
(1997) 06 AP CK 0005
In the Andhra Pradesh High Court
Case No : Appeal No. 2176 of 1988

Vegi Venkateswara Rao

APPELLANT

Vs

Vegi Venkatarama Rao alias Rajababu and Others

RESPONDENT

Date of Decision : 10-06-1997

Acts Referred:

Contract Act, 1872 — Section 52, 54

Citation : AIR 1998 AP 6 : (1997) 4 ALT 821 : (1997) 3 APLJ 43

Hon'ble Judges : V. Bhaskara Rao, J;D. Reddeppa Reddi, J

Bench : Division Bench

Advocate : Rajgopal Reddy, for the Appellant; T. Veerabhadraiah, (for No. 1), E. Manohar, (for Nos. 2 and 3) and M.V. Rajaram, (for Nos. 4 and 5), for the Respondent

Final Decision : Allowed

Judgement

D. Reddeppa Reddy, J.—This is an appeal by the 1st defendant, namely, Vegi Venkateswara Rao in O.S. No. 60 of 1981 on the file of the II Additional Subordinate Judge, Visakhapatnam against the judgment and decree dated 26-7-1988, directing him to pay a sum of Rs. 8,43,885/- and interest thereon at 12% per annum from the date of the suit i.e., 2-3-1981 till 26-7-1988 i.e., the date of decree and thereafter at 6% till the date of realisation to the 1st respondent herein, namely, Vegi Venkatarama Rao, alias Rajababu, the plaintiff in the suit. As the parties hereto are brothers and the subject-matter for consideration is the dispute relating to dissolution of partnership firm of which they were partners, we adjourned the hearing of the appeal for about a month as envisaged under Order 32-A of Code of Civil Procedure, suggesting the learned counsel on either side to try for settlement of the subject-matter of dispute herein and other matters said to be pending between the parties hereto before various Courts either through mediators or arbitrators. But, both of them reported that their efforts to persuade the parties hereto settle their disputes as suggested above failed. Therefore, there is no alternative for us except to

dispose of the matter on merits.

2. For the sake of convenience the parties hereto will be referred to as arrayed in the suit. The case of the plaintiff as culled out from the plaint and the evidence adduced on his behalf is as follows:--The plaintiff and the five defendants are brothers. Late Sri Veerinaidu is their father. The 1st defendant is the eldest and the plaintiff is the second among them. Defendant Nos. 4, 2 to 5 are their younger brothers. In the year 1953 late Sri Veerinaidu being unable to carry-on business due to old age effected partition of the properties through a registered deed of partition among his sons and other members of his family. Then, in the year 1956 the plaintiff and the defendants started varieties of business, including contracts in the name and style of M/s. Veerinaidu and Sons, a partnership firm and acquired considerable movable as well as immovable properties. In the year 1960, they floated another firm in the name and style of M/s. Vegi Venkateswara Rao and Brothers. The 1st defendant and the plaintiff were its managing partners. Defendant Nos. 4 and 5 were minors till 1966 and during the minority they were represented by their father. Since the inception, the firm : viz., M/s. Vegi Venkateswara Rao and Brothers was doing business in exhibition of cine films. In course of time, it constructed two cinema theatres called Sri Ramakrishna Picture Palace and Jagadamba 70 M.M. A/C at Visakhapatnam. Also, it constructed a commercial complex called Jagadamba Commercial Complex at Visakhapatnam. A sum of Rs. 40,00,000/- was borrowed for the above said purposes. Their father died in January, 1978. Then, defendant Nos. 4 and 5 insisted upon for dissolution of the firm viz., M/s. Vegi Venkateshwara Rao and Brothers and division of its properties among its partners. Therefore, they were given full opportunity to go through all the records, including the books of accounts etc. and after thorough scrutiny and on legal advice, it was decided that the firm should be dissolved. Initially, it started with the retirement of the plaintiff from the firm under a deed, dated 16-11-1978 (Ex. A-1). It was stipulated thereunder that the firm and the remaining five partners should pay him a sum of Rs. 8,00,000/-. Thereafter, the firm was dissolved under a deed of dissolution, dated 19- 11-1978 (Ex. A-2). As per the said deed of dissolution, Jagadamba Commercial Complex and the the liability to pay Rs. 8,00,000/- to the plaintiff under Ex. A-1 fell to the share of defendant Nos. 4 and 5. Accordingly, they executed an agreement dated 19-11-1978 (Ex. A-3) undertaking to pay the plaintiff a sum Rs. 8,00,000/-. Again, on legal advice, the firm viz., M/s. Vegi Venkateswara Rao and Brothers was revived with the defendants as five partners by a deed, dated 31-8-1979 (Ex. A-4). However, it was dissolved under a deed of dissolution, dated 4-9-1979 (Ex. A-5). As per the said deed Jagadamba Commercial Complex which fell to the share of defendant Nos. 4 and 5 together with the liability to pay Rs. 8,00,000/- to the plaintiff under Ex. A-2 was allotted to the share of the 1st defendant. The first defendant accepted the liability to pay a sum of Rs. 8,00,000/- to the plaintiff and in fact paid a sum of Rs. 34,500/- towards principal and a further sum of Rs. 57,000/- towards interest, during the period from 13-11 -1979 to 31-1-1981. Thereafter, he failed to pay the balance amount due to the plaintiff.

Hence the suit.

3. The 1st defendant filed a detailed written statement denying the plaint averments in general and his liability to pay Rs. 8,00,000/- in particular. He resisted the suit claim mainly on three grounds set out in paragraphs 8 and 24. They are :

(1) The suit is premature for the plaintiff instituted the suit on 2-3-1981 whereas the right to sue as per the schedule of payment under the deed dated 16-11-1978, Ex. A-1, accrues to him only after 15-11-1982;

(2) The plaintiff failed to perform his part of promise to deliver the godown complex and the building in the appurtenant site at Rajaram Mohan Road, as agreed to by him under the agreement dated 16-11-1978, Ex. A-1 ; and

(3) On verification of accounts of M/s. Vegi Venateshwara Rao and Brothers from 1960 to 1979, it was found that the plaintiff had to pay more than Rs. 8,00,000/- to the other partners; the plaintiff requested the other five brothers to adjust the sum of Rs. 8,00,000/- payable to him under Ex. A-1; the defendants agreed for the same; and the plaintiff passed on a receipt dated 5-9-1979, acknowledging the receipt of Rs. 8,00,000/- due to him under Ex. A-1.

4. The 2nd defendant remained ex parte.

5. The 3rd defendant filed his written statement almost supporting the case of the plaintiff. His plea is that as per the deed of dissolution, dated 4-9-1979, Ex. A-5, Jagadamba 70 M.M. theatre had fallen to his share; Rama Krishna Picture Palace had been allotted to the share of the defendant Nos. 4 and 5 and Jagadamba Commercial Complex was given to the share of the 1st defendant. The 1st defendant is liable to pay a sum of Rs. 8,00,000/- to the plaintiff.

6. Defendant Nos. 4 and 5 filed a common written statement almost supporting the case of the 1st defendant. Their plea is that they insisted for dissolution of the partnership firm as they came to know that the plaintiff and the 3rd defendant had been indulging in acts of fraud so as to cheat them. The 1st defendant is not liable to pay a sum of Rs. 8,00,000/- to the plaintiff and the suit has been filed at the instance of the 3rd defendant, who has been all through trying to grab the Jagadamba 70 M.M. and Sharada Mini Theatre, the most valuable properties of the firm viz., M/s. Vegi Venkateshwara Rao and Brothers.

7. On the basis of the above pleadings, the trial Court set the following issues for trial :--

(1) Whether the plaintiff is entitled to recover the suit amount from all the defendants ?

(2) Whether the 1st defendant did not pay Rs. 57,000/- + Rs. 34, 500/- as part payment to the plaintiff?

(3) Whether there is no cause of action against the defendants ?

(4) To what relief ?

(5) (Additional issue) Whether the discharge pleaded by D-1 is true, valid and binding on the plaintiff?

8. Evidence was let in only by the plaintiff and the 1st defendant. The plaintiff examined himself as P. W. 1 and got marked Exs. A-1 to A-44 on his behalf. The 1st defendant examined himself as D.W. 1 and got-marked Exs. B-1 to B-15 on his behalf. Notice issued Under Order 12, Rule 8 of the CPC by the 1st defendant to the plaintiff has been marked as Ex. C-1. To avoid repetition, the relevant evidence of theirs will be referred to at the appropriate stage. Suffice it to say at this stage that the trial Court, on consideration of the above referred oral and documentary evidence, answered all the issues in favour of the plaintiff and against the 1st defendant and accordingly decreed the suit against the 1st defendant with costs and dismissed the same against D-2 and D-5 without costs. Hence this appeal by the 1st defendant.

9. Though voluminous record containing nearly 1,000 pages has been filed as material papers, the learned counsel on either side have taken us through only the relevant portions of pleadings, Oral and documentary evidence and the judgment under appeal. They have also been brief in their arguments, though several grounds have been raised in the appeal. Written arguments have also been submitted. However, in the course of arguments Sri V. Rajgopal Reddy, learned counsel for the appellant (1st defendant) has given up one main plea that the suit is not maintainable against the 1st defendant as there was no privity of contract between him and the plaintiff. He was fair enough to state that the plea of discharge set up by the 1st defendant cannot be sustained. Finally, he confined his submissions on two aspects. First, the agreement dated 16-11-1978, Ex. A-1, is one of reciprocal promises and as the plaintiff failed to perform his part of the promise of handing over possession of godown complex situated in Rajaram Mohan Road, he cannot insist the performance of the promise made by the defendants to pay him a sum of Rs. 8,00,000/- Second, the suit is premature in view of the payment schedule laid down in the agreement, dated 16-11-1978, Ex. A-1. In opposition, on the first aspect it is contended by Sri T. Veerabhadraiah, learned counsel for the 1st respondent (plaintiff) that delivery of the possession of godown complex situated in Rajaram Mohan Road is not contemplated under the agreement dated 16-11-1978. His further submission on this aspect is that the performance of reciprocal promises by the plaintiff is not pleaded by the 1st defendant in his written statement and there is no evidence in that regard. He tried to justify the non-performance of the promises made by the plaintiff on the ground that it was not possible for him to hand over the godown etc. to the firm viz., M/s. Vegi Venkateshwara Rao and Brothers, as it was dissolved twice, once on 19-11-1978 and again on 4-9-1979. His submission on the second aspect is that as the defendants failed to adhere to the payment schedule stipulated in Exs. A-1 and A-3 and there is no payment schedule at all in Ex. A-5, the plaintiff is entitled to recover the entire amount in

lump sum.

10. In view of these rival contentions, the points that fall for our consideration may be formulated as under :--

(1) Whether the agreement dated 16-11-1978, Ex. A-1, is one of reciprocal promised of not ?

(2) Whether the plaintiff performed his part of promise as contemplated under Ex. A-1 ?

(3) Whether it was impossible for the plaintiff to perform his part of contract due to dissolution of the firm viz., M/s. Vegi Venkateshwara Rao and Brothers ? and

(4) Whether the suit is premature or not ?

11. POINT No. 1 :-- The foundation for laying the suit is the agreement dated 16-11-1978, which has been marked as Ex. A-1 (hereinafter referred to as "the suit agreement"). It has been entered into between the firm, viz., M/s. Vegi Venkateshwara Rao and Brothers and the defendants on one side and the plaintiff on the other. Therein, the firm and the defendant were called the firm of the first part and the plaintiff was called the retiring partner. It was mutually agreed under the suit agreement that the plaintiff should retire from the firm viz., M/s. Vegi Venkateshwara Rao and Brothers on certain terms and conditions. The relevant terms and conditions are embodied under Sub-Clauses (a) to (i) of Clause 11, which read as under:--

"(11) In lieu of all his assets and claims over all the properties of the 1st party firm of every kind the second retiring party will take in full satisfaction of all the claims and assets a sum of Rs. 8 lakhs (Rupees eight lakhs only) subject to the detailed conditions mentioned herein :--

(a) An amount of rupees one lakh out of eight lakhs mentioned above is payable by the first party firm to the second retiring party in the first instance in equal instalments of Rs. 20,000/- each per month to be paid within five months commencing from dated 1-1-1979.

(b) The interest on the balance of rupees seven lakhs is to be paid for the first four years at the rate of nine percent per annum simple and for another five years thereafter the interest on the outstanding balance amount is payable at the rate of twelve per cent per annum simple. During the period of first four years the second party-retiring partner will not be entitled to claim payment of the principal amount, and after the period of first four years, the second party will be entitled to claim payment of the principal amount of rupees seven lakhs not less than Rs. one lakh per annum the total of Rs. 7 lakhs is payable.

(c) The profits, losses, benefits of the jaggary, Banking etc., business being run at Anakapalli under the name and style of the first party herein will be the assets of the first party. The second party will have no right of interest whatsoever in the business assets profits or loss therein.

(d) The one-sixth share in the entire site at Seethammadhara to be demarcated and retained by the second party as his exclusive property to be owned and enjoyed by him with full and absolute rights, while the remaining five-sixth portion to be that of the first party firm.

(e) The twenty per cent share in the godown site at Rajaram Mohan Road claimed by the second party is given up by him and the entire godown site with buildings etc. are part of the assets of the first party firm as its assets and the second party will have no right or interest therein or any concern with it.

(f) The site with building at Official Colony bearing Dr. No. 16.8.23, Panduranganivas in IIIrd lane, in official colony in Visakhapatnam-2 belongs to Sri Vegi Venkateswara Rao since it was gifted to him already by our revered father late Sri V. V. Naidu and it remains as his absolute property with full rights of ownership. The second party will not have any right or interest in that abovesaid site with building;

(g) The building bearing D. No. 47-11-7A, at Dwarakanagar, Visakhapatnam-16, was the absolute property of the second party and it is already in the possession and occupation of the second party and the first party firm will not have any right or interest in the abovesaid building.

(h) All the liabilities, assets profits losses or gains in the disputes and litigations in regard to the contracts with the Food Corporation of India and Hindustan Steel Limited will be exclusively carried on and owned by Sri Vegi Venkateswara Rao, in the name and style of M/s. Vegi Veerinaidu and Sons, which is also referred to in Clause 10 above. The second party will have no right or interest in the claims or losses therein.

(i) The site in which the firm M/s. V.J. Enterprises had its business and given on lease to M/s. Sri Krishna Trading Co., Visakhapatnam, shall hereinafter belong to first party herein and its assets mainly the godown and other structures and buildings thereon and also the outstanding transactions, leaseholds, tenancy rights and ownership of that will accordingly devolve on the first party. The second party will have no right or interest whatsoever in the premises of the property mentioned above. The second party shall arrange the present lease of M/s. V. 1. Enterprises endorsed in the name of the first party firm and the firm has and will have full and absolute rights therein without any concern of the second party or his sons or heirs herein."

A reading of the above leave no doubt whatsoever that the suit agreement is one of reciprocal promises. The promises made by the plaintiff are embodied in Sub-clauses (e) and (i). It is clear from Sub-clause (e) that the plaintiff agreed to give up the 20% share he has been claiming in the godown complex situated at Rajaram Mohan Road and not to claim any right or interest over the same. It is also clear from Sub-clause (i) that the plaintiff covenanted that he shall have no right or interest whatsoever in the premises in which the firm namely M/s. V.J. Enterprises had its business and was given on lease to M/s. Sri Krishna Trading

Company, Visakhapatnam. He also covenanted to arrange the existing lease of M/s. V.J. Enterprises endorsed in favour of M/s. Vegi Venkateshwara Rao and Brothers of which the defendants were the partners. He further covenanted that M/s. Vegi Venkateshwara Rao and Brothers shall have full and absolute right over the said property and himself, his sons or the heirs shall have no right or interest whatsoever over the same. Likewise, the promises made by M/s. Vegi Venkateshwara Rao and Brothers and the defendants, who are its partners, are embodied in Sub-clauses (a) and (b). They provide that they shall pay a sum of Rs. 8,00,000/- to the plaintiff in instalments, the details of which will be referred to, while dealing with point No. 4. In fact, the learned counsel for the 1st respondent (plaintiff) has been fair enough to admit that the suit agreement is one of reciprocal promises. In this view of the matter, we hold unhesitatingly, that the suit agreement is one of reciprocal promises.

12. POINT No. 2:-- The plaint is totally silent about the performance of promises the plaintiff made, as embodied in Sub-clauses (e) and (i). At this stage, it is necessary to state that the plaintiff in his re joinder filed on 1-3-1984 did not specifically refute the averment made by the 1st defendant in his written statement that plaintiff failed to deliver the godown complex and the building with the appurtenant site at Rajaram Mohan Road as agreed upon by him under the suit agreement. It is not even the evidence of the plaintiff, deposing as P.W. 1, that he performed his promises as contemplated under Sub-clauses (e) and (i). It is surprising that his evidence in chief is totally silent about it. The plaint, the rejoinder and the evidence of P.W. 1 proceed as if there was no obligation on the part of the plaintiff to perform any promise under the suit agreement and the liability on the part of the defendants to pay him a sum of Rs. 8,00,000/- is absolute and unconditional. We are of the considered view that this plea and evidence of his are totally unsustainable, being quite contrary to the specific terms and conditions embodied in the suit agreement.

13. It is clear from the evidence of P.W. 1 that the property referred under Sub-clauses (e) and (i) is one and the same. In his cross-examination he goes to the extent of saying that the said property is the exclusive property of his sons. His version on this aspect as elicited in the course of cross-examination reads as under:--

"There is a vacant site of Vegi Veerinaidu in Rajaram Mohan Road. The said site is more than 1000 sq. ys. It belongs to my father. There is a godown in that vacant site which measures 80 x 30 ft. At present, my two sons are doing wholesale vegetable business, in that site and godown. It is not true to suggest that the godown and site would fetch a monthly rent of Rs. 12,500/-, if it is leased out. It is not true to suggest that after my retirement from the firm, I took the godown only for rent of Rs. 5,500/- p.m. By the time of my retirement the godown was under the tenancy of Sri Krishna Trading Company. They were also doing wholesale business in vegetables. Originally, the firm Vegi Veerinaidu and Sons did business in vegetables in that godown. The site belonged to my father. The

godown was constructed by M/s. Vegi Veerinaidu and Sons. The godown was sold in 1974 to V.J. Enterprises with all its liabilities. V.J. Enterprises purchased only structures for Rs. 8,000/-. Cash was paid to Vegi Veerinaidu and Sons. M/s. V.J. Enterprises consisting of myself and my daughter as partners was closed on 31-3-1976. From 1-4-1976 to Nov. 77 my two sons did business in the name of M/s. V.J. Enterprises in that godown. V.J. Enterprises consisting of my two sons as partners has leased to M/s. Sree Krishna Trading Co. for 5 years commencing from Nov. 77. The rent is Rs. 1,750/- p.m. My sons are absolute owners of the godown. I do not know who are the present owners of that site. The site and godown was not the properties of any one of the two firms. I studied only up to IV form. I can read and write English. I do not remember whether anything was mentioned in Ex. A-1 about the sites and the godown. (witness go through Ex. A-1. There is some difference in Ex. A-1). I do not understand what it was written there. I have no interest in the land. It is not true to suggest that there are complexes of godown, buildings and other structures in the site in Rajaram Mohan Road. By 16-11-1978 except the godown there were no structures. I did not agree under Ex. A-1 that the site belongs to Vegi Venkateshwara Rao and Bros., and its assets mainly the godown, and other structures, and buildings thereon and all the outstandings thereon leaseholds, tenancy rights and ownership will devolve on Vegi Venkateshwara Rao and Brothers and that firm will have full and absolute rights therein without my consent or the concern of my sons and heirs. Under Ex. A-1, I did not agree to confer ownership and give possession of godown and structures thereon to Vegi Venkateshwara Rao and Brothers I did not agree as per conditions on 11(e) in Ex. A-1 that 20% share in the godown site was given up by me and the entire godown site with its buildings etc., are part of the assets of Vegi Venkateshwara Rao and Bros. as I have never claimed any share in the site. I have no 20% interest in the godown and this site (witness volunteered)."

It is clear from the above version of the plaintiff that he totally denies his obligation to give up his claim and interest over the property referred to in Sub-clauses (e) and (i). Further he goes to the extent of saying that his sons are the absolute owners of the said property. It is significant to note that he did not set up such a plea either in the plaint or in the rejoinder filed by him on 1-3-1984. On earnest consideration, we are convinced that this version of the plaintiff is false and cannot be countenanced.

14. True, as contended by Sri T. Veerabhadraiah, handing over physical possession of the godown complex situated at Rajaram Mohan Road is not contemplated under the suit agreement. But in our considered view, it is of no consequence, for it is clearly recited in Sub-clause (i) that the plaintiff agreed to get the existing leases in favour of M/s. V.J. Enterprises and M/s. Sri Krishna Trading Company attorned in favour of the firm viz., M/s. Vegi Venkateshwara Rao and Brothers of which the defendants were the partners. It is not the case of the plaintiff that he has performed this promise or has been ready and willing to perform the same. Instead, he has come forward with a new theory in his

evidence that the said property belong to his sons, which in our considered view is liable to be rejected for two reasons. First, it is contrary to the specific terms and conditions of Sub-clauses (e) and (i) of Clause 11 of the suit agreement. Second, no such stand was taken in the pleadings.

15. Equally, we find no substance in the other submission that there is no specific plea in this regard, for it is clearly pleaded by the 1st defendant in his written statement that the plaintiff failed to perform his part of promise agreed upon by him under the suit agreement. As already noted, this averment has not been specifically denied by the plaintiff in the rejoinder he has filed on 1 -3-1984. Thus, viewed from any angle, we are fully convinced that the plaintiff failed to perform his part of promise embodied under Sub-clauses (e) and (i) of Clause 11 of the suit agreement.

16. POINT No. 3:-- Sri T. Veerabhadraiah, learned counsel for the 1st respondent (plaintiff) made a feeble attempt to justify the non-performance of the promises made by the plaintiff on the ground that under deeds dated 19-11-1978 and 4-9-1979, the firm namely M/s. Vegi Venkateshwara Rao and Brothers was dissolved and as such it was not possible for him to endorse or attorn the leases of M/s. V.J. Enterprises and M/s. Sri Krishna Trading Company in favour of the firm viz., M/s. Vegi Venkateshwara Rao and Brothers. We are unable to countenance this argument for the simple reason that nothing prevented the plaintiff to endorse or attorn the said leases in favour of the defendant who were the partners of the said firm. It is the specific case of the plaintiff that the liability of the firm to pay him Rs. 8,00,000/- was taken up first by defendant Nos. 4 and 5 under Ex. A-2 dated 19-11-1978 and later by the 1st defendant under Ex. A-5 dated 4-9-1979. However, there was no attempt on his part at any time to endorse or attorn the leases either in favour of D-4 and D-5 or in favour of D-1. On the other hand, as already noted, he denied his obligation to get the leases of M/s. V. J. Enterprises and M/s. Sri Krishna Trading Company endorsed or attorned either in favour of the firm or any of its partners. In this view of the matter, we answer this point against the plaintiff.

17. POINT No. 4:-- The schedule of payment of Rs. 8,00,000/- as provided in the suit agreement has already been extracted above. It is clear therefrom that a sum of Rs. 1,00,000/- out of Rs. 8,00,000/- was to be paid in five monthly instalment of Rs. 20,000/- each commencing from 1-1-1979. The balance of Rs. 7,00,000/- was payable only after a lapse of four years from the date of the suit agreement i.e., 16-11-1978 with simple interest at 9% per annum for the first four years and at 12% per annum for the next five years in instalments, which shall be not less than Rs. 1,00,000/- per year. The same payment schedule was incorporated in Ex. A-3, the agreement dated 19-11-1978 entered into between the plaintiff on one side and D-4 and D-5 on the other. It is the specific case of the plaintiff that the liability of D-4 and D-5 to pay him Rupees 8,00,000/- was passed on to D-1 under Ex. A-5 dated 4-9-1979. Thus the plaintiff could lay his claim for Rs. 7,00,000/- only on expiry of four years from 16-11-1978 i.e., after

15-11-1982. But admittedly, he instituted the suit on 2-3-1981. However, the learned counsel for the 1st respondent submits that as the defendants failed to keep up the payment schedule, the plaintiff is entitled to lay his claim for the recovery of the entire sum in lump sum. His alternative submission on this aspect is that there is no similar payment schedule in Ex. A-5. We are unable to countenance these submissions. The reasons are obvious. First, neither the terms of the suit agreement nor the terms of Ex. A-3 empower the plaintiff to lay claim for the recovery of the entire amount in case of breach of any terms and conditions of the payment schedule. Second, under Ex. A-5, the liability of D-4 and D-5 to pay the plaintiff a sum of Rs. 8,00,000/- was passed on to D-1. It does not contemplate any change in the payment schedule. For these reasons, we are fully convinced that the suit was premature as on the date of its institution. We answer this point accordingly.

18. Sections 51 - 58 of Indian Contract Act, 1872 deal with performance of Reciprocal Promises. Of them, Sections 51, 52 and 54 are alone relevant for the purpose of the present case. Section 51 deals with a contract consisting of reciprocal promises to be simultaneously performed. It reads :--

"Sections 1:-- Promisor not bound to perform unless reciprocal promisee ready and willing to perform.-- When a contract consists of reciprocal promises to be simultaneously performed, no promisor need perform his promise unless the promisee" is ready and willing to perform his reciprocal promise."

Section 52, dealing with the order of performance reciprocal promises, reads as under :--

"Section 52:-- Order of performance of reciprocal promises.-- Where the order in which reciprocal promises are to, be performed is expressly fixed by the contract, they shall be performed in that order; and, where the order is not expressly fixed by the contract, they shall be performed in that order which the nature of the transaction requires."

Section 54 dealing with the effect of default as to that promise which should be first performed reads as under:--

"Section 54:-- Effect of default as to that promise which should be first performed in contract consisting of reciprocal promises-- When a contract consists of reciprocal promises, such that one of them cannot be performed, or that its performance cannot be alarmed till the other has been performed, and the promisor of the promise last mentioned fails to perform it, such promiseor cannot claim the performance of the reciprocal promise and must make compensation to the other party to the contract or any loss which such other party may sustain by the non-performance of the contract."

19. The case on hand may not be one of a contract consisting of reciprocal promises to be performed simultaneously as contemplated u/s 51. However, it is clear from the reading of the terms and conditions of Clause 11 of the suit

agreement that the liability of the firm, M/s. Vegi Venkateshwara Rao and Brothers to pay Rs. 8,00,000/- to the plaintiff which was passed on to the 1st defendant under Ex. A-5, is subject to the plaintiff giving up 20% share in the godown complex site with buildings etc. situated at Rajaram Mohan Road and getting the leases of M/s. V.J. Enterprises and M/s. Sri Krishna Trading Company endorsed or attorned in favour of the firm and its partners. Therefore, we are of the considered view that this is a case governed by the provisions of Sections 52 and 54. We have already held under points 1 to 3 that the suit agreement is one of reciprocal promises and the plaintiff committed breach of promises he made under the same.

20. It is well settled that while seeking performance of reciprocal promise by the opposite party, the plaintiff has to specifically plead and prove that he has performed or has been ready and willing to perform the promise he has made see Vairavan Chettiar and Others Vs. Kannappa Mudaliar, , AIR 1934 91 (Privy Council) and Tan Ah Boon v. Johre State AIR 1936 RC 236. In the case on hand, the plaintiff has done the neither. Therefore, he cannot maintain the present suit. Even otherwise, the suit is premature as held by us under point No. 4. Thus, viewed from any angle, the suit is liable to be dismissed.

21. For the aforesaid reasons, the judgment and decree under appeal cannot be sustained. They are, accordingly, set aside. Consequently, the suit shall stand dismissed.

22. In the result, the appeal is allowed with costs throughout