



**IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI
(Special Original Jurisdiction)**

[3524]

FRIDAY, THE TWENTY SIXTH DAY OF SEPTEMBER
TWO THOUSAND AND TWENTY FIVE

PRESENT

THE HONOURABLE SRI JUSTICE RAVI NATH TILHARI

THE HONOURABLE SRI JUSTICE MAHESWARA RAO KUNCHEAM

FIRST APPEAL NO: 158/2014

Between:

P. Ravi Kumar and Others

...APPELLANT(S)

AND

P Ramachandra Reddy

...RESPONDENT

Counsel for the Appellant(S):

1. V R REDDY KOVVURI

Counsel for the Respondent:

1. SURESH KUMAR REDDY KALAVA

The Court made the following:

THE HONOURABLE SRI JUSTICE RAVI NATH TILHARI
THE HONOURABLE SRI JUSTICE MAHESWARA RAO KUNCHEAM
APPEAL SUIT No.158 of 2014

JUDGMENT: *(per Justice Maheswara Rao Kuncheam)*

Heard Sri V.R. Reddy Kovvuri, learned counsel for the appellants/defendants and Sri O. Manohar Reddy, learned Senior Counsel assisted by Sri Suresh Kumar Reddy Kalava, learned counsel for the respondent/plaintiff.

2. The instant first appeal is instituted by the appellants/defendants being aggrieved by the Decree and Judgment dated 26.11.2013 passed in O.S.No.46 of 2010 on the file of II Addl. District Judge, FAC, VII Addl. District Judge, Madanapalle, Chittoor District (in short 'Trial Court'). The said suit for specific performance was decreed with costs with a direction to the defendants 1 to 3 to execute regular registered Sale Deed jointly in favour of the plaintiff after receiving the balance sale consideration within three months from the date of decree and if the defendants fail to execute the regular registered sale deed in favour of the plaintiff jointly within the stipulated period as directed, the plaintiff would be at liberty to get the sale deed through process of Law.

3. For the sake of convenience, the parties are hereinafter referred to by their nomenclature, before the Trial Court.

Brief Case of the plaintiff:

4. The plaintiff submitted that on the proposal of the defendants to sell the suit schedule property to an extent of Ac.10.31 ½ cents in Kothavaripalle Panchayat, Kothavaripalle Revenue Village, Madanapalle Mandal, Chittoor District (hereinafter referred to as 'subject property'), he agreed to purchase the same through an agreement with certain terms and conditions. Accordingly, defendants executed the agreement of sale dated 15.12.2008 in favour of the plaintiff by fixing Rs.4,00,000/- per acre., for total sale consideration of Rs.41,26,000/- for the subject property and out of the total sale consideration, the plaintiff paid an amount of Rs.8,00,000/- by cash and Rs.1,00,000/- through cheque bearing No.278179 dated 03.12.2009 in total Rs.9,00,000/- to the defendants towards advance of the total sale consideration.

5. It is further case of the plaintiff that according to the terms of the agreement of sale dated 15.12.2008, the defendants would jointly execute the registered sale deed in favour of the plaintiff, after receiving the balance amount of the total sale consideration on or before 02.04.2009. It is submitted that upon insistence for part amounts by the defendant

No.3, the plaintiff paid amounts in cash in instalments on the following dates:-

Dates of payment	Amount received by the 3rd defendant
04.12.2008	Rs. 1,00,000/-
12.12.2008	Rs.1,00,000/-
29.12.2008	Rs.1,00,000/-
06.03.2009	Rs.4,00,000/-
28.03.2009	Rs.1,00,000/-
17.04.2009	Rs.2,00,000/-
21.04.2009	Rs.1,00,000/-
13.05.2009	Rs.1,00,000/-
11.08.2009	Rs.1,00,000/-
14.09.2009	Rs.1,00,000/-
02.12.2009	Rs.2,00,000/-
02.01.2010	Rs.1,50,000/-
10.02.2010	Rs.1,00,000/-
Total	Rs.19,50,000/-

6. It is also the case of the plaintiff that defendant No.3 issued receipts on receiving the above payments. It is submitted that the total amount of Rs.28,50,000/- was paid by the plaintiff, leaving the balance sale consideration of Rs.12,76,000/- under the agreement of sale dated 15.12.2008.

7. It is also the case of the plaintiff that the defendants 1 to 3 received total advance amount of Rs.17,00,000/- before the stipulated date of registration of regular sale deed i.e., before 02.04.2009 and the defendants are obligated to perform their part of contract by receiving balance sale consideration amount of Rs.24,26,000/- and by providing documents over the subject property. On 02.04.2009, the plaintiff attended the Sub-Registrar's Office, Madanapalle with non-judicial stamp paper of Rs.100/- and the defendants were not present at the office to perform the contract. In that scenario, the plaintiff issued legal notice dated 02.04.2009 to the defendants, stating that as plaintiff waited at Sub-Registrar's Office, Madanapalle to perform their part of the contract, but there was no whisper from the defendants.

8. It is further case of the plaintiff that in response to the legal notice dated 02.04.2009, the defendants issued reply notice dated 03.04.2009 with all false versions. The 1st defendant approached the plaintiff and sold some portion of the subject property as per the rate agreed in the

agreement of sale dated 15.12.2008, which belongs to the 1st defendant by executing separate Sale Deeds dated 06.03.2009 and 21.04.2009 respectively. Hence, time is not essence of the contract.

9. It is also asserted that though the plaintiff made several efforts to complete the agreement of sale dated 15.12.2008 with the defendants after receiving the balance sale consideration of Rs.12,76,000/-, there was no whisper from the defendants regarding the execution of the agreement. In this regard, the plaintiff also issued legal notices dated 25.11.2009 and 17.05.2010, requesting the defendants to attend and perform their part of the contract at the Sub-Registrar Office on 02.12.2009 and on 17.06.2010, respectively by receiving balance sale consideration of Rs.12,76,000/-.

10. According to the plaintiff, the defendants were trying to evade and postpone the execution of agreement of sale due to increase in land values in that area and the acts committed by the defendants are deliberate and intentional in nature. Hence, the plaintiff instituted the lis, seeking specific performance of agreement of sale dated 15.12.2008 against the defendants by receiving balance sale consideration of Rs. 12,76,000/-.

Brief case of the defendants:

11. On the other hand, the 3rd defendant filed written statement denying material allegations made in the plaint, while stating that the suit agreement dated 15.12.2008 itself is unregistered sale agreement and the same is invalid. It is submitted that the agreement of sale does not contain proper signatures of witnesses, including that of the 1st defendant. The defendants also denied the version of the plaintiff that they had received part amounts and issuance of receipts for part of balance of total sale consideration of Rs.28,50,000/- from the plaintiff. Hence, the very suit itself is not maintainable.

12. It is submitted that the defendants upon receiving Rs.9,00,000/- by way of cash and cheque from the plaintiff, came to an understanding to execute registered sale deed on or before 02.04.2009. In the agreement of sale dated 15.12.2008, both the plaintiff and defendants agreed that time would be the essence of the agreement and the same is also mentioned in para No.10 of the agreement of sale dated 15.12.2008. It is also asserted that the 1st defendant approached the plaintiff and expressed that he is ready to execute registered sale deed in terms of the rate fixed in the agreement of sale dated 15.12.2008. Accordingly, the 1st defendant executed a registered sale deed dated 06.03.2009 in favour of

the plaintiff, in respect of his share of properties in the agreement of sale dated 15.12.2008.

13. The plaintiff and defendants jointly agreed to the terms and conditions and entered into agreement of sale dated 15.12.2008, wherein, plaintiff agreed to purchase the subject properties of Ac.10.31½ cents at the rate of Rs.4,00,000/- per acre and out of total sale consideration of Rs.41,26,000/- plaintiff paid an amount of Rs.9,00,000/- i.e., Rs.8,00,000/- in cash and Rs.1,00,000/- by way of cheque No.278179 dated 03.12.2008 towards advance and plaintiff had agreed to pay the balance sale consideration of Rs.32,26,000/- on or before 02.04.2009 and get the registered sale deed from the defendants. Thus, time is the essence of the contract.

14. It is further asserted in the written statement that plaintiff had not paid the advance amount of Rs.9,00,000/- at one stretch. It is also stated that the plaintiff paid an amount of Rs.1,00,000/- on 29.12.2008 in cash after execution of the agreement of sale. On 06.03.2009, the plaintiff approached the defendants and stated his plight in pooling up amounts and requested the defendants that if he could get a portion of the land in his name, it would facilitate him to adjust amount to pay the remaining balance sale consideration in the prescribed time. On that belief, the

defendants after receiving the Rs.4,00,000/- from the plaintiff, executed registered sale deed to an extent of Ac.1.08cents in his favour.

15. It is also stated in the written statement that the defendants received total amount of Rs.14,00,000/- as on 06.03.2009 from the plaintiff and they executed registered sale deed in favour of the plaintiff in respect of Ac.1.08 cents valued at Rs.4,32,000/-. The balance amount of Rs.9,68,000/- was with the defendants towards the advance amount. It is also further stated that on 20.03.2009 and 28.03.2009, the plaintiff deposited Rs.1,00,000/- on each date to the defendants. The total amount left with the defendants was Rs.11,68,000/- till the time limit of the suit agreement of sale i.e., 02.04.2009. It is further raised in the written statement that the plaintiff merely stated in his payment statement that he had paid an amount of Rs.19,50,000/- upto 10.02.2010, but had not said about day to day transactions. Thus, the plaintiff has not approached the Court with clean hands.

16. The defendants also denied in the written statement that they received total amount of Rs.17,00,000/- before the date i.e., 02.04.2009 and that they are not ready to perform their part of the contract by receiving the balance sale consideration amount of Rs.24,26,000/- as on 02.04.2009, by producing the relevant documents in proof of their title and possession over the subject properties as agreed by defendant Nos.1 to

3 as on the date of execution of agreement of sale dated 15.12.2008. It is also denied by the defendants that the plaintiff waited at Sub-Registrar Office, Madanapalle on 02.04.2009 and the issuance of notice dated 02.04.2009 through courier by the plaintiff. The defendants further denied that they avoided to perform their part of contract as per the terms of agreement of sale dated 15.12.2008 and also denied the plaintiff's case of purchasing non-judicial stamp paper of Rs.100/- on 02.04.2009.

17. It is also stated in the written statement that defendant No.3 was in touch with the plaintiff on the phone from 28.03.2009 to get the plaintiff ready for the payment of the balance sale consideration and to get the registered sale deed executed by the defendants. It is further averred that the plaintiff never approached the defendants at any time after 28.03.2009 and although the defendants waited for the plaintiff at Sub-Registrar Office, Madanapalle, on 02.04.2009, the plaintiff, due to lack of funds, did not attend before the defendants.

18. It is further averred in the written statement that the plaintiff, after knowing that the defendants were going to issue notice, had issued legal notice on 03.04.2009 by mentioning the date as 02.04.2009, which is anti dated. It is also stated that, since the plaintiff failed to approach the defendants, and taking into account the plaintiff's financial status, the defendants got issued legal notice dated 03.04.2009 to the plaintiff, by

extending the time limit upto 17.04.2009 and to get the registered sale deed by paying the balance sale consideration. It is also stated that the contention of the plaintiff he paid an amount of Rs.17,00,000/- as on 02.04.2009 is not true and correct.

19. It is also stated that after the repeated requests made by the mediators namely, P.Sreeramulu Reddy, T. Venkata Ramana and S. Nagendra, the timeframe was extended upto 02.05.2009. During the period between 02.04.2009 and 02.05.2009, the plaintiff had only sent Rs.2,00,000/- on 17.04.2009 through the mediators namely, P. Sreeramulu Reddy and Sri Lakshminarayana and the 3rd defendant also issued receipts to that effect.

20. It is also asserted in the written statement that, on repeated requests made by the plaintiff, the defendants executed registered sale deed dated 28.04.2009 to an extent of Ac.2.93 cents. It is further urged that the plaintiff had paid an amount of Rs.19,00,000/- upto 21.04.2009 from the date of the agreement i.e., 15.12.2008 and got the sale deed registered in his favour in respect of Ac.4.01 cents valued at Rs.16,04,000/- @ Rs.4,00,000/- per acre and the balance amount of Rs.2,96,000/- is with the defendants only. The plaintiff had to pay the balance consideration of Rs.22,26,000/- and obtain registered sale deed from the defendants so far as the extent of land Ac.6.30½ cents within the extended and agreed

time bound date i.e., 27.10.2009. It is further urged in the written statement that the plaintiff paid Rs.1,00,000/- on 13.05.2009; Rs.1,00,000/- on 11.08.2009 and Rs.1,00,000/- on 14.09.2009 through P. Sreeramulu Reddy to the 3rd defendant and in turn, the 3rd defendant got issued the receipts for the total advance amount of Rs.5,96,000/- as on 14.09.2009. It is also stated that, to the defendants' utter surprise, the plaintiff got issued another legal notice dated 25.11.2009 seeking clearance of the revenue records of the remaining subject properties under agreement of sale and requiring the presence of the defendants before the Sub-Registrar's Office, Madanapalle, for execution of the registered sale deed after payment of the balance sale consideration.

21. The defendants got issued reply notice dated 28.11.2009 to the legal notice dated 28.11.2009 and thereafter the plaintiff approached the 3rd defendant and promised to pay the full balance consideration of the sale amount on or before 02.12.2009. The plaintiff contacted the 3rd defendant and paid an amount of Rs.2,00,000/- and agreed to enter into a new agreement on 06.12.2009 in front of the mediators, but the plaintiff failed to appear on 06.12.2009 and requested the 3rd defendant to extend further time upto 02.01.2010, and the same was agreed by the defendants.

22. It is further urged by the defendants that, the plaintiff again on 02.01.2010 approached the defendants and paid an amount of

Rs.1,50,000/- and sought further extension of time upto 10.02.2010 towards final payment. Accordingly, the plaintiff contacted the 3rd defendant on 10.02.2010 and paid Rs.1,00,000/- and got the time extended upto 11.04.2010 with an enhanced price rate for the remaining land of Ac.6.30 ½ cents, however since then the plaintiff did not respond to the 3rd defendant. It is also urged in the written statement that total advance amount of Rs.10,46,000/- is with the defendants and the plaintiff has agreed to escalate the price from Rs.2,00,000/- per acre to Rs.6,00,000/- per acre. Thus, the total value of the remaining extent of land admeasuring Ac.6.30 ½ cents would cost to Rs.37,83,000/-, out of which an advance amount of Rs.10,46,000/- was deducted, leaving a balance of Rs.27,37,000/- payable by the plaintiff so as to get the registered sale deeds from the defendants.

23. It is also averred in the written statement that the plaintiff got issued notice on 17.05.2010 with all new sorts of allegations, such as false title and possession to which the defendants also replied by way of legal notice, suggesting the plaintiff not to further approach them in respect of the subject properties.

24. Defendant Nos.1 & 2 filed Memo before the Trial Court adopting the written statement filed by defendant No.3.

Findings of the Trial Court:

25. The Trial Court framed the following issues after considering the totality of facts and the pleadings:

- 1) Whether the plaintiff is ready and willing to perform his part of contract?
- 2) Whether the time is essence of the agreement?
- 3) Whether the suit is barred by limitation?
- 4) Whether the defendants are liable to execute a registered sale deed jointly in respect of plaint schedule properties in favour of the plaintiff in pursuance of an agreement of sale deed dated 15.12.2008?
- 5) To what relief?

26. For the sake of comprehensive view, documents marked before the Trial Court are extracted hereunder:-

Witnesses examined for the plaintiff			
Sl. No.	Name of the witness	Examined as	Remarks
1.	P. Ramachandra Reddy	P.W.1	Plaintiff
2.	T. Venkatramana	P.W.2	Witness in Ex.A.2
3.	S. Nagendra	P.W.3	Witness in Ex.A.2

Documents marked on behalf of the plaintiff		
Sl.No.	Document marked as and date	Description of the document

1.	(Ex.A.1) 15-12-2008	Original Agreement of Sale executed by the Defendants in favour of the plaintiff.
2.	(Ex.A.2) 03-12-2008	Receipt for Rs.1,00,000/-
3.	(Ex.A.3) 04-12-2008	Receipt for Rs.1,00,000/-
4.	(Ex.A.4) 12-12-2008	Receipt for Rs.1,00,000/-
5.	(Ex.A.5) 06-03-2009	Receipt for Rs.1,00,000/-
6.	(Ex.A.6) 20-03-2009	Receipt for Rs.1,00,000/-
7.	(Ex.A.7) 06-03-2009	Certified copy of the sale deed executed by the 1 st defendant in favour of plaintiff.
8.	(Ex.A.8) 28-03-2009	Receipt for Rs.1,00,000/-
9.	(Ex.A.9) 02-04-2009	Office copy of legal notice
10.	(Ex.A.10) 02-04-2009	Courier Receipts-3.
11.	(Ex.A.11) 02-04-2009	Courier Acknowledgments-2.
12.	(Ex.A.12) 04-04-2009	Legal notice issued by the defendants.
13.	(Ex.A.13) 08-04-2009	Legal Notice issued by one M.Venkatramana with the enclosed documents.
14.	(Ex.A.14) 13-04-2009	Reply notice issued by the plaintiff with enclosed documents.
15.	(Ex.A.15) 13-04-2009	Reply notice issued by the defendants.
16.	(Ex.A.16) 17-04-2009	Receipt of Rs.2,00,000/-
17.	(Ex.A.17) 21-04-2009	Certified copy of the sale deed executed by 1 st defendant in favour of the plaintiff.
18.	(Ex.A.18) 21-04-2009	Receipt for Rs.1,00,000/-
19.	(Ex.A.19) 28-04-2009	Undertaking and receipt

20.	(Ex.A.20) 13-05-2009	Receipt for Rs.1,00,000/-
21.	(Ex.A.21) 11-08-2009	Receipt for Rs.1,00,000/-
22.	(Ex.A.22) 14-09-2009	Receipt for Rs.1,00,000/-
23.	(Ex.A.23) 25-11-2009	Office copy of Legal Notice.
24.	(Ex.A.24) 25-11-2009	Postal Receipt.
25.	Ex.A.25	Postal Acknowledgment
26.	(Ex.A.26) 28-11-2009	Reply notice
27.	(Ex.A.27) 02-12-2009	Receipt for Rs.2,00,000/-
28.	(Ex.A.28) 02-01-2010	Receipt for Rs.1,50,000/-
29.	(Ex.A.29) 10-02-2010	Receipt for Rs.1,00,000/-
30.	(Ex.A.30) 17-05-2010	Office copy of legal notice
31.	(Ex.A.31) 02-08-2010	Reply notice
32.	Ex.A.32	Certified Xerox copy of the Indent Register of the Sub Registrar, Madanapalle

Witnesses examined for the defendants			
Sl. No.	Name of the witness	Examined as	Remarks
1.	K.Kizar Mohamed (D3)	D.W.1	Defendant No.3
2.	P.Ravi Kumar (D1)	D.W.2	Defendant No.1
3.	P.Sreeramulu Reddy	D.W.3	Witness in Exs.A.6, A.20, A.22 & A.28
4.	K.Venkatramana	D.W.4	Witness

Documents marked on behalf of the defendants		
Sl. No.	Document marked as and date	Description of the document
1.	(Ex.B1) 03-04-2009	Office copy of legal notice issued by the defendants.
2.	(Ex.B2) 10-04-2009	Office copy of reply notice issued by the defendants.
3.	(Ex.B3) 28-11-2009	Office copy of reply notice issued by the defendants.
4.	(Ex.B4) 02-08-2010	Office copy of reply notice issued by the defendants.

27. The Trial Court in respect of Issue No.1 (whether the plaintiff is ready and willing to perform his part of the contract), held in favour of the plaintiff and in respect of Issue No.2 (whether time is the essence of the agreement), the Trial Court held in favour of the plaintiff. The remaining Issue Nos.3 & 4 were also held in favour of the plaintiff. Consequently, the suit was decreed *vide* Judgment dated 26.11.2013 in O.S.No.46 of 2010 by the learned VII Addl. District Judge, Madanapalle., directing the defendants 1 to 3 to execute regular registered sale deed jointly in favour of the plaintiff and the plaintiff was also directed to pay the remaining balance sale consideration of Rs.12,76,000/-. A period of one month time was granted to the plaintiff to pay the said amount and if the defendants fail to jointly execute the regular registered sale deed, the plaintiff would

be at liberty to get the sale deed through the process of law. Aggrieved by the said decree, the defendants filed the present appeal.

Submissions of the appellants/defendants' counsel:

28. Learned counsel for the appellants/defendants submitted that the plaintiff has not proved the essential and fundamental pre-requisites on the condition of readiness and willingness to perform his part of the contract. He further submitted that in the absence of same, decreeing the suit for specific performance is not legal and liable to be set-aside.

29. He also asserted that the Trial Court erred in arriving at the finding in the lis that time is not an essence of the contract, which is against the specific clause that the entire sale transaction had to be complied with on or before 02.04.2009, as agreed between the parties in Ex.A.1.

30. Learned counsel for the appellants/defendants, at the time of advancing arguments in the appeal, asserted that in the wake of Ex.B.4 dated 02.08.2010 (office copy of the reply legal notice issued by the defendants) cancelling the Ex.A.1, the very framing of the suit without seeking a prayer to set aside the cancellation of agreement of sale (Ex.A.1), is not maintainable.

31. Learned counsel for the appellants/defendants in support of his assertions placed reliance upon the decisions in ***U.N Krishna Murthy***

(died) through LRs Vs. A.M Krishna Murthy¹; Janardhan Das & Ors. Vs. Durga Pradesh Agarwalla²; A.S No.746 of 2013 in **Bukkapatnam Kalandar Basha Vs. Basi Reddy Vijayamma**; SLP (C) No. 10228 of 2020 in **Basireddy Vijayamma Vs. Bukkapatnam Kalandar Basha**; **R. Kandasamy (died) & Ors. Vs. T.R.K. Srwathy & Ors³**; and **Sangita Sinha Vs. Bhawana Bhardwaj⁴**.

Submissions of the respondent/plaintiff's counsel

32. Learned Senior counsel appearing for the respondent/plaintiff asserted that the plaintiff was always ready and willing to perform the terms and conditions stipulated in Ex.A.1. The learned counsel further submits that, in that process only, the plaintiff paid a substantial advance amount to the defendants at the time of Ex.A.1. He further submits that, even before the cut off date (02.04.2009), plaintiff paid further amounts to the defendants and also obtained receipts in proof of the same, which crystal clears his real intention to complete the contract without any retractions.

33. Learned counsel for the respondent/plaintiff also contended that even before the cut off date stipulated in Ex.A.1, the plaintiff by paying

¹ (2023) 11 SCC 775

² 2024 SSC OnLine SC 2937

³ 2024 SCC OnLine SC 3377

⁴ 2025 SCC OnLine SC 723

sale consideration to the defendant got executed registered sale deed dated 06.03.2009 in respect of portion of land in Ex.A.1 subject properties, which further strengthens the version of the plaintiff.

34. He further stated that, in view of the specific conscious acts by the defendants, such as receiving further amounts even after the cut-off date i.e., 06.03.2009 and also executing another registered sale deed dated 21.04.2009 (Ex.A.17) and extending the time, shows that time is not essence of the contract.

35. Learned counsel referring to the terms agreed between the parties in Ex.A.1 pointed out that, there was no clause of forfeiture of advance amount, nor unilateral cancellation of agreement at the instance of one party. He submits that very cancellation of Ex.A.1 by way of reply notice is unknown to law and it has no legal significance at all.

36. Learned counsel for the respondent/plaintiff, while submitting that even assuming for a moment the alleged plea i.e., mockery of law in Ex.B.4 as raised by the appellants/defendants, stated that there was absolutely no pleading and evidence adduced by the defendants in the suit. Therefore, adjudicating the plea of maintainability of the suit at the stage of instant appeal does not arise more particularly in the absence of foundational facts and evidence. In support of his assertions, he placed

reliance on the dictum held in ***Muddasani Venkata Narasaiah (died) through LRs Vs. Muddasani Sarojana***⁵

37. After perceiving the above rival contentions of both the parties, the following points arise for adjudication in the instant lis:-

- (1) Whether time could be said to be the essence of the Agreement of Sale (Ex.A-1)?
- (2) Whether the plaintiff is always ready and willing to perform his obligations?
- (3) Whether the registered agreement of sale deed dated 15.12.2008 (Ex.A-1) binds upon D.W.1?

38. At the threshold, it is apt to note that legislative amendments i.e., Act 18 of 2018 to the Specific Relief Act, 1963, are prospective in nature and cannot be construed to affect rights or obligations arising from transactions completed before the amendment came into force. Applying the amended provisions retrospectively would not only contravene the principle of legality but also result in undue hardship to the parties involved.

Point No.1:

39. The first point for determination is whether time could be construed to be the essence of the agreement of sale dated 15.12.2008?

⁵ 2016 (12) SCC 288

40. It may be relevant to extract the terms of the Agreement of Sale dated 15.12.2008 (Ex.A.1) before dealing with points:-

“.....**WHEREAS** the schedule property is the self acquired property of 1. Sri. P.Ravi Kumar S/o. M. Ponnu Swamy Modaliar 2. Smt. K. Kader Nisha W/o. Kadar Gani Kizar Mohamed and 3. Sri. K.KIZAR MOHAMED S/o. Late Sri. K.Kadar Gani, vide Registered

Sale deed bearing No.6638/2008 dated 22-11-2008

Sale deed bearing No.6639/2008 dated 22-11-2008

Sale deed bearing No.6743/2008 dated 28-11-2008

registered at Sub-Registrar's Office, Madanapalle. They having acquired the above property without any aid or assistance from their family or any quarters but purchased the aforesaid property entirely with their own earnings.

WHEREAS there are no encumbrances, liens, charges, Government dues, attachments, acquisition, or requisition, proceedings and whereas the VENDORS have clear and marketable title to the aforesaid Property and they have absolute power to convey the same.

WHEREAS the **VENDORS** being in need of funds for the purpose of meeting domestic expenditure, have decided to sell the above mentioned property after obtaining consent of their wives, sons and daughters.

WHEREAS the VENDORS offered to sell and transfer the schedule property to the PURCHASER for a sale consideration of Rs. 4,00,000/- (Rupees Four lakh only) per acre of the above said land and the PURCHASER herein has agreed to purchase the same for the aforesaid consideration on the following terms and conditions:

NOW THIS AGREEMENT WITNESSETH AS FOLLOWS:

1. The Sale Value of the above mentioned Property is fixed at Rs. 4,00,000/- (Rupees Four lakh only) per acre of the above said land.

2. The PURCHASER has paid a sum of Rs.8 lakhs (Rupees eight lakh only) by cash and 1 lakh (Rupees One Lakh only) by way of Cheque bearing No. 278179 dated 03-12-2008 drawn on Ing Vysya Bank, Kalikiri Branch as advance, the receipt of which sum the VENDORS do hereby acknowledge.
3. The balance of Sale consideration will be paid on or before 02nd April 2009 will be paid at the rate mentioned above by the PURCHASER to the VENDORS at the time of execution of the Absolute Sale Deed and thus complete the Sale transaction.
4. The VENDORS confirm with the PURCHASER that They have not entered into any agreement for sale, mortgage, or exchange whatsoever with any other person or persons relating to the above mentioned property of this Agreement.
5. The VENDORS agree to put the purchaser in absolute and vacant possession of the above mentioned property after executing the sale deed and registering the same in the jurisdictional Sub-Registrar's office.
6. The VENDORS covenant with the purchaser that they will not do any act, deed or thing creating any charge, lien or encumbrance in respect of the above mentioned property during the subsistence of this Agreement.
7. The VENDORS have specifically agreed and covenant with the PURCHASER that they will do all acts, deeds and things which are necessary and requisite to convey absolute and marketable title in respect of the above mentioned property in favour of the PURCHASER or his nominee.
8. IT IS AGREED between the parties that all expenses towards Stamp Duty and Registration charges shall be borne by the PURCHASER only.
9. The PURCHASER shall have the right to nominate or assign his right under this agreement to any person / persons of his choice and the VENDORS will execute the Sale Deed as per terms and conditions of this Agreement in favour of the PURCHASER or his nominee or assignee.

10. It is hereby expressly provided and agreed by the parties here to that both parties are entitled to enforce specific performance of the agreement against each other in case of breach of any conditions mentioned in this Agreement and time being the essence of this Agreement.

11. The original of the "AGREEMENT" signed by both the parties shall be with the PURCHASER and copy of the same similarly signed, shall be with the VENDORS....."

41. In matters relating to the sale of immovable property, there is a general presumption that time is not considered to be the essence of the contract, unless it is explicitly stated in the contract or inferred from the circumstances surrounding the agreement. However, it is apposite to note the well settled legal principles set out by the Hon'ble Supreme Court in **Govind Prasad Chaturvedi v. Hari Dutt Shastri**⁶, held at page Nos.543-544 as under:-

".....5. It is settled law that the fixation of the period within which the contract has to be performed does not make the stipulation as to time the essence of the contract. When a contract relates to sale of immovable property it will normally be presumed that the time is not the essence of the contract. [Vide Gomathinayagam Pillai v. Pallaniswami Nadar (1967) 1 SCR 227, AIR 1967 SC 868 (at p. 233).] It may also be mentioned that the language used in the agreement is not such as to indicate in un-mistakable terms that the time is of the essence of the contract. The intention to treat time as the essence of the contract may be evidenced by circumstances which are sufficiently strong to displace the normal presumption that in a contract of sale of land stipulation as to time is not the essence of the contract."

⁶ (1977) 2 SCC 539

42. Constitutional Bench of the Hon'ble Supreme Court in ***Chandi Rani Vs. Kamal Rani***⁷ held that mere fixation of the period within which the contract has to be performed does not make the stipulation as to the time being the essence of the contract.

43. In ***Roque Fredrick Ladinho Collasso and Ors. vs. Camilo Antonio Aquaviva and Ors***⁸, the Apex Court had held as follows:-

“.....8. As a general proposition of law, in the case of sale of immovable property there is no assumption as to time being the essence of contract. In cases where it is not made an essence of the contract the Court may infer that it is to be performed in a reasonable time, if the conditions are evident from the expressed terms of the contract, the nature of the property and the surrounding circumstances. In cases where it is specifically stipulated that time will be an essence of contract or that it clearly emerges so by way of implication, time would be an essence of contract. Such situations are exception to the well accepted principle that in case of sale of immovable property time is never regarded as essence of contract and presumption existing against the same. However, if the parties intend to make time as essence of contract it must be expressed in unequivocal language. Intention to make time as the essence, if expressed in writing must be in language which is unmistakable; it may also be inferred from nature of the property agreed to be sold, conduct of the parties and surrounding circumstances prevailing at the time of the contract. Section 55 of the Contract Act provide for effect of failure to perform the contract at a fixed time where time is essential. In cases where the time is the essence of contract and is so stipulated in writing, the extension if any should and ought to be categorical in nature rather than being vague or based on presumption and would not contemplate the unilateral extension.....”

⁷ 1993 (1) SCC 519

⁸ MANU/MH/0587/2021

44. The Hon'ble Supreme Court in the case of **Gaddipati Divija Vs. Pathuri Samrajyam**⁹ dealt with the issue of specific performance in contracts and concluded that if the contractual obligations have not been performed within the stipulated time, it does not necessarily mean that time is of the essence. The said dictum clarifies that failure to meet a deadline does not automatically bar a party from seeking specific performance and emphasizes that the enforceability of the contract depends on various factors beyond just the timing of performance.

45. In the light of above well settled legal principles of the Apex Court, we venture into the facts in the instant appeal, the agreement of sale dated 15.12.2008 (Ex.A.1), which clearly indicates the stipulation of specific time limit to complete the agreement till 02.04.2009. However, no default clause was mentioned in Ex.A1.

46. It is apt to note that even before 02.04.2009 itself, through the receipt of Rs.1,00,000/- dated 03.12.2008 (Ex.A2), receipt of Rs.1,00,000/- dated 03.12.2008 (Ex.A3), receipt of Rs.1,00,000/- dated 12.12.2008 (Ex.A4), receipt of Rs.1,00,000/- dated 06.03.2009(Ex.A5), receipt of Rs.1,00,000/- dated 20.03.2009 (Ex.A6), defendants received the amounts from the plaintiff. In fact, the 1st defendant after receiving sale consideration of Rs.81,000/- from the plaintiff also executed

⁹ 2023 SCC OnLine SC 442

registered sale deed dated 06.03.2009 in respect of an extent of Ac.1.08 cents out of the portion of lands mentioned in the agreement of sale (Ex.A1) and in the receipt of Rs.1,00,000/- dated 28.03.2009 (Ex.A8). Thus, the above documentary evidence relates to the time before 02.04.2009, which is stipulated in Ex.A.1.

47. Even the evidence of DW.1 on record clearly reveals that the defendants received part amounts from the plaintiff and issued receipts on multiple dates after the stipulated date in Ex.A.1 and also extended the time limit from 02.04.2009. In fact, it is the version projected on behalf of the defendants that, on the request made by the plaintiff only, the time stipulated in the agreement of sale (Ex.A1) was extended on multiple occasions. The payments made by the plaintiff to the defendants after 02.04.2009 are reproduced in the tabulated format below:-

Document marked as	Date	Event Description
Ex.A.16	17-04-2009	Receipt issued to the plaintiff by the 3 rd defendant on receiving Rs.2,00,000/- from the plaintiff
Ex.A.17	21-04-2009	Certified copy of sale deed executed by the 1 st defendant in favour of the plaintiff
Ex.A.18	21-04-2009	Receipt issued to the plaintiff by the 3 rd defendant on receiving Rs.1,00,000/- from the plaintiff
Ex.A.19	28-04-2009	Undertaking and receipt between the plaintiff and defendants in respect of the suit schedule property

Ex.A.20	13-05-2009	Receipt issued to the plaintiff by the 3 rd defendant on receiving Rs.1,00,000/- from the plaintiff
Ex.A.21	11-08-2009	Receipt issued to the plaintiff by the 3 rd defendant on receiving Rs.1,00,000/- from the plaintiff
Ex.A.22	14-09-2009	Receipt issued to the plaintiff by the 3 rd defendant on receiving Rs.1,00,000/- from the plaintiff
Ex.A.27	02-12-2009	Receipt issued to the plaintiff by the 3 rd defendant on receiving Rs.2,00,000/- from the plaintiff
Ex.A.28	02-01-2010	Receipt issued to the plaintiff by the 3 rd defendant on receiving Rs.1,50,000/- from the plaintiff
Ex.A.29	10-02-2010	Receipt issued to the plaintiff by the 3 rd defendant on receiving Rs.1,00,000/- from the plaintiff

48. The 3rd defendant (D.W.1), has categorically admitted in his cross examination that he issued receipt dated 10.12.2010 (Ex.A.29), after receiving a sum of Rs.1,00,000/- from the plaintiff on the condition that registration of the land would be done only if enhanced rate is given towards the subject property, which is included in the very same Ex.A.29, which reveals that a condition of enhancement was struck out. Further, D.W.1 has also stated that an excess amount of Rs.10,46,000/-, paid by the plaintiff, is with him and not Rs.12,50,000/-.

49. From the above undisputed evidence on record, it is transparent that Ex.A.1 prescribes that 02.04.2009 as the last date for concluding the contract. However, with the active participation of both sides only the defendants received amounts after 02.04.2009. In addition to that the 1st defendant also executed registered sale deed dated 21.04.2009 (Ex.A.17)

in favour of the plaintiff. As the stipulated period in agreement of sale (Ex.A.1) has not been followed by both the parties, the question of claiming that time was the essence of the contract does not arise. On this point, the Trial Court rightly arrived at its plausible reasons that time was not the essence of the contract.

50. It is apt to note that though in the agreement of sale dated 15.12.2008(Ex.A.1) it is agreed by the plaintiff and defendants that time is essence of the contract, the conduct of the parties, including the defendants themselves repeatedly agreed to extend the time on multiple occasions and accepted the payments from the plaintiff even after the deadline i.e., 02.04.2009, clearly establishes that the time is not the essence of the agreement.

51. On consideration of totality of the facts and circumstances, including the evidence on record, we see no reason to brush aside the finding of the Trial Court. Accordingly, we hold that time is not the essence of the agreement under Ex.A.1 dated 15.12.2008 in point No.1.

Point No.2:

52. In order to obtain a decree for specific performance, the plaintiff must aver and prove that he performed his part of the contract and has

always been ready and willing to perform the terms of the contract, which are to be performed.

53. In ***Sangitha Sinha Vs. Bhawana Bhardwaj and Ors***¹⁰ the Apex Court, had held as under:-

“.....16. It is settled law that under the Act, 1963, prior to the 2018 Amendment, specific performance was a discretionary and equitable relief. In **Kamal Kumar vs. Premlata Joshi and Ors., (2019) 3 SCC 704**, which has been followed in **P. Daivasigamani vs. S. Sambandan, (2022) 14 SCC 793**, this Court framed material questions which require consideration prior to grant of relief of specific performance. The relevant portion of the judgment in Kamal Kumar (supra) is reproduced hereinbelow:

“7. It is a settled principle of law that the grant of relief of specific performance is a discretionary and equitable relief. The material questions, which are required to be gone into for grant of the relief of specific performance, are:

7.1. First, whether there exists a valid and concluded contract between the parties for sale/purchase of the suit property.

7.2. Second, whether the plaintiff has been ready and willing to perform his part of contract and whether he is still ready and willing to perform his part as mentioned in the contract.

7.3. Third, whether the plaintiff has, in fact, performed his part of the contract and, if so, how and to what extent and in what manner he has performed and whether such performance was in conformity with the terms of the contract;

7.4. Fourth, whether it will be equitable to grant the relief of specific performance to the plaintiff against the defendant in relation to suit property or it will cause any kind of hardship to the defendant

¹⁰ (2025 INSC 450)

and, if so, how and in what manner and the extent if such relief is eventually granted to the plaintiff;

7.5. Lastly, whether the plaintiff is entitled for grant of any other alternative relief, namely, refund of earnest money, etc. and, if so, on what grounds.

8. In our opinion, the aforementioned questions are part of the statutory requirements [See Sections 16(c), 20, 21, 22, 23 of the Specific Relief Act, 1963 and Forms 47/48 of Appendices A to C of the Code of Civil Procedure]. These requirements have to be properly pleaded by the parties in their respective pleadings and proved with the aid of evidence in accordance with law. It is only then the Court is entitled to exercise its discretion and accordingly grant or refuse the relief of specific performance depending upon the case made out by the parties on facts.”

17. It is trite law that ‘readiness’ and ‘willingness’ are not one but two separate elements. ‘Readiness’ means the capacity of the Respondent No.1 buyer to perform the contract, which would include the financial position to pay the sale consideration. ‘Willingness’ refers to the intention of the Respondent No.1-buyer as a purchaser to perform his part of the contract, which is inferred by scrutinising the conduct of the Respondent No.1-buyer /purchaser, including attending circumstances.....”

54. In **C.S. Venkatesh Vs. A.S.C. Murthy**¹¹, the Apex Court on a consideration of various decisions, culled out what is implied by the words “ready and willing” and has held as under:

“16. 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

¹¹ (2020) 3 SCC 280

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.

55. In the light of the above authoritative settled legal principles, there is a clear distinction between “readiness” and “willingness”. Readiness refers to the buyer’s ability to perform the contract, including the financial ability to pay the sale consideration. “Willingness” refers to buyer’s intention to fulfil his obligation under contract, which can be understood by examining his conduct along with the surrounding circumstances.

56. Coming to the appeal on hand, the plaintiff in the plaint at para No.12, has raised the specific and categorical assertions that he is ready with the balance sale consideration amount of Rs.12,76,000/- to complete his part of the contract and to obtain the registered sale deed in his favour. He further asserted that defendant Nos.1 to 3 also tried to create nominal documents, which leads to unnecessary complications. Whereas, defendant No.3 filed detailed written statement running 12 pages, but did not deny the specific plea of readiness and willingness raised by the plaintiff.

57. In this context, it is apt to note Order VIII Rule 5 of C.P.C., wherein, it specifies the requirement of pleadings to be answered in the written statement. It is settled law that denial for want of knowledge is no denial at all. In the instant case, as the defendants have neither specifically denied the averments made in para No.12 of the plaint, nor an implied denial, then it must be presumed that the defendants have no knowledge of the fact. On this point, the plaintiff aptly relied upon the dictum laid down in ***Muddasani Venkata Narasaiah (died) through LRs Vs. Muddasani Sarojana***¹².

58. In fact, the plaintiff right from the inception, has continuously asserted that he was ready and willing to perform his part of contract since the issuance of legal notice dated 02.04.2009 (Ex.A.9), and he had also unequivocally asserted in the plaint that he was ready and willing to perform his part of the contract by deposing his evidence and also through his witnesses i.e., P.W.2 & P.W.3, substantiating his version in respect of readiness and willingness.

59. It is worth noting that, Ex.A.1 dated 15.12.2008, clearly indicates that the plaintiff paid total advance sale consideration of Rs.9,00,000/- (Rs.8,00,000/- by cash and Rs.1,00,000/- through cheque) and also indicates the agreement between plaintiff and defendants that the

¹² 2016 (12) SCC 288

remaining balance sale consideration to be paid on or before 02.04.2009 and Ex.A.1 dated 15.02.2008 does not contain any default clause. Further, before 02.04.2009, the plaintiff paid amounts between 03.12.2008 and 20.03.2009 and obtained receipts, which were marked as Ex.A.2 to A.6. These acts clearly transpires the plaintiff's intention to conclude the contract.

60. Moreover, the plaintiff also got issued legal notice dated 02.04.2009 (Ex.A.9) stating that he had waited at the Sub-Registrar Office, Madanapalle, so as to get regular sale deed from the defendants and called them with all the pre-requisites to complete the contract by paying the balance sale consideration. Although the defendants initially raised suspicion regarding issuance of Ex.A.9, but they have not been able to dismantle the plaintiff's version in view of cogent documentary evidence of Ex.A.10 dated 02.04.2009 (Courier Receipts), Ex.A.11 dated 02.04.2009 (Courier Acknowledgment).

61. It is also relevant to note that there is no dispute with regarding to the execution of registered sale deed dated 06.03.2009 (Ex.A.7) and registered sale deed dated 01.04.2009 (Ex.A.17) in favour of the plaintiff by the 1st defendant after receiving respective sale considerations pertaining to the portion of the subject properties in Ex.A.1, which crystal clears the factual aspects in the lis.

62. Receipt of Rs.2,00,000/- dated 17.04.2009 (Ex.A.16), receipt of Rs.1,00,000/- dated 21.04.2009 (Ex.A.18), undertaking and receipt dated 28.04.2009 (Ex.A.19), receipt of Rs.1,00,000/- dated 13.05.2009 (Ex.A.20), receipt of Rs.1,00,000/- dated 11.08.2009 (Ex.A.21), receipt of Rs.1,00,000/- dated 14.09.2009 (Ex.A.22), receipt of Rs.2,00,000/- dated 01.12.2009 (Ex.A.27), receipt of Rs.1,50,000/- dated 02.01.2010 (Ex.A.28) & receipt of Rs.1,00,000/- dated 10.02.2010 (Ex.A.29), the said receipts clearly transpires that the defendants received payments in different spells even after the cut off date i.e., 02.04.2009 from the plaintiff, and the defendants executed two registered sale deeds (Ex.A.7 and Ex.A.17) in favour of the plaintiff.

63. Importantly, receipt dated 10.02.2010 (Ex.A.29) shows that defendant No.3 received an amount of Rs.1,00,000/- from the plaintiff through P.W.2 & P.W.3 (but, P.W.2 & P.W.3 were not cross examined by the defendants) in respect of land in Reddyvaripalli, which is part of subject property in Ex.A.1. Although the defendants contended that registration of the land will be done only if enhanced rate is paid by the plaintiff, a close reading of Ex.A.29, clearly shows that the enhanced rate for the portion in Ex.A.29 was struck off and the same was also marked before the Trial Court without any objection at all.

64. Learned counsel for the appellants/defendants placed reliance on the dictum of the Hon'ble Supreme Court in ***U.N.Krishna Murthy Vs. A.M. Krishna Murthy***¹³, wherein, it has held that in respect of readiness and willingness, the duty rests upon the plaintiff to plead and substantiate the same. He further relied on another dictum laid down in ***Janardhan Das & Ors. Vs. Durga Prasad Agarwala***, wherein, the Apex Court discussing the ratio held in ***U.N.Krishna Murthy*** case, expounded the principle that readiness and willingness are the conditions precedent on the part of the plaintiff to decree the suit for specific performance.

65. In the above dictums, the respective plaintiffs therein failed to demonstrate continuous readiness and willingness to perform their part of contracts. Whereas, in the instant case, the plaintiff has not only pleaded, but also demonstrated his readiness and willingness to perform his part of the contract by paying advance amount at the time of execution of Ex.A.1, paying amounts before 02.04.2009 (cut off date), and he also went to the Sub-Registrar Office, Madanapalle., for the said purpose. In fact, defendant No.1 also executed registered sale deeds in favour of plaintiff after receiving the sale consideration amounts in respect of portion of the subject property mentioned in Ex.A.1.

¹³ 2023 (11) SCC 775

66. In view of the above clear categorical evidence on record, coupled with the fact that the Trial Court after thorough judicial scrutiny, arrived at the finding that the plaintiff was ready and willing to perform his part of the contract, we see no plausible reason to discard the said finding and we hold point No.2 in favour of the plaintiff and against the defendants.

Point No.3:

67. It is the case of the plaintiff that defendant Nos.1 to 3 executed agreement of sale dated 15.12.2008 (Ex.A.1) in favour of the plaintiff and the entire suit revolves around Ex.A.1. A close examination of Ex.A.1 clearly reveals that the agreement of sale (Ex.A.1) is with the signatures of defendant Nos.2 & 3 and without the signature of defendant No.1. Now, in the absence of signature of defendant No.1, the question arises whether he is liable to execute the registered sale deed in favour of the plaintiff. In this context, we proceed to the facts in the instant appeal. As per the terms of Ex.A.1, plaintiff (P.W.1) paid amounts on different dates to the defendants and to that effect defendants also endorsed and issued receipts i.e., Ex.A.2 to Ex.A.6, Ex.A.8, the same were also marked on behalf of the plaintiff. The plaintiff also paid amounts through P.W.2 and P.W.3, who were also examined on his behalf. Admittedly, the said P.W.2 & P.W.3 were not cross examined by the defendants and the cross-examination of P.W.2 & P.W.3 was treated as 'nil' as per the Trial Court

docket orders. Though the defendants cross examined P.W.1, but they failed to destroy the case of the plaintiff in relation to Ex.A.1. Another significant factor is that defendant No.1 executed registered sale deed dated 06.03.2009 (Ex.A.7), after receiving sale consideration from the plaintiff in respect of portion of subject property in very same Ex.A.1.

68. Further, even after passage of deadline i.e., 02.04.2009 as stipulated in Ex.A.1, the very same 1st defendant further executed another registered sale deed dated 21.04.2009 (Ex.A.27) after receiving the sale consideration of Rs.2,00,000/- from the plaintiff in respect of part of subject property in Ex.A.1 only, which clearly indicates that defendant No.1 has full knowledge in respect of Ex.A.1 dated 15.12.2008 and its terms and conditions too. Once defendant No.1 has the knowledge about Ex.A.1 dated 15.12.2008 and had himself received sale consideration amounts from the plaintiff and executed registered sale deeds in favour of the plaintiff again, cannot take a plea that he has no knowledge of Ex.A.1 at the belated stage and contend that it is not binding on him, which would amount to "Approbate and Reprobate". Hence, merely because Ex.A.1 does not contain signature of the 1st defendant, he cannot say that Ex.A.1 is not binding on him.

69. In view thereof, defendant No.1 was clearly conscious of the acts as detailed above and the Trial Court rightly arrived at its finding in favour of

the plaintiff that defendants are liable to execute the sale deed in favour of the plaintiff on receiving the balance sale consideration from the plaintiff.

70. Having regard to peculiar facts and circumstances and in the light of the above stated legal position, we answer point No.3 in favour of the plaintiff and against the defendants.

71. Before parting with the instant lis, we deem it appropriate to answer the final arguments urged by the learned counsel for the appellants/defendants in the instant appeal that the defendants through legal notice dated 02.08.2010 (Ex.B.4) attributed the plaintiff making mockery of law and also alleging nasty games played by the plaintiff in obtaining extension of time for one and a half years, had terminated the agreement of sale dated 15.12.2008 (Ex.A.1) by forfeiting the amount paid by the plaintiff. Learned counsel further submitted that merely filing a suit for specific performance without seeking a declaration of cancellation of Ex.A.1 is bad, and the said suit is *per se* is not maintainable. In support of his contentions, learned counsel for the appellants/defendants relied on ***R.Kandasamy (since dead) & Ors. Vs. T.R.K. Srawathy & Ors.***¹⁴ and ***Sangitha Sinha Vs. Bhawana Bharadwaj & Ors.***¹⁵.

¹⁴ 2024 SCC OnLine SC 3377

¹⁵ 2025 SCC OnLine SC 723

72. *Per contra*, Sri O. Manohar Reddy, learned Senior Counsel submitted that admittedly the above said point with regard to maintainability was neither raised in the written statement filed by the defendants, nor deposed in the evidence adduced by the defendants, during the entire suit proceedings before the Trial Court. He further submitted that raising a plea of maintainability at the stage of fag end of the appeal is not sustainable at all.

73. True it is that the defendants had not asserted the plea of maintainability either in their written statement or in the defendants' evidence. It is pertinent to note that the defendants have also not raised this issue even in their grounds of the present appeal.

74. A perusal of the instant appeal records also goes to show that the defendants have not filed any additional grounds by raising the said plea of maintainability of the suit. Now coming to the citation relied upon by the defendants in ***R.Kandasamy (since dead) & Ors. Vs. T.R.K. Saraswathy & Anr.***¹⁶, the Hon'ble Supreme Court held that, irrespective of whether the parties have raised the contention about the jurisdiction to maintain the lis, it is for the courts, including the appellate court, to discharge in its pursuit for rendering substantial justice to the parties.

¹⁶ (2025) 3 SCC 513

However, the Apex Court, by perceiving all aspects in its vivid terms, clarified in its para No.47, which read as under:-

“.....47. However, we clarify that any failure or omission on the part of the trial court to frame an issue on maintainability of a suit touching jurisdictional fact by itself cannot trim the powers of the higher court to examine whether the jurisdictional fact did exist for grant of relief as claimed, **provided no new facts were required to be pleaded and no new evidence led.....**”

75. In the instant case on hand, undisputedly defendants got issued Ex.B.4 dated 02.08.2010, whereunder, the defendants accused the plaintiff of committing mockery of law, and also alleged plaintiff playing all possible nasty games, for the extension of time., which made the defendants to cancel Ex.A.1 by forfeiting the advance amounts paid by the plaintiff to them.

76. In this backdrop, it is apt to go through the specific terms and conditions agreed between the both parties in agreement of sale dated 15.02.2008 (Ex.A.1), wherein, the defendants agreed to sell subject properties in Ex.A.1 for Rs.4,00,000/- per one acre of land and also defendants (vendors) received total consideration of Rs.9,00,000/- from the plaintiff (purchaser), and balance sale consideration to be paid on or before 02.04.2009 at the time of completion of sale transaction only.

77. Admittedly, there was no forfeiture clause in Ex.A.1 and even as per the version of both sides after the cut off date i.e., 02.04.2009 also the

amounts were paid by the plaintiff to the defendants, for which, defendant No.1 also executed registered sale deeds dated 06.03.2009 and 21.04.2009 (Ex.A.7 & Ex.A.17) in favour of the plaintiff in respect of portion of the subject properties in Ex.A.1.

78. Importantly, the right to forfeit the amounts flows from contractual terms as set out by the respective parties bilaterally, but not unilaterally by one party. On this point, the law is well settled by the Apex Court in **Satish Batra Vs. Sudhir Rawal**¹⁷ had held as under:-

“.....15. The law is, therefore, clear that to justify the forfeiture of advance money being part of "earnest money" the terms of the contract should be clear and explicit. Earnest money is paid or given at the time when the contract is entered into and, as a pledge for its due performance by the depositor to be forfeited in case of non-performance by the depositor. There can be converse situation also that if the seller fails to perform the contract the purchaser can also get double the amount, if it is so stipulated. It is also the law that part-payment of purchase price cannot be forfeited unless it is a guarantee for the due performance of the contract. In other words, if the payment is made only towards part-payment of consideration and not intended as earnest money then the forfeiture clause will not apply.....”

79. In **Suresh Kumar Wadhwa Vs. State of Madhya Pradesh & Ors**¹⁸, the Apex Court had held at para Nos.26 & 27 as under:-

“.....26. Equally well-settled principle of law relating to contract is that a party to the contract can insist for performance of only those terms/conditions, which are part of the contract. Likewise, a party to

¹⁷ 2013 (1) SCC 345

¹⁸ 2017 (6) SCC 757

the contract has no right to unilaterally "alter" the terms and conditions of the contract and nor they have a right to "add" any additional terms/conditions in the contract unless both the parties agree to add/alter any such terms/conditions in the contract.

27. Similarly, it is also a settled law that if any party adds any additional terms/conditions in the contract without the consent of the other contracting party then such addition is not binding on the other party. Similarly, a party, which adds any such term/condition, has no right to insist on the other party to comply with such additional terms/conditions and nor such party has a right to cancel the contract on the ground that the other party has failed to comply with such additional terms/conditions....."

80. Whereas, the defendants alleged mockery of law and other negative claims against the plaintiff for cancelling Ex.A.1. The requirement of foundational facts and clear evidence from both sides is necessary to address the core issues. Due to the lack of such vital facts and substantial evidence in the lis as clarified by the Apex Court in **R.Kandasamy** case, it is inappropriate to decide the maintainability of the suit at the final stage of the appeal. Therefore, with all due respect, the facts and circumstances in the cases referred to supra, relied upon by the learned counsel for the appellants/defendants, are not applicable to the present appeal.

Conclusion:

81. For the foregoing conclusion and in view of the points answered above, the appeal is dismissed, confirming the decree and judgment dated 26.11.2013 passed in O.S.No.46 of 2010 on the file of II Addl. District Judge, FAC, VII Addl. District Judge, Madanapalle, Chittoor District. One month time is granted to the respondent/plaintiff to pay the

balance sale consideration of Rs.12,76,000/-, if not already paid. Thereafter, the appellants/defendants shall execute the agreement of sale dated 15.12.2008 (Ex.A.1) within two months.

No costs. As a sequel, all pending applications shall stand closed.

RAVI NATH TILHARI, J

MAHESWARA RAO KUNCHEAM, J

Dated 26.09.2025
GVK

**THE HONOURABLE SRI JUSTICE RAVI NATH TILHARI
AND
THE HONOURABLE SRI JUSTICE MAHESWARA RAO KUNCHEAM**

APPEAL SUIT No.158 of 2014

Dt. 26.09.2025

GVK