

THE HON'BLE SRI JUSTICE K.C.BHANU

AND

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

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A.S.No.251 of 2006 & Cross Objection (SR) 8302 of 2006

And

A.S.No.343 of 2006

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COMMON JUDGMENT: *(Per Hon'ble Sri Justice M.Seetharama Murti)*

Both these first appeals arise out of a common judgment dated 20.02.2006 in O.S.No.10 of 1999 and in O.S.No.57 of 2000 of the learned V Additional District Judge (Judge, Fast Track Court), East Godavari at Rajahmundry. However, the two decrees which were separately drawn up in the two suits bear the date of the day on which the common judgment was pronounced. Hence, both these appeals arising out of the said decrees and common judgment were heard together and are being disposed of by this common judgment.

2. The defendants 1 and 2 in O.S.No.57 of 2000 (hereinafter referred to as 'the suit for eviction', for brevity) are admittedly the tenants of the property, which is more fully described in the schedules annexed to both the suits. The 1st defendant in the above said suit is a company represented by its' Managing Director-Bikkina Sarojini; and the 2nd defendant, Bikkina Rama Manohar, is the husband of the said Sarojini. One late Bathula Satyanarayana Murthy was the owner of the said schedule property and also the landlord. The said suit was filed by the purchasers of the property from the said original owner-Bathula Satyanarayana Murthy, for eviction of the tenants/defendants 1 and 2 and for recovery of vacant possession of the property besides damages/future damages towards arrears of rent and use and occupation etcetera. The other suit O.S.No.10 of 1999 (hereinafter referred to as 'the suit for specific performance', for brevity) was filed by the

above said Bikkina Sarojini and her husband Bikkina Rama Manohar against the legal representatives of the said Bathula Satyanarayana Murthy and the two purchasers of the property from him for specific performance of an oral agreement of sale said to have been entered into by them with late Bathula Satyanarayana Murthy, who is admittedly, the landlord-cum-original owner of the property. Both the suits were consolidated, and during the course of joint trial, common evidence was recorded in the suit for specific performance. On merits, the trial Court decreed the suit for eviction and dismissed the suit for specific performance. Therefore, in both the suits, one set of parties i.e., Bikkina Sarojini and Bikkina Rama Manohar were unsuccessful. It is necessary to reiterate that Bikkina Sarojini is the Managing Partner of the 1st defendant company in the suit for eviction. Hence, the said unsuccessful parties preferred these two first appeals.

3. Thus, the suit for eviction against the tenants in the property was filed by the purchasers from the original owner-cum-landlord. Whereas, the suit for specific performance was filed by one of the tenants and the Managing Partner of the other tenant-company. The legal representatives of the original owner i.e., the defendants 1 to 5 had remained *ex parte* in the suit for specific performance. Hence, the two contesting parties are the tenants/agreement holders and the purchasers of the property from the original landlord. Therefore, for convenience and clarity, the unsuccessful parties in the two suits before the trial court i.e., the appellants in both these appeals shall hereinafter be referred to as 'the tenants/agreement holders' and the successful parties i.e., the respondents 1 to 5 in AS 343 of 2006 shall be referred to as 'L.Rs of the original owner' and the respondents 6 and 7 as 'the purchasers/landlords'.

4. This court of first appeal being the last court of fact, it is necessary to refer to the pleadings of the parties in the two suits.

4. (a) The tenants/agreement holders filed the said suit for specific performance *inter alia* contending as follows:

‘The 1st agreement holder is the Managing Director of M/s.

Rajahmundry Diagnostic Laboratories Private Limited and the 2nd agreement holder is her husband. They are residing in the first floor of the schedule property and are running their laboratory in the ground floor of the said premises and are thus in the occupation of the schedule property since 01.09.1996 pursuant to the agreement of lease executed by Bathula Satyanarayana Murthy, the original owner of the premises. Since the said landlord used to reside at Hyderabad, the tenants/agreement holders used to attend to his affairs relating to the schedule premises like effecting repairs, payment of property tax etcetera; therefore, a considerable faith and trust had developed between the two parties. On 18.04.1998, the tenants/agreement holders along with I.V.Subba Rao, Valavala Babji and V.S.Prakash Rao, a Chartered Accountant, had visited the house of the said original owner at Hyderabad. At that time, it was suggested to the tenants/agreement holders that the said landlord/original owner was inclined to sell away the schedule property. At that time, there were negotiations and ultimately it was agreed to between the parties that the landlord/original owner shall sell the property to the tenants/agreement holders for a consideration of Rs.30,00,000/- and the sale transaction shall be completed before the end of December 1998. Since the negotiations had suddenly taken place during such visit, the tenants/agreement holders had paid Rs.13,000/- in cash, which was readily available with them to the said original owner/landlord. The advance amount of Rs.27,000/-, which was already deposited by the tenants/agreement holders with the said original owner/landlord in connection with the lease of the property was agreed to be adjusted towards part of the sale price. Rs.10,000/- was further agreed to be paid to him during September 1998, i.e., during his proposed visit to Rajahmundry. The balance of sale consideration was agreed to be paid before the end of December 1998. Thus, the landlord had received Rs.40,000/- out of the agreed sale consideration on 18.04.1998 and had assured the tenants/agreement holders that during his visit to Rajahmundry, he would execute a formal agreement of sale. In the second week of August, 1998, he had informed the tenants/agreement holders that he would not be visiting Rajahmundry during

September 1998 as contemplated earlier and had expected remittance of the balance of Rs.10,000/- to him at Hyderabad itself. The tenants/agreement holders tendered through courier the said amount of Rs.10,000/- by way of Demand Draft dated 19.08.1998 drawn on State Bank of Hyderabad along with the covering letter. Even before that cover reached the said original owner, he had died on 19.08.1998 itself. The tenants/agreement holders could not call on the members of the bereaved family of the landlord due to their pressing works at Rajahmundry. The tenants/agreement holders received a registered cover on 04.09.1998, which was purportedly dispatched by one of the L.Rs of the original owner on 31.8.1998. That cover contained the demand draft as well as covering letter addressed by the tenants/agreement holders to the (deceased) original owner and the same were not accompanied by any covering letter. On 04.09.1998, the tenants/agreement holders had addressed letter to the said L.R of the deceased original owner and sent it by a courier. However, the said letter sent by the tenants/agreement holders was also returned. Having been surprised of the conduct of the said L.R of the deceased landlord, the tenants/agreement holders had caused enquiries and came to know that the purchasers (D6 and D7 in the suit for specific performance) had obtained two sale deeds dated 25.7.1998 and 27.07.1998 from late Bathula Satyanarayana Murthy, the original owner in respect of the portions of the schedule premises despite the existence of the oral agreement of sale in favour of the tenants/agreement holders. Therefore, the tenants/agreement holders had got issued a notice dated 21.10.1998 to the LRs of the original owner and the purchasers from him, through registered post with acknowledgment due. The purchasers/landlords having received the said notice did not send any reply. The said notice of the tenants/agreement holders was sent to the known addresses of the L.Rs of the deceased original owner, i.e., Defendants 1, 3 and 5 as the address of the 4th defendant, the other LR was not known. The said notice sent to the said L.Rs was returned and, hence, the said notice was sent once again through courier; but the same was also returned. The L.Rs of the deceased original owner had knowledge of the oral agreement of sale entered into between the original

owner and the tenants/agreement holders and also about the receipt of part of sale consideration by him. The original owner/late Satyanarayana Murthy had committed breach of contract at the behest of the purchasers of the property from him. The purchasers never entered into the schedule property and never made enquiries with the tenants/agreement holders, who are in occupation of the property, and they had at their behest brought into existence the two sale deeds despite having knowledge of the fact of the prior agreement of sale in favour of the tenants/agreement holders. The tenants/agreement holders were and are always ready and willing to perform their part of contract and obtain the sale deed after paying the balance of sale consideration. Hence the suit is filed by the tenants/agreement holders for specific performance.'

5. The purchasers/the defendants 6 and 7, who are represented by their GPA Holder, while denying the material allegations in the plaint in the suit for specific performance had *inter alia* contended in their written statement as follows: 'The suit is not maintainable for want of valid and concluded agreement. The tenants/agreement holders are put to strict proof of the alleged oral agreement pleaded by them. The lease agreement dated 01.09.1996 is not valid and enforceable as the same is not registered. On the ONGC (tenant) vacating the property, it was contemplated that a regular lease be entered into in future. There is no such regular lease deed at all. The agreement holders cannot style themselves as lessees/tenants under law. The terms and conditions of the lease agreement cannot be looked into. The alleged visit of the tenants/agreement holders with others to Hyderabad, the negotiations, the oral agreement, the payment of advance, etcetera are all a concocted story. No piece of paper is produced in support of the alleged oral agreement of sale. The allegation that an advance of Rs.27,000/- deposited at the time of lease was adjusted towards advance sale consideration and that in all, Rs.40,000/- was received as advance by the original owner and the further allegations in regard to the alleged oral agreement of sale and the alleged assurances said to have been given by the original owner are all false. The allegations that there was an oral

agreement of sale between the tenants/agreement holders and the original owner-Bathula Satyanarayana Murthy on 18.04.1998 and that the said Satyanarayana Murthy had committed breach of the said oral agreement of sale and had clandestinely executed sale deeds in favour of the purchasers are false. The original owner-Satyanarayana Murthy had delivered the earlier title deeds of the property to these purchasers. To the knowledge of these purchasers, the alleged oral agreement of sale is absolutely false and invented for the purpose of the false suit. The tenants'/agreement holders' conduct in sending a notice through private courier service shows their ingenuity. The contention that the tenants had a preferential right to purchase the property under the oral agreement of sale is not valid. The defendants 6 and 7/the purchasers had purchased the schedule property under five registered sale deeds dated 25.7.1998, 27.07.1998, 13.08.1998, 14.08.1998 and 14.08.1998 for a valid consideration of Rs.4,00,000/-, Rs.4,00,000/-, Rs.4,00,000/-, Rs.4,00,000/- and Rs.4,50,000/- respectively in good faith from original owner, B.Satyanarayana Murthy without notice of any alleged earlier oral agreement of sale. The original owner, B.Satyanarayana Murthy did not make a mention of any such oral agreement of sale entered into by him. The tenancy of the tenants/agreement holders was attorned by the original owner, B.Satyanarayana Murthy, to the purchasers and a separate document dated 14.08.1998 was executed regarding the attornment of tenancy, wherein it was stated that the tenants/agreement holders agreed to pay rents to these purchasers/the defendants 6 and 7. Taking advantage of the death of the original owner, B.Satyanarayana Murthy, the tenants/agreement holders had set up a false oral agreement of sale and had created the records and had built up their case. The tenants/agreement holders are the tenants at sufferance after the expiry of the so called lease period. These defendants in their notice dated 10.12.1998 demanded for payment of rents/damages. The alleged oral agreement of sale does not create any interest in the property in favour of the tenants/agreement holders and, therefore, the tenants/agreement holders cannot stop payment of rents/damages and squat over the property. The tenants/agreement holders are liable to pay rents accrued on the property to these purchasers of the

property. They are also liable to pay arrears of rent/damages for use and occupation etcetera as the tenants are only tenants at sufferance after the expiry of so called lease period pleaded by them in the lawyers' notice dated 27.10.1998. On receipt of notice dated 27.10.1998, these purchasers had issued a reply notice dated 10.12.1998. The averment in the plaint that the defendants 6 and 7 had failed to issue a reply is false. As there is no valid and enforceable agreement and as the alleged readiness of the tenants/agreement holders is false, there is no cause of action for the suit for specific performance of the agreement to sell. Hence, the suit may be dismissed.'

6. Be it noted that the case pleaded by the purchasers in their written statement filed in the suit for specific performance is their case in their suit filed for eviction of the tenants/agreement holders. In fact, the purchasers of the property filed the suit for eviction against the tenant/agreement holders for eviction and for recovery of Rs.1,17,000/- towards arrears of rents besides damages of Rs.30,000/- for use and occupation of the plaint schedule property, and for future damages at the rate of Rs.15,000/- per month till the delivery of the property. In this suit for eviction, the purchasers had additionally pleaded in their plaint as follows: 'Having purchased the property under five regular sale deeds from the original owner, they had become the owners of the plaint schedule property and that they are having constructive possession of the schedule property and that the tenants/agreement holders became tenants of the purchasers by operation of law. The property was mutated in the names of the purchasers in the municipal records and that they are paying taxes. When the tenants/agreement holders had got issued a notice dated 27.10.1998 to the wife and children of the original owner-late Satyanarayana Murthy and also to the purchasers, falsely contending that the said B. Satyanarayana Murthy had entered into an oral agreement of sale in the month of April, 1998 to sell the plaint schedule property for Rs.30,00,000/- , these purchasers had got issued a suitable reply dated 10.12.1998 to the advocate for the tenants/agreement holders denying the alleged oral agreement. In the said reply notice, the purchasers had requested for attornment of tenancy and payment of rents for the schedule property to them

till the lease period is over and had also stated that the tenants/agreement holders are liable to vacate the plaint schedule property after efflux of stipulated period of time. Having received the said notice, the tenants/agreement holders had failed to pay the rents due from September 1998 till the date of the filing of the suit for eviction by the purchasers. The tenants/agreement holders also did not vacate the property even after the stipulated lease period of three years. The tenants/agreement holders are bound to deliver vacant possession of the schedule property to the purchasers on 30.09.1999 since under the provisions of Section 111 (a) read with Section 108 (g) of Transfer of Property Act, 1882 ('the Act', for brevity) the lease of immovable property can be determined by efflux of time. Therefore, the suit is filed for eviction and other reliefs.'

7. The defence of the tenants/agreement holders in the suit for eviction filed against them by the purchasers is more or less their pleaded case in their suit for specific performance. The further defence of the tenants/agreement holders in this suit for eviction, which is relevant, is as follows: 'As per the agreed terms of lease between the tenants/agreement holders and B.Satyanarayana Murthy, the original owner-cum-landlord, the lease deed is not required to be registered. The tenants/agreement holders have option to renew the lease for another period of three years subject to payment of enhanced rents. The sale deeds in favour of the purchasers are fictitious and brought into existence nominally with mischievous intentions. The said sale deeds do not bind the agreement holders/tenants and do not affect their rights to seek specific performance of the oral agreement of sale entered into on 18.04.1998 by them with B.Satyanarayana Murthy, the owner of the property. The purchasers are not *bona fide* purchasers for value and consideration. They had notice of the oral agreement of sale. The sales in favour of the purchasers are subject to rights of the tenants/agreement holders, who have filed the suit for specific performance based on their oral agreement of sale. The suit for eviction is filed by the purchasers as an afterthought after the suit for specific performance was filed by these tenants/agreement holders. The purchasers and their mentor Madhavarao

who are neighbours of the plaint schedule property were fully aware of the oral agreement. The reply notice was issued belatedly with false recitals. Since the tenants/agreement holders are in possession of the property in terms of the oral agreement of sale and as they are entitled to purchase the property, there is no legal or contractual obligation to pay any amount towards any rent or damages. The suit should have been valued on 3/4th of the market value and not on the annual rents. The claim for damages for use and occupation @ Rs.15,000/- per month is arbitrary and the suit may be dismissed.'

8. (a) In O.S.No.10 of 1999, the following issues were framed:

- i) Whether the Original owner of the plaint schedule premises is "Bathula Satyanarayana Murthy" as described in the plaint or "Bathula Satyanarayana" only, as contended by the defendants 6 & 7 in their written statement?
- ii) Whether the name of the 5th defendant is "Bathula Rama Devi" as arrayed in the plaint or "Bathula Rama Tilakam" as contended in the written statement of Defendants 6 & 7?
- iii) Whether the alleged visit of the tenants/agreement holders to Bathula Satyanarayana's house at Hyderabad, along with I.V.Subba Rao, Valagala Babji and V.S.Prakasam of Rajahmundry and the alleged negotiations and oral solemn agreement and payment of advance etc., are true? And whether such oral un-concluded agreement is valid and enforceable contract?
- iv) Whether the alleged oral solemn agreement for sale between Bathula Satyanarayana and the tenants/agreement holders can be construed on facts and under law as a validly concluded and enforceable contract?
- v) Whether the tenants/agreement holders can under law enforce specific performance of the oral agreement for sale?
- vi) Whether the alleged oral agreement for sale of schedule premises is valid and not barred by the provisions of the Indian Contract Act; the specific Relief Act; the Transfer of Property Act; the Indian Stamp Act; etc., and whether enforceable and whether the suit is maintainable?
- vii) Whether the alleged contemplation to adjust the amount of Rs.27,000/- deposited by the Rajahmundry Diagnostic Laboratory (Pvt) Ltd. Co., with late Bathula Satyanarayana in connection with

the alleged lease of schedule premises, towards the sale price is valid?

- viii) Whether the contention that B.Satyanarayana communicated to the tenants/agreement holders that he would not be visiting Rajahmundry in September, 1998 as proposed and expected the remittance of balance of Rs.10,000/- to Hyderabad, itself, is true?
- ix) Whether the alleged sending of D/D for Rs.10,000/- by the tenants/agreement holders to Bathula Satyanarayana through courier service and its return without any covering letter is true?
- x) Whether D.6 and D.7 are bonafide purchasers for valid consideration and without notice of the schedule premises?
- xi) Whether the tenants/agreement holders have any preferential right to purchase the schedule premises as alleged, under law?
- xii) Whether the defendants 6 & 7 are liable to execute and register conveyance as contended by the plaintiff?
- xiii) Whether the tenants/agreement holders have been always ready and willing to perform their part of the alleged contract?
- xiv) To what relief?

8. (b) In O.S.No.57 of 2000, the following issues were framed:

- i) Whether the tenants/agreement holders purchased the plaint schedule property from Bathula Satyanarayana under five registered sale deeds?
- ii) Whether the 2nd defendant and his wife entered into an agreement with Bathula Satyanarayana for purchase of the plaint schedule property?
- iii) Whether Bikkina Sarojini is a necessary party to this suit and if the suit is bad for non-joinder of parties?
- iv) Whether the tenants/agreement holders are entitled to possession of the plaint schedule property?
- v) Whether the tenants/agreement holders are entitled to rents and damages as prayed for?
- vi) To what relief?

9. As already noted, both the suits were consolidated and were jointly tried and common evidence was recorded in O.S.No.10 of 1999, which is the former of the two suits and which is the suit for specific performance filed by the tenants of the property. During the course of trial, PWs 1 to 4 were examined and exhibits A1 to A29 were marked on the side of the tenants/agreement holders. DWs 1 to 3 were examined and exhibits B1 to B22 were marked on the side of the purchasers/D6 and D7. Let it be restated that the D1 to D5 are the LRs of the original owner, who had died even prior to the institution of the suits. They had remained *ex parte*.

10. On merits, the trial Court had held in favour of defendants 6 and 7/purchasers on all the issues while dismissing the suit for specific performance filed by the tenants/agreement holders. The suit for eviction was decreed in part in favour of the purchasers directing the tenants/agreement holders to vacate the schedule property within three months from the date of the judgment and deliver vacant possession of the property. The trial Court had also granted a decree for recovery of arrears of rent @ Rs.1,39,000/- and also future damages @ Rs.11,000/- per month from December 1999 till the date of delivery of possession of the property. Therefore, the aggrieved tenants/agreement holders are before this court.

11. We have gone through the grounds of appeal urged in both the appeals by the tenants/agreement holders. The sum and substance of the said grounds and the submissions made on their behalf by their learned counsel are as under:

The trial Court ought to have believed the oral agreement of sale relied upon by the tenants/agreement holders, which was entered into by them with the original owner-cum-landlord. The trial Court had not properly and correctly appreciated the oral and documentary evidence. The evidence on record, particularly exhibit A2 recitals, clearly indicate that there are negotiations for sale between the original owner on the one hand and the tenants/appellants on the other. The original owner allegedly sold the property to the purchasers who are D6 and D7 in the suit for specific

performance. They are not *bona fide* purchasers. In spite of the fact that their documents are stated to be sham and nominal, they did not enter the witness box and therefore, there is no proof that the said purchasers are *bona fide* purchasers for value and consideration. On their behalf, only their witnesses were examined. When admittedly the tenants/agreement holders are in possession of the property and when their tenancy culminated into an agreement of sale, they have become entitled to claim rights under Section 53A of the Act. When such is the case, the purchasers ought to have made enquiries about the nature of possession of the persons in possession; when the owner is not in possession and some others are in possession of the property, the purchasers are bound under law to make enquiries before their purchase. The purchasers never came near to or entered the schedule property. Therefore, the facts and circumstances of this case show that the purchasers are not *bona fide* purchasers. By examining PW1, who is one of the tenants and agreement holders and by also examining PWs 2 and 3, who are independent and unrelated witnesses, the tenants/agreement holders have proved their oral agreement of sale and their entitlement to the relief of specific performance. The L.Rs of the original owner had remained *ex parte* and the purchasers who had alone contested the suit have not entered into the witness box. The trial court ought not to have treated the evidence of DW1 who is the agent of the defendants 6 and 7 (purchasers) as valid evidence and ought not to have decreed the suit of the purchasers based on such evidence. The trial Court ought not to have ignored the evidence of PWs 2 and 3 and ought not to have commented that the Chartered Accountant, who is an independent witness, was not examined. The trial court ought not to have ignored exhibit A2 and its contents by resorting to hair-splitting interpretation of the contents of the same and the evidence on record. The trial court ought to have seen that the relationship with the original owner was cordial and the appellants were looking after his property affairs at Rajahmundry as he was a resident of Hyderabad; and, when mutual trust and faith have developed between the original owner and the tenants, the trial court ought to have seen that the tenants' conduct in not obtaining an agreement of sale or a receipt for payment of Rs.13,000/- is natural and it

cannot be a ground to suspect the true nature of the oral agreement. The trial court made a strenuous effort in appreciating the evidence against the interests of the tenants and had failed to notice that they have discharged the initial onus of proof, which is upon them and that the purchasers from the original owner had failed to adduce necessary evidence to establish their defence or entitlement to seek eviction of the tenants/appellants from the property. The trial court ought not to have observed that any transaction by the tenants, which is beyond Rs.1,000/- ought to have been done by way of a cheque or draft when there is no law to that effect and when there was no violation of law. The trial Court ought not to have considered the evidence, which is contrary to the contents of the documents. The trial court ought to have held that the oral agreement of sale is true and that the defendants 6 and 7 are not *bona fide* purchasers and that all the defendants including the defendants 1 to 5, who are the L.Rs of the original owner, are bound to execute the sale deed in respect of the schedule property in favour of the appellants/tenants. The trial court ought to have applied equal standards while appreciating the evidence of both the sides. The trial court ought to have seen that the appellants are always ready and willing to perform their part of the contract. The trial court erred in holding that no notice to quit under Section 106 of the Act is necessary for maintainability of the suit for eviction filed by the purchasers of the property. The trial Court also erred in further holding that there is no renewal of lease and that the tenants/agreement holders are the tenants at sufferance. The trial court ought to have seen that there is no valid termination of the lease in the absence of issuance of a valid quit notice as per the mandate of Sections 106, 107 and 111 of the Act and therefore, ought to have dismissed the suit for eviction and ought to have decreed the suit for specific performance of the appellants. The trial court had failed to properly appreciate the facts, the evidence and the law applicable. Therefore, both the appeals may be allowed and the suit for specific performance be decreed and the suit for eviction be dismissed with costs throughout.

11. (a) On the other hand, the learned counsel for the contesting

respondents had supported the common judgment of the trial court in both the suits and had *inter alia* contended that the appellants, who are formerly the tenants in the property had created and concocted the story of oral agreement of sale having come to know of the death of the original owner and also the five registered sale deeds executed by the original owner in favour of the purchasers/D6 and D7 and that one of the agreement holders, who is the wife of PW1, was not examined and that as observed by the trial court, both PWs 2 and 3 are interested witnesses and that the non-examination of the Chartered Accountant, who appears to be an independent witness, is fatal to the suit for specific performance and that therefore, after proper analysis of the evidence, the trial court had rightly dismissed the suit for specific performance and had decreed the suit for eviction filed by the purchasers of the property from the original owner. He would further contend that the tenants having failed to establish the oral agreement to sell had also denied the jural relationship between them and the purchasers, and that the tenants had not paid the rents from September 1998 and had further created false documentary evidence to somehow squat on the property and that the trial court having regard to the pleadings and evidence had rightly held that there is no requirement of a quit notice in the case on hand and had therefore, rightly decreed the suit for eviction. He had finally submitted that the appellants had relied upon a false case and are therefore, not entitled to the equitable relief of specific performance and that in the absence of proof of the truthful nature of the oral agreement to sell, there is no need to go into the aspect as to whether the purchasers are bona fide purchasers, more particularly, when they had purchased the property under regular registered sale deed and the same are accepted by the L.Rs of the original owner, who had executed the said sale deeds. He had, therefore, prayed for dismissal of both the appeals with costs.

12. Now, the points that arise for determination are:

1. Whether the oral agreement of sale dated 18.04.1998 pleaded by the tenants/agreement holders is true, valid and binding? And, if so, whether the tenants/agreement holders are entitled to the relief of specific performance of the said

agreement of sale as prayed for in the suit O.S.No.10 of 1999?

2. Whether the purchasers/landlords are entitled to the reliefs of eviction and recovery of vacant possession of the schedule property from the tenants/agreement holders besides the reliefs of arrears of rent and damages as claimed and as awarded by the trial Court in O.S.No.57 of 2000, the suit for eviction? Whether the claim of the purchasers/cross objectors in the AS 251 Of 2006 that the trial Court ought to have awarded future damages for use and occupation @Rs.15,000/- per month instead of Rs.11,000/- per month as granted by the trial Court can be sustained under facts and in law?
3. Whether the decrees and the common judgment of the trial court are unsustainable under facts and in law as contended by the tenants/agreement holders?
4. To what relief?

13. POINT No.1:

13. (a) It is pertinent to note that the tenants/agreement holders had filed the former of the two suits, i.e., the suit for specific performance based on an oral agreement to sell dated 18.04.1998 said to have been entered into between them and the original owner-cum-landlord-Bathula Satyanarayana Murthy. Even before this suit for specific performance was instituted, the said original owner-cum-landlord had sold the property to the defendants 6 and 7, who are being referred to as purchasers of the said property. After his death, the suit was filed by the tenants/agreement holders against D1 to D5, who are his legal representatives, and D6 and D7, who are the purchasers, for specific performance.

13. (b) We have gone through the pleadings and the entire evidence (Oral and Documentary). We have given earnest consideration to the facts, the evidence and the submissions. On such earnest and detailed consideration, we are of the considered view that the tenants/agreement holders are not entitled to the relief of specific performance for the following reasons:

Firstly: To begin with the case of the tenants/agreement holders in support of their claim for specific performance based on an oral agreement to sell is as follows: 'The 1st agreement holder is Bikkina Sarojini, the Managing Director of M/s. Rajahmundry Diagnostic Laboratories Private Limited and the 2nd agreement holder is her husband. They are residing in the first floor of the schedule property and are running their laboratory in the ground floor of the said premises and are thus in the occupation of the schedule property since 01.09.1996 pursuant to the agreement of lease executed by Bathula Satyanarayana Murthy, the original owner of the premises. Since the said landlord used to reside at Hyderabad, the tenants/agreement holders used to attend to his affairs relating to the schedule premises like effecting repairs, payment of property tax etcetera; therefore, a considerable faith and trust had developed between the two parties. On 18.04.1998, the tenants/agreement holders along with I.V.Subba Rao, Valavala Babji and V.S.Prakash Rao, a Chartered Accountant, had visited the house of the said original owner at Hyderabad. At that time, it was suggested to the tenants/agreement holders that the said landlord/original owner was inclined to sell away the schedule property. At that time, there were negotiations and ultimately it was agreed to between the parties that the landlord/original owner shall sell the property to the tenants/agreement holders for a consideration of Rs.30,00,000/- and the sale transaction shall be completed before the end of December 1998. Since the negotiations had suddenly taken place during such visit, the tenants/agreement holders had paid Rs.13,000/- in cash, which was readily available with them to the said original owner/landlord. The advance amount of Rs.27,000/-, which was already deposited by the tenants/agreement holders with the said original owner/landlord in connection with the lease of the property was agreed to be adjusted towards part of the sale price. Rs.10,000/- was further agreed to be paid to him during September 1998, i.e., during his proposed visit to Rajahmundry. The balance of sale consideration was agreed to be paid before the end of December 1998. Thus, the landlord had received Rs.40,000/- out of the agreed sale consideration on 18.04.1998 and had assured the tenants/agreement holders

that during his visit to Rajahmundry, he would execute a formal agreement of sale.’ The oral agreement of sale pleaded by the tenants was denied by the purchasers of the property. Thus, the reasons assigned in the pleadings for not taking a written agreement or a receipt for the payment of Rs.13,000/- made towards sale consideration are – (i) The agreement to sell was entered into by the tenants with the landlord at his residence at Hyderabad and that by that time a kind of considerable faith and trust had developed between the parties; and, (ii) The tenants had visited the house of the landlord/original owner at Hyderabad along with I.V.Subba Rao, Valavala Babji and V.S.Prakash Rao, a Chartered Accountant, and at that time, it was suggested to the tenants that the said landlord/original owner was inclined to sell away the schedule property and that at that time the negotiations had taken place suddenly and that on that the oral agreement to sell was entered into and that the tenants/agreement holders had paid only Rs.13,000/- in cash and had requested the landlord/original owner to adjust the advance of Rs.27,000/-, which was already deposited by the tenants/agreement holders towards advance at the inception of the lease and that accordingly, the same was also adjusted towards part of sale consideration and thus, in all, Rs.40,000/- was paid as advance sale consideration from out of the total sale consideration of Rs.30,00,000/-. Whether this case pleaded in the pleadings is true and is established is the first aspect to be considered. As rightly contended on behalf of the purchasers, when the tenants visited casually the house of the landlord at Hyderabad and when no sale transaction was under contemplation, what was the necessity to take along with the tenants the third parties/alleged elders like I.V.Subba Rao, Valavala Babji and V.S.Prakash Rao, a Chartered Accountant could not be explained by the tenants/agreement holders. In this backdrop, it is necessary to examine the testimonies of PW1, one of the tenants/agreement holders, PW2-I.V.Subba Rao and PW3-Valavala Babji. The first question is as to whether the above two witnesses PWs 2 and 3 and the Chartered Accountant, who was not examined, were really present at the time of oral agreement of sale as contended by the tenants/agreement holders. After the said oral agreement to sell in April 1998, the first document in writing, which emanated from the

tenants/agreement holders, is the letter dated 19.08.1998, which was said to have been addressed by the tenants/agreement holders to the original owner/landlord-Bathula Satyanarayana Murthy. On the same day, i.e., 19.08.1998, he had died. This letter was said to have been sent on the night of that day through a courier. The copy of this letter dated 19.08.1998 was exhibited as exhibit A3 (=A7). In this letter, there is no mention of the date of the oral agreement of sale and there is also no mention of the presence of the above said persons at the house of the original owner at Hyderabad, i.e., at the time of the oral agreement of sale. The next document that emanated from the tenants/agreement holders is the letter dated 04.09.1998. According to them, the said letter dated 04.09.1998 was addressed to one of the L.Rs, i.e., the Son of the original owner/landlord. The copies of the said letter were exhibited as exhibit A9 (=A10). Even in these letters, there is no mention of the presence of the above said persons at Hyderabad i.e., the presence of PWs 2 and 3 and the Chartered Accountant at the time of the oral agreement of sale. No reasons are forthcoming for non-mention of the names of the witnesses in the exhibit A9 (=A10) letter despite the fact that by that time, there is a dispute even according to the case of the tenants/agreement holders. Coming to the evidence of PW1 on this aspect, it is to be noted that he had stated even in his affidavit filed in lieu of examination-in-chief that he and his wife visited the house of the original owner-cum-landlord at Hyderabad on 18.04.1998 and that at that time, PWs 2 and 3 and the Chartered Accountant accompanied them. He had further stated as follows: ***'We visited Bathula Satyanarayana in view of his proposal to sell the schedule building'***. Therefore, the tenants/agreement holders knew in advance about the proposal in regard to sale of the property by Bathula Satyanarayana Murthy, the original owner-cum-landlord. Therefore, the pleading and the case of the tenants/agreement holders to the effect that 'since the negotiations had suddenly took place during such visit, the tenants/agreement holders had paid Rs.13,000/- in cash, which was readily available with them to the said original owner/landlord', and that, therefore, in the said circumstances, no written agreement or a receipt for the said payment was obtained cannot be countenanced. Therefore, the theory that

negotiations had suddenly taken place at Hyderabad during a casual or informal visit falls to the ground. If really, there is faith and trust between the tenants/agreement holders and Bathula Satyanarayana Murthy, he ought not to have sold the property to the purchasers/defendants 6 and 7 in July and August 1998 under five registered sale deeds ignoring the oral agreement to sell. Admittedly, during the life time of the original owner-Bathula Satyanarayana Murthy, there were no disputes between him and the tenants/agreement holders. The fact that Bathula Satyanarayana Murthy had sold away the property to the purchasers/D6 and D7 in July/August 1998 under five registered sale deeds, i.e., at a time when there were admittedly no disputes at all would lay bare that the alleged oral agreement to sell is not true. Therefore, the two reasons which were assigned by the tenants/agreement holders in support of their case do not stand the test of scrutiny.

Secondly: Continuing with the aspect of the presence of PWs 2 and 3 and the Chartered Accountant at the time of the oral agreement of sale, PW1 in his cross-examination had stated that Prakash Rao is their Auditor and that Babji (PW3) is his friend and classmate and that Subba Rao (PW2) is known to him since a long time. He had further deposed that the said auditor went to Hyderabad in advance and that he, PWs 2 and 3 went together to Hyderabad for settling the sale transaction. Thus, he did not make a mention that his wife had also accompanied him and others to Hyderabad. On this aspect, PW2-Subba Rao had stated that he had accompanied PW1, his wife and Babji (PW3) to Hyderabad to meet Satyanarayana Murthy. He had also stated that he was requested by PW1 to accompany them as there are only three persons and that he did not accompany them for negotiations, but, on the way to Hyderabad he was informed that he was being taken as an elder for negotiations. If the contention of the tenants/agreement holders that the negotiations for sale at Hyderabad had suddenly taken place were to be true, there was no need to take any persons as elders for negotiations. Let it be assumed for a moment that the theory developed in evidence that PW1 and others went to Hyderabad for sale negotiations is true. If that is so, it is

for PW1 to explain as to why there was a necessity for him to take elders when there was trust and faith between him and the original owner. If really, there was no trust or faith and the presence of elders was necessary, then it is for PW1 to explain as to why he did not go prepared for obtaining a sale agreement, when he knew in advance that he was going for sale negotiations; and it is also for him to explain as to why he did not obtain at least a receipt for part payment of Rs.13,000/- made and also for the pleaded adjustment of advance rent/security deposit of Rs.27,000/- towards part of sale consideration. He (PW2) had further stated that ten persons had participated in the negotiations. But that is not the case of the tenants in their pleadings and in the evidence of PW1. According to him, the negotiations had taken place for about two or three hours. On the same aspect, PW3 had stated that they had left Rajahmundry on 17th of April and that the negotiations at the house of Satyanarayana Murthy had taken place for less than an hour and that at the time of negotiations, he, PWs 1 and 2 and Prakash Rao, an auditor and Satyanarayana Murthy were alone present and no other person was present. Thus, PW3 did not speak about the presence of the wife of PW1. Thus, there is no consistency in the evidence on material aspects and on the other hand, there are material discrepancies, which belie the theory of negotiations and culmination of the negotiations into an oral agreement of sale. If really, the theory that a concluded contract in the nature of an oral agreement of sale was arrived at Hyderabad, the further theory that the original owner had stated that he would come to Rajahmundry in September 1998 and execute a written agreement of sale cannot be true. Both the versions cannot go together and therefore, it also appears that there is no concluded agreement to sell as contended by the tenants/agreement holders. Thus, PWs 2 and 3 who were examined are interested in PW1 in view of their friendship from childhood and acquaintance since a long time respectively. The auditor, who appears to be an independent witness, was not examined for reasons best known to PW1 and his wife and no explanation is even offered for his non-examination. His non-examination is fatal to the case of the tenants/agreement holders, in the facts and circumstances of the case and in the light of the serious discrepancies in the

evidence. This evidence on record would show that the plaint averment that the negotiations for sale had suddenly cropped up during a casual/informal visit of the tenants to Hyderabad is not correct. The circumstances stated hereinabove create a reasonable doubt as to the truthful version of the tenants/agreement holders and also about the truthful nature of the alleged oral agreement to sell.

Thirdly: Coming to the aspect of advance of Rs.13,000/- said to have been paid, no receipt was admittedly obtained and no reasons much less valid reasons are forthcoming for not obtaining even a receipt when the evidence is to the effect that they went prepared with witnesses/elders for negotiations of sale, though it is not the case pleaded in the plaint by the tenants/agreement holders. Be that as it may, the further case of the tenants/agreement holders is that the advance of Rs.27,000/-, which they had deposited at the inception in connection with the lease of the property, was adjusted towards part of sale consideration. Therefore, it is for PW1 and his wife to prove that such an advance of Rs.27,000/- was paid under the lease transaction as security deposit and the same is lying with the original owner/Satyanarayana Murthy. In the first place, no endorsement was obtained on the lease agreement that the said advance was adjusted towards part of sale consideration. In the lease agreement, the copy of which is exhibited as exhibit A1, the advance amount, which is to be kept as security deposit with the lessor and which is refundable at the time of lessee vacating the property, was mentioned only as Rs.18,000/-. Therefore, from the tenants'/agreement holders' own document, it appears that the advance amount deposited by them at the time of entering into the lease transaction is Rs.18,000/- only; therefore, their contention that the advance deposit of Rs.27,000/- is lying with the landlord, which is contrary to the record cannot be countenanced. Therefore, the alleged security deposit of Rs.27,000/- was agreed to be adjusted towards part of sale consideration is obviously false.

Therefore, this plea of part payment towards sale consideration by adjustment of the alleged advance/security deposit of Rs.27,000/- as pleaded by the tenants/agreement holders must be held to be false. Thus, even

assuming for a moment that the oral agreement of sale is true, still for taking a false plea of payment of part of sale consideration, the tenants/agreement holders are liable to be non-suited in their suit for specific performance.

Fourthly: As per the oral agreement to sell pleaded by the tenants/agreement holders, another Rs.10,000/- was agreed to be paid by them to Bathula Satyanarayana Murthy/original owner during September 1998, i.e., during his proposed visit to Rajahmundry from Hyderabad. However, according to them, the said Satyanarayana Murthy had informed them during August 1998 that he would not be visiting Rajahmundry as contemplated earlier and that he had expected a remittance of balance of Rs.10,000/- to him at Hyderabad itself. In this regard, the tenants/agreement holders had further pleaded and contended that in the said circumstances, Rs.10,000/- by way of demand draft dated 19.08.1998 was sent along with a covering letter dated 19.08.1998 to Satyanarayana Murthy, the original owner, through a courier. The copy of the demand draft is exhibit A8. The copy of the said letter is exhibit A3 (=A7). It is also the case of the tenants/agreement holders that before the said cover reached him, he had died on the same day, i.e., 19.08.1998 itself and that the tenants/agreement holders due to their preoccupations could not call on the members of the bereaved family of late Satyanarayana Murthy and that the tenants/agreement holders could not re-tender the same draft as said Satyanarayana Murthy in whose favour the draft was purchased had already died. Though the agreement was entered into on 18.04.1998 according to tenants/agreement holders, there was no correspondence exchanged referring to the said agreement of sale during the life time of the original owner-Satyanarayana Murthy. PW1 had also admitted this aspect by stating that he did not address any letter referring to sale agreement till the death of the original owner-Satyanarayana Murthy. Therefore, and since the agreement of sale pleaded is an oral agreement, there was no occasion for Satyanarayana Murthy to deny the alleged oral agreement of sale during his life time. This exhibit A3 letter with the draft for Rs.10,000/- drawn in favour of Satyanarayana Murthy was admittedly sent through a courier on 19.08.1998 as is evident from exhibit A4, courier slip.

The said slip shows that the said letter with draft were sent through First Flight Courier Service, Rajahmundry on 19.08.1998 at 10.30 PM by which time, Bathula Satyanarayana Murthy had already died on the same day. Obviously, having come to know of the death of Satyanarayana Murthy/the original owner earlier in the day, the tenants/agreement holders resorted to the theory of sending Rs.10,000/- by draft in his name along with the covering letter through a courier service on the same day at 10.30 PM. Otherwise, there is no need to send the same at that odd hour of the night that too, by courier service. 19.08.1998 is not a postal holiday according to the admission of PW1 and even Speed Post facility is also available at Rajahmundry. Therefore, to create some evidence the tenants/agreement holders might have created the theory of sending the draft in the name of deceased Satyanarayana Murthy along with a covering letter through courier on the same day night having already come to know of the death of Satyanarayana Murthy earlier on that day is more probable in the facts and circumstances of the case. In fact, PW1 had admitted in his cross-examination that he had sent the original of exhibit A3 in exhibit A5 cover and it was returned to him without any endorsement. He had also admitted that he did not file any proof that he had sent exhibit A5 cover by courier service. In fact, the case of the purchasers from the original owner as suggested to in the cross examination of PW1 is that the record was brought into existence managing the courier people. However, no person from the courier service was examined. When there is no proof that exhibit A8 demand draft was sent with covering letter exhibit A3, the version of PW1 that one of the L.Rs of the deceased original owner had returned the demand draft under exhibit A6 cover with exhibits A7 and A8 cannot be countenanced. Therefore, the above conduct of the tenants/agreement holders is suggestive of the fact that there is no oral agreement to sell, but the tenants/agreement holders are trying to create some evidence in support of their case, which is not true. It is pertinent to reiterate that in this exhibit A3 letter there is no mention of the date of the oral agreement to sell and also the other details like the presence of PWs 2 and 3 and the Chartered Accountant at that time. It is also not stated in this letter that the draft for Rs.10,000/- is being sent since the original

owner-Satyanarayana Murthy had informed in August that he would not be visiting Rajahmundry in September 1998 as contemplated earlier.

Fifthly: It is appropriate to note that it is also the case and contention of the tenants/agreement holders that again a demand draft for Rs.10,000/-, which was obtained in the name of the Son of Satyanarayana Murthy was sent with a covering letter through exhibit A10 cover to the said Son of Satyanarayana Murthy i.e., one of the L.Rs of the original owner/landlord-Satyanarayana Murthy. But, PW1 had failed to produce even a copy of the demand draft to show that such demand draft in the name of the son of Satyanarayana Murthy was obtained. Thus, the conduct of the tenants/ agreement holders in sending the demand draft with covering letter through courier service on the night of the same day, i.e., 19.08.1998 on which Satyanarayana Murthy had died and their failure to prove that the said draft and covering letter sent through courier service were returned without any endorsement would show that the said contention is invented and the documents are created.

Sixthly: The tenants/agreement holders contended that since they have become purchasers of the tenanted property, they need not pay rent from September 1998 onwards as the original owner/Bathula Satyanarayana Murthy had proposed to visit Rajahmundry during that month and execute a formal agreement of sale. Coming to this contention, it is necessary to refer to exhibit A27, letter dated 06.06.1998 addressed by original owner-Satyanarayana Murthy to the doctor, i.e., (PW1) the 1st agreement holder. In this letter addressed to the 2nd plaintiff (the doctor), it is stated as follows:

“I am sending back the DD you have sent. I am keeping the notice by the Municipal Corporation with me. Please send the rent DD for Rs.9,000/-. You can deduct this amount of Rs.5,534/- in September 1998 which will facilitate me.”

So, during the life time of Satyanarayana Murthy, there was no correspondence about the alleged oral agreement of sale. On the other hand, Satyanarayana Murthy was asking the tenants herein to pay the rents and also adjust the amounts due to the Municipal Corporation from the rent.

So, had there been an agreement to sell and after such oral agreement on 18.04.1998, the tenants/agreement holders are not obliged to pay rents having become the purchasers under the agreement, Satyanarayana Murthy/the original owner ought not to have addressed exhibit A27 letter asking them to pay the rents and adjust the municipal property tax from out of one month's rent. If really, the said Satyanarayana Murthy had entered into an oral agreement to sell with the tenants/agreement holders in April 1998 and there were no disputes and the terms were good, he would not have, in the normal course of events, sold the plaint schedule property to defendants 6 and 7 in the months of July and August 1998.

Seventhly: It is necessary to mention that the tenants/agreement holders placed reliance on exhibit A2 letter. It is one of the contentions in the plaint that Satyanarayana Murthy/the original owner-cum-the vendor under the oral agreement of sale used to entrust his work relating to suit schedule property to the tenants/agreement holders and that they used to look after the same and hence, there was faith and mutual trust between him and the tenants/agreement holders and that as the said oral sale agreement transaction took place suddenly, they did not obtain anything in writing evidencing the oral agreement of sale. Exhibits A17 to A27 are the letters written by Satyanarayana Murthy/the original owner whereunder works were entrusted to the tenants in respect of plaint schedule property like payment of tax and dealing with the municipal authority etcetera. Exhibit A28 dated 29.08.1996 is the notarised specific power of attorney executed by the said Satyanarayana Murthy in favour of PW1. Exhibit A29 (=B1) dated 01.09.1996 is also a specific power of attorney executed by him. The said correspondence would show that he was in the habit of putting everything in writing and was also writing letters and/or executing documents as and when necessary while entrusting works. Even though he had written several letters from September 1996 to January 1998 while entrusting his works relating to payment of tax on the property and for taking steps for proper eviction of existing tenant-ONGC etcetera, in none of the subsequent letters he had made a mention about his entering into an oral agreement of sale dated

18.04.1998 with the tenants/agreement holders. From the plaint averments, it appears that incidentally/casually PW1 and others had visited the house of Bathula Satyanarayana Murthy/the original owner at Hyderabad on 18.04.1998, and that at that time, an inclination to sell away the plaint schedule property was expressed and that, therefore, Rs.13,000/-, which was readily available with PW1, was paid as advance and in the said circumstances, no written agreement was entered into and that it was proposed that Bathula Satyanarayana Murthy/the original owner shall execute a written agreement in September 1998 during his visit to Rajahmundry. But, during the course of evidence, PW1 had given another version stating that much prior to August 1998, Bathula Satyanarayana Murthy/the original owner had contemplated to sell the property and that this fact is also evident from exhibit A2 letter dated 19.01.1998 and that therefore, they had all visited his house in view of his proposal to sell the property. This exhibit A2 letter was neither filed with the plaint nor with a petition to receive the same on file after according necessary permission for filing the same at a belated stage. As observed in the judgment of the court below, it was filed along with the PW1's affidavit filed in lieu of examination-in-chief and was exhibited without bringing to the notice of the Court that the same was being filed for the first time with such affidavit. Though, PW1 had stated that he had received exhibit A2 letter by post, the cover in which the said letter is received was not filed. No doubt, in this letter, a request was made to settle the home affair as early as possible either in total or in part as he (Satyanarayana Murthy) may not be waiting till March 1998. This sentence in the letter is of no avail to the tenants/agreement holders as their specific contention is that the agreement to sell was entered into on 18.04.1998, but not before that date. Therefore, the original owner/ Bathula Satyanarayana Murthy contemplating to sell the property to the tenants/agreement holders even before 18.04.1998 and addressing exhibit A2 letter with such a request does not arise as it is not the case of the tenants/agreement holders that by March 1998 there was a concluded agreement of sale. Therefore, from a mention in exhibit A2 letter in regard to settlement of home affair it cannot be inferred that the same refers to the alleged sale agreement transaction under oral

agreement of sale dated 18.04.1998 on which the present suit for specific performance is based.

Eighthly: The tenants/agreement holders contended that they had got issued a legal notice dated 01.10.1998 and that there was no reply either from the L.Rs of late Satyanarayana Murthy/the original owner or the purchasers from him. The office copy of the said notice is exhibit B19. When the tenants/agreement holders had got issued the said notice dated 01.10.1998 through their Advocate, the defendants 1 to 5 had sent a reply notice dated 11.12.1998 under the original of exhibit B21. This reply notice under the original of exhibit B21 of the defendants 1 to 5 was served on the counsel for the tenants/ agreement holders and the relevant acknowledgment is exhibit B22. The purchasers, i.e., Defendants 6 and 7 had also got issued a reply through their Advocate to the notice of the tenants/agreement holders. Exhibit B20 is the office copy of the said notice. The tenants/agreement holders in their specific performance suit have suppressed the exchange of the said earlier notices between the parties. Further, in their respective reply notices, the defendants 1 to 5, i.e., the L.Rs of the deceased late Satyanarayana Murthy on one hand and the purchasers, i.e., the defendants 6 and 7 on the other have both denied the alleged oral agreement of sale pleaded by the tenants/agreement holders. It is to be next noted that the tenants/agreement holders came to the trial court with a version that when they had issued a notice dated 21.10.1998 to the defendants, there was no response from the defendants 1 to 7. The office copy of that notice dated 21.10.1998 of the tenants/agreement holders was exhibited as exhibit A11. In fact, the notice under the original of exhibit A11 said to have been sent by the tenants/agreement holders to the defendants was not shown to have been served on the defendants in the suit for specific performance. Exhibit A12 is a bunch of seven postal receipts; and the notices addressed to the defendants 1, 4 and 5 were returned with an endorsement that there are no such addressees; and no acknowledgments are produced to show that any of the defendants are served with the notice sent under the original of exhibit A11. Exhibits A13 to A15 are the returned envelopes. Therefore, the

contention of the tenants/agreement holders that exhibit A11 notice was sent and was served and that there was no reply from the defendants 1 to 5 cannot be countenanced. In exhibit B21, reply got issued by the defendants 1 to 5 who are the legal representatives of the original owner-B.Satyanarayana Murthy/the original owner, they had specifically denied the alleged oral agreement of sale said to have been entered into by B.Satyanarayana Murthy with the tenants/agreement holders and had contended that B.Satyanarayana Murthy had already sold the plaint schedule property to the defendants 6 and 7/the purchasers for valid consideration. Therefore, the L.Rs of the original owner/ Bathula Satyanarayana Murthy had remained *ex parte* in the suit is of no consequence.

Ninthly: Coming to the non-examination of the purchasers/D6 and D7 as witnesses, what is to be first noted is that they have nothing to do directly with the case of the tenants/agreement holders in regard to the oral agreement of sale as even according to the tenants/agreement holders, the purchasers, i.e., D6 and D7 had come into the picture after having subsequently purchased the property from the original owner. The L.Rs of the original owner had denied the agreement of sale in their reply notice as already noted. The purchasers had also stated that they were never informed by the original owner, i.e., their vendor, about the alleged oral agreement to sell in favour of the tenants/agreement holders. Therefore, it is for the tenants/agreement holders to prove their pleaded case in order to succeed in the suit for specific performance. On merits, this court had already recorded a finding that the oral agreement of sale is not true. Therefore, the non-examination of the purchasers is not going to make a difference insofar as the dismissal of the suit for specific performance. When once the court comes to the conclusion that the oral agreement to sell is not true and that therefore, the suit for specific performance has to fail on merit, then it follows that there is no need to go into the aspect as to whether the purchasers from the original owner are *bona fide* purchasers or not as there are no other contestants and as the L.Rs of the original owner are admitting the sale transactions under five regular registered sale deeds executed by the original owner in favour of

the purchasers/D6 and D7.

Lastly: The law is well settled that Section 20 of the Specific Relief Act, which deals with 'discretion as to decreeing specific performance', lays down that the jurisdiction to decree specific performance is discretionary and that the Court is not bound to grant such relief merely because it is lawful to do so; but the discretion of the Court is not arbitrary but sound and reasonable, guided by judicial principles and capable of correction by a Court of appeal. Having thus weighed the circumstances relating to the transaction, we find that in the facts and circumstances of the case and on exercise of discretionary jurisdiction on sound and reasonable judicial principles, this Court is not bound to grant a decree for specific performance merely because it is lawful to do so and that, therefore, judged from any angle the tenants/agreement holders are not entitled to the equitable relief of specific performance. On an analytical examination of the pleadings and the evidence, both oral and documentary, and in the light of the detailed discussion coupled with the reasons supra, we are of the well considered view that the tenants/agreement holders had failed to prove that there is an oral agreement of sale dated 18.06.1998 between them and Bathula Satyanarayana Murthy. Viewed thus, we find that the pleaded oral agreement of sale in the suit for specific performance is not true and that therefore, the tenants/agreement holders are not entitled to the relief of specific performance.

14. In view of this finding, there is no need to go into the question as to whether or not the purchasers, who had purchased the subject property under five registered sale deeds from Bathula Satyanarayana Murthy are *bona fide* purchasers. The point no.1 is accordingly answered against the tenants/agreement holders and in favour of the purchasers/D6 and D7.

15. POINT No.2:

16. (a) Coming to the suit for eviction filed by the purchasers against the tenants, it is an admitted fact that the tenants were in possession even by the

date of purchase of the property by the purchasers, i.e., the plaintiffs in the suit for eviction. The purchasers purchased the property under exhibits B3 to B7 registered sale deeds from the original owner-Satyanarayana Murthy. He had originally inducted the tenants who are the defendants in this suit. This Court had already held under point no.1 supra that the oral agreement of sale pleaded by the tenants is not true and that they are not entitled to the relief of specific performance.

16. (b) Coming to the suit for eviction filed by the purchasers, one of the contentions of the tenants is that there is no attornment of tenancy and that therefore, there is no jural relationship of tenants and landlord between the parties, i.e., the tenants and the purchasers of the property. This contention is not valid and is not tenable in the facts and circumstances of the case. In **M.Suryanarayana Raju v. Korukonda Appa Rao**^[1], the plaintiff therein had claimed to have purchased the property under a registered sale deed. The respondent therein had stated that the tenancy was not attorned in favour of the said plaintiff and that therefore, the plaintiff is not entitled to maintain the suit for the arrears of rent against him. Having considered the provisions of law and the ratios in the relevant precedents, this Court held as follows:

“For all these reasons, I have to conclude that neither under the provisions of the Transfer of Property Act nor under the provisions of A.P. Rent Control Act there is any provision for attornment of the tenancy by the tenant in favour of the transferee and such transferee would automatically become the landlord of the tenant on the same existing terms and conditions.”

Further, in the decision in **Shankaramma v. Mohammed Abdul Hameed**^[2], a Division Bench of this Court had held that a transferee of the landlord's rights steps into the shoes of transferor/landlord with all the rights and liabilities in respect of subsisting tenancy and that Section 109 of the Act makes it clear that the landlord can transfer his property in favour of a third party during the subsistence of the lease and that the consent of the tenant is not necessary to transfer the property in favour of a third party and that in the light of the provisions of the Transfer of Property Act and the case law, the

attornment automatically follows on transfer of property on the same terms and conditions on which the transferor entered into lease agreement with the tenant unless there is a contract to the contrary and that the transferee of a landlord is thus entitled to collect rent as of right and is a landlord and that since the attornment is not necessary under Section 109 of the Act, the tenant cannot dispute the right of transferee to maintain a suit for eviction or to claim rent. Therefore, from the legal position obtaining, even assuming for a moment that there is no attornment of tenancy, the purchasers can maintain the suit for eviction and arrears of rent etcetera.

16. (c) The tenants/agreement holders had contended that one of the agreement holders, i.e., Bikkina Sarojini is a necessary party to the suit for eviction and that the suit is bad for non-joinder of necessary party and that therefore, the suit is liable to be dismissed. Admittedly, the suit schedule property was taken on lease from the vendor of the defendants 6 and 7, who are the purchasers of the suit schedule property. The Diagnostic Laboratory, i.e., the 1st defendant represented by Bikkina Sarojini is being run in the ground floor and the 1st floor in the occupation of Bikkina Sarojini and her husband Rama Manohar. Further, she is a party to the suit for specific performance filed by her and her husband and the said suit and the eviction suit filed by the purchasers were consolidated and tried together and common evidence was recorded in the suit for specific performance and a common judgment was rendered by the trial Court. Further, in the suit for specific performance of the tenants/agreement holders, this Court held that they had failed to prove the oral agreement of sale. Hence, Bikkina Sarojini in her individual capacity is not a necessary party to the suit for eviction. Therefore, on the ground that she was not added as a party to the said suit, the said suit need not be dismissed. It is also contended that non-examination of the purchasers and the examination of only their agent and power of attorney holder as DW1 is fatal to the eviction suit. The evidence on record of DW1 would show that he has been looking after the property affairs of D6 and D7/purchasers and that he is aware of the transactions from the beginning; further, the relevant authorization letters were also marked in his

evidence; and, in his cross-examination, he had stated that he and his father attended at the time of negotiations and execution and registration of exhibits B3 to B7, sale deeds, in favour of the purchasers and that his father has got drafted the pleadings and that at that time, he had assisted his father while giving instructions to the counsel for preparation of pleadings and notices; and, therefore, his evidence would show that he has personal knowledge of the transactions related to the present lease. Since this evidence of DW1, which is worthy of credit, shows that he is having personal knowledge, the decision in **Janki Vashedevo Bhojwani v. Indusind Bank Limited** [(2005) 2 SCC 217] relied upon by the learned counsel for the tenants is not helpful to the tenants as DW1 is competent to depose in regard to matters of which he is having personal knowledge. Therefore, the evidence of DW1 on the side of the purchasers/plaintiffs in the eviction suit is sufficient and the non-examination of the purchasers is not fatal as contended on behalf of the tenants/appellants.

16. (d) The trial court granted a decree for arrears of rent/damages (past and future) in favour of the purchasers and against the tenants while also granting the relief of eviction. The next contention of the tenants is that they need not pay rents from September 1998 onwards as they had become purchasers by virtue of an oral agreement of sale. Therefore, they did not admittedly pay rents. Even after the issuance of exhibit B20 reply notice dated 10.12.1998 by the purchasers in reply to the tenants' notice dated 01.10.1998, the tenants did not pay the rents to the purchasers and had maintained the stand that they can continue as purchasers under oral agreement of sale without payment of any rent from September 1998. The tenants had also placed reliance on the agreement of lease dated 01.09.1996 between them and Bathula Satyanarayana Murthy/the original owner to contend that the lease period is three years and is subject to renewal. It is an unregistered lease deed dated 01.09.1996 for a period of three years. Therefore, the tenants contend that the original period of lease is three years and that they came into possession of the property in October 1999 and that there is also an agreement to renew the lease with Bathula Satyanarayana

Murthy. However, since Bathula Satyanarayana Murthy had died, admittedly, there is no renewal of further lease period after the efflux of the originally agreed three years period by September 1999. In fact, the tenants, during the pendency of the suit before the trial court made an attempt to seek amendment of their written statement in the eviction suit for seeking a relief of specific performance of renewal of lease by making a counter claim. The interlocutory application in I.A.No.1454 of 2000 in that regard was dismissed by the trial Court in January 2003 and the said order has become final. Therefore, there was no renewal of lease after the efflux of the originally agreed term of lease between the tenants and the original owner. This suit for eviction was filed in the year 2000, at any rate, after the originally agreed period of lease had expired by efflux of time. Under law, any lease deed for a period of three years is compulsorily registerable as per the provisions of the Act and Section 17 of the Indian Registration Act. If the lease deed is unregistered, its terms cannot be looked into to ascertain the period of lease agreed upon. Therefore, the question of ascertainment of lease period as three years and their entitlement for renewal of lease as contended by the tenants does not arise for consideration as the lease deed is unregistered. The trial court had also held that even in the absence of any registered lease deed, there is evidence on record that the originally agreed lease period had expired by efflux of time and that there was no renewal of lease since the original landlord-cum-original owner had died and that therefore, when the tenancy period had come to an end by efflux of time, there is no need for issuance of a quit notice in the light of the ratio in the decision in **A.G.Chandrasekhar v. Ramagiri Mahalakshmi** [2002(5) ALD 573]. It is also contended that in this case a quit notice giving fifteen days time is not sufficient as the ground floor is being put to use by the tenants for running a Diagnostic Laboratory. It is to be first noted that a lease for running a Diagnostic Laboratory cannot be deemed as a lease for manufacturing process. Further, in the decision in **SAMIR MUKHERJEE v. DAVINDER K. BAJAJ AND OTHERS**^[3], the facts show that the respondents had filed a suit for eviction of the appellant from the suit property and for recovery of

arrears of rent and damages/mesne profits; And, according to the respondents, the appellant was a monthly tenant and therefore, 15 days notice terminating the tenancy as required under Section 106 of the Act was issued; The receipt of the said notice was not disputed; The tenancy was created by an oral agreement; The tenant had taken a plea of permanent tenancy and that the tenancy was in respect of a business i.e., for manufacturing purpose since the inception of tenancy; On the said defence raised it was pleaded that the appellant was carrying on business in manufacturing of transmission towers and railway electrification fittings and that therefore, the lease shall be deemed to be from year to year as per the provision of Section 106 of the Act and therefore, a notice to quit ought to have been given for six months expiring on the last date of the year of tenancy. The Hon'ble Supreme Court, having regard to the above facts and having considered the provisions of law, had held as follows:

“In the present case though the appellant has claimed that it was lease for manufacturing purpose, admittedly there was no registered written lease. Therefore, the rule of construction as envisaged in Section 106 would not be applicable as the statutory requirement of Section 107 of the Act has not been satisfied. The plea of the appellant that 15 days notice terminating the present tenancy is bad in law would not be sustainable.”

Therefore, the contention of the tenants herein that a quit notice giving six months time is necessary cannot be countenanced. In this instant case, based on an oral agreement of sale, which is held to be untrue, the tenants having claimed themselves as purchasers had failed to pay the rents to the plaintiffs, who had purchased the property from the original owner under five regular registered sale deeds. Thus, the tenants have become tenants at sufferance. The learned counsel for the tenants having placed reliance on the decision in **Samir Mukherjee v. Davinder K Baja**^[4] had contended that the suit for eviction cannot be maintained for want of valid quit notice. In the facts and circumstances peculiar to the case and for the reasons assigned infra, the ratio in the said decision is not helpful to advance the case of the tenants. In the written statement filed by them, the tenants did not plead and contend that the suit for eviction is not maintainable without issuing a valid quit notice under Section 106 of the Act. Further, without a foundation in the

pleading, the tenants, who had not admitted the jural relationship with the purchasers and who had failed to pay the rents by not admitting the purchasers as their landlords, cannot be permitted to contend that the suit cannot be maintained without a valid quit notice. In the absence of any defence by the tenants in their written statement that the suit is not maintainable in the absence of a valid quit notice, it can also be taken that the requirement of issuance of quit notice is waived by them. Moreover, in this case in exhibit B20, which is their reply notice dated 10.12.1998, the purchasers had categorically stated that on the failure of the tenants to pay the rents they would be constrained to resort to suit for eviction on the grounds of default etcetera. Therefore, it cannot be said that there is no notice demanding arrears of rent and seeking eviction on failure to pay the rents. No doubt, in this notice no specific time for eviction was mentioned. However, the suit for eviction was filed in the year 2000. There is no requirement of law to expressly terminate the tenancy and any omission of the words that the tenancy is terminated is no ground to non-suit the purchasers/ landlords. The law is now well settled that a quit notice issued to the tenants asking them to vacate the property should be liberally construed. Therefore, the said notice which was issued to the tenants itself is a notice to quit on the tenants. In the light of the discussion coupled with reasons, the contention of the tenants/agreement holders that the purchasers' suit for eviction is not maintainable for non-issuance of a valid quit notice cannot be countenanced and such a contention is devoid of merit in the peculiar facts and circumstances of the case. Viewed thus, we find that the purchasers are entitled to the relief of recovery of possession after evicting the tenants from the schedule property as prayed for in the suit for eviction.

16. (e) Coming to the portion of the decree granting the reliefs of arrears of rent/damages (past and future), the trial Court had held that the purchasers i.e., the plaintiffs in the suit for eviction are entitled to Rs.1,39,000/- towards the arrears of rent/damages in view of the admitted fact that rents were not paid. Here itself, it is also necessary to observe that the past damages were awarded @ Rs.11,000/- per month for the months of October and November

1999. Coming to the claim of future damages, the trial Court had awarded future damages @ Rs.11,000/- per month from December 1999 till the date of delivery of possession of the property by the tenants by taking into consideration the facts and circumstances of the case, the nature and location of the property and the rent prevailing at the earlier point of time, though the purchasers by examining DW1 had claimed future damages @ Rs.15,000/-per month. Though the purchasers have filed cross-objections claiming that they are entitled to future damages @ Rs.15,000/-per month and not at the rate awarded by the trial Court, they could not show as to how the appreciation of evidence of the trial court in this regard is erroneous and needs interference. Therefore, we see no merit in the cross objection and on the other hand, the trial court was right in awarding damages @ Rs.11,000/- per month. Having independently examined the evidence, we find that the reliefs in regard to arrears of rent/damages and award of future damages @ Rs.11,000/- per month from December 1999 onwards till the date of delivery of possession of the property and the further direction of the trial court to the purchasers i.e., the plaintiffs in the eviction suit to pay the requisite court fee need no interference.

16. (f) In the light of the discussion and the findings coupled with reasons supra, the point is answered holding that the purchasers/landlords are entitled to the relief of eviction and recovery of vacant possession of the schedule property from the tenants/agreement holders besides the reliefs of arrears of rent/damages and future damages as awarded by the trial Court in O.S.No.57 of 2000, the suit for eviction.

17. POINT No.3:

We have gone through the decrees and common judgment of the trial Court. The trial Court having accurately considered the facts and having applied the evidence correctly to the facts of the case had recorded well reasoned finding that the plaintiffs/tenants are not entitled to the relief of specific performance and that the purchasers/the plaintiffs in the eviction suit are entitled to the relief of eviction and other allied reliefs. For the reasons

now assigned and in view of the findings recorded by us under points Nos.1 and 2, we find that the decrees and the common judgment of the trial Court do not call for interference and that none of the grounds urged by the appellants merit consideration and that the appeals are devoid of merit. We accordingly hold that the common judgment and decrees of the trial court are sustainable both under facts and in law.

18. POINT No.4:

In the result, both the appeals are dismissed, however, without costs. The tenants/defendants in O.S.No.57 of 2000 are granted six (6) weeks time from the date of the receipt of a copy of this judgment for vacating the schedule property and delivering vacant possession of the same to the plaintiffs in the said suit. On failure of the defendants to do so, the plaintiffs are at liberty to recover possession of the plaint schedule property in accordance with the procedure established by law. The cross objections in A.S.No.251 of 2006 filed by the plaintiffs, i.e., the respondents 1 and 2 are also dismissed.

Miscellaneous petitions, if any, pending in these appeals shall stand dismissed.

K.C. BHANU, J

M. SEETHARAMA MURTI, J

06th April 2015
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[\[1\]](#) 1997 (1) Law Summary 409

[\[2\]](#) 2006 (1) ALT 103

[\[3\]](#) AIR 2001 SC 1696

[\[4\]](#) 2001 (4) ALD 23 (SC)