*** THE HONOURABLE SMT. JUSTICE M.G. PRIYADARSINI**

\+ **Appeal Suit No.69 OF 2019**

% 16.04.2024

\# Between:

Podila Sailaja @ Lakkineni Sailaja

Appellant

Vs.

Podila Sasikala

Respondent

! Counsel for Appellants : Sri Vadeendra Joshi

^ Counsel for Respondents : Sri L. Srinivas Patel

<GIST:

> HEAD NOTE:

? Cases referred :

1. CCCA Nos.111 and 112 of 2021 decided on 10.06.2022
2. AIR 1969 SC 73
3. 2006 SCC Online AP 754
4. 2022 SCC Online SC 1545
5. 2022 SCC Online SC 840
6. (2009) 7 Supreme Court Cases 444

THE HONOURABLE SMT. JUSTICE M.G. PRIYADARSINI

A.S.No.69 OF 2019

JUDGMENT:

Aggrieved by the judgment and decree dated 20.11.2018 in O.S.No.30 of 2014 (hereinafter will be referred as 'impugned judgment') passed by the learned VI Additional District Judge at Siddipet (hereinafter will be referred as 'trial Court'), the defendant No.2 preferred the present appeal to set aside the impugned judgment.

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

3. The brief facts of the case, which necessitated the appellant to file the present appeal, are as follows:

a) The plaintiff filed O.S.No.30 of 2014 against defendant Nos.1 and 2 seeking specific performance of agreement of sale – cum- GPA and to declare the registered sale deed bearing document No.6153 of 2014 dated 08.05.2014 as null and void and not binding on the plaintiff and for perpetual injunction restraining the defendants from interfering with the peaceful possession and enjoyment of plaintiff in respect of agricultural land admeasuring Ac.4.24 guntas in Sy.No.61

of Brahmanpally Village, Toopran Mandal, Medak District (hereinafter will be referred as suit schedule property). The brief averments of the plaint are as under:

i) Defendant No.1 has executed an agreement of sale cum GPA with possession in favour of suit schedule property vide document bearing No.142 of 2012 dated 03.02.2012 by receiving sale consideration from the plaintiff and also delivered vacant, physical and peaceful possession of the property apart from handing over all the original documents to the plaintiff. As per the terms of agreement, defendant No.1 agreed to execute registered sale deeds in favour of intending purchasers either in part or in total.

ii) Without knowledge of the plaintiff, the defendant No.1 by suppression and concealment of material facts of agreement, sold away suit property to defendant No.2 vide document bearing No.6153 of 2014 dated 08.05.2014. Defendant No.1 is not competent to execute impugned sale deed in favour of defendant No.2 during subsistence of agreement of sale cum – GPA. The impugned sale deed executed by defendant No.1 in favour of defendant No.2 is a fraudulent document and thus, liable to be declared as null and void and not binding on the plaintiff.

iii) On 27.11.2014 defendant No.2 along with her henchmen in collusion with defendant No.1 came to suit land, tried to dispossess the plaintiff, who could resist them with the help of neighbours and well wishers. Hence, plaintiff filed the suit for specific performance.

b) In reply to the plaint averments, the defendant No.1 filed written statement, the brief averments of which are as under:

i) Plaintiff misrepresented the actual facts as the plaintiff executed an undertaking letter dated 03.02.2012 on the same day when the document No.142 of 2012 was executed. The plaintiff did not pay any sale consideration and executed an undertaking letter to defendant No.1 and stated that he will pay sale consideration of Rs.10,00,000/- to defendant No.1 on 18.03.2012. Defendant No.1 executed a Revocation Deed on 17.01.2013. There is no delivery of possession and no sale consideration was paid by the plaintiff. There is no cause of action for filing of the suit. Suit is bad for suppression of facts.

ii) Defendant No.1 issued notice to the plaintiff, for which the plaintiff issued reply notice on 30.07.2014, then defendant No.1 issued rejoinder notice to the counsel for the plaintiff. Plaintiff filed the suit suppressing the fact that GPA was cancelled. It is defendant

No.2, who is holding peaceful possession as absolute owner. Plaintiff is aware about the case vide File No.F3/2831/2012, F3/22/ROR/2012 adjudicated before the Joint Collector.

iii) Originally Mohammed Hafeezuddin, S/o. Mohd. Sardar Ali was pattadar and possessor of suit schedule property and he has gifted the said land on 02.11.1947 to Mohd. Amjad Ali, S/o.Md.Mumtaz Ali, who is brother in law (sister's husband). After the demise of Mohd. Amjad Ali, his sons Mohd. Jaffar Ali and Mohd.Mumtaz Ali succeeded the land as sons and MRO, Toopran issued ROR proceedings in favour of Jaffar Ali being elder son of Mohd. Amjad Ali and in the present case, plaintiff allegedly got General Power of Attorney from defendant No.1 only and said GPA is null and void.

c) In reply to the plaint averments, the defendant No.2 filed written statement, the brief averments of which are as under:

i) Defendant No.2 purchased only after verification of title and possession of defendant No.1 Mohammad Jaffer Ali, Mohammed Mumtaz Ali for a consideration of Rs.13,80,000/- vide registered sale deed bearing document No.6153 of 2014 dated 08.05.2014. The defendant No.2 was inducted into possession by their vendors. Plaintiff and defendant No.1 were having cordial relationship, with a

pre plan created alleged agreement of sale cum GPA to deceive intending purchasers.

ii) The relief of specific performance is an equitable relief. Plaintiff filed suit in collusion with defendant No.1 by suppressing the real facts. Defendant No.2 is a bonafide purchaser. After receiving summons, defendant No.2 questioned defendant No.1, who replied that he cancelled the said agreement of sale - cum – GPA, as plaintiff did not pay any sale consideration nor possession was delivered to plaintiff.

iii) On the death of Mohd. Amjad ali, the suit land devolved on his sons defendant No.1 Mohammed Jaffar Ali and Mohammed Mumtaz Ali, as such the alleged agreement of sale – cum – GPA bearing document No.142 of 2012 dated 03.02.2012 is void and it cannot be enforced against third party. The suit is bad for non joinder of necessary party. Defendant No.2 is in possession and enjoyment of the suit land and question of dispossession of plaintiff does not arise.

d) Based on the pleadings of both the sides, the trial Court has framed the following issues and additional issue:

1. *Whether the registered agreement of sale cum GPA document*

No.142 of 2012 dated 03.02.2012 is true, valid and binding on the defendants?

2. *Whether the plaintiff is entitled for specific performance of agreement of sale dated 03.02.2012 by defendants with respect to suit property?*
3. *Whether the plaintiff is entitled for declaration that the registered sale deed document No.6153/2014 dated 08.085.2014 of Joint Registrar, Sangareddy is null and void and not binding on the plaintiff"*
4. *To what relief?*

Whether the plaintiff is entitled for perpetual injunction restraining the defendants from interfering in the possession and enjoyment of plaintiff over suit property?

e) The plaintiff, in support of his contentions, examined himself as PW1 and got marked Exs. A1 to A10. On the other hand, the defendants got examined DWs 1 and 2 and got marked Exs.B1 to B3. The trial Court on appreciating the evidence on record, has decreed the suit by directing the defendant No.1 to executed registered sale deed in favour of plaintiff in respect of suit schedule property within two months, failing which the plaintiff is at liberty to proceed as per law. Further, the registered sale deed bearing document No.6153/2014 dated 08.05.2014 executed by defendant No.1 in favour of defendant No.2 was declared as null and void and not binding on the plaintiff. The defendant Nos.1 and 2 were

restrained by way of perpetual injunction from interfering inn the peaceful possession and enjoyment of the plaintiff over the suit lands.

4. Aggrieved by the judgment and decree, the defendant No.2 filed the present appeal.

5. Heard both sides and perused the record including the grounds of appeal.

6. It is the contention of the defendant No.2 that the cause of action shown by the plaintiff is concocted one for the purpose of filing the suit and that the trial Court failed to take into consideration that prior to filing of the suit no notice was issued to the defendants to execute the sale deed. It is to be seen that except asserting that the cause of action shown by the plaintiff is concocted one, the defendant No.2 has not produced any material before this Court. If at all the contention of the defendant No.2 is true, then certainly the defendant No.2 ought to have elicited the same while cross examining the plaintiff/PW1 or atleast she ought to have given a suggestion to PW1 in that regard. But there is no such instance. Moreover, the plaintiff has clearly stated five dates on which cause of action arose for him to file the suit i.e., on 03.02.2012 when

agreement of sale cum GPA with possession was executed between plaintiff and defendant No.1, on 08.05.2014 when the impugned sale deed document No.6153 of 2014 and finally on 27.11.2014 and 09.12.2014 when the defendants threatened the plaintiff to dispossess him from the suit schedule property. The factum of execution of Ex.A1 and Ex.B1 on 03.02.2012 and 08.05.2014 respectively is not being denied by the defendant No.2. Coming to the aspect of issuing notice prior to filing of suit for specific performance, the requirement of issuing a legal notice before filing a suit for specific performance is not mandatory in all cases. Moreover, it is to be seen that when the plaintiff has come to know about the execution of sale deed by defendant No.1 in favour of defendant No.2 during the subsistence of Ex.A1 Agreement of Sale – cum – irrevocable GPA between plaintiff and defendant No.1, there is no point in sending legal notice to the defendants rather than filing a suit for specific performance, more particularly, when the defendants alleged to have come to the suit schedule property and threatening the plaintiff to dispossess him from the suit schedule property.

7. It is further contention of the defendant No.2 that the trial Court failed to see that the plaintiff utterly failed to show that he was in physical possession of the suit schedule land and has not filed an

iota of evidence to prove his physical possession and that except oral statement of the plaintiff, no documentary evidence is filed. The learned counsel for the defendant No.2 contended that there is no proof of delivery of possession after execution of the agreement of sale – cum – GPA and the trial Court has failed to take into consideration that no mutation has taken place in revenue records in favour of the plaintiff. Though the plaintiff has got marked Exs.A1 to A10, much reliance is placed on Ex.A1 i.e., Agreement of sale – cum – irrevocable GPA with possession. The description of the document itself speaks a lot about the nature of the document. It is very much evident that the possession was also delivered on the date of execution of document. Thus, no other better document can be expected other than Ex.A1 from the plaintiff to establish his possession over the suit schedule property. It is settled law that mere execution of Agreement of Sale cum GPA would not confer any title to the immovable property. Thus, there is no point in expecting mutation of name of the plaintiff in revenue records based on Ex.A1 i.e., Agreement of sale – cum – irrevocable GPA with possession.

8. The learned counsel for the defendant No.2 contended that the trial Court failed to take into consideration that the vendor of the plaintiff i.e., defendant No.1 is not the exclusive owner of the suit

schedule property and ought not to have decreed the suit for specific performance when the plaintiff himself has admitted the same. It is specific contention of the defendant No.2 that the property originally belongs to Mohd. Hafeezuddin, who has gifted the property to his Mohd. Amjad i.e., father of defendant No.1 and after the death of Mohd.Amjad the suit schedule property would succeed to his two sons i.e., the defendant No.1 and one Mumtaj Ali. In order to refute the above contentions, the plaintiff relied upon Exs.A3, A4 and A10 i.e., original pattadar passbook, original title deed and original proceedings No.B/3137/2009 issued by Tahsildar Toopra mandal in favour of Defendant No.1 in respect of suit schedule property. A perusal of Ex.A10 clearly discloses that the defendant No.1 has submitted an application before the Tahsildar, Toopran Mandal and on such application and revenue records i.e., Khasra Pahani for the years 1954-55, 1979-80, 1989-90, gift deed executed in the year 1947 and report of Mandal Revenue Inspector, succession was granted in favour of defendant No.1 by the Tahsildar, Toopran Mandal. A perusal of Ex.A1 discloses that the brother of defendant No.1 i.e., Mumtaj Ali has subscribed his signature as a witness to the said document. If a witness is stranger to the transaction and its parties, then certainly the question of not knowing the contents of the document arises. But the attesting witness to Ex.A1 is none

other than the own brother of defendant No.1. In such circumstances, the brother of defendant No.1 would certainly be aware of the transaction that his brother is alienating the suit schedule property in favour of plaintiff. Even for the sake of arguments, if we accept that the brother of defendant No.1 is also having claim over the suit schedule property, there is no explanation from the defendants as to what prevented the defendant No.1 to make his brother as party to Ex.A1. It is not the case of defendants that Ex.A1 is forged and fabricated document. Even on perusal of Ex.A2, it is clearly stated that defendant No.1 is the absolute owner and peaceful possessor of the suit schedule property. It was further averred that vendor Nos.2 to 4 were joined as vendors along with vendor No.1 to avoid future litigation. Thus, even from the contents of Ex.A2, it is very much clear that vendor Nos.2 to 4 have no interest over the suit schedule property and only to avoid future litigations, their names were added as co-vendors.

9. It is surprising to note that defendant No.1 did not come forward to enter into the witness box to depose about his grievance. There is no explanation on the part of defendant No.1 as to why he has executed sale deed under Ex.B2 in favour of defendant No.2 during the subsistence of Ex.A1. It is not the case of the defendants

that Ex.A1 was terminated or cancelled under due process of law. It is not even the case of the defendants that defendant No.1 has not executed Ex.A1 in favour of the plaintiff. When defendant No.1 is intending to execute sale deed in favour of defendant No.2 in respect of suit schedule property, he ought to have cancelled Ex.A1 which is subsisting between plaintiff and defendant No.1 in respect of same property. Mere issuance of legal notice by defendant No.1 to plaintiff expressing his intention to cancel the GPA is not sufficient. It is pertinent to note that after issuance of legal notice defendant No.1, the plaintiff has also issued reply notice. But unfortunately none of the parties before this Court could produce the alleged correspondence between them to ascertain as to what kind of conversation took place between them.

10. It is further contention of the defendant No.1 that the trial Court failed to take into consideration that the agreement of sale – cum – GPA was cancelled by the defendant No.1. It is the contention of the defendant No.1 that he has issued notice to plaintiff stating that the agreement of sale – cum – GPA is cancelled. Now at this juncture, it is appropriate to appreciate as to whether unilateral cancellation of agreement of sale – cum – GPA is permissible. It is pertinent to note that Ex.A1 is registered agreement of sale – cum –

irrevocable GPA with possession. In **Mr.P.Venkata Ravi Kishore v. M/s.JMR Developers Private Limited Represented by its Managing Director**[1] this Court observed as under:

> *"34. Section 202 keeps a small window to terminate the agency. But, its doors are automatically closed, when agent has an interest in the subject property and when no termination clause is incorporated in the agreement. By virtue of Exs.A1 and A2, agreements, interest is created to first plaintiff and the agreements have not provided for unilateral termination of agency. Therefore, the principal cannot cancel the agency unilaterally when the agent has interest in the suit schedule properties.*
>
> *35. Further, Section 202 of the Contract Act in general terms regulates the relationship of principal and agent. It does not impinge upon the parties to enter into written agreements and to register those agreements. Section 202 presupposes existence of a written agreement. If such agreement requires registration, it has to be registered under the Indian Registration Act. There is no overlapping of area covered by Section 202 of Indian Contract Act and Section 17 of the Indian Registration Act. They are in harmony with each other. At no stretch it can be assumed to override the statutory prescription of the Indian Registration Act and the Registration Rules made there under. The Registration Act and the Rules made there under, as held by the Constitutional Courts, prohibits unilateral cancellation of any document by one party without the consent of other party. Once an agreement is registered under the Indian Registration Act, such agreement cannot be cancelled unilaterally by one party to the detriment of other party even when it deals with agency and when no clause is incorporated in the registered document authorizing principal to unilaterally cancel the agency affecting the interest of the agent."*

In **Seth Loon Karan Sethiya v. Ivan E John**[2] the Honourable Supreme Court observed as under:

> *"8. There is hardly any doubt that the power given by the appellant in favour of the bank is a power coupled with interest. That is clear both from the tenor of the document as well as from its terms. Section 202 of the Contract Act provides that where the agent has himself an interest in the property which forms the subject-matter of the agency, the agency cannot, in the absence of*

---

[1] CCCA Nos.111 and 112 of 2021 decided on 10.06.2022
[2] AIR 1969 SC 73

> *an express contract, be terminated to the prejudice of such interest. It is settled law that where the agency is created for valuable consideration and authority is given to effectuate a security or to secure interest of the agent, the authority cannot be revoked. The document itself says that the power given to the bank is irrevocable. It must be said in fairness to Shri Chagla that he did not contest the finding of the High Court that the power in question was irrevocable."*

In the case on hand, a perusal of Ex.A1, which is a registered document, does not disclose any covenant with regard to power of principal in unilaterally cancelling the agreement. Moreover, covenant No.1 discloses that plaintiff paid Rs.6,90,000/- towards consideration and the same was acknowledged by the defendant No.1. Thus, certainly, the interest of the agent i.e., plaintiff is involved in the schedule property mentioned in the said agreement and thus, unilateral cancellation of said agreement under Ex.A1 causes great prejudice to the agent.

11. It is the contention of the defendant No.2 that the trial Court failed to take into consideration that no person other than the plaintiff was examined to show that plaintiff was in possession and not even a scrap of paper was filed to show that the plaintiff is in actual possession of the suit schedule property and whereas the defendant No.2 has not only examined herself but also his neighbour to show that she was in possession of suit land and nothing was elicited from the said witness to discredit his testimony. As stated

supra, no other better document can be expected other than Ex.A1 to establish the possession of plaintiff over the suit schedule property. Furthermore, the title and possession of the defendant No.2 over the suit schedule property is subject to cancellation of Ex.A1 by due process of law. The title and possession of defendant No.2 over the suit schedule property will be perfected only after cancellation of Ex.A1 by due process of law. Until and unless Ex.A1 is cancelled in accordance with law, defendant No.2 cannot claim her rights over the suit schedule property. DW2 admitted that he did not see any document showing suit land in the name of Limba Goud or Vara Laxmi. DW2 deposed that when the land of Limba Goud was surveyed he saw Varalaxmi at that time. DW2, who is village servant, did not depose about the extent of survey number 61. DW2 did not depose the specific month or year, much less the date, on which he saw the defendant No.2 at the suit schedule land. In such circumstances, the probability of DW2 identifying the suit schedule property allegedly belonging to defendant No.2 is doubtful. Even if the evidence of DW2 is considered as true and correct, it is settled law that the title of the owner of a property will be perfected

12. It is further contention of the defendant No.2 that trial Court has filed to see that defendant No.2 is a bonafide purchaser and that

the Agreement of sale – cum - GPA entered into by the plaintiff and defendant No. 1 is a sham document under which no consideration has been passed as evidenced by Ex.B2. It is contended that the trial Court has failed to take into consideration the undertaking given by the plaintiff to the effect that he still had to pay an amount of Rs.10,00,000/- to the defendant No.1 under Agreement of sale – cum – GPA and the same was admitted in the cross examination. Ex.B2 is alleged to be undertaking issued by the plaintiff stating that he has to pay Rs.10 lakhs to defendant No.1. But a perusal of Ex.A1 discloses that entire sale consideration was paid. On a comparison of Ex.B2 and Ex.A2 certainly an ambiguity arises as to what is the appropriate sale consideration that was agreed between the plaintiff and defendant No.1 for purchase of the suit schedule property i.e., Rs.6,90,000/- or Rs.10,00,000/- or Rs.16,90,000/-. Moreover, as per Ex.A1 the sale consideration of Rs.6,90,000/- is in proper perspective as the amount per acre was shown as Rs.1,50,000/- but as per Ex.B2 there is no explanation as to how the consideration of Rs.10,00,000/- was arrived. It is pertinent to note that there is no reference of Ex.A1 in Ex.B2 and there is no reference of Ex.B2 in Ex.A1. Defendant No.1 with an ulterior motive failed to come to the witness box to explain as to under what circumstances, Ex.B2 was executed by plaintiff. Though the plaintiff has admitted his

signature on Ex.B2, he denied the contents of Ex.B2. It is pertinent to note that the date on which Ex.B2 was executed is not available, however, the stamp was alleged to have purchased on 03.02.2012. Thus, the date of purchase of stamp paper of Ex.B2 and the date of execution of Ex.A1 are both one and the same day. When Ex.A1 was already executed with the contents that entire sale consideration was paid, then there is no necessity for the plaintiff to execute Ex.B2 stating that he has to pay Rs.10,00,000/- to the defendant No.1. If at all the plaintiff needs to pay Rs.10,00,000/- to defendant No.1 at a subsequent date to 03.02.2012 then certainly the same would have been incorporated in Ex.A1 Agreement of sale - cum – irrevocable GPA with possession. Even for the sake of arguments, if we consider that plaintiff has not paid entire sale consideration to the defendant No.1, then what prompted the defendant No.1 to hand over the physically possession of the suit schedule property to plaintiff prior to the payment of entire sale consideration as per the covenant No.3 of Ex.A1. Not only handing over the possession in respect of suit schedule property, a perusal of covenant No.4 of Ex.A1 discloses that the defendant No.1 has also handed over original link documents pertaining to the suit schedule property to the plaintiff. As discussed above, if the plaintiff has not paid entire sale consideration to the defendant No.1, there is absolutely no

circumstance prevails for defendant No.1 to deliver possession as well as original link documents to plaintiff, more particularly, prior to receipt of entire sale consideration (as per the contention of the defendants). The admission on the part of DW1, who is the husband of defendant No.2, that when he asked about original of passbook, defendant No.1 stated that said document was lost, lends any amount of credence to the version of plaintiff. This admission on the part of DW1 was not denied by defendant No.1. The defendant No.1 has not explained as to when and where he lost the documents. If at all the original link documents were lost by the defendant No.1, then certainly he ought to have taken some immediate measures to trace out the said documents. But there is no such instance in the case on hand.

13. Furthermore, DW1 deposed in his cross examination that even as on today the suit land stands in the name of Defendant No.1 in the official records. The suit was filed in the year 2014 and the evidence of DW1 was recorded on 20.04.2018. Even if we consider that defendant No.1 has executed sale deed under Ex.A2 in favour of defendant No.2, there is no explanation on the part of defendants as to why the name of defendant No.1 is still continuing as owner of the suit schedule property in the official records. It is also to be seen

that DW1 is doing real estate business and he is bound to obtain encumbrance certificate before purchase of the suit schedule property. Though DW1 pleaded ignorance about Ex.A1, it is to be seen that Ex.A1 is a registered document and it will be reflected in the encumbrance certificate. No man of ordinary prudence will dare to purchase a property without obtaining encumbrance certificate to know the previous encumbrances in respect of said property. DW1 deposed that he did not obtain encumbrance certificate. Ex.A5 encumbrance certificate obtained by the plaintiff on 17.12.2014 clearly discloses about execution of Ex.A1 between plaintiff and defendant No.1. Thus, the contention of defendant No.2 that Ex.A2 is sham document is unsustainable. It is pertinent to note that Ex.A1 is much prior to execution of Ex.A2. In the above circumstances, it is appropriate to state that Ex.A2 might have been created by the defendants to defeat the interest of plaintiff accrued to him by virtue of Ex.A1 rather than saying that Ex.A1 is a sham document created for the purpose of defeating the rights of defendant No.2.

14. The learned counsel for the defendant No.2 contended that the suit is liable to be dismissed on the ground of non-joinder of necessary parties as the plaintiff failed to add all the vendors of

Ex.A2 to the suit while seeking for cancellation of Ex.A2. In support of the said contention, the learned counsel for the defendant No.2 relied upon a decision in **D. Sarala v. P. Pratap Reddy**[3], wherein the High Court for the State of Andhra Pradesh observed as under:

> *"This decision by the Apex Court puts beyond doubt the necessity of the subsequent purchaser being made a party to the suit for specific performance. It also further indicates that a person directly and legally interested in the answers to the controversies involved in the suit regarding the rights set up and the relief claimed, will undoubtedly be a proper party and may also be a necessary party. If the vendor is not made a party to the suit to declare the sale deed executed by the vendor in favour of the subsequent purchaser as null and void, the vendor's rights and interests would be affected without notice to and without an opportunity of hearing for the vendor. Any grant of such declaration of nullity of sale deed is likely to make the vendor answerable for any claim by the subsequent purchaser for equities or the rights regarding the consideration paid by him or the damages or loss sustained by him or the compensation or reimbursement to which he may be entitled to. Though all rights of ownership in the property are conveyed and passed from the vendor to the subsequent purchaser under a registered conveyance, the absence of subsisting interest for the vendor in the property is only so long as that sale deed stands. If the sale deed were to be rendered legally ineffective in a judicial proceeding, the vendor will not only subject himself to any consequential claims from the subsequent purchaser due to the sale in his favour being nullified but also to the claims of the vendee to subject the vendor to specifically perform his contractual obligations in respect of the same property. In fact, it was held in Azhar Hasan and Ors. v. District Judge, Saharanpur and Ors. , that return of plaint by a civil Court was right, as the sale deed which has been questioned on the basis of fraud, was not executed by the plaintiffs but by others, and they were not parties thereto so as to allege the incidence of fraud. The decision clearly lays down the principle that when a sale deed is sought to be avoided on the basis of fraud, the executants of the sale deed must be made parties to the legal proceeding to avoid such sale. The principle has to as well extend to any suit or legal proceeding seeking to avoid the sale deed on any analogous ground. Cancellation of an instrument without impleading the executant thereof and without notice to and hearing him, is clearly opposed to the basic rules of natural justice and the fundamental*

---

[3] 2006 SCC Online AP 754

> *principles of judicial procedure. The same principles and logic by which the subsequent purchaser is considered necessary in the suit for specific performance, would equally apply to the necessity of the executant of a sale deed being a party to any suit for cancellation or setting aside of such document or for declaration that it is null and void.*
>
> *33. Though no direct judicial pronouncement is placed before this Court about the vendor being a necessary party to the suit for cancellation of a sale deed or for declaration that the sale deed is void, the same is inherent and evident from the various precedents referred to above."*

15. There is absolutely no doubt in the principle laid down in the above said decision. In the case on hand, as stated supra, only defendant No.1 i.e., vendor No.1 is the owner and possessor of the suit schedule property as he succeeded to the property of his father which is evident from Exs.A3, A4 and A10 and vendor Nos.2 to 4 were added only to avoid future litigation. It is not the case of the defendant No.2 that though vendor Nos.2 to 4 are having interest, they were not impleaded as parties to the suit and thereby depriving their right to be heard while declaring the sale deed to be null and void. If Ex.A2 sale deed is declared as null and void, vendor Nos.2 to 4 will not suffer any loss as vendor No.1 i.e., defendant No.1 alone has succeeded to the property. It is not even the case of defendant No.2 that the sale consideration was received by all the four vendors.

16. The learned counsel for the defendant No.2 contended that the trial Court failed to frame issue regarding readiness and willingness

of the plaintiff. In support of the said contention, the learned counsel for the defendant No.2 placed his reliance on a decision of the Honourable Supreme Court in **V.S. Ramakrishnan v. P.M.Mohammed Ali**[4] wherein it was observed as under:

> *"There must be a specific issue framed on readiness and willingness on the part of the plaintiff in a suit for specific performance and before giving any specific finding, the parties must be put to notice. The object and purpose of framing the issue is so that the parties to the suit can lead the specific evidence on the same."*

17. The learned counsel for the defendant No.2 also contended that the plaintiff failed to aver the readiness and willingness to perform his part of contract and thus, the suit is liable to be dismissed. In support of the said contention, the learned counsel for the defendant No.2 placed his reliance on a decision of the Honourable Supreme Court in **U.N. Krishnamurthy v. A.M.Krishnamurthy**[5] wherein it was observed as under:

> *"27. In Pt. Prem Raj v. D.L.F. Housing and Construction (Private) Ltd. And Anr.2 cited by Mr. Venugopal, this Court speaking 1 (2010) 10 SCC 512 2 AIR 1968 SC 1355 through Ramaswamy J. held that "it is well-settled that in a suit for specific performance the plaintiff should allege that he is ready and willing to perform his part of the contract….." and if the fact is traversed, he is required to prove a continuous readiness and willingness from the date of the contract to the time of the hearing, to perform the contract on his part. For such conclusion the learned Judge relied upon the opinion of Lord Blanesburgh, in Ardeshir Mama v. Flora Sassoon3.*

---

[4] 2022 SCC Online SC 1545
[5] 2022 SCC Online SC 840

> *28. In D.L.F. Housing and Construction (Pvt.) Ltd. (supra), in the absence of an averment on the part of the Plaintiff in the plaint, that he was ready and willing to perform his part of the contract, it was held that the Plaintiff had no cause of action so far as the relief for Specific Performance was concerned. In this case, of course, there is an averment in the plaint that the Respondent Plaintiff was all along ready and willing to perform his obligations under the contract. The question is whether the Respondent Plaintiff had proved his readiness and willingness to perform his obligations under the contract.*
>
> *29. In N.P. Thirugnanam v. Dr. R. Jagan Mohan Rao and Ors. 4, this Court reiterated that Section 16(c) of the Specific Relief Act, 1963 envisages that the Plaintiff must plead and prove that he had performed or has always been ready and willing to perform the essential terms of the contract which were to be performed by him 3 55 IA 300, at pg. 372:AIR 1928 PC 208 4 (1995) 5 SCC 115 other than those terms, the performance of which has been prevented or waived by the Defendant. In N.P. Thirugnanam (supra) this Court said that the continuous readiness and willingness on the part of the Plaintiff was a condition precedent for grant of the relief of Specific Performance."*

18. There is absolutely no doubt in the principles laid down in the above said decisions. In **V.S. Ramakrishnan's** case (supra), the plaintiff was intending to purchase property for Rs.1 crore and accordingly paid Rs.65 lakhs in cash and also issued a post dated cheque for Rs.35 lakhs. In such circumstances, the plaintiff was supposed to retain sufficient balance of Rs.35 lakhs to ensure that the said cheque gets honoured. Thus, the plaintiff therein needs to aver in the pleadings that he is ready and willing to perform his part of contract and the trial Court is also bound to frame an issue in that regard. But the facts in the case on hand are entirely different. As per Ex.A1 the plaintiff has paid entire sale consideration of Rs.6,90,000/- and in such circumstances, the question of plaintiff

being ready and willing to perform his part of contract and the obligation of the trial Court to frame an issue regarding the plaintiff's willingness to perform his part of contract does not arise at all.

19. The learned counsel for the defendant No.2 relied upon a decision in **Ramdas v. Sitabai and others**[6] the Honourable Apex Court observed that an undivided share of co-sharer may be a subject matter of sale, but possession cannot be handed over to vendee unless the property is partitioned by metes and bounds amicably and through mutual settlement or by a decree of Court. On going through the facts in the above said decision, it is clear that on the death of Sukha, who is the absolute owner of the properties, the plaintiff and defendant became joint owners and possessors of the suit schedule property, however, in the case on hand, after the death of Mohd. Amjad Ali, his elder son Mohd. Jaffar Ali (defendant No.1) succeeded the land as son and MRO, Toopran issued ROR proceedings in favour of Jaffar Ali being elder son of Mohd. Amjad Ali. There is no document to show that defendant No.1 and his brother Mumtaj Ali are joint owners and possessors of the property belonging to Mohd. Amjad Ali. Even in the sale deed executed by the defendant No.1 in favour of defendant No.2, the defendant No.1 was

---

[6] (2009) 7 Supreme Court Cases 444

shown as absolute owner and possessors of the suit schedule properties. It is pertinent to note that in Ex.A1 and Ex.A2 the signatures of the younger brother of defendant No.1 i.e., Mumtaj Ali were obtained, as such, Mumtaj Ali is very much aware of the alleged alienations made by his own brother i.e., defendant No.1. Even if Mumtaj Ali is having any interest in the suit schedule properties, certainly he would have objected for such alienations before subscribing his signatures on Exs.A1 and A2. But there is no such instance in the case on hand. Hence, the facts of the case in the above said decision are quite different from the facts of the case on hand and thereby the defendants cannot expect any assistance from the principle laid down in the above said decision.

20. It is pertinent to note that the suit schedule properties are located in Brahmanpally Village, Toopra Mandal and the appropriate registration office nearer to the said locality is office of Joint Registrar, Toopran and accordingly, Ex.A1 was registered in the said office. But the defendants with the sole intention to suppress the said document, have cleverly got registered Ex.A2 in the office of Joint Registrar, Sangareddy. The trial Court has rightly observed in paragraph No.63 of the impugned judgment that defendant No.2 and her husband were aware about Ex.A1, yet they chose to enter into

Ex.B1 transaction for their self serving needs and to defeat the rights of plaintiff under Ex.A1.

21. The defendant No.2 is a purchaser of the suit schedule properties from defendant No.1, who is the original owner. Now, it has to be ascertained as to whether the defendant No.2 was diligent enough in making discrete enquiries before purchase of the suit schedule properties. Purchasing an immovable property requires utmost care and caution. The purchaser has to examine and find out the title of the seller or nature of his right. A seller can sell only what he possesses. Therefore, if a seller has proper and valid title, on purchase the purchaser will get valid title. If the seller's title is defective, the purchaser will get only defective title. The simple reasoning is that the seller can sell what he has, and nothing more. While buying an immovable property, legal due diligence is essential for the purchaser to avoid getting entangled in legal issues later. Generally most of the purchasers will verify title deeds and all connected documents before buying an immovable property, but fail to verify the antecedents of the vendor. It is better to verify the antecedents of the vendor. The title of the property forms the foundation of any contract. According to the Indian Contract Act, no seller can pass on to the purchaser a better title than

what he already possesses. Therefore, the title of the seller must be clear and free from any encumbrance. A search of the records at the sub-registrar's office may be carried out for documents that may affect the property and may have been registered. The report will show the recorded owner of title of the property and changes in the title of the property. Buyer beware is the crucial aspect that needs to be considered while dealing with immovable property transactions. Therefore, the entire onus lies on the purchaser in verifying the title, ownership and possession of the property. He must take all reasonable steps to ensure that he is purchasing the property from a right person and also a right property.

22. The most important precaution is undertaking a personal inspection of the property under the sale. During the personal inspection, the buyer shall inquire with the neighbours regarding the ownership and possession of the property, disputes if any and they shall make discrete enquiries with various persons in and around the property like elders of the locality, longstanding property owners/tenants, workmen, etc. Though the defendant No.2 came to know about Ex.A1 through defendant No.1, DW1 or defendant No.2 did not take any

precautions before entering into transaction with defendant No.1 under Ex.A2. It is always necessary to inspect the original documents of the seller and read all the documents carefully before signing them. In the case on hand, when DW1 enquired with defendant No.1 about original link documents, he was replied that the documents were lost. In such circumstances, the defendant No.2 ought to have issued a public notice about purchasing the property in the local newspaper. If the vendor states that the original documents were missing or stolen or lost, then it is better to know the full facts relating to missing of documents and it has to be ascertain as to whether the vendor has filed a complaint in the concerned police station and got the copy of FIR with regard to missing of documents and what are the other steps he had taken to trace them as a prudent person. So it is better to get full information regarding original documents that are missing. And it is always better to give a public notice with regard to purchase of the property on the basis of certified copies of the title deeds instead of original documents which were lost. In the case on hand, though defendant No.2 and her husband were aware about missing of original link documents, it was elicited in the cross examination of DW1 that no public notice was issued in newspapers calling

for claims in respect of the property being purchased. Issuing public notice helps in proving that the purchaser has purchased the property with *bona fide* intention and in good faith. This will prove that the purchaser has taken all measures that can be expected from bona fide and prudent purchaser thereby. A search of the records at the sub-registrar's office may be carried out for documents that may affect the property and may have been registered. Section 57 of Registration Act, 1908 allows citizens to get certified copies and encumbrance certificates from the Registrar/Sub Registrar Offices. Any person can verify personally the registered document entries in the books of the Registrar/Sub Registrar Offices by paying prescribed fee.

23. In the case on hand, defendant No.1 has shown copies of the original link document. When copies of the documents are given for perusal, the purchaser shall not rely only on them, but rather can apply for certified copies too. The certified copies of the link documents should also be obtained. In the case on hand, except stating that he has made discrete enquiry, the husband of defendant No.2, who was examined as DW1, has not taken any of the above precautions before purchase of the suit schedule properties. Since the vendor of defendant No.2 has

purchased the suit schedule properties from the defendant No.1, who has already given authority to plaintiff to deal with the suit schedule property under Ex.A1, the defendant No.2 is not supposed to enter into a contract of sale with defendant No.1. It is not the case of Defendant No.1 that he has informed defendant No.2 about execution of Ex.A1 by him in favour of plaintiff. However, as per the contention of defendant No.2, she is aware of Ex.B2 i.e., a document in relation to purchase of suit schedule property by plaintiff. A perusal of Ex.A2 discloses that there is no reference of any agreement between defendant No.1 and defendant No.2 in respect of purchase of suit schedule property. Ex.A2 also does not disclose as to when the sale consideration of Rs.13,80,000/- was paid by the defendant No.2 in favour of defendant No.1. Thus, without any agreement and without any reference of specific date of payment of consideration, execution of sale deed by defendant No.1 in favour of defendant No.2 creates any amount of suspicion over validity of Ex.A2.

24. As per Section 20 of Specific Relief Act, granting of specific performance of a contract is a discretionary relief and the court is not bound to grant such relief merely because it is lawful to do so;

but the discretion of the court is not arbitrary but sound and reasonable, guided by judicial principles and capable of correction by a court of appeal. The trial Court while exercising its discretion has rightly decreed the suit in favour of the plaintiff by considering the oral and documentary evidence adduced on behalf of either sides and there are no reasons to interfere with the well reasoned judgment passed by the trial Court. The defendant No.1 failed to establish any of the grounds urged in the memorandum of appeal and thereby the appeal is devoid of merits and liable to be dismissed.

25. In the result, this appeal is dismissed. There shall be no order as to costs.

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

JUSTICE M.G. PRIYADARSINI

Date: 16.04.2024

Note: LR Copy to be marked.
B/o. AS