
Chintala Vijayalaxmi Vs S.Ramesh Another

Appeal Suit No. 1902 Of 2003

Court: High Court For The State Of Telangana:: At Hyderabad

Date of Decision: Oct. 5, 2021

Acts Referred:

Evidence Act, 1872 â€” Section 3#Specific Relief Act, 1963 â€” Section 20

Hon'ble Judges: G. Sridevi, J

Bench: Single Bench

Final Decision: Allowed

Judgement

The 2nd defendant in Original Suit No.120 of 1995 on the file of the Principal Senior Civil Judge, Ranga Reddy District (for short, 'the trial

Court'), preferred this appeal challenging the judgment and decree passed in the said Suit, dated 30.06.2003, whereby the suit filed by the plaintiff for

specific performance of contract of sale dated 13.04.1994 in respect of land admeasuring 680 square yards forming part of 1280 square yards in Plot

No.9 in Sy.No.129/1 of Kothapet Village, Uppal Mandal, Rangareddy District, was decreed. Appellant herein is the 2nd defendant, 1st respondent

herein is the plaintiff and the 2nd respondent herein is the 1st defendant before the trial Court. For convenience of reference, the ranks given to the

parties in O.S.No.120 of 1995, before the trial Court, will be adopted throughout this judgment.

The plaintiff filed the above suit against the defendants for the following reliefs:-

1. to direct the defendants to execute and register sale deed in favour of the plaintiff for the land measuring 680 square yards forming part of Plot

No.9 in Survey No.129/1 situated at Kothapet Village, Uppal Mandal, L.B. Nagar Municipality, Ranga Reddy District.

2. If the defendants fail to execute and register the sale deed, the Court may execute and register the sale deed in respect of the said property in

favour of the plaintiff and also

3. to direct the defendants to deliver the suit schedule property to the plaintiff.

It is alleged in the plaint that the defendants are the owners of open land admeasuring 1280 square yards bearing Plot No.9 in Sy.No.129/1 situated at

Kothapet Village, Uppal Mandal, Ranga Reddy District, having purchased the same under a registered sale deed dated 18.03.1989. The plaintiff

entered into an agreement of sale, dated 13.04.1994, with the defendants to purchase land admeasuring 680 square yards out of 1280 square yards for

a total consideration of Rs.1,60,000/-. The plaintiff paid a sum of Rs.1,55,000/- to the defendants as part of sale consideration on the date of the

agreement and the same was acknowledged by the defendants. Under the agreement referred to above, it is stipulated that the balance consideration

of Rs.5,000/- shall be paid by the plaintiff to the defendants at the time of registration of sale deed on or before 06.07.1994. At the time of agreement

of sale, the defendants handed over the link documents to the plaintiff. The plaintiff has expressed his willingness to the defendants that he is ready

much earlier than 06.07.1994 with the amount and requested the defendants to execute the sale deed and receive the amount at the time of

registration, but for the reasons best known, the defendants were evading to do so. Though the plaintiff paid almost the entire sale consideration

except a paltry sum of Rs.5,000/- and offered to pay the balance amount, the defendants evaded to fulfil their obligation under the agreement of sale

with an ulterior motive to deprive the plaintiff of his rights and benefits arising out of the transaction. As the defendants failed to give any response to

the repeated oral demands made by the plaintiff, the plaintiff got issued a legal notice dated 28.12.1994 to the defendants. The 1st defendant refused

to receive the said notice, whereas the 2nd defendant received the said notice. After considerable delay, the defendants got issued reply on

27.02.1995. It is further stated that the allegation made in the reply notice that the plaintiff was not ready to pay the balance amount is incorrect and

untenable. The plaintiff has always been ready and willing to perform his part of the terms of agreement and still continued to be ready to fulfil his

obligation under the agreement. It is also stated in the plaint that in view of the fact that almost the entire consideration was paid at the time of

agreement, the possession of the schedule property was delivered to the plaintiff. However, after the receipt of the legal notice, the defendants

trespassed into the suit schedule property and, therefore, the plaintiff was constrained to ask for possession of the suit schedule property also.

The 1st defendant filed written statement denying material allegations of the plaint, inter alia contending that the suit filed by the plaintiff for specific

performance is neither maintainable in law nor on facts. It is admitted that the defendants are owners of plot No.9. It is also stated that the agreement

of sale was executed only as a security to the hand loan advanced by the plaintiff's attorney holder, M.Linga Murthy, as such a paltry amount of

Rs.5,000/- was mentioned in the said agreement of sale. The G.P.A. holder of plaintiff had executed through the defendants, a G.P.A. in favour of

one Anand, who is none other than the sister's son of G.P.A. holder of the plaintiff. The said G.P.A. was executed on 13.04.1994 itself to carry

out the terms of agreement of sale dated 13.04.1994. It is also stated that having paid a sum of Rs.1,55,000/-, the question of seeking time till

06.07.1994 shows that the agreement of sale is not executed as a sale transaction. It is further stated that the 1st defendant has not received any legal

notice as alleged in the plaint. As per the terms of the agreement of sale, the time is the essence of the contract. As the terms are not complied with,

the same has been deemed to have been cancelled. The G.P.A. holder of the plaintiff is a licensed money lender. In the said money transactions, the

defendants are forced to sign on several sale papers due to the pressures of the G.P.A. holder to pay the amount. The 1st defendant addressed a

letter on 07.12.1994 intimating cancellation of the agreement of sale and also the cancellation of the G.P.A. bearing document No.302 dated

13.04.1994 and to return back the original document. It is further stated that the name of the plaintiff was shown only as dummy to avoid taxation

problem. Therefore, prayed to dismiss the suit.

The 2nd defendant filed written statement denying material allegations of the plaint, inter alia contending that the alleged agreement of sale is time

barred. The G.P.A. holder of the plaintiff obtained a registered G.P.A. from the defendants in respect of the suit schedule property on 13.04.1994

from the Sub-Registrar's Office, Uppal, which was cancelled on 10.08.1994. While supporting the other contentions of the written statement of

the 1st defendant, this defendant stated that no possession was delivered nor the defendants trespassed as alleged in the plaint. The present suit was

filed at the instance of the brother-in-law of the plaintiff by name Linga Murthy and prayed to dismiss the suit.

On the basis of the aforesaid pleadings, the trial court framed the following issues-

1. Whether the plaintiff is entitled for specific performance of the agreement of sale dated 13.04.1994 in respect of the suit schedule property?

2. Whether the plaintiff is entitled for the possession of the suit schedule property?

3. To what reliefs?

During trial, the plaintiff was examined as P.W.1 and got marked Exs.A1 to A6. On behalf of the defendants, D.Ws.1 and 2 were examined and

Exs.B1 and B2 were marked.

The trial Court, on consideration of the rival contentions and also the entire material available on record, decreed the suit. Against the said judgment

and decree, the 2nd defendant filed the present appeal.

Heard Sri D.V.Seetharam Murthy, learned Senior Counsel appearing on behalf of Ms. Pitla Sailaja, learned Counsel for the appellant/2nd defendant;

Sri Vedula Venkata Ramana, learned Senior Counsel for the 1st respondent/plaintiff, Sri Anjaneyulu Chandubatl, learned Counsel for the 2nd

respondent/1st defendant and perused the record.

Learned Senior Counsel for the appellant/2nd defendant would submit that as per Ex.A1 agreement, out of total consideration of Rs.1,60,000/- only

Rs.5,000/- remained to be paid by 06.07.1994, plaintiff was put in possession of the suit schedule property and link documents were also handed over

to the plaintiff and under clause (12) of Ex.A1, defendants executed G.P.A. bearing No.302 of 1994 in favour of one K.Anand, a nominee of the

plaintiff's relative exclusively to carry out the terms of Ex.A1 and the plaintiff does not know the contents of said G.P.A. and also who signed on

the plaint and that Ex.A1 was not sufficiently stamped or registered as it was a formal document for the purpose of security to a hand loan. He further

submits that if at all the sale transaction between the plaintiff and defendants was complete in all respects, but the plaintiff failed to explain as to why

he did not get the sale deed executed by the defendants GPA holder in respect of the suit schedule property after 06.07.1994, which was the time

specified in Ex.A1 for execution of a registered sale deed. He also submits that the fact that G.P.A., dated 13.04.1994, executed by the defendants in

favour of the said Anand, nominee of the plaintiff, to carry out the terms of Ex.A1 was cancelled on 10.08.1994 vide document No.649 of 1994 and

the discharge letter-Ex.B2, dated 12.09.1994, and transfer of a constructed house by D.W.2, who is the husband of the 2nd defendant, in favour of the

wife of Lingamurthy through Ex.B1, dated 13.09.1994, establishes that Ex.A1 was executed only as a security to a hand loan obtained from the

brother-in-law of the plaintiff, who instituted the above suit as the G.P.A. of the plaintiff. He further submits that in the cross-examination, plaintiff

admitted that he filed the suit through Lingamurthy, his sister's husband; that he does not remember the dimensions of the suit schedule property

and on which side of the suit schedule property, the road is situated; that he cannot say where the terms of agreement were finalised and where he

paid sale consideration of Rs.1,55,000/- to the defendants; that he did not sign Ex.A1-Agreement of sale and the same was got prepared by the

defendants, with whom he has no acquaintance and the defendants were known to his brother-in-law Lingamurthy; that he does not know the

personal avocations of the defendants as his brother-in-law was looking into the transactions; that Lingamurthy was also present at the time of

execution of Ex.A1 and he also admitted that the said Anand, in whose favour the defendants executed a registered G.P.A. for carrying out terms of

Ex.A1, is the sister's son of Lingamurthy; that he got impounded Ex.A1, but he cannot say how much amount was paid by him. In the cross-

examination done on behalf the 2nd defendant, plaintiff admitted that he was a business man and doing business of Rice Bran, that his father paid an

amount of Rs.1,55,000/- and he has not shown the said amount in income tax returns for the years 1994-95 and he does not know, who signed the

plaint. Learned Senior Counsel further submitted that the plaintiff did not examine the said Lingamurthy, who is his G.P.A. holder, to rebut the

allegations that Ex.A1 was executed towards security to a loan transaction between Lingamurthy and defendants and that the plaintiff also did not file

any rejoinder to these allegations. Learned Senior Counsel also submits that Ex.A3-legal notice dated 28.12.1994 was got issued after Ex.B2-

discharge letter, dated 12.09.1994, and Ex.B1-sale deed dated 13.09.1994 and that the plaintiff failed to discharge the initial burden that Ex.A1 was not

a security for a loan transaction by examining any of the witnesses, who attested Ex.A1. He further submits that in her evidence, D.W.1 admitted her

signature on Ex.A1, but she does not know the contents of Ex.A1 as she cannot read English and she does not know the plaintiff; that one

Lingamurthy was known to her as he was the friend of her husband; that her husband signed on Ex.A1 as witness and on the instructions of her

husband, she signed Ex.A1 as she was told that for the money owed by her husband to Lingamurthy as a surety she had to sign Ex.A1 and as such

she signed on Ex.A1; that D.W.1 also stated that her husband and the 1st defendant were conducting tiles business and in that connection they

borrowed money from the said Lingamurthy. Learned Senior Counsel also submits that the trial Court ought not to have placed too much importance

that the plea of discharge was taken in the legal notice at the first instance. Learned Senior Counsel further submits that O.S.No.122 of 1995 was also

filed for specific performance of the remaining extent of 600 square yards by the said Lingamurthy, as G.P.A. holder of the plaintiff therein, and the

contents of agreement of sale and the averments in the plaint are identical. He also submits that the 1st defendant was not examined as he was out of

the Country, but unfortunately this fact does not find place in the docket proceedings and the same was not noted by the Advocate-Commissioner and

it is for this purpose, the 1st defendant was shown as 2nd respondent in the present appeal. He also submits that non-examination of the 1st defendant

will not in any manner prejudice to the case of the defendant in view of the fact that D.Ws.1 and 2 gave evidence that Ex.A1 was only a

surety/security to a loan transaction and it stood discharged and the same was rebutted. In support of his contentions, he relied upon the judgments of

the Apex Court in Parakunnan Veetill Joseph & Son Mathew v. Nedumbara Kuruvilla & Son and others AIR 1987 SC 2328 and S.Rangaraju

Naidu v. Thiruvarakkarasu AIR 1995 SC 1769.

Learned Senior Counsel appearing for the 1st respondent/ plaintiff would submit that the suit was filed for specific performance and for direction to

register the suit schedule property in favour of the plaintiff and that the plaintiff had expressed his readiness and willingness to pay the balance sale

consideration of Rs.5,000/-. He also submits that before filing the suit, a legal notice was issued on 28.12.1994 calling upon the defendants to come

forward for registration of sale deed and a reply notice was given by the appellant herein stating that as per the agreement of sale the balance

consideration should have been paid on 06.07.1994 and since the same has not been paid, the agreement of sale stood cancelled with effect from

06.07.1994. He also submits that the execution of the agreement of sale is admitted, the payment of the consideration amount of Rs.1,55,000/- out of

Rs.1,60,000/- is also admitted and the plea taken in the reply notice is that since the remaining amount i.e., Rs.5,000/- was not paid before 06.07.1994,

the amount already paid stood forfeited and the agreement of sale stood cancelled. Since the execution of agreement of sale and the receipt of the

amount of Rs.1,55,000/- from out of Rs.1,60,000/- have been admitted, the only contention of the appellant that the agreement of sale stood cancelled

and the amount already paid stood forfeited since the balance amount of Rs.5,000/- was not paid before 06.07.1994, does not give any effect to the

execution of the agreement of sale. The contention that the agreement of sale does not reflect the intention to sell the property, but the same is only a

security document for the benefit of the General Power of Attorney holder Lingamurthy, is vague and is not binding upon the plaintiff. Relying upon

the relevant clause Nos.1 and 2 in the agreement of sale, dated 13.04.1994, learned Senior Counsel submits that the trial Court has rightly held that the

date i.e., 06.07.1994 is for the purpose of execution of sale deed and the balance consideration of Rs.5,000/- was agreed to be paid at the time of

registration. Thus, the time is not essence of contract and that there is no clause that the amount paid will be forfeited and the agreement of sale will

stand cancelled and as such the defendants in the specific performance suit have wrongly pleaded that non-payment of the balance sale consideration

on or before 06.07.1994 would result in cancellation of the agreement of sale and forfeiture of the amount already paid. He further submits that the

trial Court after considering the entire evidence on record has correctly concluded that the suit is liable to be decreed and accordingly passed the

decree for specific performance. He also submits that in view of the law laid down by the Apex Court in *Zarina Siddiqui v. A.Ramalingam* @

R.Amarnathan (2015) 1 SCC 705, since the defendants have tried to mislead the Court by wrongly pleading that the balance amount has to be paid on

or before 06.07.1994, which is contrary to clause (2) of the agreement of sale, the trial Court has rightly decreed the suit for specific performance. He

also submits that in view of the law laid down by the Apex Court in *Aloka Bose v. Parmatma Devi and others* (2009) 2 SCC 582 the contention that

the purchaser has not signed the agreement of sale and only vendors have signed the agreement of sale is not a valid contention. A contract of sale

will have to be primarily signed by the vendors as the obligation to execute a registered sale deed is on the vendors and not on the vendee. Having

received Rs.1,55,000/- out of total consideration amount of Rs.1,60,000/- and admitted the same, it is not open to contend that the suit is not

maintainable for want of signature of the purchaser on the agreement of sale and, therefore, he submits that there are no merits in the appeal and

prayed to dismiss the same.

Learned Counsel appearing for the 2nd respondent/1st defendant adopted the arguments advanced by the learned Senior Counsel appearing for the

appellant/2nd defendant. This Court being a 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. This Court is conscious of the fact that before reversing

a finding of a fact, the appellate Court has to bear in mind the reasons ascribed by the trial Court. Therefore, I would like to reappraise the entire

evidence with reference to the legal position relied upon by the learned Counsel for the appellant/2nd defendant to decide the appeal afresh,

uninfluenced by the finding recorded by the trial Court. Considering the material available on record and arguments advanced by the learned Counsel

for the respective parties, the points that arise for consideration are as under:-

1) Whether Ex.A1, dated 13.04.1994 is true, valid, genuine and enforceable under law?

2) Whether Ex.A1 is supported by consideration of Rs.1,60,000/-?

3) Whether the plaintiff is entitled to the relief of specific performance of agreement of sale in respect of 680 square yards pertaining to Sy.No.129/1

of Kothapet Village, Uppal Mandal, Ranga Reddy District as mentioned in the plaint schedule?

The main contention of the appellant/2nd defendant is that Ex.A1-agreement of sale, dated 13.04.1994, was merely a formal document for the purpose

of security to the hand loan obtained by the husband of the 2nd defendant from one Linga Murthy, the power of attorney holder of the present plaintiff,

who has filed the suit in the capacity of an agent to the plaintiff. It is also the further submission of the present appellant/2nd defendant that under

Ex.A1, out of total sale consideration of Rs.1,60,000/- only a balance of Rs.5,000/- remained to be paid by 06.07.1994 i.e., within three months from

the date of execution of the agreement of sale. The plaintiff was said to have been put in possession of the property under Ex.A1, so also the link

documents were also handed over to the plaintiff. Under clause (12) of Ex.A1, the defendants executed General Power of Attorney on the very same

day bearing document No.302 of 1994 in favour of one K.Anand, a nominee of the plaintiff's relative exclusively to carry out the terms of the

agreement of sale. However, the plaintiff does not know the contents of the said G.P.A. executed in favour of the said Anand on the same day. Even

the plaintiff does not know who signed the plaint. It is also the contention of the 2nd defendant that Ex.A1 was neither sufficiently stamped nor the

same was registered, hence it was merely a formal document for the purpose of security to the hand loan given by the said Linga Murthy, who is none

other than the brother-in-law of the plaintiff. It is also the specific contention of the 2nd defendant that the said power of attorney, which was

executed in favour of Anand, was cancelled on 10.08.1994 vide document No.649 of 1994 and the discharge letter Ex.B2, dated 12.09.1994, and

transfer of a constructed house by D.W.2, husband of the 2nd defendant, in favour of the wife of Lingamurthy through Ex.B1, dated 13.09.1994,

clearly establishes that Ex.A1 was executed only towards security to the hand loan. It is also the case of the 2nd defendant that when the plaintiff

sought for the relief of specific performance and when the same is denied by the 2nd defendant contending that the said Ex.A1 was executed only for

the limited purpose, the onus of proof is always on the plaintiff to prove the execution of Ex.A1 in any one of the modes provided under Section 3 of

the Indian Evidence Act, which was not done by the plaintiff.

In order to prove execution of the document i.e., Ex.A1, the plaintiff himself was examined as P.W.1. During his cross-examination, the plaintiff

admitted that "he filed the suit through Linga Murthy, his sister's husband; that he does not remember the dimensions of the suit property and

he cannot say on which side of the suit property, road is situated; that he cannot say where the terms of agreement were finalised and where he paid

the sale consideration of Rs.1,55,000/- to the defendants; that he extended to depose that he did not sign Ex.A1-agreement of sale and the same was

got prepared by the defendants, with whom he has no acquaintance and the defendants were known to his brother-in-law Linga Murthy; that he does

not know the personal avocations of the defendants as his brother-in-law was looking after the transactions; that Linga Murthy was also present at the

time of execution of Ex.A1; it may be true that Anand, in whose favour the defendants executed a registered G.P.A. for carrying out terms of Ex.A1,

is the sister's son of Linga Murthy; he got impounded Ex.A1, but cannot say how much amount was paid by him and he cannot say when the

impounding of Ex.A1 was made in the Court.

In the cross-examination on behalf of the 2nd defendant, P.W.1 stated that "he was a businessman and was doing the business of rice bran; he

further stated that his father paid an amount of Rs.1,55,000/-, however he has not shown the said amount in the income tax return for the years 1994-

1995 and he also categorically stated that he does not know, who signed the plaint. Except himself being examined as P.W.1, the plaintiff did not

chose to examine any other witnesses and even he did not examine the said Linga Murthy, his G.P.A. holder, to rebut the contentions raised by the

defendants that Ex.A1-agreement of sale was merely a security to the loan transaction between the said Linga Murthy and the defendants. Even the

plaintiff did not file any rejoinder to the contentions raised by the defendants.

Thus, from a perusal of the aforesaid evidence adduced by the plaintiff, it is crystal clear that the pleadings and the evidence adduced before the trial

Court is totally contrary to the agreement of sale for the simple reason that the plaintiff was not even aware of the execution of the agreement of sale

or payment of the sale consideration amount. He was not even aware of the plaint averments as he has categorically stated that the plaint was not

signed by him rather it was signed by his brother-in-law as his G.P.A. holder.

A perusal of the material available on record, Ex.A3-legal notice, dated 28.12.1994, was got issued after execution of Ex.B1-sale deed, dated

13.09.1994 and Ex.B2-the discharge letter, dated 12.09.1994, which prima facie established the fact that Ex.A1 was executed only towards security to

the loan transaction, which was given by the G.P.A. holder of the plaintiff and for that reason only Ex.A1 was insufficiently stamped. The plaintiff

also did not let-in a rebuttal evidence to the contentions of the defendants that Ex.A1 was only a security to the loan transaction between the

defendants and said Linga Murthy, which stood discharged by the defendants through their cogent evidence so also the documentary evidence i.e.,

Exs.B1 and B2. In her evidence before the trial Court, the appellant/2nd defendant, who was examined as D.W.1, had admitted that her signature in

Ex.A1, but she stated that she does not know the contents of Ex.A1 as she cannot read English and she does not know the plaintiff; that Linga Murthy

was known to her as he was the friend of her husband; that her husband signed Ex.A1 as the witness and on his instructions, she signed Ex.A1 since

she was told that for the money owed by her husband to Linga Murthy as a security, she had to sign Ex.A1. She also admits that her husband and the

1st defendant were conducting business in Tiles and in that connection they borrowed money from Linga Murthy, as such they have signed Exs.A1

and A2. In this connection, it would be appropriate to refer to the judgment of the Hon'ble Supreme Court in *Tejram v. Patirambhau* (1997) 9

SCC 634, wherein it was observed by the Apex Court that "On the admitted finding that the respondent was a money lender, it would be unlikely

that he had paid Rs.48,000/- as cash consideration for that agreement; and would not have kept quiet without asking for the delivery of possession and

then without paying Rs.2,000/- for three years and filing the suit on the last date. Under these circumstances, the necessary conclusion would be that

the purported endorsement was not, in fact, receipt of the amount but dues owed to him. In the said case, it was also observed that "the question

that arises for consideration is whether the respondent has paid Rs.48,000/- as cash consideration towards sale transaction. It is seen that the

document purporting to be an agreement of sale was not, in fact in truth and in reality an agreement of sale. Witness 2, the scribe of the agreement

admitted in the examination-in-chief that he has executed several similar documents. All those documents i.e., eight out of ten relate to specific

performance; all of them are those, who took loan from the respondents. It is admitted position that the respondent is a money lender. Under these

circumstances, the document purporting to be an agreement for sale is in fact not an agreement of sale; it is towards the unpaid interest of the loan

taken by the respondent. If it is a true sale transaction and the respondent being a businessman and having purported to have paid Rs.48,000/-, one

would expect that he would seek possession or he would pay the balance consideration and request for execution of the sale deed. Instead, he kept

quiet for full three years. Be that as it may, it would appear that there was money transaction between the appellant and the respondent and the

respondent, being a money lender was taken documents, purporting to be an agreement of sale, from the loanee in the event of loanee's failure to

pay the loan amount along with interest stipulated by him, the document would, obviously be executed with a view to enforce the repayment of loan

and interest accrued thereon.

In the present case also, as already stated above, Ex.A1 was executed at the instance of the brother-in-law of the plaintiff M.Linga Murthy, as there

were loan transactions between the husband of the 2nd defendant and the 1st defendant on one hand and the said Linga Murthy on the other hand and

a G.P.A. was also got executed and registered in favour of one Anand, the sister's son of Linga Murthy on the same day, however, though Ex.A1

was executed in favour of the plaintiff and the total consideration of Rs.1,55,000/- was shown to have received by the defendants on the same day

leaving the balance of Rs.5,000/- only and the possession of the scheduled property was shown to have taken on the same day, the plaintiff or the

G.P.A. holder of the plaintiff have not taken any steps to get the document registered on the same day simply because of the reason that they were

aware of the fact that Ex.A1 was executed only for the purpose of security to the loan transaction and not for any other purpose and for this reason

only the plaintiff remained silent till 28.12.1994, when the legal notice-Ex.A3 was issued and by this time he was aware of the fact that Exs.B1 and B2

have already came into existence. If at all the delivery of possession was handed over to the plaintiff, he ought not to have sought for the relief of

delivery of possession, which proves the fact that the agreement of sale was not executed in the presence of the plaintiff.

In Parakanunan Veetill Joseph's Son Mathew v. Nedumbarakuruvila's Son and others (1 supra) the Apex Court held as under:-

"14. Section 20 of the Specific Relief Act, 1963 preserves judicial discretion to Courts as to decreeing specific performance. The Court should

meticulously consider all facts and circumstances of the case. The Court is not bound to grant specific performance merely because it is lawful to do

so. The motive behind the litigation should also enter into the judicial verdict. The Court should take care to see that it is not used as an instrument of

oppression to have an unfair advantage to the plaintiff. The High Court has failed to consider the motive with which Varghese instituted the suit. It

was instituted because Kuruvila could not get the estate and Mathew was not prepared to part with it. The sheet anchor of the suit by Varghese is the

agreement for sale Ex.A1. Since Chettiar had waived his rights thereunder, Varghese as an assignee could not get a better right to enforce that

agreement. He is, therefore, not entitled to a decree for specific performance.

In S.Rangaraju Naidu v. S.Thiruvakkarasu (2 supra) the Apex Court held as under:-

"2. Though the learned counsel for the appellant sought to contend that the agreement of sale was only collateral to the promissory note and that

there was no consensus ad idem to sell the land under the agreement but only as a collateral security, the High Court has gone into the question and

gave findings that it was not given as collateral security, but an agreement to sale, with which we are broadly in agreement. But the question is

whether the decree for specific performance is to be confirmed. It is true as rightly pointed out by Shri K.R. Choudhary, learned counsel for the

respondent, that since the High Court and the courts below have exercised discretion, it may not normally be interfered with under Art, 136 of the

Constitution, but the fact remains that the respondents are money-lenders and that they sought to recover the amounts due to them. Since the appellant

was not in a position to pay the amount due on the promissory note, he entered into the agreement to sell the property and the agreement was sought

to be enforced. Though the appellant had agreed to sell the property to respondents, the pre-dominant object thereby would be for recovery of the

dues with interest. He who demands equity must do equity. Court has discretion. Court is not bound to grant specific performance. It depends on facts

and circumstances in each case.

Granting of specific performance is an equitable relief, though the same is now governed by the statutory provisions of the Specific Relief Act, 1963

(for short "the Act"). These equitable reliefs are incorporated in Section 20 of the Act. While granting the relief of specific performance, the

statutory guidelines shall be in the forefront of the mind of the Court. In the present case, the trial Court had the added advantage of recording the

evidence and seeing the demeanour of the witnesses ought to have also kept in mind the statutory guidelines as stipulated in Section 20 of the Act.

Discretion of the Court regarding grant of specific relief is not to be exercised in arbitrary or unreasonable manner. On the facts as emerged from the

record, the plaintiff has tried to take unfair advantage of the defendants and had approached the Court with unclean hands and has behaved unfairly

all throughout. It is also clear that the plaintiff has made futile attempts to legalise the illegal acts of his brother-in-law M.Linga Murthy, who is also the

power attorney holder of the plaintiff, in respect of Ex.A1 alleging that the defendants have agreed to sell the scheduled property, which creates great

suspicion in respect of genuineness of Ex.A1. The power of attorney holder M.Linga Murthy, who has entered into several transactions with the 2nd

defendant and her husband, has not entered his appearance and he has not adduced any evidence before the trial Court regarding the sale transaction

and payment of consideration. Since the plaintiff failed to examine his Power of Attorney Holder and has not proved the payment of sale consideration

or the execution of agreement of sale, he is not entitled to any discretionary relief i.e., the decree for specific performance.

In the light of the observations made above, the judgments relied upon by the learned Senior Counsel for the plaintiff, are not applicable to the facts of

the present case.

In view of the discrepancies pointed out in the aforesaid paragraphs, the trial Court only by drawing an inference, erroneously concluded that Ex.A1

was executed for valid consideration and as such the said finding of the trial Court is liable to be set aside.

In the result, the Appeal Suit is allowed, and the judgment and decree, dated 30.06.2003, passed in O.S.No.120 of 1995 on the file of the Principal

Senior Civil Judge, Ranga Reddy District, is hereby set aside. There shall be no order as to costs.

Consequently, miscellaneous petitions, if any, pending shall stand closed.