

HIGH COURT OF ANDHRA PRADESH

Bench: JUSTICE T.MALLIKARJUNA RAO

Date of Decision: 8 February 2024

APPEAL SUIT NO. 1134 OF 2016

BOGI RAJESWARI ...APPELLANT/DEFENDANT

VERSUS

CHINTALA SRINIVASA KUMAR ...RESPONDENT/PLAINTIFF

Legislation:

Section 96 of the Code of Civil Procedure, 1908 (C.P.C.)

Section 16(3) of the Indian Contract Act

Section 111 of the Indian Evidence Act

Sections 16(c) and 20 of the Specific Relief Act

Subject: Appeal against the trial court's decision granting specific performance of a sale agreement for immovable property, focusing on the authenticity of the agreement and the readiness and willingness of the parties to perform their contractual obligations.

Headnotes:

Specific Performance of Sale Agreement – Upholding trial court's decision for specific performance – Defendant (Appellant) challenged the authenticity of the sale agreement dated 25.05.2009 and receipt of advance payment – Trial court findings confirmed, establishing the agreement's validity and appellant's contractual obligations. [Paras 8, 15, 24-26, 34, 55-56]

Dispute Over Execution of Agreement – Defendant claimed agreement (Ex.A.1) was fabricated and denied executing it – Trial court and High Court found appellant's claims unsubstantiated, validating the respondent's claims and documents presented. [Paras 17-19, 21-23, 25, 55]

Financial Capacity and Readiness to Perform Contract – Plaintiff (Respondent) demonstrated financial capacity and readiness to perform the contract, contradicting defendant's assertions – High Court emphasized importance of readiness and willingness in specific performance suits. [Paras 30-32, 35-37, 42-43]

Conduct of Parties and Discretion in Specific Performance – High Court observed defendant's conduct aimed at evading contractual obligations – Exercised judicial discretion in favor of specific performance, as per established legal principles. [Paras 40-41, 47-49, 53-54]

Modification of Trial Court Judgment – High Court modified trial court's decree – Directed respondent to deposit balance sale consideration with interest, post which appellant to execute sale deed; failing which, court to execute deed in favor of respondent. [Paras 57-58]

Referred Cases:

- Netyam Venkataramanna and others, V. Mahankali Narasimham (died) and others¹, the composite High Court of Andhra 11993 (2) APLJ 381 (HC)
- R.Lakshmikantham v. Devaraji 2019 (4) ALT 415 (SC)
- Chundururu Padmavati v. Chundururu Narasimha Rao 2000(1) ALT 613
- Silvey v. Arun Varghese (2008) 11 S.C.C. 45
- Lourdu Mari David V. Louis Chinnaya Arogiaswamy 1996) 5 SCC 589
- U.N. Krishnamurthy (since deceased) Thr. L.R.s. Vs. A.M.Krishnamurthy 6(2022) S.C.C. Online 840
- His Holiness Acharya Swami Ganesh Dassji v. Sita Ram Thapar (1996) 4 SCC 526
- Kalawati v. Rakesh Kumar (2018) 3 SCC 658
- P. Daivasigamani Vs. S.Sambandan 2022 S.C.C. OnLine SC 1391
- Syed Dastagir v. T.R. GopalakrishnaSetty (1999) 6 SCC 337
- Mademsetty Satyanarayana v. G. Yelloji Rao A.I.R. 1965 SC 1405
- R. Lakshmikantham v. Devaraji (2019) 8 S.C.C. 62
- Sukhbir Singh v. Brij Pal Singh (1997) 2 SCC 200
- Kanthamani v. Nasreen Ahmed (2017) 4 SCC 654
- C.S. Venkatesh v. A.S.C. Murthy (2020) 3 SCC 280
- Nathulal Vs. Phoolchand A.I.R. 1970 SC 546
- Bank of India Ltd. & Ors. v. Jamsetji A. H. Chinoy and Messrs. Chinoy and Company A.I.R. 1950 P.C. 90 at p.96
- VeeramareddyNagabhushana Rao V. JyothulaVenkateswara Rao 2011 (1) ALT 600 (DB)
- P.Ramasubbamma Vs. V.Vijayalakshmi&Ors 2022 (2) DNJ 625
- Veeramareddy Nagabhushana Rao V. JyothulaVenkateswara Rao 2011 (1) ALT 600 (DB)
- Mysore State Road Transport Corporation Vs. MirjaKhasim Ali Beg and Another A.I.R. 1977 SC 747
- Prakash Chandra Vs. Angadlal and Others A.I.R. 1979 SC 1241
- Nirmala Anand V. Advent Corporation (P) Ltd. And others 232002 (6) A.L.D. 54 (S.C.)

Representing Advocates:**Sri G.Ramesh Babu for appellant/defendant****Sri Turaga Sai Surya for respondent/plaintiff****Bogi Rajeswari vs Chintala Srinivasa Kumar on 8 February, 2024**

THE HON'BLE SRI JUSTICE

T.MALLIKARJUNA RAO

APPEAL SUIT

NO.1134 OF 2016 JUDGMENT:

1. The Appeal, under Section 96 of the Code of the Civil Procedure, 1908 (for short, 'C.P.C.'), is filed by the Appellant/Defendant challenging the decree and Judgment dated 26.09.2016 in O.S. No.27 of 2010 passed by the learned Principal District Judge, Srikakulam (for short, 'the trial court').
2. Respondent is the Plaintiff who filed the suit in O.S. No.27 of 2010 seeking Specific Performance of agreement of sale dated 25.05.2009, directing the Defendant to execute the registered sale deed in favour of the Plaintiff regarding the suit schedule property by receiving the balance sale consideration amount.
3. Referring to the parties hereinafter as arrayed in the suit is expedient to mitigate potential confusion and better comprehend the case.
4. The factual matrix, necessary and germane for adjudicating the contentious issues between the parties inter se, may be delineated as follows:
 - (a) The Defendant, possessing full ownership of the schedule property, agreed to sell it to the Plaintiff at Rs.11,000/- per cent. The agreement was formalized on 25.05.2009, with the Defendant receiving an advance payment of Rs.12,00,000/- on the same day. The agreement, T.M.R., J executed at the Defendant's residence in the presence of witnesses and a scribe, included a condition for executing the sale deed within nine (9) months from the agreement date. Furthermore, Defendant committed to removing a shed on the schedule property. Defendant provided Plaintiff with the original sale deed dated 19.01.1999, through which she acquired the schedule property, along with the adjacent property, and relevant proceedings dated 14.11.2008 of Tahsildar, Etcherla, issued in her name, along with a sketch.

(b) The Plaintiff consistently demonstrates readiness and willingness to fulfil his contractual obligations, while the Defendant deliberately avoids completing the registration of the sale deed. Following Defendant's failure to execute the registered sale deed within the stipulated timeframe, Plaintiff issued a legal notice on 28.04.2010, requiring Defendant to manage the sale deed upon receipt of the remaining sale consideration within seven days. Although Defendant received the notice on 01.05.2010, she neither responded nor executed the registered sale deed. She tried to alienate the property to her relatives to create an assortment of litigation.

5. (a) In her written statement, the Defendant refuted most of the assertions made in the plaint. She contested the accuracy of her stated address, clarifying that she resides separately from her husband, Bogi Anjaneyulu, due to marital differences and currently lives with her elder son, Bogi Ananda Rao, at Dabalvari Street, Amadalavalasa. The Defendant disclosed that the original sale deed and related documents are in the T.M.R., J possession of her husband, who allegedly obtained her signatures on blank white papers, conquest papers, and stamp papers, misleading her into believing they were required for business and court purposes. Upon discovering her husband's manipulation and the filing of petitions in her name with the aforementioned blank papers containing her signatures, she submitted an affidavit before the Principal Senior Civil Judge's Court, Srikakulam, in O.S. No.5 of 2003, exposing the fraud perpetrated by her husband. Defendant asserted that she did not enter into the purported suit agreement dated 25.05.2009 nor provide any consideration.

(b) Additionally, Defendant asserts that the property outlined in the plaint schedule is her exclusive possession, acquired with her Stridhana. She contended that she had previously entered into an agreement of sale with Nallamilli Srinivasa Reddy on 03.04.2007 at Rs.15,000/- per cent, having received an advance amount of Rs.15,00,000/-, and had informed both her husband and the Plaintiff about this arrangement. Despite Srinivasa Reddy's request to finalize the sale deed by settling the outstanding consideration, the Defendant claimed to be hindered, as her husband retained the original documents. She also pointed out ongoing negotiations with her husband, mediated through elders, and her retention of silver and gold ornaments in the Lakshminagar residence. Defendant insisted there was no agreement between Plaintiff and herself and asserted that Plaintiff, conspiring with her husband, was attempting T.M.R., J to acquire the property at an undervalued price through the forgery of documents, taking advantage of her innocence and vulnerability.

6. Based on the above pleadings, the trial Court framed the following issues:

- (1) Whether the Plaintiff is entitled for specific performance of sale agreement dated 25.05.2009 executed by the Defendant in favour of the Plaintiff in respect of suit schedule property?

(2) Whether the suit is vexatious and frivolous one?

(3) To what relief?

7. During the trial, on behalf of the Plaintiff, P.Ws.1 to 3 were examined and marked Exs.A.1 to A.8. On behalf of the Defendant, D.Ws.1 to 6 were examined and marked Exs.B.1 to B.5 and Exs.X.1 to X.4.

8. After completing the trial and hearing the arguments of both sides, the trial Court dismissed the suit with costs, directing the Defendant to execute the registered sale deed in respect of the plaint schedule property in favour of the Plaintiff after receiving the balance sale consideration within three months from the date of Judgment; if the Defendant fails to execute the registered sale deed as stated supra, the Plaintiff is at liberty to get it registered under due process of Law after depositing the balance sale consideration into Court within three months.

9. I have heard learned counsel appearing on behalf of the respective parties at length and have gone through the Judgment and findings recorded by the learned trial Court while decreeing the suit. I have also re-

T.M.R., J appreciated all the evidence on record, including the deposition of relevant witnesses examined by both sides.

10. (a) Learned counsel Sri G.Ramesh Babu, representing the appellant/defendant, contends that the trial court handled the suit perfunctorily, reaching improper conclusions based on assumptions. The failure to lift the Plaintiff's veil, considering the denial of the agreement's execution and the legal nuances of suits for specific performance, is highlighted. The argument emphasizes that the trial Court neglected to consider relevant precedents related to Section 16(3) of the Indian Contract Act, Section 111 of the Indian Evidence Act, and Sections 16(c) and 20 of the Specific Relief Act. It is further asserted that the trial Court erred in accepting the Plaintiff's claim of withdrawal and payment as advance sale consideration, overlooking the multiple withdrawals exceeding the required amount. The Plaintiff's alleged ill motive before the suit is emphasized. The contention disputes the trial Court's conclusion that the withdrawn amount was paid to the Defendant, emphasizing that withdrawals don't necessarily imply payment to the Defendant. The defence points to the Plaintiff's admission in paragraph 4 of the plaint, asserting that he approached the Defendant after the stipulated period, which should disqualify the Plaintiff.

(b) It is further contended that the bank statement (Ex.A.7) demonstrates that Plaintiff had no balance within the stipulated period and after that. The trial Court's alleged error in determining when T.M.R., J Defendant became aware of Ex.A.1 is disputed, emphasizing her assertion that she did not execute Ex.A.1 and that it may have been created on blank papers with her signatures obtained by her husband over time.

- (b) The defence questions the trial Court's rejection of reliance on Ex.B.2 plaint to prove differences between the Defendant and her husband, asserting that it occurred during the suit's pendency. The failure to compare Defendant's signature in Ex.A.4 acknowledgement with admitted signatures is raised, arguing that it establishes non-service of Ex.A.2 notice at the Lakshmi Nagar address and implies manipulation by Plaintiff.
- (c) Lastly, it is argued that the Defendant's husband should have been made a party to the suit.

11. Per contra, Sri Turaga Sai Surya, learned counsel representing the Respondent/Plaintiff, argued that the trial Court appreciated the case facts and reached a correct conclusion. The reasons given by the trial Court do not require any interference.

12. Concerning the pleadings in the suit, the findings recorded by the Trial Court and in light of their contentions and submissions made on either side before this Court, the following points would arise for determination:

1) Is the trial Court justified in granting the relief of specific performance of the Ex.A.1 agreement of sale dated 25.05.2009?

2) Does the trial Court judgment need any interference? POINT NOs.1& 2:

13. It is settled Law that in a suit for Specific Performance, the Plaintiff has to win or lose his case on his strength and not on the Defendant's weak case.

14. Plaintiff-Chinthala Srinivasa Kumar has been examined as PW.1, and Defendant Bhogi Rajeswaris DW.1. It is undisputed that Defendant owns the suit schedule property. Both PW.1 and DW.1 have reiterated the positions outlined in their respective pleadings. Supporting this, PW.2 (Tadikamalla Purna Chandra Sekhara Rao), an attesor of the Ex.A.1 agreement of sale, and PW.3 (Sura Syamala Rao), the scribe of Ex.A.1, have provided evidence.

15. The testimony of PWs.1 to 3 establishes that Defendant agreed to sell the suit schedule property, an extent of Ac.1.63 cents, to Plaintiff at Rs.11,000/- per cent. Subsequently, on 25.05.2009, Defendant executed the Ex.A.1 sale agreement in favour of Plaintiff after receiving an advance payment of Rs.12,00,000/- on the same day, in the presence of the scribe and attestors at Defendant's residence. At the time of executing Ex.A.1, the Defendant handed over the original registered sale deed dated 19.01.1999 (Ex.A.5), through which she acquired the schedule property, along with the proceedings dated 14.11.2008 of Tahsildar, Etcherla, issued in her name, accompanied by a sketch (Ex.A.6), to the Plaintiff.

T.M.R., J

16. To substantiate the Plaintiff's case, reliance was placed on Ex.A.2, a legal notice dated 28.04.2010, which was issued to the Defendant, urging her to execute the sale deed after receiving the consideration amount within seven days of receiving the legal notice. The service of the legal notice on the Defendant is evidenced by Ex.A.3 postal receipt and Ex.A.4 postal acknowledgement.

17. Defendant's stance, as asserted by DW.1 in both oral testimony and the written statement, is that she did not enter into the Ex.A.1 agreement of sale with Plaintiff. She contended that disputes existed between her and her husband, who had custody of the original sale deed (Ex.A.5). According to her, it is a habitual practice of her husband to obtain her signatures on blank papers, which were then allegedly used to create Ex.A.1 with the collusion of the Plaintiff and attestors. Defendant posited that Plaintiff, taking advantage of the discord between her and her husband, fabricated a document on a conquest paper, raising suspicions about the authenticity of Ex.A.1.

18. In support of her position, Defendant presented DW.2 (B. Someswararao), her elder son, whose testimony affirmed the disputes between his parents. However, during DW.2's testimony, he acknowledged the endorsement of the Tahsildar under Ex.A.6 and the certificate issued to his mother. DW.2 admitted awareness of the execution of the registered lease deed dated 17.04.2004 in favour of Bharat Petroleum for 40 years by his mother under Ex.A.8. It was also T.M.R., J disclosed by DW.2 that he was familiar with the identity of Srinivasa Reddy, i.e., DW.3, as his brother Anand's friend. However, DW.1 did not dispute her signature appearing on Ex.A.1.

19. In assessing whether the Defendant can substantiate her claim of having disputes with her husband at the time of the alleged Ex.A.1 agreement of sale, certain discrepancies in the evidence arise. DW.1, in her testimony, admitted that her husband passed away on 07.10.2014. Despite presenting Ex.B.5, the death certificate of her husband, DW.1, denied that her husband died in Amadalavalasa. However, DW.2's cross-examination revealed that, according to Ex.B.5, his father passed away in Lakshmi Nagar, Amadalavalasa. This inconsistency raises questions about the accuracy of DW.1's evidence regarding the place of her husband's death, particularly given her reliance on Ex.B.5.

20. DW.1 asserted that she had not been residing at Lakshmi Nagar, Amadalavalasa, by the date of the alleged agreement due to ongoing differences with her husband and sons since the end of 2007. She contended that the Plaintiff filed the suit at her husband's behest in collusion with the attestors and the scribe. However, DW.1 admitted that her residential particulars were mentioned in the lease deed dated 17.04.2014 (Ex.A.8), contradicting her claim. Moreover, DW.1 acknowledged that she had not reported her husband's actions to the police regarding obtaining her signatures on blank papers and creating documents against her interest. The defence relied on Ex.B.2, a certified T.M.R., J copy of the plaint in O.S. No.443

of 2012, where DW.1 is the Plaintiff and her husband is the Defendant. However, Ex.B.8 reveals that this suit was filed after the present suit by the Plaintiff. The trial court rightly observed that it does not conclusively establish disputes between the Defendant and her husband at the time of Ex.A.1. It is difficult to come to conclude that she was residing in the house bearing D.No.23-3-4, Dhabala Street, Amadalavalasa town as on the date of suit transaction.

21. The trial court also correctly noted that Ex.B.5, the death certificate, indicates the place of death as Lakshmi Nagar, Amadalavalasa, not Dhabala Street. Legal notices, Court summons, and the Defendant's written statement were sent to the address mentioned in Ex.A.1, supporting the conclusion that the Defendant resided with her husband in the house at Lakshmi Nagar, Amadalavasa, at that time. The material on record does not substantiate the claim that Defendant lived separately from her husband since 2007 with her son, Anand, at Dhabala Street, misusing her blank signed papers. The trial court reasonably concluded that Defendant raised the dispute plea to avoid fulfilling her contractual obligations under Ex.A.1.

22. The trial court rightly observed that Exs.B.2 and B.3 documents have no relevance to Plaintiff, and the material on record establishes that Defendant used to reside with her husband at Lakshmi Nagar, Amadalavalasa. This fact is evident from the documents the Plaintiff and Defendant relied upon. Therefore, it is obvious that the Defendant T.M.R., J introduced the plea of disputes between her and her husband solely to support her case in the suit.

23. DW.1, in cross-examination, admitted that her husband looked after this case until his death. The trial court noted that DW.1's statement undermines her defence, as it establishes that her husband pursued this court litigation on her behalf. Given these circumstances, it becomes difficult to believe DW.1's contention that she filed a suit against her husband due to disputes between them. The trial court rightly considered the possibility of filing such a suit to strengthen the defence in the present case.

24. The onus to prove that Plaintiff had obtained Defendant's signatures on blank papers through her husband lies entirely upon the Appellant. However, the Appellant failed to present any documentary or oral evidence to discharge this onus. The trial court appropriately disbelieved the Defendant's case, as no evidence was provided to substantiate the plea.

25. DW.2 denied the Plaintiff that his wife is working in the same college, where the Plaintiff's wife is working as a Commerce lecturer and he got acquainted with the Plaintiff even before Ex.A.1. The trial court, relying on Ex.B.3 document, observed that DW.2's wife works as a Commerce lecturer in Government Women's College, Srikakulam, despite DW.2 initially denying this connection with the Plaintiff's wife. The trial court extensively discussed the evidence related to the proceedings in C.R.P. No.3060 of 2011. Exs.B.3

and B.4 revealed that DW.2's father filed T.M.R., J a petition in the name of DW.2's wife (the Defendant), requesting her appointment as a guardian for DW.2, who was alleged to be of unsound mind at that time. The Court appointed her as a guardian to DW.2. The trial court concluded that Ex.B.4, a copy of the petition in I.A. No.139 of 2007, did not help decide the dispute. After carefully appreciating the evidence adduced in this regard, this Court concurs with the said findings recorded by the trial Court.

26. The other contention raised is that the Defendant already entered into the agreement of sale with N.Srinivasa Reddy (DW.3) by executing Ex.X.1 agreement in his favour on 03.04.2007 in the presence of attestors by receiving Rs.15,00,000/- @ Rs.1,500/- per cent. To prove the said agreement, the Defendant examined Ganda Chandramouli as DW.4, the 1st attestor of Ex.X.1. To confirm this agreement, the Defendant presented Ganda Chandramouli as DW.4, the first attestor of Ex.X.1, and the scribe, P.V. Ramana, as DW.5. The trial court extensively referred to their evidence in its Judgment. The trial court observed that Ex.X.1 stamp paper indicated it was purchased in Balabadrapuram village, East Godavari District, in the name of DW.3. The trial court scrutinized the evidence and expressed doubts about the purchase of the stamp paper, considering that the drafting of Ex.X.1 took place in the Defendant's house at Lakshmi Nagar, Amadalavasa. DW.3, a friend of the Defendant's elder son, admitted visiting Balabadrapuram village before the execution T.M.R., J of Ex.X.1. The Court considered this evidence to disbelieve the purchase of the stamp paper by DW.3 in his village.

27. According to the evidence of DWs.3 and 4, Ex.X.1 was prepared in the Defendant's house at Lakshmi Nagar, Amadalavasa; there are some endorsements regarding the payment of cash amount vide Exs.X.3 and X.4. The trial Court appreciated the evidence of DWs.3 to 5 at paragraphs No.24 and 25 of its Judgment. To support the said transaction, the Defendant also examined P.Laxmanamurthy as DW.6. After appreciation of their evidence, the trial Court observed that the purchase of the stamp paper by DW.1 is doubtful as it was purchased at Balabadrapuram village i.e., the DW.3's village at East Godavari District, whereas, drafting of Ex.X.1 was taken place in the Defendant's house at Lakshmi Nagar, Amadalavasa. The evidence on record indicates that DW.3 is the friend of Defendant's elder son. The sad fact is admitted by DW.2, the Defendant's younger son, and DW.6, who claimed to be the neighbour of the Defendant's elder son. DW.3 also stated in his evidence that he did visit Balabadrapuram village before the execution of Ex.X.1.

28. The trial court also noted that DW.3 had not filed any suit for specific performance against the Defendant based on the Ex.X.1 agreement, despite the alleged payment made under it. After careful appreciation of the evidence, the trial court disbelieved the Defendant's case regarding the execution of Ex.X.1 agreement before Ex.A.1. In contrast, the Court expressed concerns about the credibility of DW.1, T.M.R., J stating that she showed no regard for the truth, provided incorrect versions on minute aspects, and gave evasive

replies on vital aspects of the case. DW.1's evidence in cross-examination is further referred to for a better understanding:

..... I do not remember whether I received the legal notice dated 28.04.2010 issued by the Plaintiff under Ex.A.2 and acknowledged the said notice under Ex.A.4. I do not remember whether PW.3 Syamalarao scribed about 10 to 12 documents relating to our family.....I do not know whether I have handed over my original title deed, endorsement of Tahsildar and sketch, i.e., Ex.A.5 and A.6, to the Plaintiff at the time of Ex.A.1 agreement. I do not know what is mentioned in my written statement or my chief examination affidavit about my title deed.....I do not know whether on the date of that Ex.A.1 agreement, when I told them to bring stamp papers, they had not brought stamp papers, and as such, the EX.A.1 agreement had to be executed on white paper.....

29. The evidence provided by DW.1 clearly indicates that she needs to be better versed with the defence articulated in her written statement and the contents of her chief affidavit concerning her title deed. As previously noted, DW.1 primarily asserted that she had disputes with her husband, who allegedly obtained her signatures and fabricated the Ex.A.1 agreement. Her testimony further establishes that until her husband's demise, he actively pursued the case, and the available material on record suggests that the Defendant and her husband continued to reside together under the same roof until his death. Notably, the Defendant has not substantially contested the Plaintiff's financial capacity, as evidenced by the record.

30. Defendant asserted that Plaintiff lacks the financial capacity to pay the balance sale consideration amount. However, she needed to elucidate why she agreed with the Plaintiff if he lacked financial capacity. It strains credulity to believe that Defendant would willingly enter into the sale agreement (Ex.A.1) without conducting due diligence.

31. The counsel for the respondent/plaintiff asserts that Plaintiff consistently demonstrated readiness and willingness to fulfil his contractual obligations. When the Defendant failed to come forward, the Plaintiff promptly issued a legal notice. It is emphasized that, in the context of the sale of immovable properties, time is generally not considered the essence of the contract unless there are specific grounds indicating otherwise.

32. On the contrary, the Plaintiff has presented documentary evidence to substantiate his financial capacity to acquire the property, supporting his position. DW.1 has submitted Ex.A.7 bank account statements covering 01.04.2008 to 05.11.2012. Upon examination of Ex.A.7, it is evident that the Plaintiff withdrew various amounts on different dates, including Rs.3,24,000/- on 25.03.2009, Rs.1,75,000/- on 31.03.2009, Rs.2,00,000/- on 29.04.2009, Rs.1,70,000/- on 07.05.2009, Rs.4,25,000/- on 23.06.2009, and Rs.2,00,000/- on 08.07.2009. The Plaintiff, engaged in the Granite business,

asserts that he earns Rs.2,00,000/- per month, a claim that has not been disputed. The available evidence indicates that he had Rs.20,00,000/- as of entering into the Ex.A.1 agreement. Plaintiff further contends that he acquired other properties, including those in the vicinity of Defendant's property and Visakhapatnam, and these acquisitions are not contested. Consequently, the Plaintiff's financial capacity is substantiated by compelling documentary evidence.

33. The testimony of PWs.1 to 3 establishes that Defendant entered into the Ex.A.1 agreement of sale with Plaintiff on 25.05.2009 after receiving the advance amount of Rs.12,00,000/-. Despite a thorough cross-examination of P.W.s 2 and 3, something needed to be brought forth to discredit their evidence. This Court finds no reason to doubt the credibility of P.W.s 2 and 3, as their testimony appears consistent, trustworthy, and unchallenged.

34. The Plaintiff has presented Ex.A.5, a registered sale deed, and Ex.A.6, proceedings of the Tahsildar, along with a sketch, all of which were entrusted to him. The Defendant has not explained the custody of these documents. DW.1's admission during cross-examination indicates that the theory of disputes with her husband was concocted solely for suit to undermine the Plaintiff's rights. The evidence on record refutes the defence raised by the Defendant regarding disputes with her husband, as it suggests that the Defendant's husband actively pursued the litigation until his demise.

35. The Ex.A.1 agreement stipulates a nine-month period from the date of the agreement, during which Defendant had to remove the shed from T.M.R., J the suit schedule property before executing the registered sale deed. PW.1's cross-examination did not reveal anything that would discredit his version. The evidence shows that after completing the stipulated nine-month period, Plaintiff requested Defendant to execute the registered sale deed. Subsequently, when no response was received, the Plaintiff issued a legal notice on 28.04.2010. The evidence on record indicates that, due to the absence of a response from Defendant, Plaintiff filed the present suit on 13.05.2010, within one year from the date of the Ex.A.1 agreement. This demonstrates that the Plaintiff promptly initiated legal proceedings to secure the execution of the registered sale deed within a reasonable timeframe.

36. Whether the Plaintiff was ready and willing to perform his part of the contract must be decided in light of the parties' pleadings, evidence produced by them and their conduct. The thrust of the case set up by the Appellant/Defendant was that Defendant neither executed the agreement nor received the advance amount. It is significant to note that the Defendant had set up the case of total denial. She pleaded that the agreement for sale (Ex.A.1) was a fictitious document and that Plaintiff had fabricated the same in conspiring with her husband.

37. In *Netyam Venkataramanna and others, V. Mahankali Narasimham (died) and others*¹, the composite High Court of Andhra 11993 (2) APLJ 381

(HC) Pradesh, by relying on several decisions of the High Court and Supreme Court, held as follows:

..... K. Sambasiva Rao v. P. Bangaru Raju (A.I.R. 1985 A.P. 393) is a direct authority for the proposition that a suit filed on the last date of limitation does not entitle the Court to refuse to exercise its discretion for giving the relief of specific performance..... A suit within the limitation period cannot be considered an instance of delay in filing the suit for a specific performance and thus disentitle the Plaintiff from getting the relief of a specific performance.

..... "While in England mere delay or laches may be a ground for refusing to give a relief of specific performance, in India mere delay without such conduct on the part of the Plaintiff as would cause prejudice to the Defendant does not empower a court to refuse such a relief.

..... "But as stated earlier, the English principles based upon mere delay can have no application in India where the statute prescribes the time for enforcing the claim for specific performance."

The Court ultimately held that a mere delay extending up to the limitation period is insufficient grounds to refuse the relief.

38. In R.Lakshmikantham V. Devaraji², the Hon'ble Supreme Court held that:

In India, it is well-settled that the rule of equity in England does not apply. So long as a Suit for a specific performance is filed within the period of limitation, delay cannot be put against the Plaintiff - See Mademsetty Satyanarayana v. G. Yelloji Rao and others AIR 1965 Supreme Court 1405 (paragraph 7) which reads as under:

"(7) Mr. Lakshmaiah cited a long catena of English decisions to define the scope of a Court's discretion. Before referring to them, it is necessary to know the fundamental difference between the two systems-English and Indian-qua the relief of specific performance. In England the relief of specific performance pertains to the domain of equity; in India, to that of statutory Law. In England there is no period of limitation for instituting a suit for the said relief and, therefore, mere delay - the time lag depending upon circumstances - may itself be sufficient to refuse the relief; but, in India mere delay cannot be a ground for refusing the said relief, for the statute prescribes the period of limitation. If the suit is in time, delay is sanctioned by Law; if it is beyond time, the suit will be dismissed as barred by time; in either case, no question of equity arises."

39. In Chundurur Padmavati Vs. Chundurur Narasimha Rao, the composite High Court of Andhra Pradesh at Hyderabad, held as under:

"7. It is well settled that in the case of contracts relating to the sale of immovable property, generally, time is not regarded as the essence of the contract. It is, however, open to the parties to make time the essence of the contract by making express provisions in the contract on that behalf. It can also be inferred from the surrounding facts and circumstances of the case. Even though time was not originally made the essence of the contract, it can be made the essence of the contract by subsequent notice. In *Chandi Rani v. Kamal Rani*, a Constitution Bench of the Supreme Court held that even where time is not of the essence of the contract, the Plaintiff must perform his part of the contract within a reasonable time and reasonable time should be determined by looking at all the surrounding circumstances including the express terms of the contract, nature of the property and the object of making the contract. This principle was reiterated in the recent decision of the Supreme Court in *K.S. Vidyanadam v. Vairavan*, 1997 (2) Supreme 597, where the Apex Court, in keeping with the changing times, has made a bold departure from the traditional rule that time is not of the essence of the contract in the case of immovable properties in the following words:

"Indeed we are inclined to think that the rigour of the rule evolved by Courts that time is not of the essence of the contract in the case of immovable properties evolved in times when prices and values were stable and inflation was unknown-requires to be relaxed if not modified, particularly in the case of urban immovable properties. It is high time we do so."

40. In *Silvey and others, V. Arun Varghese and another*, the Hon'ble Apex Court, while referring to the decision in *Lourdu Mari David V. Louis Chinnaya Arogiaswamy*, it was noted that the Defendant's conduct cannot be ignored while weighing the question of exercise of discretion for decreeing or denying a decree for a specific performance. The High Court, after analyzing the factual position, has concluded that the defendants were really not ready to perform their obligation in terms of the contract and had made a false plea in the written statement.
41. In the present case, the Appellant had neither pleaded hardship nor produced any evidence to show that it would be inequitable to order specific performance of the agreement. Rather, the important plea taken by the Appellant was that the agreement was fictitious and fabricated, and Defendant had neither executed the same nor received the earnest money, and, as mentioned above, the trial Court has found this plea to be wholly untenable. No evidence is placed before the Court to show the escalation in the price of the land. However, it cannot, by itself, be a ground for denying relief of specific performance. Though Defendant has raised several contentions regarding the property's value as of the date of Ex.A.1 agreement of sale, no material is placed to substantiate her contention.

42. Since the Defendant's case is one of denial, the Plaintiff's case that he is ready and willing to perform his part of the contract is sufficient to infer that the Plaintiff is ready and willing to perform his part of the contract. Therefore, the argument raised by the learned counsel for the Appellant that the Plaintiff has yet to provide evidence to prove his readiness and willingness to perform the contract is not tenable.
43. The learned counsel for the Appellant contends that the Plaintiff has to prove that he has the money or has alternatively made necessary arrangements to get the money. The continuous readiness and willingness of the Plaintiff is a precedent for granting the relief of specific performance; this circumstance is material and relevant and must be considered by the Court while granting an order refusing to grant the relief. The learned counsel for the Appellant submits that the Plaintiff failed to deposit the balance of sale consideration within the time stipulated. It establishes that he is not ready and willing to perform his part of the contract. In U.N. Krishnamurthy (since deceased) Thr. L.R.s. Vs. A.M.Krishnamurthy, the Hon'ble Apex Court also held that:

There is a distinction between readiness and willingness to perform the contract; both ingredients are necessary to relieve Specific performance. In His Holiness Acharya Swami Ganesh Dassji v. Sita Ram Thapar Cited by Mr Venugopal, this Court said there was a difference between readiness and willingness to perform a contract. While readiness means the capacity of the Plaintiff to perform the agreement, which would include his financial position, willingness relates to the Plaintiff's conduct. This Court took the same view in Kalawati v. Rakesh Kumar..

44. In P. Daivasigamani Vs. S.Sambandan, the Hon'ble Apex Court referred to the case of Syed Dastagir v. T.R. GopalakrishnaSetty, a three-judge Bench of the Apex Court observed that:

12. The ratio in Mademsetty Satyanarayana v. G. Yelloji Rao, it has been observed as follows:

"7. Mr. Lakshmaiah cited a long catena of English decisions to define the scope of a court's discretion. Before referring to them, it is necessary to know the fundamental difference between the two systems-- English and Indian--qua the relief of specific performance. In England the relief of specific performance pertains to the domain of equity; in India, to that of statutory Law. In England there is no period of limitation for instituting a suit for the said relief and, therefore, mere delay -- the time lag depending upon circumstances -- may itself be sufficient to refuse the relief; but, in India mere delay cannot be a ground for refusing the said relief, for the statute prescribes the period of limitation. If the suit is in time, delay is sanctioned by Law; it is beyond time, the suit will be dismissed as barred by time; in either case, no question of equity arises."

The ratio mentioned above has also been followed recently by this Court in R. Lakshmikantham v. Devaraji. We, therefore, have no hesitation in holding that mere delay alone in filing the suit for specific performance, without reference to the conduct of the Plaintiff, could not be a ground for refusing the said relief when the suit was filed within the statutory time limit by the respondent plaintiff.

"It is significant that this explanation carves out a contract which involves payment of money as a separate class from Section 16(c). Explanation (i) uses the words "it is not essential for the plaintiff actually to tender to the defendant or to deposit in court any money except when so directed by the court". (emphasis supplied) This speaks in a negative term of what is not essential for the Plaintiff to do. This is more in support of the Plaintiff that he need not tender to the Defendant or deposit in Court any money, but the Plaintiff must [as per explanation (ii)] at least over his performance or readiness and willingness to perform his part of the contract".

18. In Sukhbir Singh v. Brij Pal Singh This Court had laid down that the Law is not in doubt and is not a condition that the respondents (Plaintiffs) should have ready cash with them. It is sufficient for the respondents to establish that they could pay the sale consideration. They don't need to always carry the money with them from the date of the suit till the date of the decree. The said principle was followed in the case of A. Kanthamani v. Nasreen Ahmed, in case of C.S. Venkatesh v. A.S.C. Murthy etc.

45. In Nathulal Vs. Phoolchand, the Hon'ble Apex Court observed that:

6.....To prove himself ready and willing, a purchaser does not necessarily have to produce the money or to vouch for a concluded scheme for financing the transaction: Bank of India Ltd. & Ors. v. Jamsetji A. H. Chinoy and Messrs. Chinoy and Company.

46. In light of the above settled legal position, this Court views that mere non-deposit of the balance sale consideration amount cannot be a ground to hold that the Plaintiff is not ready and willing to perform his part of the contract. It is not the Appellant/Defendant case that, despite the direction of the trial Court or this Court, the Respondent/Plaintiff failed to deposit the amount.

47. Moreover, it is the Defendant who had always been trying to wriggle out of the contract by disputing the execution of the agreement of sale. Now, the Defendant cannot take advantage of her wrong and then plead that a grant of decree of specific performance would be inequitable. It is not established by Defendant that during the period between Ex.A1 and the date of filing of the suit, there was a rise in prices regarding immovable properties like the plaint schedule property, which made Plaintiff avail of this opportunity. Escalation of prices cannot be a ground for denying the relief of specific performance.

48. Section 20(2) of the Specific Relief Act contains the cases in which the Court may properly exercise discretion not to decree specific performance. Three types of cases have been given under subsection (2) in the form of clauses (a), (b) & (c), in which the Court exercises its discretion not to decree specific performance; it is useful to extract the said clauses hereunder:

(a) where the terms of the contract or the conduct of the parties at the time of entering into the contract or the other circumstances under which the contract was entered into are such that the contract, though not voidable, gives the Plaintiff an unfair advantage over the Defendant; or

(b) where the performance of the contract would involve some hardship on Defendant which he did not foresee, whereas its non-performance would involve no such hardship on Plaintiff or

(c) where the Defendant entered into the contract under circumstances which, though not rendering the contract voidable, make it inequitable to enforce specific performance.

49. The instant case does not fall under any of these clauses. Usually, when the trial Court exercises its discretion in one way or another after appreciating the entire evidence and the materials on record, the Appellate Court should only interfere if it is established that the discretion has been exercised perversely, arbitrarily or against judicial principles. The Appellate Court should also not exercise its discretion against the grant of specific performance on extraneous considerations or sympathetic considerations. It is true, as contemplated under section 20 of the Specific Relief Act, that a party is not entitled to get a decree for a specific performance merely because it is lawful to do so. Nevertheless, once an agreement to sell is legal and validly proved and further requirements for getting such a decree are established, the Court has to exercise its discretion to grant relief for a specific performance.

50. In *VeeramareddyNagabhushana Rao V. JyothulaVenkateswara Rao*¹⁸, the Division Bench of the composite High Court of Andhra Pradesh held that:

20. Once the Defendant has failed to prove that the suit agreement of sale is fabricated, all other defences taken by him, such as readiness and willingness of the Plaintiff and there is no requirement of selling the suit schedule property, are all supplementary, based on which, equitable relief of decreeing the suit cannot be refused to the Plaintiff when it is otherwise legal and justified to do so.

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32..... The Plaintiff cannot be denied the equitable relief and, more so, the ease of specific performance being discretionary, and the trial Court, having rightly exercised the said discretion based on the available material, is not liable to be interfered with in Appeal.

51. In P.Ramasubbamma Vs. V.Vijayalakshmi&Ors, the Hon'ble Apex Court observed that:

Once the execution of the agreement to sell and the payment/receipt of advance substantial sale consideration was admitted by the vendor, nothing further was required to be proved by the Plaintiff-vendee. Therefore, as such, the learned Trial Court rightly decreed the suit for the specific performance of an agreement to sell. The High Court was not required to go into the aspect of the execution of the agreement to sell and the payment/receipt of substantial advance sale consideration once the vendor had specifically admitted the execution of the agreement to sell and receipt of the advance sale consideration; thereafter no further evidence and/or proof was required.

52. In Veeramareddy Nagabhushana Rao V. JyothulaVenkateswara Rao, the Division Bench of the composite High Court of Andhra Pradesh referred to the decision of Mysore State Road Transport Corporation Vs. Mirja Khasim Ali Beg and Another, wherein the Hon'ble Supreme Court was of the view that once discretion has been exercised by the lower Court in a given set of facts in favour of a party unless that discretion exercised is capricious, the appellate Court would not interfere since another possible result could have come in the suit, had the appellate Court decided the suit.

53. In Prakash Chandra Vs. Angadlal and Others, the Hon'ble Supreme Court observed that the ordinary rule is that specific performance should be granted. It ought to be denied only when equitable considerations point to its refusal and the circumstances show that damages would constitute an adequate relief. In the present case, the conduct of the Plaintiff has not been such as to disentitle him from the relief of specific performance.

54. In Nirmala Anand V. Advent Corporation (P) Ltd. And others, the Hon'ble Apex Court held that:

.....As a general rule, it cannot be held that ordinarily, the Plaintiff cannot be allowed to have, for her alone, the entire benefit of a phenomenal increase in the value of the property during the pendency of the litigation. While balancing the equities, one of the considerations to be kept in view is who is the defaulting party. It is also to be borne in mind whether a party is trying to take undue advantage over the other and the hardship that may be caused to the Defendant by directing specific performance. There may be other circumstances in which parties may not have any control. The totality of the circumstances is required to be seen.

55. The trial court comprehensively analyzed the pleadings and the evidence of the parties. It held that Plaintiff has succeeded in proving the execution of the Ex.A.1 agreement by Defendant. For the preceding discussion, I am of the

view that Defendant failed to prove that Ex.A.1 agreement of sale has come into existence by fabrication by Plaintiff.

56. After reviewing all the evidence on record, this Court upholds the trial court's findings that the Defendant executed Ex.A.1 agreement agreeing to the terms and conditions, and the Plaintiff is always ready and willing to perform his part of the contract. There are no justifiable reasons to arrive at a different conclusion. The learned trial Judge used his discretion to grant relief of specific performance of the agreement, and the said discretion was based on the proper exercise of sound principles. The conduct of the Defendant resisting the execution of the sale deed is quite incorrect.
57. The trial court's findings are accurate, and there is no need for interference except for awarding interest on the balance sale consideration amount. Having concluded that the Judgment of the trial court results from proper appreciation of evidence, I find no illegality or arbitrariness in the impugned Judgment. The learned Judge ought to have granted a decree for specific performance, directing the Plaintiff to pay a balance sale consideration amount with interest thereon at 12% per annum following the terms of the agreement. Accordingly, the points raised in the Appeal are answered.
58. As a result,
- (a) The Appeal is allowed in part. The Judgment and decree dated dt.26.09.2016 passed in O.S.No.27 of 2010 by the learned Principal District Judge, Srikakulam, hereby confirmed the relief of specific performance with costs and
 - (b) The Judgment and decree dated dt.26.09.2016 passed in O.S. No.27 of 2010 shall stand modified and direct the Respondent/Plaintiff to deposit the balance sale consideration of Rs.5,93,000/(Rupees Five Lakhs Ninety- Three Thousand Only) along with interest @ 12% per annum from 26.02.2010 till the date of deposit of such amount in the Court, within two months from the date of this Judgment. The balance amount, if any, already deposited shall be deducted from the amount above.
 - (c) On such deposit, Defendant shall execute the sale deed in favour of Plaintiff within one month, failing which, the Court shall execute the sale deed in favour of Plaintiff regarding the plaint schedule property.
 - (d) After execution of the sale deed, Defendant is entitled to withdraw the amount deposited in the Court.
 - (e) In the facts and circumstances, the parties have to bear their costs in the Appeal.

Miscellaneous petitions pending, if any, in this Appeal shall stand closed.

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