

**HIGH COURT FOR THE STATE OF TELANGANA  
AT HYDERABAD**

**I.A.No. 3 of 2023**  
**In**  
**A.S.No.149 of 2011**  
**&**  
**APPEAL SUIT No.149 of 2011**

Between:

Vonuguri Srisailam

... Appellant/Defendant

And

Alle Ravinder

..Respondent/plaintiff

DATE OF JUDGMENT PRONOUNCED :21.02.2024

Submitted for approval.

**THE HON'BLE SRI JUSTICE K.SURENDER**

- 1 Whether Reporters of Local newspapers may be allowed to see the Judgments? Yes/No
- 2 Whether the copies of judgment may be marked to Law Reporters/Journals Yes/No
- 3 Whether Their Ladyship/Lordship Wish to see their fair copy of the Judgment? Yes/No

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*K.SURENDER, J*

**\* THE HON'BLE SRI JUSTICE K. SURENDER**

**+ I.A.No. 3 of 2023**  
**In**  
**A.S.No.149 of 2011**  
**&**  
**APPEAL SUIT No.149 of 2011**

% Dated 21.02.2024

# Vonuguri Srisailam

... Appellant

And

\$ Alle Ravinder

...Respondent

**! Counsel for the Appellant:** Sri Pratap Narayan Sanghi, learned Senior  
Counsel for Venkateshwarlu Gummadavelly

**^ Counsel for the Respondent:** Sri Vedula Venkata Ramana, Senior  
Counsel for Kowturu Pavan Kumar for R2.

**>HEAD NOTE:**

? Cases referred

<sup>1</sup> AIR OnLine 2022 SC 998

<sup>2</sup> AIR 2022 SC 3884

<sup>3</sup> AIR OnLine 214 SC 197

<sup>4</sup> AIR 1999 Supreme Court 3381

<sup>5</sup> AIR OnLine 2013 AP 149

<sup>6</sup> (2015) 14 Supreme Court Cases 450

<sup>7</sup> (2020) 13 Supreme Court Cases 773

<sup>8</sup> (2005) 6 Supreme Court Cases 733

<sup>9</sup> 2010(5) SCJ 831 (D.B)

**THE HON'BLE SRI JUSTICE K.SURENDER**

**I.A.No. 3 of 2023**  
**In**  
**A.S.No.149 of 2011**  
**&**  
**APPEAL SUIT No.149 of 2011**

**JUDGMENT:**

1. This Appeal Suit is filed aggrieved by the judgment and decree in O.S.No.722 of 2006 dated 23.11.2010 passed by the III Additional District Judge, Ranga Reddy District at L.B.Nagar, wherein and whereby the suit filed by the defendant/plaintiff is decreed.

2. The appellant is the defendant in the trial Court. Suit for specific performance was filed by the respondent herein, who is the plaintiff in the trial Court.

3. For the sake of convenience, the parties hereinafter will be referred to as arrayed in the original suit before the trial Court.

4. According to the case of the plaintiff, the defendant executed agreement of sale ExA1 dated 05.03.2005 in respect of land admeasuring Acs.1.11 gts in Sy.No.344/AA, land

admeasuring 0.30 gts in Sy.No.349/A, totally admeasuring Acs.2.33 gts of Maheshwaram Mandal. The defendant agreed to sell the scheduled property at Rs.8,50,000/- per acre and the total consideration amount was arrived at 24,01,250/-.

5. Exs.A2 and A3 dated 05.03.2005 and 05.06.2005 were executed by the defendant and cheques were also issued which were encashed by the defendant. Ex.A4 is the original Bank statement filed by the plaintiff. Though the plaintiff appealed to the defendant to get the land surveyed and receive the balance sale consideration of Rs.10,01,250/-,the defendant postponed the registration.

6. The plaintiff issued legal notice and the office copy of which is marked as Ex.A6. Since the defendant failed to respond to register the land, suit for specific performance of agreement dated 05.03.2005 was filed and also seeking delivery of possession of the schedule property.

7. Learned trial Judge, having considered the oral and documentary evidence on record, decreed the suit in favour of

the plaintiff directing the plaintiff to deposit the balance sale consideration of Rs.10,01,250/- within 30 days from the date of judgment and on failure by the defendant to register the property by executing regular sale deed, the plaintiff was at liberty to approach the Court to execute through the process of the Court.

8. Sri P.N.Sanghi, learned Senior Counsel appearing for the appellant/defendant would submit that in the written statement filed by the defendant, there is total denial of execution of Ex.A1 agreement of sale. Learned Senior Counsel had taken this Court through the evidence of witnesses and argued that the respondent/plaintiff in his evidence admitted that Ex.A1 was in the process of a partnership deed for development of the property between the plaintiff and the defendant. Plaintiff admitted that P.Ws.2 to 4 had contributed the amounts towards the suit land for development, as such, the question of maintaining suit for specific performance does not arise.

9. Learned Senior Counsel further argued that when Ex.A1 agreement of sale could not be established, the trial Court erred in granting decree for specific performance. He relied on the judgment of Hon'ble Supreme Court in the case of **U.N.krishnamurthy (since deceased) through LRs. V. A.M Krishnamurthy**<sup>1</sup> and referred to paras 33 to 38. He also relied on the judgment in the case of **Ayillyath Yadunath Nambiar v. P.Sreedharan**<sup>2</sup> and relied on para 9 of the judgment.

10. Learned counsel further argued that the specific case of the defendant is that extent of the property is Acs.2.33 guntas. However, it was admitted during examination of witnesses that the extent is Acs.2.32 guntas. When the evidence relied on was contrary to indicate that the property to an extent of Acs.2.32 guntas and the claim was to an extent of Acs.2.33 guntas, the trial Court erred in decreeing the suit for specific performance. Learned Senior Counsel further submits that the property was family property and since the defendant had suffered a decree filed by the family members, granting decree

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<sup>1</sup> AIR OnLine 2022 SC 998

<sup>2</sup> AIR 2022 SC 3884

for specific performance is incorrect and has to be set aside. He relied on the following judgments; i) **Pemmada Prabhakar v. Youngmen's Vysya Association**<sup>3</sup>; **Balraj Taneja and another v. Sunil Madan and another**<sup>4</sup>; ii) **Mididodi Saraswathi v. The Mandal Revenue Officer, Nagarkurnool Mandal**; iii) **Kedarisetti Atmaram v. N.Seetharamaraju**; iv) **M/s.Tanmai Jewels Private Limited and another v. Ch.Sreesaila Kumari and another**<sup>5</sup> and v) **State of Madhya Pradesh v. Nomi Singh and another**<sup>6</sup>.

11. Learned Senior Counsel also argued that on I.A.No.3 of 2023 in A.S.No.149 of 2011 filed to receive the Certified Copy of Judgment and Decree in O.S.No.121 of 2014 dated 24.08.2023 on the file of V Additional District Judge, Ranga Reddy District at L.B.Nagar as additional evidence be allowed and the document considered as part of the record. The said suit was filed for partition and separate possession in respect of the suit schedule property.

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<sup>3</sup> AIR OnLine 214 SC 197

<sup>4</sup> AIR 1999 Supreme Court 3381

<sup>5</sup> AIR OnLine 2013 AP 149

<sup>6</sup> (2015) 14 Supreme Court Cases 450

12. On the other hand, Sri Vedula Venkata Ramana, learned Senior Counsel appearing on behalf of the plaintiff would submit that the defendant, though engaged counsel, did not take steps to enter into the witness box to speak about the facts of the case and denied the agreement of sale Ex.A1. Further, no other witnesses were examined. A bare denial will not entail relief, unless the case of the defendant is proved by adducing evidence. The suit mentions Acs.2.33 guntas as subject property, however, during cross-examination, witness mentioned as Acs.2.32 guntas. The said discrepancy is of no consequence. Insofar as the additional evidence is concerned, the suit filed for partition and separate possession in the year 2014 will have no consequence in the present case since the suit was decided in the year 2011 itself. In the said circumstances, appeal has to be dismissed. In support of his contentions, he relied on the following judgments; i) **Gurmit Singh Bhatia v. Kiran Kant Robinson and others**<sup>7</sup>; ii) **Kasturi v. Iyyamperumal and others**<sup>8</sup>; iii) **Mumbai**

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<sup>7</sup> (2020) 13 Supreme Court Cases 773

<sup>8</sup> (2005) 6 Supreme Court Cases 733

**International Airport Private Limited v. Regency Convention Centre & Hotels Private Limited and others<sup>9</sup>.**

13. The defendant in the main suit, for the reasons best known has neither examined himself nor any witness on his behalf. The counsel for the defendant had cross-examined the witnesses. On the basis of the said alleged discrepancies that have crept in the cross-examination, counsel for the defendant seeks reversal of the trial Court judgment.

14. The crucial question that arises for consideration is execution of Ex.A1 agreement of sale. It is contended that the plaintiff is not the signatory to the said document. The said argument is of no help to the defendant. In the absence of the signature of the purchaser, when the vendor has signed the document in the presence of witnesses, the purchaser not signing Ex.A1 agreement of sale is of no consequence. At one breath, the argument of learned Senior Counsel for the defendant is that Ex.A1 was not executed by the defendant and again, it is argued that the document Ex.A1 is not in the

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<sup>9</sup> 2010(5) SCJ 831 (D.B)

form of an agreement of sale but an agreement in between the partners for development of the property for which reason, the suit for specific performance is not maintainable. A reading of Ex.A1 goes to show that it is clearly an agreement in between the parties for sale of the subject property.

15. There is no explanation and no reasons are given as to why, though the defendant contested the case, failed to either enter into the witness box or examine any witnesses in support of his contention regarding non execution of Ex.A1 or has taken steps to send the documents for the purpose of hand writing expert opinion to say that the signature appearing on Ex.A1 is not that of the defendant. In the said circumstances, an adverse inference has to be drawn against the case of the defendant and the case put up by him in the written statement is incorrect.

16. I.A.No.3 of 2023 is filed to receive the Certified Copy of Judgment and Decree in O.S.No.121 of 2014 dated 24.08.2023 on the file of V Additional District Judge, Ranga

Reddy District at L.B.Nagar as additional evidence. Order XLI

Rule 27 of CPC reads as follows:

**“27. Production of additional evidence in Appellate Court.-** (1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court. But if—

(a) the court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or

(aa) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or

(b) the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause, the Appellate Court may allow such evidence or document to be produced, or witness to be examined.

(2) Whenever additional evidence is allowed to be produced, by an Appellate Court, the Court shall record the reason for its admission.”

17. The judgment sought to be marked is in respect of a partition suit in between the defendant and his family members who are claiming rights over the property. The said suit was filed in the year 2014. Though, a competent civil Court has found that the said property also belongs to the other members of the family that cannot be made basis to set

aside the judgment of the trial Court. Apparently, the suit in question for specific performance was filed in the year 2006 and judgment passed on 23.11.2010. However, the partition suit was filed in the year 2014. In the said circumstances, this Court is not inclined to admit the document in the form of additional evidence since the said document does not fall within any of the categories mentioned in Order 41 Rule 27 of CPC. Accordingly, the prayer for receiving the Certified Copy of Judgment and Decree in O.S.No.121 of 2014 dated 24.08.2023 on the file of V Additional District Judge, Ranga Reddy District at L.B.Nagar as additional evidence is dismissed.

18. This Court, by order dated 11.09.2023 dismissed applications filed by proposed respondents to implead them in the appeal. Their contention is that they are legal heirs to the subject property and have right in the property by virtue of the decree in O.S.No.121 of 2014. The Hon'ble Supreme Court in **Gurmit Singh Bhatia v. Kiran Kant Robinson and others's case (supra)** held as follows:

“In a suit for specific performance of the contract to sell the *lis* between the vendor and the persons in whose favour agreement to sell is executed shall only be gone into and it is also not open to the Court to decide whether any other parties have acquired any title and possession of the contracted property.”

19. This Court, cannot, in the present appeal decide whether any other parties have acquired any rights or interest over the subject property. It is for the interested parties to obstruct the execution of order to protect their rights in accordance with law.

20. In the result, the Appeal Suit is dismissed. Consequently, miscellaneous applications, if any pending in this Appeal Suit, shall stand closed.

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**K.SURENDER, J**

Date: 21.02.2024

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