

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

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**S.A.No.1634 of 2011**

**Between:**

B.Kista Reddy (died per LRs.)  
and others

.. Appellants

AND

Smt.V.Srilatha

.. Respondent

Date of Judgment Pronounced: **27.04.2023**

**SUBMITTED FOR APPROVAL:**

**HONOURABLE SRI JUSTICE A.SANTHOSH REDDY**

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|----|--|--------|
| 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 Reports/Journals?      | YES/NO |
| 3. | Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? | YES/NO |

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**A.SANTHOSH REDDY, J**

**\* HONOURABLE SRI JUSTICE A.SANTHOSH REDDY**

**+ S.A.No.1634 of 2011**

% Dated 27-04-2023

# B.Kista Reddy (died per LRs.)  
and others

.. Appellants

VERSUS

\$ Smt.V.Srilatha

...Respondent

! Counsel for appellants : Mr. E.madan Mohan Rao,  
Senior Counsel appearing for  
Sri Gaddam Srinivas

^Counsel for respondent : Mr.A.Ravinder Reddy  
Senior Counsel appearing for  
Mr.Amogh Reddy

<GIST:

> HEAD NOTE:

? Cases referred

1995(5) SCC 115  
(2015) 8 SCC 695  
AIR 2020 SC 930  
AIR 2022 SC 5435  
2014(1) ALD 269  
AIR 2014 SC 2912  
2002 (9) SCC 582

**THE HONOURABLE SRI JUSTICE A.SANTHOSH REDDY****S.A.No.1634 OF 2011****JUDGMENT:**

This second appeal is directed against the judgment and decree dated 16.09.2011 in A.S.No.288 of 2006, on the file of the III-Additional District Judge (FTC), Ranga Reddy District, wherein the said appeal filed by respondent No.1 herein (plaintiff) was allowed by setting the judgment and decree dated 21.11.2006 in O.S.No.11 of 1997, on the file of the Principal Senior Civil Judge, Ranga Reddy District, whereinunder the suit filed by respondent No.1 was dismissed.

2. Heard Sri E.Madan Mohan Rao, learned senior counsel, appearing for Sri Gaddam Srinivas, learned counsel for the appellants, and Sri A.Ravinder Reddy, learned senior counsel, appearing for Sri M.Amogh Reddy, learned counsel for the respondent. Perused the record.

3. For the sake of convenience, the parties are hereinafter referred to as arrayed in the suit.

4. The plaintiff filed suit for specific performance of agreement of sale dated 24.01.1994. According to the plaintiff, defendant Nos.1 to 5 are the owners of suit schedule land in Sy.Nos.404, admeasuring Acs.12-36 Gts., and land in Sy.No.405 admeasuring Acs.2-00 at Poodur Village. Defendant Nos. 1 to 3 agreed to sell suit the schedule property in favour of the plaintiff for a sale consideration of Rs.4,02,000/- by entering into an agreement of sale dated 24.01.1994. Plaintiff paid Rs.1,50,000/- towards part sale consideration to defendant Nos.1 to 3 and agreed to pay balance sale consideration at the time of execution of registered sale deed. Defendant Nos.4 and 5 are brought on record as the legal representatives of deceased defendant No.1. As per the terms of the agreement, defendants have to demarcate the boundaries of the suit schedule property and establish an approach road before execution of registered sale deed, but the defendants have been procrastinating the same though they have received a further sum of Rs.65,000/- towards sale consideration on various dates from 11.02.1994 and 19.06.1995.

5. The plaintiff further stated that she was ready and willing to pay the balance sale consideration of Rs.1,87,000/, but the

defendants were evading the same. When the plaintiff came to know that the defendants were trying to alienate the suit property in favour of third parties for a higher sale consideration, she got issued legal notice dated 02.01.1997. The defendants failed to respond to the plaintiff's legal notice. Though, the plaintiff was always ready and willing to perform her part of contract, the defendants were not coming forward to perform their part of contract. Hence, the suit.

6. Defendant No.1 filed written statement *inter alia* contending that neither he entered into agreement of sale with the regard to suit property nor received part sale consideration of Rs.1,50,000/- from the plaintiff. It is also denied that he along with defendant Nos.2 and 3 agreed to demarcate the boundaries of suit schedule property and to establish an approach road and received further amount of Rs.65,000/- from the plaintiff. Defendant No.1 also denied the execution of agreement of sale dated 24.01.1994. Defendant No.1 along with defendant Nos.2 and 3 approached the plaintiff's husband for financial assistance in the year 1994 on the advise of their relative Bagi Reddy. The plaintiff's husband lent an amount of Rs.20,000/- as hand loan and obtained signatures of defendant

Nos.1 to 3 on some blank stamp papers promising to return the said papers soon after the said amount was repaid. Though defendants repaid the loan amount and also requested the plaintiff's husband to return the blank stamp papers, but they fabricated the agreement of sale dated 24.01.1994 by using the said stamp papers with a *mala fide* intention of grabbing the suit property and thus the agreement of sale is unenforceable and void. There is no cause of action for filing the suit. The plaintiff is not entitled for specific performance of agreement of sale.

7. Defendant No.2 adopted the written statement filed by defendant No.1, while defendant No.3 filed separate written statement contending that he neither entered into agreement and sale nor received any sale consideration from the plaintiffs. He stated that his and the signatures of defendant No.2 were obtained on blank stamp papers. Defendant No.3 stated that defendant No.2 might have created the agreement of sale dated 24.01.1994 by seeing the blank papers and that defendant No.3 was a minor as on the date of agreement of sale and it is void *ab initio* and *non est* in the eye of law. Defendant Nos.1 and 2 do not have any right to sell

the suit property, as the same being joint family property and there is no cause of action for filing the suit.

8. Defendant Nos.4 and 5, being the legal representatives of defendant No.1, filed separate written statement on the similar lines of defendant Nos.1 to 3. They stated that the agreement of sale is not binding on them and that the suit property is the joint family property and they too have share in the same. As such defendants 1 to 3 do not have right to sell the suit property.

9. On the strength of the above pleadings, the trial Court framed the following issues and additional issue:

ISSUES:

- i. Whether the plaintiff is entitled for specific performance of agreement of sale dt.24.1.1994?
- ii. To what relief?

ADDITIONAL ISSUE:

- i. Whether the sale agreement is binding on D-4 and D-5?

10. During trial, on behalf of the plaintiff, P.Ws.1 and 2 were examined and Exs.A-1 to 21 were marked. On behalf of the defendants, D.Ws.1 to 4 were examined and Ex.B-1 was marked. C.W.1 was marked.

11. On a consideration of the evidence available on record, the trial Court held that the plaintiff is not entitled for specific performance of agreement of sale dated 24.01.1994 and, ultimately, dismissed the suit. Aggrieved by the same, the plaintiff preferred an appeal in A.S.No.288 of 2006.

12. The learned III Additional District Judge (FTC) framed the following points for consideration:

- “i. Whether the agreement of sale dated 24.01.1994 is true valid and binding on the defendants?
- ii. Whether the plaintiffs are entitled for specific performance of agreement of sale?
- iii. Whether the judgment and decree of the trial court is sustainable?
- iv. To what relief?

13. On reappraisal of the evidence on record, the learned III-Additional District Judge held that the plaintiff established the case of specific performance of agreement of sale. Accordingly, the appeal was allowed by setting aside the decree and judgment of dismissal passed by the trial Court.

14. The second appeal was admitted on the following substantial questions of law:



- “i. Whether, in the absence of a plea of agency in the plaint to the effect that Bhagareddy was acting as the agent of the defendants 1-3 for receiving the balance of sale consideration, the receipts Exs.A10 to A19 said to have been executed by Bhagareddy can be looked into in support of the plea of payment of part of balance of sale consideration?
- ii. Whether the 1<sup>st</sup> appellate court is right in not looking into the admitted fact that the respondent herein categorically admitted in her cross-examination that Sri Bhaga Reddy has no authorization to receive the sale consideration on behalf of the appellants herein, despite the entire case being that the respondent paid the sale consideration to the tune of Rs.65,000/- to Sri Bhaga Reddy?
- iii. Whether 1<sup>st</sup> appellate court is right in setting aside the judgment and decree of the lower court, without looking into the conduct of the respondent herein, who filed a suit for specific performance nearly after three years of alleged agreement of sale, despite there is a condition to execute the sale deed within a period of six months?”

15. Sri E.Madan Mohan Rao, learned senior counsel appearing for the appellants, vehemently submitted that the appellate Court committed error in allowing the appeal. Learned counsel submitted that as per the agreement of sale dated 24.01.1994, the sale transaction should be completed within six months, but the

respondent had issued legal notice dated 02.01.1997 and that the plaintiff never expressed her willingness to perform her part of the contract and failed to specify the main ingredients of the suit for specific performance. He submitted that the plaintiff is alleged to have paid the sale consideration to one Sri D.Bhaga Reddy, but he has no authorization from defendants to receive the sale consideration and the same cannot be looked into in support of plea of payment of balance sale consideration. He has submitted that the appellate Court has failed to take into consideration that defendant No.3 was minor as on the date of alleged agreement of sale and he was not competent to enter into an agreement. Therefore, learned counsel submitted that the conduct of the plaintiff in filing the suit after three years of alleged agreement of sale in spite of condition to execute the sale within six months is not maintainable. In support of his contentions, learned counsel placed reliance on the following decisions:

- i. N.P.THIRUGNANAM (DEAD) BY L.Rs. v. Dr.R. JAGAN MOHAN RAO AND ORS<sup>1</sup>**
- ii. PADMAKUMARI AND ORS. V. DASAYYAN AND ORS<sup>2</sup>**

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<sup>1</sup>1995(5) SCC 115

<sup>2</sup>(2015) 8 SCC 695

- iii. **C.S. VENKATESH v. A.S.C.MURTHY (D) by L.Rs. AND ORS.**<sup>3</sup>
- iv. **KATTA SUJATHA REDDY AND ORS. v. SIDDAMSETTY INFRA PROJECTS PVT. LTD AND ORS**<sup>4</sup>
- v. **MANEPALLI UDAYA BHASKARA RAO v. KANUBOYINA DHARMARAJU**<sup>5</sup>
- vi. **EASWARI v. PARVATHI AND ORS**<sup>6</sup>

16. On the other hand, Sri A.Ravinder Reddy, learned senior counsel appearing for the respondent, sought to justify the impugned judgment of the appellate Court. Learned counsel submitted that the appellate Court has rightly appreciated the oral and documentary evidence and held that the plaintiff established the case for specific performance of agreement of sale and prayed to set aside the dismissal of the suit by the trial Court. He has submitted that the payment of sale consideration directly by the plaintiff and subsequently to Sri Bhaga Reddy is proved and it is also proved that Ex.A-1 was executed after receiving the initial amount of Rs.1,50,000/- and also proved the subsequent payments through Sri Bhaga Reddy. He has submitted that the plaintiff

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<sup>3</sup>AIR 2020 SC 930

<sup>4</sup>AIR 2022 SC 5435

<sup>5</sup>2014(1) ALD 269

<sup>6</sup>AIR 2014 SC 2912

established that Ex.A-1 is true and valid and supported by consideration and the appellate Court had rightly decreed the suit. Therefore, he prayed to dismiss the second appeal.

17. I have carefully considered the submissions of both the learned senior counsel made at the Bar.

18. The suit filed by the plaintiff is for specific performance of agreement of sale dated 24.01.1994. On appreciation of the material on record, the trial Court held that the plaintiff has failed to prove that she was always ready and willing to perform her part of the contract. The trial Court has negatived the plaintiff's claim that Ex.A-1 sale deed is supported by consideration and the plaintiff was ready and willing to perform her part of the contract. However, the trial Court refused to grant specific performance of agreement of sale dated 24.01.1994 and dismissed the suit. The appellate Court reversed the finding of the trial Court and held that the plaintiff was ready and willing to perform her part of the contract and the oral and documentary evidence clearly established that the plaintiff has proved the execution of Ex.A-1 by defendants 1 to 3 after receiving the sale consideration of Rs.1,50,000/- and

subsequently Rs.65,000/-. The appellate Court has decreed the suit of the plaintiff and directed the plaintiff to deposit the balance sale consideration of Rs.1,87,000/- with interest at 12% per annum.

19. The first legal contention urged by learned senior counsel for the appellants is that the conduct of the parties is relevant to arrive at a finding as to whether the plaintiff was all along ready and willing to perform her part of the contract, which is compulsorily required under Section 16(c) of the Specific Relief Act. In support of his contention, he relied on the judgment of the Hon'ble Apex Court in *C.S.Venkatesh*'s case (3 supra) which is quite relevant on the said principle. In the said judgment, the Hon'ble Apex Court has placed reliance on the judgments in *N.P.Thirugnanam*'s case (1 supra) and **PUSHPARANI S.SUNDARAM AND ORS. v. PAULINE MANOMANI JAMES (DECEASED) AND ORS**<sup>7</sup> and held at paragraphs 14 and 15 as under:

14. The next question for consideration is in relation to compliance of Section 16(c) of the Act by the plaintiff. Though a question was raised before the trial court that there are no pleadings as regards the plaintiff's readiness and willingness to perform the contract, the

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<sup>7</sup>2002 (9) SCC 582

trial court has rightly held that there is sufficient compliance of Section 16(c) of the Act to the extent of pleadings. Therefore, the question to be considered is whether the plaintiff was ready and willing to perform his part of the contract.

15. The words 'ready and willing' imply that the plaintiff was prepared to carry out those parts of the contract to their logical end so far as they depend upon his performance. The continuous readiness and willingness on the part of the plaintiff is a condition precedent to grant the relief of performance. If the plaintiff fails to either aver or prove the same, he must fail. To adjudge whether the plaintiff is ready and willing to perform his part of contract, the court must take into consideration the conduct of the plaintiff prior, and subsequent to the filing of the suit along with other attending circumstances. The amount which he has to pay the defendant must be of necessity to be proved to be available. Right from the date of the execution of the contract till the date of decree, he must prove that he is ready and willing to perform his part of the contract. The court may infer from the facts and circumstances whether the plaintiff was ready and was always ready to perform his contract.

20. It is the case of the plaintiff that she had proved that she was always ready and willing to perform her part of the contract of agreement of sale under Ex.A-1. She stated that she had paid Rs.1,50,000/- at the time of agreement of sale and she had also paid a further sum of Rs.65,000/- and expressed her willingness and

readiness to pay the balance sale consideration, but the defendants did not come forward to perform their part of the contract. It is the further case of the plaintiff that the defendants did not demarcate the suit schedule property in terms of the agreement of sale. They were postponing the demarcation as well as execution of registered sale deeds by receiving balance sale consideration. It is the case of defendant Nos.1 and 2 that they neither agreed to sell the suit schedule property nor received any sale consideration from the plaintiff. It is their further case that they have approached the husband of the plaintiff for hand loan of Rs.20,000/- and he obtained signatures on blank papers and he along with the plaintiff fabricated the agreement of sale.

21. Further, on a perusal of the evidence adduced by both the parties, it is clear that defendants 1 to 3 have received Rs.1,50,000/- towards part sale consideration and executed the agreement of sale Ex.A-1. P.W.1 in her evidence also stated that defendant No.1 asked her to pay the amounts to his brother-in-law Bhaga Reddy (C.W.1) and, accordingly, she paid the amount of Rs.65,000/-. The condition stipulated in the agreement of sale is that the defendants are required to demarcate the suit schedule

property before execution of the sale deed. She refused to pay further amounts, when Bhaga Reddy approached her. The case of plaintiff is corroborated by the evidence of P.W.2 as regards the execution of Ex.A-1 and payment of consideration. Though P.W.2 had not attested Ex.A-1, but was present at the time of execution of Ex.A-1. Apart from that, defendant No.3, who was examined as D.W.3, admitted the signature on Ex.A-1 and also C.W.1 who is related to defendant No.1, as his daughter was given in marriage to the son of defendant No.1, also admitted his signature on Ex.A-1.

22. As observed by the appellate Court, the defendants did not reply to the legal notice under Ex.A-2 and the evidence on record clearly establishes that the transaction under Ex.A-1 was in respect of agreement of sale and not a loan transaction. I have also perused the evidence of C.W.1 and as appreciated by the appellate Court, the said evidence is not reliable and trustworthy in view of his close relationship with D.W.1 and his evidence may not be helpful to the case of the defendants.



23. Coming to the question of filing the suit nearly three years after the alleged agreement of sale despite there being a condition to execute the sale deed within a period of six months, the plaintiff stated that she was ready and willing to perform her part of the contract, but the defendants failed to demarcate the suit schedule property which is required to be performed by them and thereafter to receive the balance sale consideration and execute the sale deed. P.W.1 also stated that Bhaga Reddy agreed to fix the boundary within one month, but he did not turn up and her brother Sudhakar Reddy approached defendant No.1, but he did not respond. The plaintiff's brothers have approached Bhaga Reddy and requested to execute the registered sale deed by receiving the balance amount, but he expressed his inability to do so and thereafter, the plaintiff got issued legal notice dated 02.01.1997. Despite receiving the legal notice, defendants 1 to 3 did not respond. The plaintiff was always ready and willing to perform her part of the contract and ready to pay the balance sale consideration. The agreement of sale is dated 24.01.1994 and the plaintiff got issued legal notice dated 02.01.1997. When the defendants failed to respond to the legal notice even after receipt of

the same, she filed the suit for specific performance of agreement of sale on 21.01.1997. Learned senior counsel for the appellants submitted that the timeline of six months should have been taken into consideration by the appellate Court to decide the conduct of the plaintiff and refuse the relief of specific performance. In support of his contention, he placed reliance on the decision in ***Katta Sujatha Reddy***'s case (4 supra) wherein it is was held at paragraphs 58, 59, 68 & 69 as under:

58. From the aforesaid, it is clear that the purchaser ought to have been vigilant in the case at hand to enforce his right and could not have been lackadaisical in his approach. From the facts, it is clear that the purchaser had entered into an agreement way back on 26/27.03.1997, which had a clause mandating completion of the contract by payment of the remaining consideration within three months. The aforesaid clause was drafted, as alluded to earlier, for providing one last opportunity for the purchaser to make good their lapse which had happened on the earlier occasion. In this context, the time for performance of the contract including the payment lasted till the month of June 1997.

59. It was necessary that the purchaser should have taken immediate steps to complete the transaction and if such steps were immediately completed then the purchaser would have a clear right for seeking

enforcement for 3 years reckoned from the last date decided for completion of the contract.

68. In the light of the above, it is clear that Section 16(c) of the Specific Relief Act would only come into force if the purchaser was ready and willing to perform the contract within the three month period prescribed under Clause 3 of the agreements. The aforesaid conclusion is also bolstered by the fact that specific performance can only be granted when essential terms of contract are not violated in terms of Section 16(b).

69. From the above, we can safely conclude that the purchaser was not ready or willing to perform his part of the contract within the time stipulated and accordingly, specific performance cannot be granted for the entire contract.

24. In the instant case, time limit of six months is stipulated for demarcation of the suit schedule property before execution of sale deed and then only the entire sale consideration would be paid and proper registered sale deed has to be executed. It is not in dispute that so far as the aspect of limitation is concerned, First Schedule of the Limitation Act, 1963 provides for the period of limitation that under Article 54 “for specific performance of a contract, the period of limitation is three years”. The recitals of the agreement of sale disclose that the defendants have to demarcate the suit schedule property within six months from the date of agreement of

sale. It is settled law that the courts, while exercising discretion in suits for specific performance, should bear in mind that when the parties prescribe a time/period, for taking certain steps or for completion of the transaction, that must have some significance and, therefore, time/period prescribed cannot be ignored. However, in the present case, a scrutiny of the evidence reveals that the plaintiff was already and willing to perform her part of the contract and there is no breach or refusal of any condition by the plaintiff. Since the condition stipulated is six months for a particular purpose, the burden was on the defendants to perform the same. Therefore, in the said circumstances, the plaintiff got issued a notice dated 02.01.1997 in Ex.A-2 implicitly acknowledging the fact that time was considered as essence and within three years from the period of limitation after issuing the notice. As there was no reply from the defendants in spite of receipt of notice, the present suit is filed for specific performance of agreement of sale. Since the plaintiff was ready and willing to perform her part of the contract and the defendants in spite of receipt of notice failed to give any reply, it would certainly constitute a demand for specific performance of the agreement of sale.

25. Learned senior counsel for the appellants submitted that failure to issue notice or failure to give reply to such notice would not amount to tacit consent in respect of demanded liability. In support of the same, learned counsel relied on the decision of this Court in *Manepalli Udaya Bhaskara Rao's* case (5 supra). In fact, it is the case of the plaintiff herein that in spite of issuance of notice dated 02.01.1997 Ex.A-2, defendants 1 to 3 received notice but did not respond. The plaintiff was willing to perform her part of the contract by paying balance sale consideration. It is not in dispute that the omission to reply to the notice does not amount to tacit consent in spite of execution of agreement of sale. However, the judgment in *Manepalli Udaya Bhaskara Rao's* case (5 supra) relates to the legal notice issued in respect of a summary suit filed under Sub-rule (5) of Rule 3 of Order XXXVII CPC. The facts and circumstances in the above case are different from the case on hand. However, in the instant case, the aforesaid legal notice under Ex.A-2 reflects the intention by the purchaser i.e., plaintiff that she is ready and willing to perform her part of the contract. Therefore, the conduct of the plaintiff herein clearly shows that the plaintiff was always ready and willing to perform her part of the contract

and she established that the defendants refused to perform their part of the contract. In the light of these circumstances, it is clear that Section 16(c) of the Specific Relief Act would come into force as the plaintiff has proved her case that she was ready and willing to perform her part of the contract and the defendants failed to assist the purchasers and had not come forward to complete their part and rightly the plaintiff got issued a notice and filed the suit for specific performance. Therefore, it can safely be concluded that the plaintiff was ready and willing to perform her part of the contract and rightly she is entitled for specific performance of agreement of sale dated 24.01.1994.

26. In view of the above, I am of the considered opinion that the appellate Court was justified in allowing the appeal and decreeing the suit filed by the respondent/plaintiff for specific performance. The findings of the appellate Court are hereby upheld. The present appeal has no merit and is liable to be dismissed.

27. Accordingly, the second appeal is dismissed, and the judgment and decree dated 16.09.2011 in A.S.No.288 of 2006

passed by the III Additional District Judge (FTC), Ranga Reddy District, is hereby affirmed. There shall be no order as to costs.

28. Miscellaneous petitions, if any pending, stand closed.

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**A.SANTHOSH REDDY, J**

27.04.2023

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