HON'BLE SRI JUSTICE NAGESH BHEEMAPAKA

A.S.No.559, 560, 561 AND 562 of 2009
AND
Tr.A.S.No.267 of 2013

COMMON JUDGMENT:

Parties to these Appeals and the relief prayed for is the same. Though separate evidence is recorded in the trail Court, as the point involved is the same, these Appeals are heard together along with the Review Applications filed and are being disposed of by way of a common judgment. The Review Applications filed in all the Appeals against the judgment dated 06.09.2022 were considered and allowed *vide* separate detailed common order. While arguing review applications, learned counsel for both the parties have taken this Court through merits of the Appeals also at length. In fact, they have drawn attention of this Court to the written submissions filed during the hearing of Appeals, and since the Appeals were filed in 2009 and disposed of in 2022, there is no justification to post them for hearing afresh in the light of the common order passed in the Review Applications.

2. For convenience sake, narration of factual matrix referred to in the earlier common judgment dated 06.09.2022 is taken into consideration. Parties are referred to as plaintiff and defendants.

3. Plaintiff filed all the suits on the file of the Court of Senior Civil Judge, Siddipet seeking Specific Performance of Agreement of Sale in respect of land to a total extent of Acs. 27.10 guntas covered under nine sale deeds. As already stated supra, pleadings and evidence in all the suits are one and the same and the trial Court decreed all the suits on 28.07.2009. In all these Appeals, defendant is appellant.

4. A.S.No.559 of 2009 is arising out of the judgment and decree in O.S.No. 145 of 2006, dated 28.07.2009 which was filed by the plaintiff to direct defendant to execute registered sale deed transferring and

conveying all his rights, title and interest in the suit schedule property i.e. agricultural land admeasuring Acs.6.19 guntas in Survey Nos. 171/1, 160/E and 166/U situated at Kallakal Village, Toopran Mandal, Medak District in favour of plaintiff by receiving balance sale consideration of Rs.1,60,000/- (covered under agreement of sale dated 27.10.2003) within the time fixed by the Court and further, to grant perpetual injunction restraining defendant, his agents, servants or any one claiming through or under him from interfering with plaintiff's peaceful possession and enjoyment of suit schedule property and also to award costs.

5. A.S.No.560 of 2009 is arising out of the judgment and decree in O.S.No. 146 of 2006, dated 28.07.2009 which was filed by plaintiff seeking a direction to defendant to execute registered sale deed transferring and conveying all his rights, title and interest in the suit schedule property i.e. agricultural land admeasuring Acs.2.20 guntas in Survey Nos. 159/VUU, 159/RU, 159/RUU, 159/LU, Acs.4.37 guntas in Survey. Nos. 166/AA, 166/EE and 169 (Total land admeasuring Acs.7.17 guntas) situated at Kallakal Village, Toopran Mandal, Medak District in favour of plaintiff by receiving balance sale consideration of Rs.2,05,000/- (covered under agreement of sale dated 30.10.2003) within the time fixed by the Court and further to grant perpetual injunction restraining defendant, his agents, servants or any one claiming through or under him from interfering with plaintiff's peaceful possession and enjoyment of suit schedule property and also to award costs.

6. A.S.No.561 of 2009 is arising out of the judgment and decree in O.S. No. 147 of 2006, dated 28.07.2009 which was filed by plaintiff seeking a direction to defendant to execute registered sale deed transferring and conveying all his rights, title and interest in the suit schedule property i.e. agricultural land admeasuring Acs.7.09 guntas in

Survey Nos. 160/E, 168/EE, 160/A, 168/A situated at Kallakal Village, Toopran Mandal. Medak District in favour of plaintiff by receiving balance sale consideration of Rs. 1,80,000/- (covered under agreement of sale dated 10.11.2003) within the time fixed by the Court and further to grant perpetual injunction restraining defendant, his agents, servants or any one claiming through or under him from interfering with plaintiff's peaceful possession and enjoyment of suit schedule property and also to award costs.

7. A.S.No.562 of 2009 is arising out of the judgment and decree in O.S.No. 149 of 2006, dated 28.07.2009 which was filed by plaintiff seeking to direct defendant to execute registered sale deed transferring and conveying all his rights, title and interest in the suit schedule property i.e. agricultural land admeasuring Acs.3.30 guntas in Survey Nos. 158/2/2/A and 158/2/2/AA situated at Kallakal Village, Toopran Mandal, Medak District in favour of plaintiff by receiving balance sale consideration of Rs.1,00,000/- (covered under agreement of sale dated 07.11.2003) within the time fixed by the Court and further to grant perpetual injunction restraining defendant, his agents, servants or anyone claiming through or under him from interfering with plaintiff's peaceful possession and enjoyment of suit schedule property and also to award costs.

8. Tr.A.S.No.267 of 2013 is arising out of the judgment and decree in O.S.No. 148 of 2006, dated 28.07.2009 which was filed by plaintiff seeking to direct defendant to execute registered sale deed transferring and conveying all his rights, title and interest in the suit schedule property i.e. agricultural land admeasuring Acs.2.15 guntas in Survey Nos. 156/RUU and 157/A situated at Kallakal Village, Toopran Mandal, Medak District in favour of plaintiff by receiving balance sale consideration of Rs.60,000/- (covered under agreement of sale dated

14.11.2003) within the time fixed by the Court and further to grant perpetual injunction restraining the defendant, his agents, servants or any one claiming through or under him from interfering with the plaintiff's peaceful possession and enjoyment of the suit schedule property and also to award costs.

9. The oral and documentary evidence will be discussed as to the extent required for proper appreciation of facts.

10. The case, in brief, of plaintiff is that defendant is the absolute owner and possessor of agricultural lands admeasuring Acs.27-10 guntas in Survey Nos. 156 to 160, 168, 169 and 171 of Kallakal Village and defendant purchased the said lands under registered sale deeds dated 24.05.2003, 14.07.2003, 16.07.2003, 28.08.2003, 19.09.2003 and 22.10.2003. It is also the specific case of plaintiff that defendant offered to sell the lands for a valuable consideration and earnest money was paid by him and he was willing to perform his part of the contract, but the defendant did not turn up to execute sale deeds in favour of plaintiff and kept postponing the same. Recitals of the plaint also disclose that plaintiff is known to defendant for more than ten years as on the date of filing the suit.

11. On the other hand, the case of defendant, in brief, is that he was the absolute owner of subject land to a total extent of Acs.27-10 guntas in Kallakal Village, having purchased the same under different registered sale deeds from pattadars and was in possession of said land and also applied for mutation of his name in revenue records and accordingly, the Mandal Revenue Officer, Toopran passed orders dated 12.08.2004 mutating his name. Pursuant to it, pattadar passbooks and title deeds were also issued in favour of defendant. It is the specific contention of defendant that he had no intention to sell the property and defendant being the Managing Director of M/s Kamal Spring Fields Pvt.

Ltd., wherein his wife and friend by name P.B.S.V.Satyanarayana Raju and his wife are share holders, purchased Acs.11.00 of land in Survey Nos. 388 P, 523 P and 524 P of Gundla Pochampally Village, Medchal Mandal and vendor applied to HUDA (Hyderabad Urban Development Authority) for grant of layout. Further, the said Real Estate Company purchased property under registered sale deeds dated 08.03.2004 and 15.03.2004 and later HUDA granted a draft layout on 30.11.2004. As per the norms of HUDA, 25% of the plots which are to be developed, should be mortgaged in favour of HUDA, till the final layout is sanctioned. As the Company faced financial difficulties in procuring funds for undertaking development of land situated at Gundla Pochampally Village, at that juncture ie. in February 2005, plaintiff expressed his willingness to purchase 20 plots, provided, the Company reduces the price and gives security for completing development activities and also for obtaining final layout. It is the further pleading of defendant that plaintiff insisted him to deposit title deeds and link documents pertaining to the property of Kallakal village and insisted him to make signatures on blank agreements of sale which would be returned, after approval of final layout and that plaintiff got prepared the blank agreements of sale on Rs. 100/- non-judicial stamp papers numbering twelve, consisting of half-printed agreement proformas with blanks. Further, defendant signed all the blank agreement proformas and also handed over nine original registered sale deeds pertaining to the land at Kallakal village to plaintiff who filed suits on the basis of blank agreements of sale by interpolating the particulars. It is also the contention of defendant that plaintiff purchased land to an extent of 5,882.3 square yards covered under twenty registered sale deeds, out of which, eight were executed in favour of plaintiff, nine in favour of plaintiff's wife named G.Shanthi, two in favour of plaintiff's son named Ajithesh and one sale deed in favour of

plaintiff's sister's daughter named K.Prathibha and all the said sale deeds were executed on 23.02.2005 and 11.05.2005.

12. Recitals of written statement further disclose that neither defendant executed agreements of sale in favour of plaintiff with respect to suit schedule properties nor did he receive any amounts from plaintiff. Plaintiff and brother of defendant by name Sri Mahesh Chandra Benerjee agreed to purchase an extent of 600 square yards in Plot bearing No.289 of Vijaya Co-operative Society, Jubilee Hills, Hyderabad and brother of defendant paid an amount of Rs. 15,00,000/- by way of demand draft, for which, plaintiff obtained agreement of sale-cum-GPA on 26.08.2004 in the name of his wife G.Shanthi and it was agreed that plaintiff would sell property and distribute the amount between plaintiff and brother o the defendant. Accordingly, wife of plaintiff sold the said property to third parties *vide* registered sale deed dated 11.05.2006 and fearing of possible civil and criminal action by the brother of defendant, plaintiff utilized the blank agreements of sale which are with different dates, for filing suits, taking advantage of the fact that the original sale deeds (link documents) of the suit schedule property are with him.

13. It is the specific contention of defendant that if at all he executed agreements of sale on different dates in 2003 in favour of plaintiff, he would not have applied for mutation and obtained pattadar passbooks on his name in 2004 and that defendant has no obligation to execute sale deeds based on fabricated agreements, and therefore, suits are liable to be dismissed.

14. A detailed rejoinder was filed by plaintiff in all the suits contending *inter alia* that defendant got the agreements of sale prepared on stamp papers purchased by him and after duly filling up the blanks on the agreements of sale, defendant had signed them. Further, plaintiff is cultivating the suit schedule land which is in his possession from the

date of agreement and that twenty sale deeds executed by defendant relate to individual transactions which are unconnected with the present agreements of sale.

15. Basing on the pleadings, the trial Court has framed the following issues for trial in all the suits:

1. Whether the plaintiff is entitled for specific performance of agreement of sale directing the defendant to execute the registered sale deed in favour of the plaintiff by receiving balance sale consideration?

2. Whether the defendant had deposited the title deeds with the plaintiff as security, in respect of some transaction at Gundla Pochampally village, Medchal, R.R.District as alleged by the defendant?

3. Whether the suit agreement is fabricated, all contents of the agreement are subsequently filled as alleged by the defendant?

4. To what relief?

16. During trial, on behalf of plaintiff, PWs. 1 to 3 were examined and Exs.A-1 to A-8 were marked. On behalf of defendant, DWs.1 to 3 were examined and Exs. B-1 to B-40 were marked.

17. The trial Court, after considering oral and documentary evidence, decreed all the suits directing defendant to execute registered sale deeds in respect of suit schedule properties in favour of plaintiff.

18. The points for consideration in these Appeals are:

i. Whether Ex. A1 document in all the suits is an agreement of sale and are genuine and binding on the defendant?

ii. Whether the plaintiff is entitled for a decree for specific performance of Ex.A1?

iii. To what relief?

19. Heard Sri Y. Srinivasa Murthy, learned Senior Counsel appearing on behalf of Sri K. Durga Prasad, learned counsel for Appellants and Sri D. Jagadeshwar Rao, learned counsel for Respondents and perused the entire record.

20. On perusal of the record, it is evident that plaintiff filed plaint and rejoinder and marked Exs. A-1 to A-8 in support of his case while defendant filed written statement and got marked Exs. B-1 to B-40 to substantiate his contentions. The entire evidence was marked in O.S. No. 145 of 2006 and no separate evidence was lead in any of the other suits.

21. It is contended by learned Senior Counsel appearing for the Appellants, *inter alia*, that the nature of Ex. A-1 is not an agreement of sale capable of being enforced for specific performance as it does not satisfy the ingredients of an agreement of sale though it is styled as such. A perusal of Ex. A-1 in the manner in which it is brought into existence does not instil any confidence in a prudent man to construe it as an agreement of sale. It is contended that important aspects of documents are handwritten and that they are intended only as a security for hand loan borrowed by defendant. He argues that Ex. A-1 does not disclose by what mode, the consideration mentioned therein was transferred; identity of property under transaction is doubtful as it is vague, uncertain and ambiguous; when possession was delivered under the document, it does not satisfy the ingredients of the AP Amendment Act 4 of 1999 to the Registration Act; the conduct of the parties wherein the defendant registered the sale deeds in favour of plaintiff and his family members in respect of other lands speaks volumes regarding genuineness of Ex. A-1 and its very nature, plaintiff had never paid balance sale consideration to be paid within 9 months as admitted even in the so-called Ex. A-1 agreement of Sale; plaintiff is habituated to lend money in cash and have documents executed as per his choice and retain the originals as security for his loan disbursed, that his admissions in the cross examination as regards payments he makes, the fact of the impugned transaction not being reflected in IT returns

filed by him, the strained relationship from 2005 as is evident on a perusal of the record would go a long way to presume that suit transaction under Ex. A-1 is only sham, nominal and not binding on defendant, the trail Court ought to have drawn presumption that defendant issued blank stamp papers only for the purpose of security for another transaction; plaintiff has come to Court with unclean hands and no equitable relief of specific performance can be granted and that suits are liable to be dismissed with costs.

22. Learned counsel for appellants also brought to the notice of this Court about filing I.A.No.2 of 2022 in A.S.No. 559 of 2009 for receiving additional documents to be marked in evidence on behalf of plaintiff, which, according to them, could not be filed during the Appeal as they were made available subsequently. Reasoning as regards receiving of the same is dealt with separately while disposing of this Appeal after appreciating whether they do require for adjudication of the issues raised in this Appeal.

23. In support of his contentions on merits, the learned Senior Counsel relied on the judgment of the Apex Court in ***Veena Singh v District Collector***[1] to substantiate his contention that even though signature on the document is admitted, it does not amount to due 'execution'. He also relied on ***State of Punjab v Hindustan Development Board Ltd., Amritsar***[2] to fortify his contention that it is of the essence of contract that there should be an aggregation of mention, the meeting of minds of the contracting parties. In the absence of the same, according to him, the document styled as Ex.A-1 is not valid and binding on the defendant. He also relied on the decision of Privy Council reported in ***MA THAUNG v. MA THAN***[3] and contended that if the written contract is doubtful in its meaning, the surrounding circumstances

[1] (2022 (7) SCC 1)
[2] AIR 1960 Punjab 585
[3] AIR 1924 PC 88

existing in creating the contract must be looked into apart from the conduct of the parties.

24. Learned Senior Counsel also relied on the judgment of the Hon'ble Supreme Court in ***Ranganayakamma v K.S. Prakash (D) By Lrs***[4] to the effect that there should be consensus ad idem for a concluded contract and the same shall be void in case of transfer without consideration as is required under the Contract Act. Learned counsel has also taken this Court to Paras 7 to 9 of the decision reported in ***Pavan Kumar Dutt v Sakunthala Devi***[5] to contend that when the agreement in question lacks recitals relating to boundaries and there is no clarity as regards the property in transaction for sale, Courts are not expected to pass a decree which is not being capable of enforcement under the provisions of the Specific Relief Act. Similarly, he relied on ***Aloke Bose v. Parmatma Devi***[6], ***S.M. Gopal Chetty v. Raman Alias Natesan***[7], ***A. Abdul Rashid Khan (dead) v. P.A.K.A. Shahul Hameed***[8] and also the provisions of Sec.54 of the Transfer of Property Act, 1882, the Specific Relief Act, the Indian Contract Act, 1881 to substantiate his contentions.

25. *Per contra,* learned counsel for respondents, while drawing Court's attention to the contentions raised by Sri Y. Chandra Sekhar, learned Senior Counsel appeared at the first instance, submits that he adopts the same. He also contended *inter alia* that Review Applications are not maintainable in law; suit document Ex. A-1 is true, valid and binding; reasoning of the learned Single Judge, who heard the Appeal on merits at the first instance, is sound and cannot be interfered with; plaintiff had paid earnest money, Ex. A-1 was executed by defendant; his signature on the document was admitted, that as defendant is evading performance of his part of the contract, he is compelled to institute the

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[4] AIR 1997 SC 1411
[5] (2010) 15 SCC 601
[6] (2009) 2 SCC 582
[7] AIR 1998 Madras 169
[8] (2000) 10 SCC 636

suit immediately without issuance of any notice; the documents filed in the suit prove the case of plaintiff and no oral evidence can be substituted for the recitals in the documents as is barred under the provisions of the Indian Evidence Act; plaintiff was put in possession of subject lands, that he is ready and willing to perform his part of contract and defendant has not come forward to receive balance sale consideration and execute a regular sale deed and that there is no error or irregularity in the judgments of lower court and the same requires to be confirmed.

26. Learned counsel for respondents also submitted that the submissions made by the learned Senior Counsel earlier may be considered along with the case law he relied on and prayed that Review Applications and the Petition to receive additional documents sought to be marked and the Appeals are to be dismissed as there are no merits.

27. Upon hearing the respective counsel, perused the original records and have also gone through the evidence that has been let in along with the pleadings. I have also anxiously considered the judgment of the learned Single Judge recorded in these Appeals. This Court is of the considered opinion that there are errors apparent on the face of the record and the judgment under Review requires reconsideration on merits for the reasons stated in the order passed separately.

28. Having appreciated the pleadings and the evidence on record, this Court proceeds to consider the Appeals as arguments were advanced on merits by the respective counsel during hearing of Review Applications.

29. A perusal of Ex. A-1, basic document on which the parties have been litigating, shows that recitals are of two-natured. The covenants of Ex. A-1 and Schedule Property referred to in Ex.A-1 are extracted hereunder for better appreciation of the transaction.

"**NOW THIS AGREEMENT OF SALE WINTNESS AS FOLLOWS:**

1. That the Purchasers have paid a sum of Rs 6,30,000/- (Rupees Six Lakhs Thirty Thousand only) on 27-10-2003 as part of sale consideration, the receipt of which the vendors hereby admit and acknowledge.
2. That the vendors have delivered vacant possession of the schedule property unto the purchaser on 27-10-2003 and both the parties hereby confirm the same.
3. That the purchaser should develop the property with his own expenses and get permissions, if any required from the concern departments.
4. That the purchaser hereby assure the vendors that he will develop the schedule property and get all necessary permissions from the concerned departments and sell the property in partly or wholly, by paying the balance sale consideration to the vendors by registering the sale deeds in the name of the purchasers or their nominees.
5. That the Vendors having agreed to sell the schedule property shall cooperate and coordinate with the purchaser by filling necessary applications, affidavits, and declarations required for obtaining the necessary permissions from the concerned departments.
6. That the purchasers have agreed to pay out the balance of sale consideration in respect of the schedule property within Nine months from the date of this agreement by transferring of the above said property on their names or their nominees.

7. That the recitals mentioned herein above are true and correct and nothing materials been concealed there from.

SCHEDULE OF PROPERTY

"All that property of agricultural lands bearing Survey Nos. 171/1, 160/ And 168/ The total extent of land Ac. 6-19 Gts situated at Kallakal Village, Mandal Toopran, Medak Dist."

30. In the light of the said recitals of Ex. A-1, it is to be noticed that the total consideration payable, consideration paid, dates, survey numbers, extents, etcetera are all hand-written. The nature of document, though styled as an agreement of sale, the language used in the document goes to suggest that it is not clear that it is an out and outright agreement of sale. The recitals of the covenant are contradictory. It is also true that identity of the property as reflected in the document is vague and no boundaries are stated in the document. Having regard to the same, it cannot be said that Ex. A-1 can be treated as an agreement

of sale for enforcement for the purpose of the decree for specific performance of the same.

31. Further, the stamp paper appears to have been purchased on 25.10.2002, whereas the document, as per hand writing, appears to have been executed on 27.10.2003. In view of the fact of delivery of possession, if accepted to be true, then it requires registration as per the AP Amendment to Registration Act and the said fact also goes a long way to consider the genuineness of the document of Ex. A-1.

32. In appreciating the probabilities in execution of Ex. A-1 which may lead to decide its genuineness, conduct of the parties and money dealings between them are to be noticed. The oral evidence of PW1 and DW1 and their admissions go to show that plaintiff is habituated to lend money to persons in need on having security of documents, blank stamp papers, promissory notes, cheques, etcetera. It is also clear from the conduct of the parties that the defendant in fact registered 21 sale deeds in respect of Gundla Pochampally lands to the defendant between 23-03-2005 and 11-05-2005 which demonstrates that defendant had not performed his part of the contract would be incorrect and the subsequent conduct disproves the case of plaintiff. It is also clear from the factum of payment of earnest money; the said payment in the absence of the specific recital of the mode of payment is vague and uncertain and it also gives an impression that it is only a sham transaction not supported by consideration. Absence of these particulars in the IT returns of plaintiff also goes a long way in establishing execution of Ex. A-1 shrouded in suspicion.

33. The evidence on record also does not disclose whether plaintiff is ready and willing to perform his part of contract. The conduct of plaintiff in not disclosing the aforesaid facts in his case goes to establish that plaintiff has not approached this Court with clean hands. Except the

arguments advanced in the Appeals, there is nothing on record to substantiate that plaintiff is ready and willing to perform his part of contract. It is a mandatory requirement of law that it is for plaintiff to plead and prove that he is ready and willing to perform his part of contract and in the absence of the same, he is not entitled to seek decree for specific performance of agreement of sale. The fact that institution of suit without issuing notice to defendant calling upon him to perform his part of the contract and in the absence of the same it cannot be assumed that there is any refusal on the part of defendant to perform his part of the contract even assuming that the document Ex. A-1 is an agreement of sale supported by consideration of payment of earnest money and that there is consensus between the parties that the document is so executed for a proposed sale transaction. In the absence of issuance of a notice to the defendant calling upon him to perform his part of the contract, plaintiff has not established a cause of action for him to institute the suit for specific performance and seek a decree therefor. Even on the said count, the suit transaction cannot be enforced.

34. The contention of appellant is that there is no consensus ad idem which is mandatory for a valid contract and the document Ex. A-1 on its construction and its recitals do not establish that it is an agreement of sale. In the light of the decision of the Apex Court in ***Veena Singh,*** referred to supra, it can be safely be said that mere admission of a signature on the document Ex.A-1 does not amount to valid execution and that would constitute the meeting of minds between parties. The transactions between the parties as regards Gundla Pochampally, the fall out of their relations after institution of criminal case by the brother of defendant against plaintiff and his wife are the other circumstances which goes to show the transaction is only a sham transaction not supported by consideration and the institution of the suit is only a

counter blast. Therefore, it cannot be presumed that suit transaction is not an agreement of sale and can be enforced under the provisions of the Specific Relief Act.

35. The evidence of PWs. 1 to 3 and DWs. 1 to 3 coupled with the documentary evidence would also, on appreciation, makes it clear that suit transaction is an off-shoot of a monetary dealing between the parties to the document and the cases between the parties hereto. It is settled law that it is for plaintiff, who comes to the court to prove his case and the burden of proof of the case cannot be shifted to the defendant in any case more so when the plaintiff has failed to prove his case. He, in fact, had failed to establish refusal of defendant to perform his part of contract which is mandatory ingredient to constitute the cause of action for institution of suit for specific performance of alleged Ex.A-1 agreement of sale.

36. Having regard to the discussion made hereinabove, there is no reason for this Court to receive any additional documents filed along with I.A. No. 2 of 2022 and the same is closed *vide* separate order.

37. In the result, Appeal Suit Nos. 559, 560, 561 and 562 of 2009 and Tr. A.S.No.267 of 2013 are allowed and judgment and decrees dated 28.07.2009 in O.S.Nos. 145, 146, 147, 148 and 149 of 2006 on the file of the Senior Civil Judge, Siddipet are set aside and the suits are dismissed. There shall be no order as to pass.

38. All the miscellaneous petitions, if any pending are stands closed.

NAGESH BHEEMAPAKA, J

30th October 2024

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