
(2014) 03 AP CK 0068
In the Andhra Pradesh High Court
Case No : AS No. 1256 of 1993

Sirigina Rama Lakshmi

APPELLANT

Vs

Bantupalli Surya Bhaskerrao

RESPONDENT

Date of Decision : 21-03-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 16 Rule 16
Evidence Act, 1872 — Section 3, 45, 47, 73, 92

Citation : (2015) 1 ALD 19

Hon'ble Judges : M. Satyanarayana Murthy, J

Bench : Single Bench

Advocate : S. Subba Reddy, Advocate for the Appellant

Judgement

M. Satyanarayana Murthy, J.—The 1st defendant in Original Suit No. 19 of 1979, on the file of Sub-ordinate Judge (Now Senior Civil Judge), Tanuku, West Godavari District (for short, "the trial Court"), preferred this appeal against the impugned decree and judgment dated 27.2.1990, wherein the suit filed for specific performance of agreement of sale dated 3.6.1978 was decreed in favour of the plaintiff and against the 1st defendant. The appellant herein was the 1st defendant and the 1st respondent herein was the plaintiff before the trial Court, in OS No. 19 of 1979. For the sake of convenience, the parties hereinafter will be referred as arrayed before the trial Court.

2. During pendency of this appeal, appellant herein died and her legal representatives i.e., appellants 2 to 6 herein were brought on record as per the orders of this Court in ASMP Nos. 1885, 1886 and 1887 of 2012 on 3.6.2013 and respondent herein died and his legal representative i.e., 2nd respondent herein was brought on record as per the orders of this Court in ASMP No. 2160 of 2012 on 25.9.2013.

3. The plaintiff filed the suit for specific performance of agreement of sale, initially, against defendants 1 to 3 and later, 3rd defendant died and her legal heirs i.e., defendants 4 and 5 were brought on record, alleging that the 2nd

defendant obtained land belonging to Someswaraswamy Temple of Nidadavole on lease and failed to pay arrears of maktha to the temple; thereupon, the temple authorities filed a suit in OS No. 19 of 1967, obtained a decree for recovery of amount, filed Execution Petition No. 73 of 1974 for recovery of the amount and brought Ac.0.80 cents of suit schedule property for sale in execution of decree in EP No. 73 of 1974 on the file of Sub-ordinate Judge, Tanuku. Expecting that the property will be sold in Court auction for lesser amount, 2nd defendant requested the plaintiff to lend Rs. 13,000/- to him, so that he can purchase the property in the name of his wife, 1st defendant, and later execute a registered sale deed in favour of the plaintiff at a reasonable price. Due to friendship between the plaintiff and 2nd defendant, believing the representation of the 2nd defendant, plaintiff lent an amount of Rs. 13,000/- to the 2nd defendant, obtained a promissory note for the said amount. Subsequently, 2nd defendant received an amount of Rs. 2,000/- from the plaintiff from time to time. 2nd defendant was successful in getting the sale knocked down in favour of his wife, 1st defendant, in the Court auction held by the Sub-ordinate Judge, Tanuku, in EP No. 73 of 1974 in OS No. 19 of 1967. Thus, the sale was confirmed in favour of the 1st defendant. Thus, the 1st defendant, who is the wife of 2nd defendant, became owner of the schedule property by virtue of purchase in the Court auction.

4. While the matter stood thus, on 3.6.1978, 2nd defendant got executed an agreement of sale for Rs. 23,000/- agreeing to sell Ac.0.80 cents purchased by the 1st defendant in the Court auction and Ac.0.12 cents belonging to 3rd defendant, who is no other than the mother of 2nd defendant promising to get the sale deed executed by his mother. Defendants 1 and 2 took Rs. 5,000/- from the plaintiff on the date of execution of agreement dated 3.6.1978. Thus, defendants 1 and 2 received an amount of Rs. 20,000/- as advance of sale consideration, in total.

5. As per the terms of contract, balance of Rs. 3,000/- is agreed to be paid at the time of registration of the document, after taking measurements, so as to ascertain the correct extent available, but defendants 1 and 2 did not co-operate to get the land measured and receive balance of sale consideration in terms of the agreement, though, the plaintiff is always ready and willing to perform his part of obligation and obtain registered sale deed in pursuance of the agreement of sale.

6. The plaintiff having no other alternative, got issued a legal notice dated 15.3.1979 calling upon the defendants 1 and 2 along with 3rd defendant to execute registered sale deed in his favour for the schedule property to an extent of Ac.0.92 cents in total. On receipt of notice, 1st defendant got issued a reply with false allegations, mainly contending that she is the absolute owner of Ac.0.80 cents of land and 3rd defendant is the owner of Ac.0.12 cents of schedule property while denying execution of agreement of sale affixing her thumb impression contending that the document is a rank forgery.

7. The plaintiff alone is in possession and enjoyment of the schedule property

even prior to the date of purchase of the same and also continuing to be in possession even as on the date of filing the suit. Though the plaintiff is ready and willing to perform his part of obligation under the agreement of sale, the defendants did not co-operate to execute registered sale deed, hence, filed the suit for specific performance of agreement of sale dated 3.6.1978 directing defendants 1 and 2 to execute a registered sale deed in terms of the agreement of sale, in case defendants 1 and 2 failed to execute registered sale deed, permit the petitioner to obtain registered sale deed, through process of Court.

8. The 1st defendant filed written statement denying execution of agreement of sale and her obligation to execute registered sale deed in favour of the plaintiff to an extent of Ac.0.80 cents, which she purchased in the Court auction in EP No. 73 of 1974 in OS No. 19 of 1967. The plaintiff was never in possession and enjoyment of the property on the date of filing the suit as she became highest bidder in the Court auction, Sale Certificate was issued in her favour for Ac.0.80 cents of land and delivery of property was taken on 28.3.1979 through process of Court, since then she is in possession and enjoyment of the property.

The 1st defendant mainly contended that she is not aware of anything about receipt of Rs. 13,000/- and Rs. 2,000/- by the 2nd defendant; so also Rs. 5,000/- at the time of alleged execution of agreement of sale on 3.6.1978 but the plaintiff and 2nd defendant brought into existence the collusive agreement of sale due to differences between the 1st and 2nd defendants, who are no other than wife and husband. Thus, the agreement of sale dated 3.6.1978 is invalid and not enforceable under law as it is a rank forgery.

The 1st defendant also denied purchase of property with the amount advanced by the plaintiff to the 2nd defendant and purchase of property in the name of 1st defendant while contending that she purchased Ac.0.80 cents of land with her "stridhana" amount, thereby she is the absolute owner of Ac.0.80 cents of property out of Ac.0.92 cents. Hence, the plaintiff is not entitled to any relief much less the relief of specific performance and finally prayed to dismiss the suit.

9. The 2nd defendant remained ex-parte. The 3rd defendant filed written statement denying her obligation to execute registered sale deed since, she never executed agreement of sale in favour of the plaintiff agreeing to sell her Ac.0.12 cents of land, even according to the allegations made in the plaint, and prayed for dismissal of the suit against her.

10. On the strength of the above pleadings, the trial Court framed the following issues:

1. Whether the agreement dated 3.6.1978 is true and valid?
2. Whether the plaintiff is in possession of the suit property?
3. Whether the plaintiff is entitled to specific performance of the contract dated 3.6.1978?

4. Whether the 3rd defendant is not a necessary or proper party?

5. To what relief?

11. During course of trial, on behalf of the plaintiff, PWs.1 to 4 were examined and Exs.A1 to A19 were marked; on behalf of the defendants, DW1 was examined and no documents were marked.

12. Upon hearing argument of both the Counsel, perusing oral and documentary evidence on record, the trial Court believed execution of agreement of sale dated 3.6.1978, marked as Ex.A1, and that the property was knocked down in the name of 1st defendant, in the Court auction with the amount advanced by the plaintiff to 2nd defendant and also believed payment of Rs. 5,000/- on the date of execution of Ex.A1, decreed the suit granting relief of specific performance.

13. Aggrieved by the impugned decree and judgment of the trial Court, the 1st defendant alone preferred this appeal on various grounds mainly contending that:

(a) The plaintiff failed to prove execution of Ex.A1, dated 3.6.1978, by examining any attestors or the document writer or at least any of the modes of proof contemplated under the Evidence Act, 1872 (for short, "the Act") but still the trial Court believed the agreement of sale without proper appreciation of evidence;

(b) The trial Court on erroneous appreciation of evidence on record, believed payment of Rs. 13,000/- to 2nd defendant, which is not proved by examining any witnesses, even otherwise, payment of Rs. 5,000/- on the date of execution of Ex. A1 is also not proved but the trial Court on erroneous exercise of discretion, granted a decree in favour of the plaintiff for specific performance;

(c) The recitals of Ex.A1 are totally silent regarding payment of Rs. 13,000/- for purchasing the property in the name of plaintiff and obtaining of promissory note and also appropriating the same towards sale consideration but the recitals therein show that cash consideration of Rs. 15,000/- was paid on the date of execution of Ex.A1. Therefore, the pleadings are totally contrary to the recitals of Ex.A1 and the trial Court on erroneous appreciation of evidence believed Ex.A1 in spite of discrepancies both in oral and documentary evidence;

(d) The trial Court also failed to consider the affect of non-examination of any of the witnesses to prove the alleged payments covered by Ex.A1 and Rs. 5,000/- on the date of execution of Ex.A1. If the oral evidence on record is appreciated in proper perspective, the trial Court ought not passed a decree in favour of the plaintiff but committed an error on wrong appreciation of oral and documentary evidence, passed a decree in favour of the plaintiff.

Finally prayed to allow the appeal setting aside the impugned decree and judgment of the trial Court dismissing the suit.

14. During course of argument, learned Counsel for the 1st defendant-appellant reiterated the grounds urged in the grounds of appeal, mainly concentrating to

proof of passing of consideration under Ex.A1 to the 2nd defendant and failure to prove Rs. 5,000/-, allegedly paid on the date of execution of Ex.A1 and placed reliance on a judgment of this Court in Kommisetti Venkatasubbayya Vs. Karamsetti Venkateswarlu and Others, , in support of his contentions while pointing out the variation between the documentary evidence and in the pleadings, finally contended that if the evidence is appreciated in proper perspective the plaintiff is not entitled to the relief of specific performance and requested to reappraise the entire evidence on record being the Court of first appeal to come to an independent conclusion, pass judgment setting aside the impugned decree and judgment of the trial Court, dismissing the suit.

15. None appeared for the respondents, despite service of notice.

16. This Court being the Court of first appeal is under an obligation to reappraise the entire oral and documentary evidence to come to an independent conclusion, notwithstanding the findings recorded by the trial Court. Therefore, I would like to reappraise the entire evidence with reference to legal position relied upon by the learned Counsel for the 1st defendant-appellant and decide the appeal, afresh, un-influenced by the findings recorded by the trial Court.

17. Considering the material available on record and the argument advanced by learned Counsel for the 1st defendant-appellant, the points that arise for consideration are:

1. Whether Ex.A1 dated 3.6.1978 is true, valid, genuine and enforceable under law?

2. Whether Ex.A1 is supported by consideration of Rs. 20,000/-?

3. Whether the plaintiff-1st respondent is entitled to the relief of specific performance of agreement of sale in respect of Ac.0.80 cents of agricultural land out of Ac.0.92 cents described in the schedule?

18. Point Nos. 1 and 2:--The main contention of learned Counsel for the 1st defendant-appellant is that Ex.A1 agreement of sale dated 3.6.1978 is forged document, she never signed on the said document agreeing to sell the property for Rs. 23,000/- including the property of the 3rd defendant who is no other than her mother-in-law, when the plaintiff-first respondent herein asserted that 2nd defendant got executed Ex.A1, agreeing to sell the schedule property. When the plaintiff-1st respondent sought for the relief of specific performance, when the same is denied by the 1st defendant-appellant contending that it is a forged document, the onus of proof is always on the plaintiff-1st respondent to prove execution of Ex.A1 in any of the modes provided under Section 3 of Indian Evidence Act. At this stage, I feel it is relevant to refer the principles laid down by the apex Court in The State (Delhi Administration) Vs. Pali Ram, :

"23. Just as in English Law, the Indian Evidence Act recognises two direct methods of proving the handwriting of a person:

- (1) By an admission of the person who wrote it; and
- (2) By the evidence of some witness who saw it written.

These are the best methods of proof. These apart, there are three other modes of proof by opinion. They are:

- (i) By the evidence of a Handwriting Expert. (Section 45)
- (ii) By the evidence of a witness acquainted with the handwriting of the person who is said to have written the writing in question. (Section 47);
- (iii) Opinion formed by the Court on comparison made by itself. (Section 73)

All these three cognate modes of proof involve a process of comparison. In mode (i), the comparison is made by the expert of the disputed writing with the admitted or proved writing of the person who is said to have written the questioned document. In (ii), the comparison takes the form of a belief which the witness entertains upon comparing the writing in question, with an exemplar formed in his mind from some previous knowledge of repetitive observance of the handwriting of the person concerned. In the case of (iii), the comparison is made by the Court with the sample writing or exemplar obtained by it from the person concerned."

19. If the said principles are applied to the present facts of the case, a document can be proved either by admission or by examining any person who was present at the time of execution of the document and who can identify the signature or writing of the executants. As the initial onus of proof is on the plaintiff-1st respondent to prove the document in any of the modes stated in the above judgment, to prove execution of the document the plaintiff himself was examined as PW1, he testified about execution of the document by the 1st defendant-appellant and the same was got executed by her husband agreeing to sell both the property purchased by her in Court auction in EP No. 73 of 1974 in OS No. 19 of 1967 filed by Sri Madana Gopala Swamy Temple authorities including the property owned and possessed by 3rd defendant mother-in-law of the 1st defendant-appellant. The attestors and document writer were not examined to prove execution of the document on the ground that the scribe of the document is no more and the 1st attestor is residing at Karnataka State, whereas the 2nd attestor is the husband of the plaintiff. The non-examination of scribe of the document due to his death and the second attestor, husband of the 1st defendant, who is the 2nd defendant in the suit is justifiable, whereas, non-examination of 1st attestor who is available during trial at Karnataka, no specific reason was assigned for his non-examination. Merely because the witness is out of State, nothing prevented the plaintiff-1st respondent to examine him either by issuing summons through process of the Court under Order 16 of C.P.C. or by appointing an Advocate Commissioner to record the evidence of the 1st attestor who was alive by then. Therefore, non-examination of the 1st attestor though he is alive, is fatal to prove execution of Ex.A1, more particularly, when the

execution was denied contending that Ex.A1 document is a rank forgery, is fatal. Thus, the plaintiff failed to establish execution of the document by resorting to the procedure laid down by the apex Court in the judgment referred above.

20. Even if the scribe is no more and 1st attestor is not available to the process of the Court, nothing prevented the plaintiff to examine any person who can identify the signatures of the attestors, scribe and the thumb impression of the plaintiff, which is one of the modes of proof, in view of the principles laid down by the apex Court in the above judgment, but obviously for different reasons, the plaintiff did not examine any person who had acquaintance with the writing of the scribe or attestors etc.

21. The specific plea of the 1st defendant is that Ex.A1 is a forged document as she never affixed her thumb impression on Ex.A1. In normal course of events, it is difficult for any individual to identify the thumb impression of any person, but the document can be proved with the aid of an expert opinion who can compare the admitted thumb impressions with the disputed thumb impressions with the help of technical aid and issue opinion but the plaintiff did not resort to prove the document, relying on opinion of expert, which is relevant under Section 45 of Indian Evidence Act to prove that the thumb impression of the executant on Ex.A1 is that of the thumb impression of the 1st defendant-appellant, allegedly executed Ex.A1.

22. The 2nd mode of proof of document by opinion evidence i.e., examination of the disputed thumb impressions with the admitted thumb impressions exercising power under Section 73 of Indian Evidence Act by the Court itself but such power has to be exercised sparingly, in exceptional circumstances. In the instant case on hand, though the burden is upon the plaintiff, the plaintiff did not resort to any of the modes laid down by the apex Court to prove execution of the document and as resort available to the Court is to compare the thumb impressions both admitted and disputed, belonging to the 1st defendant but the trial Court did not exercise its power conferred under Section 73 of Indian Evidence Act but concluded that Ex.A1 was executed by 1st defendant agreeing to sell the schedule property.

23. There are several inconsistencies in the oral evidence of PW1, which clinches the issue. Now, I would like to advert to the oral evidence of PW1 and the contents of Ex.A1. According to the examination-in-chief of PW1, the case of the plaintiff is that he shall participate in the auction in the name of his wife and accordingly the bid was knocked down in the Court auction in favour of the 1st defendant, wife of the 2nd defendant, later, he paid Rs. 2,000/-, obtained 2 promissory notes for the above amount paid on 2 different occasions and later, those 2 promissory notes were returned to the defendants (there are 3 defendants), on the date of execution of Ex.A1, he paid Rs. 5,000/- as advance. Thus, in total, he paid Rs. 20,000/-, delivered possession of the land on the date of execution of Ex.A1, whereas the above evidence is totally in consonance with the pleadings in the plaint. However, when the recitals of Ex.A1 are adverted to,

it disclosed that the 1st defendant-appellant participated in the auction became highest bidder, bid was knocked down in her favour, later she obtained Sale Certificate and took possession of Ac.0.80 cents out of Ac.0.92 cents through process of Court. Since then, she is in possession and enjoyment of the property i.e., Ac.0.80 cents. It is further disclosed that at the time of execution of Ex.A1 in the presence of attestors an amount of Rs. 20,000/- was paid as advance agreeing to pay the balance of sale consideration on or before 3.11.1978, after taking measurements. Thus, it is clear that the pleadings and evidence is totally contrary to the agreement of sale for the reason that absolutely there was no reference with regard to the advancement of Rs. 13,000/- so as to enable the 2nd defendant to participate in the Court auction and bid the property in the name of his wife, the 1st defendant-appellant herein; so also payment of Rs. 2,000/- on any specific date, obtaining 2 promissory notes and payment of Rs. 5,000/- on the date of execution of Ex.A1. Thus, the pleadings and oral evidence of PW1 is totally contrary to the covenants of Ex.A1. Apart from that, there are several inconsistencies in Ex.A1 itself, according to recitals, the 1st defendant-appellant took possession of the property and continuing in possession of the same, which she purchased in the Court auction, but in the last sentence of the document it is recited that the plaintiff himself is in possession of the property even by the date of execution of Ex.A1 and thereby the question of delivery of possession again does not arise. This recital is totally contrary to the recitals in the earlier part of Para 1 of Ex.A1. Therefore, passing of consideration of Rs. 20,000/- under Ex.A1 is highly doubtful, even otherwise, the evidence of PW1 with regard to payment of consideration is inadmissible in evidence in view of the interdict contained under Section 92 of the Indian Evidence Act, which says that when the terms of any such contract, grant or other disposition of property, or any matter required by law to be reduced to the form of a document, have been proved according to the last section, no evidence of any oral agreement or statement shall be admitted, as between the parties to any such instrument or their representatives in interest, for the purpose of contradicting, varying, adding to, or subtracting from, its terms.

24. Therefore, the evidence with regard to two modes of passing of consideration and delivery of possession as recited under Ex.A1 is not in consonance with the oral evidence of PW1 and pleadings which is a judicial admission. This discrepancy creates any amount of suspicion about execution of Ex.A1. Ex.A3 is the office copy of registered notice dated 15.3.1978 wherein the plaintiff demanded the defendants to receive balance of sale consideration and execute registered sale deed. The contents of the notice regarding payment of consideration and delivery of possession are not consistent to the recitals of Ex.A1. It appears that the plaintiff laid foundation in Ex.A3 itself. Therefore, whatever oral evidence adduced by the plaintiff, PW1, to explain the contents of passing of consideration under Ex.A1 is inadmissible in evidence and on the basis of such evidence it is highly doubtful for the Court to believe execution of Ex.A1.

25. The 1st defendant was examined as DW1. She specifically denied execution

of Ex.A1 and delivery of possession in her examination-in-chief and in cross-examination while admitting the purchase of the property in the Court auction, contended that she purchased the property in the Court auction with her "stridhana" amount. In the cross-examination, learned Counsel for the plaintiff could elicit that she has no means to purchase the property and that too one of her son was grazing cattle and her husband was in financial crisis, indebted to the Temple. Basing on the incapacity to purchase the property by the defendants, when the 1st defendant had no means to purchase the property, it can be presumed that with the money advanced by PW1, 2nd defendant purchased the property in the Court auction. In fact, no such presumption is available under law. However, it is the obligation of the plaintiff-1st respondent to discharge the initial burden to establish that Ex.A1 was executed. If for any reason, execution of Ex.A1 is proved, then question of payment of consideration etc., basing on the preponderance of the probabilities of the case, Court can presume payment of Rs. 13,000/- etc., to purchase the property by the 1st defendant. When once the plaintiff miserably failed to establish execution of Ex.A1 directly adhering to the provisions of Indian Evidence Act, taking advantage of weakness of the defendants case, the trial Court is not supposed to believe execution of Ex.A1. Thus, the finding of the trial Court with regard to genuineness, validity and enforceability of Ex.A1 is erroneous for the reason that the plaintiff-1st respondent did not resort to any of the modes of proof as laid down by the apex Court in the above judgment to establish execution of Ex.A1 by the 1st defendant-appellant. Therefore, the finding of the trial Court is hereby set aside, holding that the plaintiff-first respondent herein failed to establish execution of Ex.A1. Accordingly, the point is held in favour of the 1st defendant-appellant and against the plaintiff-1st respondent.

26. One of the contentions of the plaintiff is that he advanced Rs. 13,000/- so as to enable the 2nd defendant to participate in the Court auction, bid the property in the name of the 1st defendant with a promise to sell the same to the plaintiff. If really, the plaintiff himself is interested to purchase the property instead of advancing Rs. 13,000/- to the 2nd defendant, he can directly participate in the auction and purchase the property in the Court auction itself. Therefore, lending amount to 2nd defendant purchasing the property in the Court auction etc., more particularly, when the plaintiff himself is interested in purchasing the property creates any amount of suspicion and it is against the natural conduct of a human being.

27. As seen from the registered notice marked as Ex.A3, the pleadings in the plaint and evidence of PW1, he obtained 2 promissory notes for Rs. 13,000/- and Rs. 2,000/- paid on two occasions but the dates of payment of Rs. 13,000/- and Rs. 2,000/- on two occasions and dates of promissory notes, rate of interest recited in promissory notes was not disclosed either in the pleadings or in the evidence. On the contrary, the recitals in Ex.A1 shows that Rs. 20,000/- was paid on the date of execution of Ex.A1 itself, which was denied by the plaintiff himself in his evidence. Thus, according the pleadings and evidence of PW1 Rs. 20,000/-

was not paid on the date of execution as recited in Ex.A1, as advance of sale consideration. None of the witnesses who were present at the time of lending amount were not examined to establish that he advanced Rs. 13,000/- and Rs. 2,000/- on two different occasions enabling the 2nd defendant to purchase the property in the Court auction in favour of his wife. In the absence of material details of lending and execution of two promissory notes and interest agreed to be paid by the parties etc., the alleged payment of consideration under Ex.A1 is highly doubtful and against the probabilities of the case. Therefore, the evidence of PW1 is not believable for the reason he is neither wholly reliable nor wholly unreliable witness. Consequently, no credence can be attached to the testimony of PW1 to establish either execution of Ex.A1 or passing of consideration under Ex.A1, but the trial Court basing on the incapacity of defendants to purchase the property in the Court auction concluded that the property was purchased allegedly with the amount advanced by PW1 but that is not sufficient, in the absence of proof of payment of Rs. 2,000/- and Rs. 5,000/- pleaded in the plaint and spoken in the evidence of PW1. There are crucial admissions regarding passing of consideration in the evidence of PW1 and the specific admissions in the cross-examination of PW1, are extracted hereunder for better appreciation:

"The contents of Ex.A1 were read over to me, and the contents are true. In 1973 at the time of auction I paid Rs. 13,000/- to D1 and D2. I returned the pronote, after I obtained Ex.A1 agreement to D1 in the presence of D1 and D2. The payment of Rs. 13,000/- was mentioned in Ex.A1. Two months after the execution of Ex.A1 agreement, I paid Rs. 2,000/- (again says) it is two months after the payment of Rs. 13,000/- and at my house."

28. If this evidence is analyzed, it is inconsistent with the plea in the plaint and examination-in-chief. Even otherwise, in the middle of cross-examination at Page No. 4, he contended that D1 executed promissory note and followed by a suggestion that PW1 never paid Rs. 2,000/- or Rs. 13,000/- to the 1st defendant and never executed promissory notes, got denial of it. It was never the case of the plaintiff that he paid any amount to 1st defendant and obtained any promissory notes but changed his version from time to time, thereby his evidence is inconsistent and he is not a credible witness. Therefore, the evidence of PW1 is not believable with regard to passing of consideration.

29. In view of the discrepancies pointed out by me in the earlier paragraphs, the trial Court only by drawing inferences, due to incapacity of the 1st defendant to purchase the property in the Court auction, concluded that she received consideration and executed Ex.A1, erroneously. Hence, the finding of the trial Court is erroneous on the face of the record and the same is hereby set aside holding these points in favour of the 1st defendant-appellant and against the plaintiff-first respondent.

30. Point No. 3: As per my findings on points 1 and 2, the plaintiff-1st respondent failed to establish execution of Ex.A1 by 1st defendant; so also passing of consideration under Ex.A1. Consequently, Ex.A1 is not enforceable

under law and the plaintiff-1st respondent is not entitled to claim the relief of specific performance of agreement of sale dated 3.6.1978, marked as Ex.A1, but the trial Court on erroneous appreciation of evidence and by drawing inferences committed an error in granting the relief of specific performance and the same is liable to be set aside. Accordingly, the point is held in favour of the 1st defendant-appellant and against the plaintiff-1st respondent.

31. In the result, the appeal suit is allowed setting aside the impugned decree and judgment dated 27.2.1990, passed in Original Suit No. 19 of 1979 by the Subordinate Judge, Tanuku. In consequence, miscellaneous petitions, if any, pending in this appeal, shall stand closed. No order as to costs.