
(2025) 10 TH CK 0014

Telangana HC

Case No: Appeal Suit No.295 Of 2012

Swargam Venkata
Swamy

APPELLANT

Vs

Eligeti Prabhakar

RESPONDENT

Date of Decision: Oct. 7, 2025

Acts Referred:

- Specific Relief Act, 1963 — Section 12
- Transfer of Property Act, 1882 — Section 43

Hon'ble Judges: Abhinand Kumar Shavili, J; Vakiti Ramakrishna Reddy, J

Bench: Division Bench

Advocate: M. Rama Rao, V. Hariharan

Final Decision: Dismissed

Judgement

Vakiti Ramakrishna Reddy, J

1. This Appeal Suit is preferred by the appellant/defendant No.1 assailing the Judgment and Decree dated 24.11.2011 in O.S. No.29 of 2007 on the file of the I Additional District Judge, Karimnagar, whereby the suit filed by the plaintiff for specific performance of an agreement of sale was partly decreed.

2. For the sake of convenience, the parties are referred to as they were arrayed before the Trial Court.

I. BRIEF FACTS:

3. The case of the plaintiff is that defendant No.1 agreed to sell the schedule property, an industrial shed bearing No.E-5, Padma Nagar, Karimnagar, admeasuring 1300 sq. yards (approximately 11 guntas) with a plinth area of 229.27 sq. meters, for a total consideration of Rs.12,50,000/-. An advance of Rs.3,00,000/- was paid under agreement dated 11.03.2003, followed by subsequent payments aggregating to Rs.7,00,000/-. A further sum of Rs.40,000/- was allegedly collected by defendant No.1 for remittance to APIIC Ltd., though the plaintiff later discovered that APIIC had already executed a registered sale deed in favour of defendant No.1 on 23.03.2005.

4. Despite repeated demands, defendant No.1 avoided execution of the sale deed, and eventually, in collusion with defendant No.2, conveyed part of the property to defendant No.2 under a registered sale deed dated 17.03.2006. The plaintiff, claiming continuous readiness and willingness, issued a legal notice dated 16.11.2006 and instituted the present suit.

5. Defendant No.1 admitted execution of the agreement and receipt of Rs.7,00,000/- but pleaded that the plaintiff defaulted in paying the balance within the stipulated time of one month. He contended that time was the essence of the contract and that, due to the plaintiff's default, he had to sell part of the property to defendant No.2.

II. ISSUES FRAMED BEFORE THE TRIAL COURT:

6. On the basis of pleadings, the Trial Court framed the following issues:

1. Whether defendant No.1 entered into an agreement of sale on 03.11.2003 and received Rs.7 lakhs as consideration out of the total consideration of Rs.12,50,000/-?
2. Whether defendant No.1 received Rs.40,000/- on 27.09.2005 with a promise to secure a registered sale deed from APIIC Ltd.?
3. Whether the further sum of Rs.1,70,000/- alleged to have been received is unconnected to the contract of sale?
4. Whether defendant No.1 had clear title to execute the sale deed in favour of the plaintiff?
5. Whether the suit was barred by limitation?

6. Whether defendant No.2 had knowledge of the agreement of sale dated 03.11.2003 and whether it bound him?
7. Whether the plaintiff was entitled to specific performance?
8. To what relief?

III. EVIDENCE ON RECORD:

7. To substantiate his claim, the plaintiff examined himself as PW1 and three other witnesses (PW2 - his brother, PW3 - scribe of Ex.A1, and PW4 - attester). Exhibits A1 to A11 were marked.
8. On behalf of the defendants, defendant No.1 was examined as DW1 and defendant No.2 as DW2. Exhibit B1, the registered sale deed executed by defendant No.1 in favour of defendant No.2, was marked.

IV. FINDINGS OF THE TRIAL COURT:

9. The Trial Court, on consideration of the evidence, partly decreed the suit, directing defendant No.1 to execute a registered sale deed in favour of the plaintiff in respect of 735.59 sq. yards out of the suit property, excluding 564.41 sq. yards already conveyed to defendant No.2.
10. Aggrieved thereby, defendant No.1 preferred this appeal.

V. SUBMISSIONS OF THE PARTIES:

A) On behalf of the Appellant/Defendant No.1:

11. Learned counsel for the appellant argued that the decree for partial specific performance was legally unsustainable; that Ex.A1 was insufficiently stamped; that defendant No.1, in his individual capacity, was

not competent to execute a valid sale deed; that necessary parties were not impleaded; that the plaintiff failed to prove readiness and willingness; and that time was the essence of the contract.

B) On behalf of the Respondent/Plaintiff:

12. Per contra, learned counsel for the plaintiff submitted that defendant No.1, having received substantial consideration, fraudulently withheld information about the registered sale deed executed by APIIC in his favour and collusively alienated part of the property to defendant No.2. The plaintiff, who was financially capable and consistently willing, cannot be denied equitable relief.

VI. ISSUE FOR DETERMINATION:

13. In the light of the rival contentions, the point for consideration is:

“Whether there exist valid grounds to interfere with the Judgment and Decree dated 24.11.2011 in O.S. No.29 of 2007 passed by the I Additional District Judge, Karimnagar?”

VII. ANALYSIS AND FINDINGS:

14. At the threshold, it is relevant to note that the original appellant/defendant No.1 expired during the pendency of the appeal, and his legal representatives were brought on record. The substitution does not alter the legal matrix of the case since the contractual obligations and liabilities are enforceable against the estate.

15. Coming to the central issue, it is an admitted fact that defendant No.1 executed Ex.A1 agreement in favour of the plaintiff and received substantial consideration, both directly from PW1 and indirectly through PW2. The testimonies of PW3 (scribe) and PW4 (attestor) lend corroboration, thereby affirming the genuineness of Ex.A1 and the underlying transaction.

16. The Trial Court granted partial specific performance to the extent of 735.59 sq. yards. The law in this regard is contained in Section 12 of the Specific Relief Act, 1963, which generally prohibits enforcement of

part of a contract unless the unperformed portion is minor, severable, and compensable. In the present case, since part of the property was already alienated to defendant No.2, the Trial Court judiciously confined relief to the remaining portion. This balancing of equities was consistent with the statutory mandate.

17. The objection regarding insufficiency of stamping of Ex.A1 is devoid of merit. It is well settled that once a document has been admitted in evidence without objection, such an objection cannot subsequently be raised. A deficiency in stamp duty is a curable defect and cannot, by itself, nullify the contract. Thus, Ex.A1 remains a valid foundation for the plaintiff's claim.

18. Another dimension relates to Section 43 of the Transfer of Property Act, 1882, embodying the doctrine of "feeding the grant by estoppel." At the time of Ex.A1, defendant No.1 did not have perfect title from APIIC, but he later acquired title under a registered sale deed dated 17.03.2006. As laid down in *Jumma Masjid, Mercara v. Kodimaniandra Deviah* AIR 1962 SC 847, any subsequent acquisition of title by the transferor enures to the benefit of the transferee. Hence, defendant No.1 cannot now plead want of title.

19. Equally important is the question of readiness and willingness. The plaintiff adduced Exs.A10 and A11 showing deposits adequate to meet the balance consideration. Payments made by PW2 on behalf of PW1 also stand validated. The principle in *Syed Dastagir v. T.R. Gopalakrishna Setty* (1999) 6 SCC 337 is that readiness and willingness must be deduced from the totality of conduct, not from isolated omissions. The plaintiff's conduct, including prompt issuance of notice upon discovering defendant's mala fide conduct, leaves no doubt as to his willingness.

20. The conduct of defendant No.1, on the contrary, was marked by bad faith. Having obtained title from APIIC, he neither notified the plaintiff nor sought payment of balance consideration, but instead clandestinely sold a portion to defendant No.2. Such behaviour is tainted with malafides. In *Kammana Sambamurthy v. Kalipatnam Satyavathi* (1994) 4 SCC 214, the Supreme Court has held that a person acting fraudulently cannot claim equitable protection. In *Macchindranath v. Ramchandra Gangadhar Dhamne and others* (2025) 7 Supreme Court Cases 456 the Honourable Supreme Court observed as under:

40. Undoubtedly, the present case comes under a unique category where a person on the one hand comes before a Court seeking that his own actions be nullified on the ground that it was void and on the other hand wants relief in his favour, which is consequential to and traceable to 26 of 29 his own wrong. It would not be proper for a Court of law to assist or aid such person who states that the wrong he committed be set aside and a relief be granted de hors the wrong committed, after condoning the same. In the present case, the plaintiff cannot be allowed to benefit from his own wrong and the Court will not be a party to a perpetuation of illegality.

41. In *Ram Pyare v Ram Narain*, (1985) 2 SCC 162, a 3-Judge Bench of this Court, in the circumstances therein, did not void a transaction even though the transaction was void being prohibited by law. The principle that no party can take advantage of his/her own wrong i.e. *ex injuria sua nemo habere debet* is squarely attracted.

42. In *Kusheshwar Prasad Singh v State of Bihar*, (2007) 11 SCC 447, it was held:

“13. The appellant is also right in contending before this Court that the power under Section 32-B of the Act to initiate fresh proceedings could not have been exercised. Admittedly, Section 32-B came on the statute book by Bihar Act 55 of 1982. The case of the appellant was over much prior to the amendment of the Act and insertion of Section 32-B. The appellant, therefore, is right in contending that the authorities cannot be allowed to take undue advantage of their own default in failure to act in accordance with law and initiate fresh proceedings.

14. In this connection, our attention has been invited by the learned counsel for the appellant to a decision of this Court in *Mrutunjay Pani v. Narmada Bala Sasmal* [AIR 1961 SC 1353] wherein it was held by this Court that where an obligation is cast on a party and he commits a breach of such obligation, he cannot be permitted to take advantage of such situation. This is based on the Latin maxim *commodum ex injuria sua nemo habere debet* (no party can take undue advantage of his own wrong).

15. In *Union of India v. Major General Madan Lal Yadav* [(1996) 4 SCC 127: 1996 SCC (Cri) 592] the accused 27 of 29 army personnel himself was responsible for delay as he escaped from detention. Then he raised an objection against initiation of proceedings on the ground that such proceedings ought to have been initiated within six months under the Army Act, 1950. Referring to the above maxim, this Court held that the accused could not take undue advantage of his own wrong. Considering the relevant provisions of the Act, the Court held that presence of the accused was an essential condition for the commencement of trial and when the accused did not make himself available, he could not be allowed to raise a contention that proceedings were timebarred. This Court (at SCC p. 142, para 28) referred to *Broom's Legal Maxims* (10th Edn.), p. 191 wherein it was stated:

“It is a maxim of law, recognised and established, that no man shall take advantage of his own wrong; and this maxim, which is based on elementary principles, is fully recognised in courts of law and of equity, and, indeed, admits of illustration from every branch of legal procedure.”

16. It is settled principle of law that a man cannot be permitted to take undue and unfair advantage of his own wrong to gain favourable interpretation of law. It is sound principle that he who prevents a thing from being done shall not avail himself of the non-performance he has occasioned. To put it differently, “a wrongdoer ought not to be permitted to make a profit out of his own wrong”TM (emphasis supplied)

21. Even in the instant case, the defendant No.1 having acquired sale deed from APIIC in respect of suit schedule property intentionally did not intimate the same to the plaintiff despite receiving consideration and moreover alienated the part of suit schedule property to the defendant No.2. Thus, the conduct of defendant

No.1 is questionable. The principle laid down in the above said decision is squarely applicable to the facts of the present case.

22. On a holistic appraisal, we find that the Trial Court correctly applied the principles of law concerning partial specific performance, readiness and willingness, and estoppel. The equities clearly lean in favour of the plaintiff, and no substantial ground is made out for interference by this Court.

23. Accordingly, the appeal, being devoid of merit, deserves dismissal.

VIII. CONCLUSION:

24. In view of the foregoing discussion and in light of binding precedents, the Appeal Suit is dismissed. In the circumstances, there shall be no order as to costs.

25. As a sequel, pending miscellaneous applications, if any, stand closed.