inadequacy of consideration, by itself, does not constitute a factor, to deny the specific relief, and that the Court has to weigh the circumstances, which relate to the transaction.

42. The concept of adequacy of consideration in a transaction assumes different colours, depending on the situation. If the value of the property was not determined earlier, and both the parties agree for a consideration, the mere fact that in a better bargain, the property could have fetched a higher price, cannot render the consideration inadequate. Where, however, the property was valued at a price on earlier occasion and the consideration under the contract in question is far below than that, heavy burden lies upon the plaintiff to prove the circumstances, that justify the acceptance of such lesser amount towards consideration. Otherwise, the contract partakes the characters of an oppression, undue influence or exploitation of a situation by the plaintiff. All these factors, in turn, tell upon the equitable nature of the transaction, which happens to be the rudder, to guide the Court, in the matter of exercise of discretion to grant or refuse the equitable relief.

43. Another contention put forward by Sri Yadagiri Rao is that since the defendants 2 and 6 did not choose to enter into the witness box, an adverse inference deserves to be drawn against them u/s 114(g) of the Evidence Act. He cited the judgment of the Supreme Court in *Vidhyadhar Vs. Manikrao and Another*, , and two other judgments on this point.

44. The theory of adverse inference gets attracted, where the party on whom the burden rested, failed to examine the persons, or place the documentary evidence, which he was otherwise entitled to. It is difficult to invoke this, as

against a person on whom the burden does not rest. In a suit for specific performance, basically, it is for the plaintiff to prove the execution and contents of the agreement. It is only thereafter, that the application of the defendant, to disprove the contents of the plaint, or other material arises. In the instant case, it has emerged that the plaintiffs had virtually disowned Ex.A-1, and in that view of the matter, there does not exist any occasion for the Court to call upon the defendants to substantiate their plea.

45. On behalf of the appellants it is contended that having regard to the facts and circumstances of the case, grant of relief in favour of the respondents was totally inequitable. On the other hand, it is urged on behalf of the respondents that mere inadequacy of consideration is not at all a ground to deny the relief. Reliance is placed upon certain judgments on this point. It is also contended that no hardship, as such was proved, and therefore, the decree of the trial Court cannot be interfered with.

46. It has already been pointed out that the consideration under Ex.A-1 for the property of which, the suit schedule constitutes 1/3rd was agreed to be at Rs. 10,75,000/-. Domalguda is one of the posh localities in the city of Hyderabad. The Court can take judicial note of the fact that there was spiraling of prices in the city of Hyderabad, in general, and in the areas concerned, in particular, ever since early 1980's. The suit property is 1/3rd of the one under Ex.B-1. Its value in the year 1983, comes roughly to Rs. 3,75,000/-. Six years later, that property is said to have been agreed to be sold for a sum of Rs. 2 lakhs. It is here, that the plea of the appellants 2 to 7, that Ex.A-1 was executed only for the purpose of repaying the loan of Rs. 1 lakh, and that they had no option to comply with the command of the 1st appellant, becomes relevant. Their plea that the amount of Rs. 96,000/-, represented the interest at 48% per annum, calculated on Rs. 1 lakh, for a period of two years, gains a semblance of credibility. This Court finds that this appeal presents typical example for invocation of Section 20 of the Act, even if it were to have been held that Ex.A-1 was proved to the satisfaction of the Court and that it does not suffer from any factual or legal infirmity.

47. Learned Counsel for the parties relied upon number of citations, in support of their contentions. Since most of them are on the same point or on settled principles of law, and since the findings are reached on appreciation of evidence, they are not referred to, individually.

48. This Court certainly would have considered the feasibility of granting a decree for payment of the amount referred to in Ex.A-1, had there been such a plea in the plaint u/s 22. No such relief was claimed in the suit. Sub-section (2) of Section 22 of the Act prohibits the Court from granting such a relief, unless it has specifically been claimed, and disable from granting such a relief.

49. For the foregoing reasons, the appeal is allowed and the judgment and decree of the trial Court is set aside. There shall be no order as to costs.