HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

APPEAL SUIT No.2440 of 2001

JUDGMENT

The unsuccessful plaintiffs in O.S. No.5 of 1992 on the file of Additional Senior Civil Judge, at Rajahmundry, preferred this appeal challenging the decree and judgment dated 29.06.2001, whereby the suit filed by the plaintiffs for specific performance of agreement of sale was dismissed.

02. For convenience of reference, the ranks given to the parties in O.S. No.5 of 1992 before the Additional Senior Civil Judge, Rajahmundry, will be adopted throughout the judgment.

03. The plaintiffs filed the suit for specific performance of agreement of sale dated 23.05.1987 and the alternative relief for refund of advance of Rs.8,73,750/- towards sale consideration paid to the defendants by the plaintiffs, alleging that the defendants 2 to 4 are the sons and the defendants 5 to 8 are the daughters, of the first defendant. They constituted as members of Hindu undivided joint family.

04. The 3rd defendant represented by his brother, Venkateswara Rao - 4th defendant, as power of attorney holder. The defendants 5 to 8 represented by their father/ power of attorney holder - the first defendant, Babu Rao agreed to sell the schedule property and the plaintiffs agreed to purchase the same @ Rs.1,95,000/- per acre, paid and obtained agreement of sale dated 23.05.1987, paid an amount of Rs.1,00,000/- towards advance by way of cheque bearing No.LA/43 No.365151 drawn on Andhra Bank, Danavaipeta, Rajahmundry, incorporating the following terms:

> a) Plaintiffs have to get ready with the balance of sale consideration and obtain registered sale deed or deeds in their favour or in favour of their nominees within one year from the date of agreement of sale at their expenses;
>
> b) Plaintiffs have to pay 10 lakh rupees by 23.06.1987 to defendants and the defendants have to receive the same;
>
> c) Defendants have to deliver the extent of land for which registered sale deeds are executed in favour of plaintiffs or their nominees.
>
> d) Plaintiffs have to keep in deposit Rs.2,00,000/- till the time, the transaction is completed;

e) Defendants shall have to get ready to receive the balance sale consideration from the plaintiffs and get ready to execute the registered sale deeds in favour of plaintiffs or their nominees at their expenses, and

f) Time is the essence of contract.

05. Subsequent to the execution of agreement of sale dated 23.05.1987, the defendants 1 to 4 and the 1st defendant as a power of attorney holder of defendants 5 to 8 delivered the scheduled property under agreement of sale to the plaintiffs and the plaintiffs have been in possession and enjoyment of the same by paying land revenue to the Government. After taking delivery of possession of suit schedule land, the plaintiffs have constructed two pucca sheds and installed one new bore well, incurred an amount of Rs.1,50,000/-. Since then they are enjoying the amenity of electricity and paying electricity consumption charges to the electricity department.

06. The plaintiffs have paid Rs.1,00,000/- to the defendants on 15.06.1987 and Rs.6,00,000/- on 23.06.1987. Those payments were endorsed on the reverse of the agreement of sale. The defendants have extended one year time for execution of the sale deed by endorsement dated 21.05.1988. Again on 12.09.1988 the plaintiffs have paid Rs.1,00,000/- and the same was endorsed overleaf of the agreement of sale.

07. The plaintiffs have always been ready and willing to perform their part of obligation under the agreement of sale, but due to domestic difficulties and personal inconvenience, the defendants could not perform their part of obligation within the time stipulated in the agreement of sale.

08. The defendants extended time from 15.05.1989 to 19.05.1990 to complete transaction, as per endorsement dated 15.05.1989. Thereafter the plaintiffs have paid Rs.3,00,000/- towards part payment of sale consideration on 07.08.1989 and the same was endorsed on the agreement of sale and altogether, the plaintiffs have paid Rs.12,00,000/- towards sale consideration for the schedule land.

09. The defendants 1 to 4 and defendants 5 to 8 represented by the first defendant as their power of attorney holder, have received consideration from the nominees of plaintiffs and executed registered sale deeds in their favour for an extent of Ac.12.00 cents in R.S.No.388/2 and 389/3 and still the defendants have to execute registered

sale deed in favour of the plaintiffs or their nominees. The plaintiffs are in possession and enjoyment of the schedule property, have paid Rs.12,00,000/- towards part payment of sale consideration, still an amount of Rs.3,19,500/- is due and the plaintiffs are ready and willing to perform their part of obligation under the agreement of sale to obtain registered sale deed, by purchasing the required non judicial stamp papers. The plaintiffs through mediators, namely A.D.V. Prasada Rao, Koyyalamudi Atchanna, Cherukuri Satyanarayana and others, demanded the defendants 1 to 4, to receive balance sale consideration of Rs.3,19,500/- and execute registered sale deed in favour of the plaintiffs or their nominees. But the defendants did not comply the legitimate demand of the plaintiffs. Thereupon, the plaintiffs got issued legal notice dated 17.09.1991 and a telegraphic notice dated 13.11.1991 to the defendants, whereby the plaintiffs conveyed their readiness to perform their part of obligation under agreement of sale. Receipt of the notice was acknowledged by the defendants.

10. On 26.12.1991 the defendants have executed a registered sale deed in favour of the 2nd plaintiff conveying title to an extent of Ac.2.61 cents, but failed to comply with the terms of agreement of sale to execute the registered sale deed for Ac.1.18 cents out of schedule land.

11. During the pendency of the suit, the defendants have executed registered sale deed for an extent of Ac.4.00 of land and still the defendants have to execute registered sale deed for an extent of Ac.0.18 cents in R.S.No.389/3 and Ac.1.00 in R.S.No.388/2. The plaintiffs are ready to pay balance of sale consideration of Rs.30,100/- after adjusting Rs.2,00,000/- which is deposited with the defendants as per the terms of the agreement of sale, but the defendants failed to execute registered sale deed for an extent of Ac.1.18 cents in RS.No.389/3 and 388/2. The plaintiffs filed the present suit for the aforesaid reliefs.

12. The first defendant filed written statement. By filing the memo dated 15.09.1992 the defendants 2 to 8 adopted the written statement of the first defendant.

13. The defendant No.1 while admitting the execution of agreement of sale, denied readiness and willingness pleaded by plaintiffs, while contending that the transaction was concluded between the parties amicably with regard to performance of part of obligation under agreement of sale and that the plaintiffs informed the first defendant that they would get the suit withdrawn and dismissed without costs, gave

a memo duly signed by them. For the reasons known to them, the plaintiffs did not file memo into the Court, so far. Thus, the cause of action is no more surviving to claim any relief in the suit and prayed to dismiss the suit.

14. Subsequently, after amending the plaint by incorporating paragraph 5A, the 2nd defendant filed additional written statement contending that the suit claim is barred by limitation. Consequently, the suit is liable to be dismissed *in limini*. As the plaintiffs requested the defendants 1 to 4, they executed sale deeds in the names of their nominees conveying part of schedule property on different occasions. As per the endorsement made by the first defendant on 08.04.1992, an extent of Ac.18.16 cents was already conveyed under different sale deeds in favour of the plaintiffs or their nominees. The plaintiffs endorsed on 08.04.1992 stating that there is no further balance of land to be conveyed by the defendants 1 to 4 to the plaintiffs or their nominees as per the agreement of sale and the remaining part, if any, was treated as cancelled. In pursuance of the same, the first plaintiff got typed a memo dated 08.04.1992 signed on it and obtained signature of the first defendant as well as Advocate on the said memo, assured the defendants and their Advocate that the plaintiffs would get the original memo filed into the Court through their advocate, while passing photo copy of memo, as the dispute was settled between the parties to the agreement, and to withdraw the suit or to get it dismissed without costs. But contrary to the assurance given by the plaintiffs, the plaintiffs continued the suit.

15. One Kudapa Hymavathi, W/o.Venkateswara Rao, nominee of the plaintiffs, to whom part of the land was conveyed by sale deed, at the instigation of her sons and others, filed suit O.S. No.283 of 1991 on the file of Senior Civil Judge, Rajahmundry, against the defendants claiming unjustly some more extent of land and the plaintiffs agreed to get the suit withdrawn by the said Kudapa Hymavathi as per the memo. But she continued the suit and the suit is being contested by the defendants herein.

16. The agreement between the plaintiffs and the defendants is no more subsisting. The plaintiffs are not entitled to any relief against the defendants much less for executing registered sale deed for an extent of Ac.1.18 cents in pursuance of the agreement of sale dated 23.05.1987 and that the defendants never shirked to execute any conveyance in favour of the plaintiffs or their nominees for the extent they agreed to sell under the agreement of sale. The defendants were not under legal obligation to convey further extent of land because of abnormal delay caused

by the plaintiffs and failure of plaintiffs to pay balance of sale consideration. Thus, the defendants to keep up their promise executed registered sale deeds in favour of the plaintiffs and their nominees for various extents, in piece meal and the plaintiffs sold the property for lucrative sale price. Thus, the plaintiffs failed to comply the terms and conditions of the agreement and that they were never ready and willing to perform their part of obligation under the agreement of sale. It is further contended that failure to give notice as required under law expressing their readiness and willingness, debars the plaintiffs to claim relief of specific performance. The belated notice dated 01.10.1989 expressing their readiness and willingness is not sufficient to claim the equitable relief of specific performance.

17. According to the plaintiffs, they have to pay Rs.30,100/- towards balance of sale consideration without expressing their readiness and willingness to pay actual amount due to the defendants and this amounts to non compliance of mandatory requirement of the readiness and willingness to perform their part of obligation. On this ground also, the plaintiffs are disentitled to claim any of the relief claimed in the suit. Since the plaintiffs failed to plead the mandatory requirement of readiness and willingness, the plaintiffs are disentitled to claim relief of specific performance, and apart from that, due to obtaining the memo withdrawing the suit and get the suit dismissed without costs on account of compromise between the parties on 08.04.1992, no relief can be granted to the plaintiffs and the suit is liable for dismissal.

18. Basing on the above pleadings, the trial court framed the following issues and additional issue: (extracted)

1. Whether the plaintiffs are entitled for the relief of
specific performance as prayed for?

2. Whether the plaintiffs are entitled for refund of
money with charge, as alternative relief?

3. To what relief?

Additional issue:

Whether the adjustment pleaded by the defendants is true?

19. During the trial, on behalf of the plaintiffs, P.Ws.1 and 2 were examined and marked Exs.A.1 to A.14. On behalf of the defendants, DWs.1 and 2 were examined, marked Exs.B.1 to B.5 and Exs.X.1 to X.3 through Advocate-Commissioner.

20. Upon hearing both the learned counsel, considering oral and documentary evidence, the trial court disbelieved the payment of Rs.2,00,000/-, retaining the same till completion of transaction by the defendants and concluded that in view of settlement of the claim between the plaintiffs and defendants under Ex.B.3 - memo and Ex.B.4 – letter, the defendants are not under obligation to execute the registered sale deed conveying Ac.1.18 cents, receiving Rs.30,100/- towards balance of sale consideration, dismissed the suit in toto.

21. Aggrieved by the decree and judgment of the trial court, the unsuccessful plaintiffs preferred the present appeal challenging the decree and judgment dated 29.06.2001 in O.S. No.5 of 1992 passed by the Additional Senior Civil Judge, Rajahmundry. Among the various grounds urged in the grounds of appeal by the appellants, the following are the main grounds raised before this Court.

a) The documents, Exs.B.3 and B.4 are only forged documents, but the trial court accepted the documents erroneously, concluded that there was a settlement between the plaintiffs and defendants and thereby, the defendants are not under obligation to execute registered sale deed.

b) The trial court placing reliance on Ex.X.1 and the evidence of D.W.2 coupled with Exs.B.3 and B.4, concluded that the signatures on Exs.B.3 and B.4 are that of signatures of the plaintiffs and such memo marked as Ex.B.3, would not take away right of the plaintiffs to claim relief since the memo is not valid.

c) The trial court failed to consider the conduct of the defendants for not filing Exs.B.3 and B.4 along with written statements and any explanation for the long delay in filing memos marked as Exs.B.3 and B.4 and the trial court should have not disbelieved the very execution of Exs.B.3 and B.4.

d) The trial court did not consider Exs.A.7 and A.8 in proper perspective and committed error in declining the reliefs claimed by the plaintiffs in the suit erroneously, finally prayed to allow the appeal setting aside the decree and judgment of the trial court and pass a decree for specific performance of agreement of sale, directing the defendants to execute the registered sale deed for an extent of Ac.1.18 cents receiving balance of sale consideration.

22. During hearing, Sri M.V. Durga Prasad, learned counsel for the plaintiffs/ appellants, mostly concentrated on demonstrating that Exs.B.3 and B.4 do not amount to compromise and withdrawing the suit, as it is against the purport under the Rule 1 or 3 of Order XXIII of the Code of Civil Procedure, 1908 (for short, 'the Code') and placed reliance on following decisions of the Calcutta High Court, other High Courts and the Apex Court:

i) ***Molla Sirajul Haque and etc., v. Gorachand Mullick and others***

ii) **K. Venkatachala Bhat and another v. Krishna Nayak (D) by Legal Representatives and another**

iii) **Gurpreet Singh v. Chatur Bhuj Goel**

iv) **Sneh Gupta v. Devi Sarup and others**

23. He also further pointed out that as per the terms of Ex.A.8 - agreement of sale, the defendants agreed to retain an amount of Rs.2,00,000/- till completion of transaction, that means till conveying the property agreed to be sold under Ex.A.8. Accordingly, the defendants retained Rs.2,00,000/- with them and if that is excluded only Rs.30,100/- is required to be paid by the plaintiffs to obtain registered sale deed for an extent of Ac.1.18 cents which is balance of sale consideration agreed to be paid after execution of various sale deeds. In pursuance of the agreement of sale - Ex.A.8, the plaintiffs are always ready and willing to perform their part of obligation, but the defendants did not come forward to perform their part of obligation and that the time is not essence of the contract. Therefore the defendants are liable to execute registered sale deed. But the trial court, on wrong appreciation of facts and law, erroneously dismissed the suit, declining to grant the decree for the aforesaid reliefs.

24. *Per contra*, Sri Ch.Dhanamjaya, learned counsel for the respondents/ defendants, would submit that the plaintiffs miserably failed to plead and prove their readiness and willingness to obtain registered sale deed. Apart from that the alleged retention of Rs.2,00,000/- till completion of the transaction under the agreement of sale is false on the face of record and in addition to that, in view of settlement of the

claim between the plaintiffs and defendants, passed a photostat copy of the Memo marked as Ex.B.3 and chit marked as Ex.B.4 would clinchingly establish that there was a compromise and the defendants were not required to execute the registered sale deed in favour of the plaintiffs for an extent of Ac.1.18 cents and that when the plaintiffs approached the Court with false plea, and without expressing their readiness and willingness to perform their part of obligation i.e. payment of Rs.2,30,100/- towards consideration for an extent of Ac.1.18 cents itself suffice to decline relief of specific performance or any other relief.

25. It is further contended that as per the terms and conditions of Ex.A.1, the transaction shall be completed within one year from the date of execution of Ex.A.8 i.e., 23.05.1987. However, time was extended by making endorsement on the reverse side of Ex.A.8 vide Ex.A.13 dated 21.05.1988 extending time for one year and again under Ex.A.14 for another year. Therefore, failure to pay balance of sale consideration and complete the transaction by obtaining registered sale deed atleast within the extended time would disentitle the plaintiffs to claim equitable relief of specific performance of agreement of sale and prayed to dismiss the appeal confirming the decree and judgment of the trial court.

26. Considering the rival contentions, perusing the decree and judgment passed by the trial court, oral and documentary evidence on record, the points that arise for consideration are as follows:

> *i) Whether settlement of the dispute after filing the suit by issuing Exs.B.3 and B.4 amounts to compromise of the suit within the meaning of Rule 3 of Order XXIII of the Code? If not, the cause of action to claim relief survived?*
>
> *ii) Whether the defendants retained an amount of Rs.2,00,000/- after executing the registered sale deeds for various extents, covered by agreement of sale Ex.A.8?*
>
> *iii) Whether the plaintiffs are ready and willing to perform their part of obligation under Ex.A.8 from the date of execution till date? If so, are the plaintiffs entitled to claim relief of specific performance of agreement of sale under Ex.A.8?*

<u>Point No.1:</u>

27. The first and foremost contention of the defendants, from the beginning, is that

after filing the suit there was a settlement between the plaintiffs and defendants and executed a regular registered sale deed in favour of the plaintiffs, conveying the extent of Ac.4.00 of land and upon that the plaintiffs assuring that they will withdraw the suit and get the suit dismissed without costs, issued photostat copy of the Memo - Ex.B.3 and Chit - Ex.B.4. But contrary to the promise, the plaintiffs continued the suit. Therefore, in view of the said settlement of the dispute, after executing registered sale deed for an extent of Ac.4.00 of land, the cause of action to claim relief is no more surviving.

28. Whereas the plaintiffs contended that no such compromise took place and the Memo - Ex.B.3 and letter - Ex.B.4 would not amount to compromise and still the cause of action continued to survive and the defendants are under obligation to execute registered sale deed in favour of the plaintiffs for an extent of Ac.1.18 cents receiving balance sale consideration of Rs.30,100/- after appropriating Rs.2,00,000/- retained by the defendants in terms of Ex.A.8 - agreement of sale. The trial court believed the alleged compromise under Exs.B.3 and B.4 and dismissed the suit negating the main relief and alternative relief.

29. Undisputedly, Ex.A.8 - agreement of sale was executed by the defendants in favour of the plaintiffs agreeing to sell an extent of Ac.19.79 cents (Ac.6.71 cents in RS No.389/3 and Ac.13.08 cents in RS No.389/2) within the following boundaries:

East - Land belonging to Society

South - Punta (Pindigoyyi Panchayat Village)

West - Land of Laxman Rao

North - Land of Sappa Appa Rao.

30. As per the terms of agreement of sale, the plaintiffs have to pay Rs.10,00,000/- on or before 23.06.1987 and agreed to execute registered sale deed in proportion to sale consideration paid while retaining Rs.2,00,000/- as deposit till completion of the sale transaction. Undisputedly, the defendants executed registered sale deeds on various dates for different amounts and extents in favour of their nominees, as follows:

S.No.	Date of sale deed	Document No., of Rajahmundry Sub-Registrar	Lands sold R.S.No. of Rajahmundry	Ac.cts	Sale price Rs.
01.	06.07.1990	4747 of 90	388/2	2.00	1,48,000
02.	06.07.1990	4748 of 90	388/2	0.50	37,000
03.	07.07.1990	4764 of 90	389/3	2.00	1,48,000
04.	07.07.1990	4765 of 90	388/2	0.50	37,000
05.	11.07.1990	4851 of 90	388/2	2.00	1,48,000
06.	19.07.1990	5100 of 90	388/2	2.00	1,50,000
07.	19.07.1990	5101 of 90	388/2	0.50	37,500
08.	26.07.1990	5229 of 90	388/2	2.00	1,50,000
09.	26.07.1990	5230 of 90	388/2	0.50	37,500
10.	26.12.1991	9830 of 91	388/2 389/3	1.50 0.58 0.53	2,25,000
11.	26.03.1992	2802 of 92	389/3	1.00	75,000
12.	08.04.1992	2800 of 92	389/3	2.00	1,40,000
13.	08.04.1992	2801 of 92	389/2	0.52 0.48	70,000

31. The suit was filed before the trial court on 18.01.1992, whereas the defendants pleaded the settlement of dispute between the plaintiffs and defendants under Exs.B.3 and B.4. Ex.B.3 is the memo agreed to be filed by the plaintiffs in O.S. No.5 of 1992. The contents of the memo read as follows:

> *"The plaintiff, having adjusted out of the court with the defendants, is withdrawing this suit, and therefore the suit may be dismissed without costs"*

32. The said memo was duly signed by the advocate for defendants and M. Babu Rao, the first defendant on 08.04.1992 and also duly signed by the first plaintiff.

33. Taking advantage of Ex.B.3, learned counsel for the defendants contended that since the matter was adjusted outside the court they are not under obligation to execute registered sale deed, in view of the assurance given by the plaintiffs to file the memo, original of Ex.B.3 into the court. If Ex.B.3 is accepted, the suit claim, during pendency of the suit, was settled outside the court. The plaintiffs by filing rejoinder denied the signature of the plaintiffs on the memo. But the disputed signature along with the admitted signatures were referred to handwriting expert - D.W.2 and called for opinion. Ex.X.1 is the opinion of hand writing expert, who expressed his opinion that the disputed signature and the admitted signatures were written by the same person. D.W.2 - the Assistant Government Examiner examined the questioned signatures on documents in the office of GEQD Bureau of Police

Research and Development Hyderabad, who is a qualified examiner of questioned documents and examination of hand writing. According to his evidence, he compared questioned signatures Q1 and Q2 with the admitted signatures and opined that the disputed signatures were written by the person, who wrote the admitted signatures or standard signatures. He was cross-examined by the counsel for the plaintiffs, pointing out the variation in the size of the letters in Q1 and Q2, the witness admitted the variation in the letters in Q1 and Q2 when compared with A.17 (Ex.A.7), but no two signatures of a person exactly alike, as hand is not a printing machine and the hand writing is a process of neuro muscular movement. Therefore, the variation in the size of the letters in Q1 and Q2 could not be said to be unnatural. If the variation is natural variation, the opinion of the expert can be accepted. Even in the entire cross-examination nothing could be elicited by learned counsel for the plaintiffs to discredit the opinion of D.W.2 with regard to the signature on Exs.B.3, B.4. However, I am doubtful whether opinion can be given based on Photostat copies of documents, but the plaintiff's counsel did not question the same on the said ground.

34. As per Section 45 of the Indian Evidence Act, 1872, (for short, 'the Act') the opinion of expert is relevant. But still the court can examine the genuineness of the signature based on evidence available on record.

35. One line of decisions of various High Courts including the Apex Court is to the effect that opinion of expert is not conclusive proof, it is only a corroborative piece of evidence and the other line of decisions are totally contrary to the expression of the Apex Court.

36. It is settled law that opinion of handwriting expert is not a perfect science. It is only advisory in nature. In the decision of the Apex Court reported in **Malay Kumar Ganguly V. Dr.Sukumar Mukherjee and others**, it was held as follows:

> *"A Court is not bound by expert's evidence which is to a large extent advisory in nature. The Court must derive its own conclusion upon considering opinion of experts which may be adduced by both sides, cautiously, and upon taking into consideration the authorities on the point on which he deposes. Medical science is a difficult one. The Court for the purpose of arriving at a decision on the basis of opinions of experts must take into consideration difference between an expert witness and an "ordinary witness". The opinion must be based on a person having special skill or knowledge in medical science. It could be admitted or denied. Whether such an evidence could be admitted, how much weight should be given thereto, lies within the domain of the*

Court. Evidence of an expert should, however, be interpreted like any other evidence."

37. From reading of the principles laid down in the above decision, it is clear that the Court has to scrutinize the entire evidence with reference to the expert's opinion, but cannot base its decision on the opinion of an expert.

38. Generally, the handwriting of a person depends upon qualification, physical strength and mind of an individual. If for any reason a person became sick mentally or physically, there may be some variation in his signature. But here, there was no such contingency and it is nobody's case. In normal course of events, the natural variation and changeability complicate the comparison and therefore, for comparison, the expert is to take care of the natural characteristics in the disputed signature and questioned signature, which are described as follows:

a. "Those pertaining to the act itself like movement and its qualities. Since writing is produced by a series of movements, it is more fundamental than any other characteristic.

b. Those of style such as slant, roundness, angularity.

c. Those of form and formulations and their inconspicuous details, such as beginnings, endings, curves, angles, etc.

d. Those pertaining to the writing as a whole, such as arrangement, spacing, alignment, margins, paragraphing and punctuation.

e. Qualities like skill, symmetry, fixity and artistic quality.

f. Natural variation-its range.

g. General appearance or pictorial effect."

39. The appellants questioned the opinion of expert in ground No.2 of the memorandum of the appeal. The evidence of an expert is only an opinion evidence and unless it is corroborated by some other evidence, the same cannot be relied on, to arrive at a conclusion and decide the real controversy between the parties. But, in a decision reported in **Ishwari Prasad Misra Vs. Mohammad Isa**, wherein the Apex Court held as follows:

"We have so far not considered the evidence of the experts. Mr.Bennett examined by the appellant supports the appellant's case, whereas Nasrat Hussain examined by the

respondent supports his case. Evidence given by experts of handwriting can never be conclusive, because it is, after all, opinion evidence. Since we have come to the conclusion that the evidence given by the attesting witnesses and the scribe and the appellant is wholly satisfactory, that evidence proved the execution of the document by the respondent and the said evidence does not really need to be corroborated by the opinion of experts."

40. In the facts of the above decision, one expert was examined by each party to the proceedings. Both experts gave evidence in support of the party on whose behalf they are giving evidence. So, the Apex Court did not accept the evidence of an expert holding that it is after all an opinion, but not conclusive evidence. The same principle cannot be applied to the present facts of the case for the simple reason that, there are no two opinions and there is no evidence of two experts. The expert - D.W.2 gave his opinion - Ex.X.1, which is supported by sound reasoning.

41. In **Murarilal V. State of M.P.**, the Apex Court held as follows:

"There is no rule of law, nor any rule of prudence, which has crystallized into a rule of law, that opinion evidence of a handwriting expert must never be acted upon, unless substantially corroborated. But, having due regard to the imperfect nature of the science of identification of handwriting, the approach should be one of caution. Reasons for the opinion must be carefully probed and examined. All other relevant evidence must be considered. In appropriate cases, corroboration may be sought. In cases where the reasons for the opinion are convincing and there is no reliable evidence through a doubt, the uncorroborated testimony of a handwriting expert may be accepted."

42. In the above decision, their Lordships discussed the scope of Section 73 of the Act, power of the court to compare the admitted signatures with the questioned signatures and finally concluded that the court can rely on expert opinion, if the reasons given by expert are convincing.

43. In another decision reported in **State of Maharashtra Vs. Sukhdeo Singh and another**, wherein the Apex Court held as follows:

"A handwriting expert is a competent witness, whose opinion evidence is recognized as relevant under the provisions of the Evidence Act and has not been equated to the class of evidence of an accomplice. It would, therefore, not be fair to approach the opinion evidence with suspicion, but the correct approach would be to weight the reasons on which it is based. The quality of his opinion would depend on the soundness of the reasons on which it is founded. But the Court cannot afford to overlook the fact that the science of identification of handwriting is an imperfect and frail one as compared to the science of identification of fingerprints; Courts have,

therefore, been wary in placing implicit reliance on such opinion evidence and have looked for corroboration, but that is not to say that it is a rule of prudence of general application regardless of the circumstances of the case and the quality of expert evidence. No hard and fast rule can be laid down in this behalf, but the Court has to decide in each case on its own merits what weight it would attach to the opinion of the expert. In the instant case, the opinion evidence of handwriting expert was not so high as to commend acceptance without corroboration."

44. In another decision reported in **Fakhruddin Vs. The State of M.P.**, the Apex Court ruled in Paragraphs 10 and 11 as follows:

"The writing may be proved to be in the hand writing of a particular individual by the evidence of a person familiar with the hand writing of that individual or by the testimony of an Expert competent to the comparison of hand writings on a scientific basis. A third method is comparison by the Court with the writing made in the presence of the Court or admitted or proved to by the writing of the person. Both under Sections 45 and 47, the evidence is an opinion, in the former by a scientific comparison and in the latter on the basis of familiarity resulting from frequent observations and experience. In either case, the Court must satisfy itself by such means as are open that the opinion may be acted upon. Where an expert's opinion is given, the Court must see for itself and with the assistance of the expert come to its own conclusion, whether it can safely be held that the two writings are by the same person. This is not to say that the Court must play the role of an expert, but to say that the Court may accept the fact proved only, when it has satisfied itself on its observation that it is safe to accept the opinion, whether of the expert or other witness. The Supreme Court in an appeal also is entitled to call for the writings for making a comparison thereof."

45. In view of the law declared by the Apex Court in decisions referred to supra, an opinion of expert cannot be brushed aside unless the reasons given by the expert for his conclusion or opinion are perverse. In the present case, learned counsel for the plaintiffs before the trial court could elicit nothing to disbelieve the opinion of expert. Therefore, placing reliance on a decision reported in **Murarilal's case** referred to supra, the Court can conclude that the opinion of expert is sufficient that the signature in Exs.B.3, B.4 are that of the first plaintiff.

46. Proof of document may be in different modes as enshrined in the Evidence Act. A signature can be proved by admission of the person who wrote it and by the evidence of some witnesses who saw it written. These are the best methods of proof.

47. These apart there are three other modes of proof. They are:

(i) By the evidence of a handwriting expert.

(Section 45)

(ii) By the evidence of a witness acquainted with the handwriting of the person who is said to have written the writing in question.

(Section 47)

(iii) Opinion formed by the Court on comparison made by itself.

(Section 73)

All these three cognate modes of proof involve a process of comparison.

In mode (i), the comparison is made by the expert of the disputed writing with the admitted or proved writing of the person who is said to have written the questioned document.

In (ii), the comparison takes the form of a belief which the witness entertains upon comparing the writing in question, with an exemplar formed in his mind from some previous knowledge or repetitive observance of the handwriting of the person concerned.

In the case of (iii), the comparison is made by the Court with the sample writing or exemplar obtained by it from the person concerned (vide expression of the Apex Court ***State (Delhi Administration) v. Pali Ram*** *)*

48. In the present facts of the case, the defendants opted first mode of proof under Section 45 of the Indian Evidence Act. The evidence of D.W.2 is supported by reasoning to arrive at such conclusion and in such case no corroboration is required and the Court can base an opinion of expert to believe the signature on Exs.B.3, B.4

49. Therefore, the trial court rightly accepted the disputed signatures of the first plaintiff on Ex.B.3, B.4 totally placing reliance on the opinion of expert in view of the law declared by this Court reported in **Baddam Prathap Reddy V. Chennadi Jalapathi Reddy and another** wherein this Court reviewed the entire law with regard to evidentiary value of handwriting expert and its relevancy under Section 45 of the Act and held in Paragraph 11 as follows:

"Section 45 of the Evidence Act is to the effect that the opinions of experts especially skilled in science or arts or in questions as to identity of handwriting or finger impressions, are relevant facts when the Court has to form opinion on such a point. One fact is said to be relevant to another, when one is connected with other relating to relevant facts. As per Section 5 of Evidence Act, evidence has to be given with reference to every fact in issue and relevant facts. Reading Sections 3, 5 and 45 of the Evidence Act, it becomes clear that when an opinion is to be formed with regard to a disputed handwriting, the opinion of an expert is relevant fact, but still it requires evidence. "Evidence" means, a statement, which the Court permits to be made by a

witness. Therefore, the opinion given by an expert is a relevant fact and the expert himself becomes a witness. In such an event, merely because the witness is not corroborated, the Court cannot throw away the opinion of expert (relevant fact) and the evidence given in relation to such relevant fact (evidence of expert). For this reason, though Courts often describe the opinion of handwriting experts or fingerprint experts as weak piece of evidence, in many cases and on many occasions, the opinion of handwriting expert becomes strong reason for the Court to form an opinion on a disputed question of fact."

50. In view of the law laid down in above judgments, this Court relied on the law declared by the Apex Court in ***Murari Lal's case, Alamgir's case, Lalit Popli's*** case and finally held that

"C*orroboration is not required to accept the opinion of an expert, if the reasons given by the expert for arriving at such opinion, are convincing*."

51. In view of proposition of law declared by the Apex Court and this Court, the opinion of expert was rightly accepted by trial court.

52. The main controversy between the parties before this Court is that the memo marked as Ex.B.3 letter does not amount to withdrawal of the suit under Rule 1 or 3 of Order XXIII of the Code. A special procedure is prescribed under Rule 1 or 3 of Order XXIII of the Code to withdraw or to abandon the suit. As seen from the contents of the Memo – Ex.B.3, the plaintiffs, at best, intended to withdraw the suit, not press the suit, get the suit dismissed without costs, in view of the alleged compromise. Such memo would not fall within the ambit of Rule 1 of Order XXIII of the Code, for the reason that Rule 1 of Order XXIII of the Code can be invoked only when a party wanted to withdraw or abandon the claim in suit or any proceeding, reserving right to file separate suit on the same cause of action. Therefore, Rule 1 of Order XXIII of the Code is also not applicable to the present situation. Ex.B.3 is only a memo to intimate the Court about the settlement of the suit claim outside the court requesting to dismiss the suit without costs. Till its filing before the trial court and get the same recorded, it cannot be said that the suit claim was withdrawn or abandoned.

53. Learned counsel for the plaintiffs/ appellants while contending that the alleged compromise of the pending suit is not legal and drawn the attention of this Court in judgment reported in ***Molla Sirajul Haque*** referred to supra, wherein the Division

Bench of the Calcutta High Court held that an application under Rule 3 of Order XXIII of the Code for summary recording of compromise by way of adjustment will not succeed unless the same contained in writing and signed by the parties. Therefore, the application of the plaintiffs was liable to be dismissed when the purported agreement or compromise is not signed by the parties as required under the provisions of Rule 3 of Order XXIII of the Code. Though the oral admission or compromise is not placed under Rule 3 of Order XXIII of the Code, it is not absolutely useless or ineffective. If any such oral admission or compromise or any other therefor is brought to the notice of the court as a piece of evidence, the court trying the proceeding shall have to take into account along with all other material on record and dispose of the proceedings on consideration of all the materials including oral compromise or offer to compromise. But the decree, if any, in such case would not in form being compromise decree, but a decree on merits. The principle laid down in the above judgment is that the agreement must be signed by both the parties to the compromise in view of the specific procedure prescribed under Rule 3 of Order XXIII of the Code.

54. But in the present case, only the first defendant allegedly signed. The 2nd plaintiff and other defendants did not sign on Ex.B.3 – Memo. Consequently it does not amount to compromise between the parties.

55. Learned counsel also drawn attention of this Court to the decision of the Apex Court in **K. Venkatachala Bhat and another** referred to supra, wherein similar question came up for consideration with regard to the said compromise under Rule 3 of Order XXIII of the Code, it was held by the Apex Court that

> *“It is crystal clear that the High Court proceeded on entirely erroneous premises. If it wanted to dispose of a part of the dispute on the basis of a settlement purportedly arrived at between the parties, the memo and affidavit should have been filed by the parties concerned. Acting on the basis of memo or affidavit which was singed by the respondents only the dispute could not have been settled against the appellants without their consent.”*
>
> *At this juncture, it would be appropriate to take note of Order XXIII Rule 3 of the Code of Civil Procedure, 1908 (in short `CPC') dealing with compromise of suit. Same reads as follows:*
>
> *"Where it is proved to the satisfaction of the Court that a suit has been adjusted wholly or in part by any lawful agreement or compromise in writing and signed by the parties, or where the defendant satisfies the plaintiff in respect of the whole or any part of the subject matter of the suit, the Court shall order such agreement, compromise or satisfaction to be recorded, and shall pass a decree in accordance therewith so far as it relates to the parties to the suit, whether or not the subject matter of the agreement, compromise or satisfaction is the same as the subject matter of the suit:*

Provided that where it is alleged by one party and denied by the other that an adjustment or satisfaction has been arrived at, the court shall decide the question; but no adjournment shall be granted for the purpose of deciding the question, unless the Court, for reasons to be recorded, thinks fit to grant such adjournment.

Explanation-An agreement or compromise which is void or voidable under the Indian Contract Act, 1872 (9 of 1872) shall not be deemed to be lawful within the meaning of this Rule."

The words "in writing and signed by the parties" were inserted by Act 104 of 1976 with effect from 1.2.1977.

The effect of the inserted portion as noted above is that the compromise if not signed by the parties cannot be recorded by the Court. In Byram Pestonji Gariwala v. Union Bank of India and Ors., AIR (1991) SC 2234 it was held that the compromise can be signed by the parties, their counsel or even their agents. The view was re-iterated in Jineshwardas (D) by Lrs. and Ors. v. Jagrani (Smt.) and Anr., [2003] 11 SCC 372.

56. In **Gurupreet Singh v. Chatur Bhuj Goel** the Apex Court held that,

According to the grammatical construction, the word 'or' makes the two conditions disjunctive. At first blush, the argument of the learned counsel appears to be plausible but that is of no avail. In our opinion, the present case clearly falls within the first part and not the second. We find no justification to confine the applicability of the first part of order XXIII, R. 3 of the Code to a compromise effected out of Court. Under the rule prior to the amendment, the agreement com promising the suit could be written or oral and necessarily the Court had to enquire whether or not such compromise had been effected. It was open to the Court to decide the matter by taking evidence in the usual way or upon affidavits. The whole object of the amendment by adding the words 'in writing and signed by the parties' is to prevent false and frivolous pleas that a suit had been adjusted wholly or in part by any lawful agreement or compromise, with a view to protract or delay the proceedings in the suit.

Under r. 3 as it now stands, when a claim in suit has been adjusted wholly or in part by any lawful agreement or compromise, the compromise must be in writing and signed by the parties and there must be a completed agreement between them. To constitute an adjustment, the agreement or compromise must itself be capable of being embodied in a decree. When the parties enter into a compromise during the hearing of a suit or appeal, there is no reason why the requirement that the compromise should be reduced in writing in the form of an instrument signed by the parties should be dispensed with. The Court must therefore insist upon the parties to reduce the terms into writing.

57. Similarly, in **Sneh Gupta v. Devi Sarup and others** the Apex Court laid the same principle that,

If the compromise has been accepted in absence of all the parties, the same would be void. But if the same having resulted in grant of a decree, the decree based on compromise was required to be set aside. The compromise may be void or voidable but it is required to be set aside by filing a suit within the period of limitation. Limitation is a statute of repose. If a suit is not filed within the period of limitation, the remedy would be barred. As appellant had appeared in the appeal, as indicated hereinbefore, the first part shall apply. The suit was filed on 28.2.2002, i.e., after a gap of four years. There is no reason as to why the factum in regard to passing of the decree could not have been known in July or soon thereafter.

58. The law declared by the Apex Court and the Calcutta High Court is not in quarrel. Ex.B.3 is only a Memo to withdraw the suit intimating about the settlement of the suit claim outside the Court, enabling the Court to dismiss the suit without costs. Neither Rule 1 nor Rule 3 of Order XXIII of the Code is applicable to the present

situation, since it was not a compromise settling the terms between the parties. When the plaintiff wanted to withdraw the suit, not pressing the same, there is no need to enter into compromise as required under Rule 3 of Order XXIII of the Code, in the pending suit.

59. In any view of the matter, till filing of the memo before the trial court not pressing the suit or withdrawing the suit claim enabling the Court to dismiss the suit without costs, the suit is deemed to be pending. Hence, the conclusion arrived at by the trial court that on account of Ex.B.3 there was a settlement between the parties which was not reduced into writing, as admittedly. Hence, the conclusion of the trial court that the suit claim was settled between the parties is erroneous and consequently dismissal of the suit claim is apparent error on the face of record which warrants interference of this court.

60. In view of the contents of original of Ex.B.3, it is difficult to hold that there was a compromise between the parties and till the memo is filed into the court (on record), till dismissal of the suit the suit claim is deemed to be survived and it is difficult to hold that the suit claim is no more surviving.

61. Besides the memo - Ex.B.3 dated 08.04.1992 the first plaintiff executed Ex.B.4. According to it, the first plaintiff settled the matter and the defendants are not required to execute any document for any extent covered by Ex.A.8. In fact the signature on Ex.B.4 was denied by filing rejoinder by the plaintiffs, however, in view of the opinion marked under Ex.X.1, the signature on Ex.B.4 is that of the signature of the first plaintiff and thus the defendants proved that the first defendant executed the document marked as Ex.A.4. In view of Ex.A.4, the defendants are not under obligation to perform their part of obligation under contract Ex.A.8. When I adverted to the evidence of P.Ws.1 and 2, I find lot of inconsistency about the execution of Ex.B.4. As usual in the examination in chief of P.W.1 denied execution of Exs.B.3 and B.4. In the cross-examination dated 28.08.2000 made certain admissions. According to the facts elicited in the cross examination of P.W.1, the defendants executed 11 sale deeds from 06.07.1992 to 26.12.1991 as required by the plaintiffs and a suggestion was put to him that the entire amount paid as advance was completely adjusted by 26.12.1991 and agreement was closed at the request of P.W.1 and denied the same, last two lines of same page of the cross examination, he admitted that P.W.1 and the 2nd plaintiff purchased land not with an intention to

cultivate the land, but for sale and resale for house plots. In any view of the matter, at the end of 10 lines of page 5 of the cross examination, P.W.1 testified that the entire amount of Rs.5,00,000/- covered by sale deed dated 26.12.1992 was adjusted as advance amount in respect of sale of Ac.4.00 acres of land payment made subsequent to the filing of the suit and an amount of Rs.4,91,050/- was adjusted from out of the advance amount. Filing of the adjustment memo before the court came up for reference during the execution of sale deed for Ac.4.00 of land. So this admission clearly goes to show that a memo marked as Ex.B.3 was handed over besides executing Ex.B.4. If really there was no adjustment between the plaintiffs and defendants after filing the suit and before execution of sale deed conveying Ac.4.00 of land for Rs.4,91,050/-, the question of referring the adjustment at the time of execution does not arise. Therefore, the cumulative effect of various admissions of P.W.1 goes to establish that there was adjustment covered by Exs.B.3 and B.4 and P.W.1 agreed to file a memo not pressing the suit and duly obtained the signature of the first defendant and his advocate, but failed to file the memo into court. Similarly at page 9 of the cross examination, the first plaintiff - P.W.1 denied that Ex.B.1 is not his signature, but admitted that he gave photostat copy of Ex.A.7 to Babu Rao and it is followed by a suggestion that the signature marked as Ex.B.1 is that of him and denied by him.

62. In any view of the matter, on an overall consideration of evidence of P.W.1, it is evident that there was a compromise between the plaintiffs and defendants and executed Ex.B.4 and the memo - Ex.B.3 agreeing to file the same into the court not pressing the suit.

63. P.W.2 is one of the purchasers. At the end of last 5 lines in cross-examination he made the following admission:-

> *"At the time mediation a document was executed by P.W.1 according to which the defendants were to execute sale deeds for entire extent of Ac.5.18 cents and the plaintiffs were to withdraw the suit. The signature shown to me is that of Parvatalu P.W.1. Ex.B.1 is the signature of Parvathalu (only signature portion is marked)".*

64. The above admission is also lending support to the contention of the defendants regarding the execution of Exs.B.3 and B.4 and signature marked as Ex.B.1 is the signature of the first plaintiff - P.W.1.

65. In the evidence of D.W.1, he totally supported the case of the defendants

regarding the adjustment and explained the reason for delay in filing Exs.B.1, 3 and 4. In the entire cross examination, the counsel for the defendants could elicit nothing. Therefore, from the unrebutted evidence of D.W.1 coupled with various admissions by P.Ws.1 and 2, it is clear that there was compromise between the plaintiffs and defendants for withdrawing the suit and executed Exs.B.3 and B.4 in terms of the compromise agreeing to file a memo into the court to withdraw the suit. But contrary to the promise made by P.W.1, he continued the proceedings in the suit. Therefore, to the extent of execution of Exs.B.3 and B.4, I hold that there was a compromise between the plaintiffs and defendants, but that is not a sufficient ground to dismiss the suit, since it was not recorded by Court, in view of the law declared by the Apex Court referred in the earlier paragraphs.

66. Therefore, the compromise between the plaintiffs and the defendants is not enforceable. Accordingly, point No.1 is decided.

Point Nos.2 and 3:

67. The suit is filed for specific performance of agreement of sale, which is purely discretionary in nature under Section 20 of the Specific Relief Act, 1963. The defendants denied the liability to execute registered sale deed on three grounds.

> *1) The plaintiffs failed to prove their readiness and willingness to perform their part of obligation.*
>
> *2) The plaintiffs did not pay the balance of sale consideration within the stipulated time and extended from time to time under Ex.A.8.*
>
> *3) The plaintiffs did not approach the court with clean hands while claiming discretionary and equitable relief of specific performance of agreement of sale.*

68. Undisputedly, Ex.A.8 - agreement was executed by the defendants. As per the terms of the agreement, the plaintiffs have to pay Rs.1,00,000/- on the date of execution of Ex.A.8 while agreeing to pay Rs.10,00,000/- on or before 23.06.1987 and obtain registered sale deed in favour of the plaintiffs or their nominees within one year from the date of agreement of sale. In the present case, the plaintiffs, undisputedly, paid Rs.1,00,000/- on the date of execution of Ex.A.8, but did not pay the balance of Rs.10,00,000/- on or before 23.06.1987, as agreed. According to the plaintiffs, they paid Rs.1,00,000/- on 15.06.1987, Rs.6,00,000/- on 23.06.1987 and Rs.1,00,000/- on 12.09.1988 and Rs.3,00,000/- on 07.08.1989. The time was

extended for one year for payment of balance on 21.05.1988 and again on 15.05.1989 till 19.05.1990. According to the admissions in the pleadings so also the evidentiary admissions, initially, the plaintiffs agreed to pay part of consideration of Rs.10,00,000/- on or before 23.06.1987, later, time was extended on 21.05.1988 and 15.05.1989 vide Exs.A.13 and A.14. As seen from Exs.A.13 and A.14, time was extended for one year to comply the terms and conditions of the agreement of sale which was expired on 21.05.1988 similar endorsement is under Ex.A.14 extending time till 15.05.1989, but the plaintiffs did not comply the compromise terms and conditions within the stipulated period and paid meager amount and obtained registered sale deed in piece meal. Assuming for a moment that the time was extended under Exs.A.13 and A.14, the plaintiffs are under obligation to pay balance of sale consideration and obtained registered sale deed for entire property within the stipulated time.

69. A clear admission is made in the examination-in-chief of P.W.1 that the plaintiffs paid Rs.12,00,000/- to the defendants including advance of Rs.10,00,000/- and all the payments were endorsed on the agreement of sale. Further, they admitted that they paid only Rs.6,00,000/- in addition to Rs.1,00,000/-, already paid as advance, at the time of execution of Ex.A.8 on 23.05.1987. But as seen from Ex.A.8, the plaintiffs have to pay Rs.10,00,000/- on or before 23.06.1987, instead of paying the amount as agreed, the defendants paid different amount on different occasions endorsed on the reverse of Ex.A.8, which were marked as Exs.A.9 to A.12, wherein the time was extended for one year on 21.05.1988 for a period of one year from that date.

70. Thus, it is clear from the endorsement made on the reverse of Ex.A.8, the plaintiffs did not pay Rs.10,00,000/- as agreed on or before 23.06.1987. No explanation was offered by the plaintiffs as to why Rs.10,00,000/- could not be paid by them strictly adhering to the terms of Ex.A.8. The said payment of Rs.10,00,000/- on or before 23.06.1987 is not linked with any other obligation imposed on the defendants. Therefore, non payment of Rs.10,00,000/- within the stipulated time before extension of time under Ex.A.13 amounts to breach of terms of conditions of Ex.A.8 in view of Section 16 (b) of Specific Relief Act, 1963.

71. Apart from that it is the case of the plaintiffs that the possession of the scheduled property was delivered to them and they are continuing in possession and enjoyment of the same, paying land revenue to the Government. But as seen from

page 3 of the agreement marked as Ex.A.8, the defendants agreed to execute registered sale deed, conveying title to the extent of Ac.19.18 cents together with trees and fruit bearing trees existing thereon, two Wells and two electricity service connections after measuring land and deliver vacant possession of the property to the plaintiffs on the date of registration. Therefore, the alleged delivery of possession pleaded by the plaintiffs in paragraph 4 of the plaint is false on the face of record.

72. In addition to the terms and conditions contained in Ex.A.8 regarding delivery of possession, other documents produced before this Court executed by defendants in favour of the plaintiffs and their nominees would establish that the possession of the property was delivered to the purchasers under those documents on the date of execution of registered sale deeds. Therefore, the alleged delivery of possession pleaded by the plaintiffs in paragraph 4 of the plaint is incorrect.

73. Yet, the contention of the plaintiffs is that the defendants retained Rs.2,00,000/- with them as agreed till completion of the transaction. Therefore, the plaintiffs have to pay only Rs.30,100/- towards sale consideration for an extent Ac.1.18 cents. The same is mentioned in the notice, registered correspondence between the plaintiff and defendant. In the entire evidence, the plaintiffs failed to explain what was the amount paid on different dates for obtaining the registered sale deeds mentioned in the table stated above. Hence, I hold that the plaintiff failed to establish retaining an amount of Rs.2,00,000/- even after execution of sale deed during pendency of suit.

74. According to the law laid down by the Apex Court in **Saradamani Kandappan v. S. Rajalakshmi** when the plaintiff agreed to pay balance sale consideration within the time fixed under the agreement of sale delinking with his other conditions but failed to pay the plaintiff is disentitled to claim the relief of specific performance. It was further held as follows:

> *"The order of performance of reciprocal promises does not depend upon the order in which the terms of the agreement are reduced into writing. The order of performance should be expressly stated or provided, that is, the agreement should say only after performance of obligations of vendors, the purchaser will have to perform her obligations. In the present case the agreement of sale expressly provided that the purchaser shall pay the balance sale consideration within time schedule as specified. The payment of sale price was delinked from execution of sale deed. The purchaser had to fulfill her obligation in regard to payment of price and thereafter vendors were required to perform their reciprocal promise of executing the sale deed, whenever required by the purchaser. The agreement provided specifically that having paid the balance price, if the purchaser is not satisfied about the title and on being intimated about the same if the vendors fail to satisfy the purchaser about their title, all amounts paid towards the price should be refunded to purchaser. This clearly demonstrates that the payment of balance of sale price in terms of the contract was not postponed nor made conditional upon the purchaser being satisfied about the title,*

but that payment of the balance price should be made to the vendors as agreed unconditionally. In such circumstances the plea of purchaser that since clause providing that execution of the sale deed shall depend upon the purchaser getting satisfied regarding title to the lands and that property is not subject of any encumbrance; precedes clause requiring payment of balance consideration in three installments, the satisfaction of the purchaser in regard to the vendor's title to the land and encumbrance, was a condition precedent for payment of the balance consideration cannot be accepted. Since section 52 cannot come in aid of purchaser to save his non-payment of balance consideration within time fixed when time was essence of contract. Therefore, the failure of the appellant purchaser to pay the balance sale consideration within time fixed, clearly amounted to breach of contract. As the time for payment was, the essence of the contract, the respondents were justified in determining the agreement of sale. The rejection of the prayer for specific performance was, therefore, proper."

75. A similar question came up before the Constitutional Bench in **Chand Rani (dead) by LRs. V. Kamal Rani (dead) by LRs.** wherein the apex Court held as follows:

"In case of immovable property, there is no presumption as to time being the essence of the contract. Even if it is not of the essence of the contract the court may infer that it is to be performed in a reasonable time if the conditions are (1) from the express terms of the contract (2) from the nature of property and (3) from the surrounding circumstances.

Wherein an agreement to sell the immovable property it was stipulated that amount in part was to be paid within 10 days of the execution of the agreement and the balance has to be paid at the time of registration of deed and was agreed that the vendor would redeem the property which was mortgaged and also obtain the Income Tax clearance certificate and the word 'only' was used twice i.e. to qualify the amount and to qualify the period of payment of such amount i.e. ten days it was held that the intention of the parties was to make time as essence of contract and in such case, when the purchaser was not ready and willing to pay the amount in part as agreed, before delivery of possession and income tax clearance certificate and redemption of property, it was contrary to the conditions of the agreement and the purchaser was not entitled to the specific performance of contract".

76. Relying on the principle laid down in **Chand Rani's** case referred to supra the Apex Court in the judgment rendered in **K.S. Vidyanadham v. Vairavan** reiterated the same principle.

77. In all the above judgments, the Apex Court consistently held that the obligations of the parties to the agreement of sale are mutual and reciprocal.

78. When the order of the performance is fixed in the agreement of sale, the parties have to perform their obligation under agreement of sale in the order of performance. In the instant case, the plaintiffs agreed to pay Rs.10,00,000/- on or before 23.06.1987, but did not pay Rs.10,00,000/- as agreed. However, they wanted to take

advantage of Ex.A.13 – endorsement, extending time. But when the plaintiffs failed to pay balance of Rs.10,00,000/- as agreed within the stipulated time the extension of time under Exs.A.13 and A.14 would not confer any benefit on them as the date stipulated for payment of Rs.10,00,000/- expired by the date of Ex.A.13. Even otherwise, within the stipulated time, the plaintiffs did not pay the amount as agreed under Ex.A.8 and did not obtain sale deed within one year from the date of execution of sale deed and also failed to obtain registered sale deed within the extended time under Exs.A.13 and A.14. Thus the plaintiffs committed breach of contract, thereby disentitled to claim relief of specific performance.

79. On the other hand, P.W.1 expressed his inability to explain as to how he paid sale consideration. More curiously, in all the registered sale deeds, the value of the property per acre was shown as Rs.71,500/-. If the value of the property as per the registered sale deed was Rs.71,500/- and obtained registered sale deeds referred to in the table paying stamp duty and registration charges on the value of Rs.71,500/- per acre, creates any amount of suspicion about the payment of consideration and appropriation of the same by the defendants. Thus, the plaintiffs approached the Court with tainted hands, suppressing several facts inventing different stories and under Exs.B.3 and B.4 made a false promise to file a memo to obtain registered sale deed for an extent of Ac.4.00 cents settling the claim in total cancelling the agreement. This fact was also denied by the plaintiffs in the rejoinder so also in the evidence of P.W.1. Therefore, all these circumstances would cumulatively and clinchingly establish that the plaintiffs did not disclose true facts, approached the court with false story seeking equitable discretionary relief of specific performance under Section 20 of the Specific Relief Act. Payment of balance of sale consideration in piecemeal obtaining registered sale deeds on different dates for different extents itself suffice to conclude that the plaintiffs are not ready and willing to perform their part of obligation.

80. Undisputedly, the relief of specific performance is purely discretionary in nature and the Court cannot exercise its discretion merely because it is lawful to do so and when the plaintiffs approached the Court with false plea, the plaintiff is disentitled to claim discretionary and equitable relief of specific performance.

81. Thus, the plaintiffs approached the Court with unclean hands and with a false plea. When the plaintiffs approached the Court with a false plea and with unclean hands, they are disentitled to the relief of specific performance in view of the

principle laid down by the Division Bench of Madras High Court in **Sririgneedi Subbarayudu v. Kopanathi Tatayya**. While relying on the said judgment, the Division Bench of this Court in a decision reported in **Kommisetti Venkatasubbayya v. Karamsetti Venkateswarlu**, held in paragraph 4 as follows.

> *"…………The statement that he had already paid Rs.1500/- has now been found to be not true by both the courts and that finding of fact cannot be disturbed and in fact was not seriously challenged by Mr.A.Gangadhara Rao, learned counsel for the appellant. That being so, it must be taken that the averment in the plaint that he had paid a sum of Rs.1500/- on 14-10-1960 is not true. In stating that he was ready and willing to perform his part of the contract, it must be taken that he was ready and willing to pay Rs.272-50 Ps. which was the balance payable according to him under Ex. A-1 and not that he was ready and willing to pay Rs.1772-50 Ps. which was due and payable by the plaintiff according to the finding of the court below. Unless the readiness and willingness of the plaintiff was to pay the entire balance of the purchase money he is not entitled to a decree for specific performance. In issuing the demand notice dated 10-10-1961 also what he could have mean was that he was ready and willing to pay Rs.272-50 Ps. and not Rs.1771-50 Ps. that was really due from him. Irrespective of any other fact, the averment in the plaint and the notice is sufficient to hold that he was not ready and willing to perform his part of the obligation under Ex. A-1. That apart, the plaintiff who seeks equitable remedy of specific performance must come to the court with clean hands…………*
>
> *………..When the plaintiff approached the Court with unclean hands he is disentitled to the discretionary relief not only on the ground that he has set up a false plea but also on the ground that he was not ready and willing to perform his part of the contract."*

82. In another judgment reported in **Mamidi Jagannadham v. Yelgani Shankaraiah died by LRs**, the learned single Judge of this Court held that when the plea that the plaintiffs paid balance sale consideration on or before a particular date is unfounded and he took a false plea to avoid payment of the balance sale consideration, the Court cannot exercise discretion to grant relief of specific performance.

83. The learned single Judge of this Court relied on **Sririgneedi Subbarayudu's** case referred to supra, wherein the Madras High Court held that the plaintiffs who are capable of setting up a false case cannot expect a Court of equity to grant them relief. In the light of the above legal position, the learned single Judge of this Court held that the plea of the plaintiffs that they paid the balance sale consideration is false, thereby not entitled to equitable and discretionary relief of specific performance.

84. In **M.N. Mohammad Mirza @ Mirza v. B. Subhan Saheb**, the Division Bench of this Court reiterated the principle laid down by the Madras High Court in **Sririgneedi Subbarayudu's** case referred to supra and held in paragraph 16 of the judgment as follows.

> *"It is thus clear that on vital and important aspects the plaintiff's case is false and equally false is his testimony as PW.1. He came to the Court with unclean hands. He is, therefore, not entitled to the equitable relief of specific performance under Section 20 of the Act……….."*

85. In **Krovidi Kameswaramma v. Kudapa Balaramayya**, the Division Bench of this Court specifically held as follows.

> *"The plaintiff who had set up a false plea of payment of a major portion of the purchase money was not only disentitled to the discretionary relief on the ground that he has set up a false plea but also on the ground that, that discloses that he was not ready and willing to perform his part of the contract. We are in respectful agreement with the view taken in this decision. The principle that Impari delicto potior est conditio defentis is also to the effect that in case of equal guilt the defendant alone should succeed. So on application of this principle also the plaintiff must fail for setting up a false plea. From all the above principles it is clear that the plaintiff who does not come to the Court with clean hands cannot succeed………"*

86. The law consistently laid down by the Division Bench of this Court and other Courts is that, when the plaintiffs set up a false plea to claim the relief of specific performance, they are disentitled to claim the relief of specific performance.

87. The conduct of the parties is also relevant either to grant specific performance or not. In **Man Kaur (dead) by LRS. Vs. Hartar Singh Sangha** the Apex Court held that

> *"The continuous readiness and willingness on the part of the plaintiff is a condition precedent to grant the relief of specific performance. This circumstance is material and relevant and is required to be considered by the court while granting or refusing to grant the relief. If the plaintiff fails to either aver or prove the same, he must fail. To adjudge whether the plaintiff is ready and willing to perform his part of the contract, the court must take into consideration the conduct of the plaintiff prior and subsequent to the filing of the suit along with other attending circumstances. The amount of consideration which he has to ay to the defendant must of necessity be proved to be available. Right from the date of the execution till date of the decree he must prove that he is ready and has always been willing to perform his part of the contract. As stated, the factum of his readiness and willingness to perform his part of the contract is to be adjudged <u>with reference to the conduct of the party and the attending circumstances.</u> The court may infer from the facts and circumstances whether the plaintiff was ready and was always ready and willing to perform his part of contract.*

88. In **Zarina Siddiqui v. A. Ramalingam @ A. Amaranathan** the Apex Court held that the conduct of both the parties has to be taken into consideration either to grant or deny the relief of specific performance.

89. Learned counsel for the respondents/defendants contended that when the plaintiffs are able to prove their readiness and willingness to pay balance sale consideration, the relief of specific performance cannot be denied and he placed reliance on a Judgment of the Hon'ble Apex Court reported in **K. Prakash v. B.R. Sampath Kumar**, wherein the Hon'ble Apex Court, while discussing Sections 16(c) and 20 of the Specific Relief Act, held that the relief for specific performance is an equitable remedy and while granting such relief court has to exercise discretion in accordance with sound and reasonable judicial principles and where the plaintiff brings a suit for specific performance of contract for sale, law insists a condition precedent to grant of decree for specific performance that the plaintiff must show his continuous readiness and willingness to perform his part of contract in accordance with its terms from the date of contract to the date of hearing. Normally, when trial Court exercises its discretion in one way or other after appreciation of entire evidence and material on record, appellate Court should not interfere unless it is established that discretion has been exercised perversely, arbitrarily or against judicial principles. The appellate Court should also not exercise its discretion against grant of specific performance on extraneous considerations or sympathetic considerations.

90. He also placed reliance on another judgment reported in **Laxman Tatyaba Kankate v. Taramati Harishchandra Dhatrak,** wherein the Hon'ble Apex Court held that the relief of specific performance is purely discretionary and equitable in nature and the conduct of the parties plays an important role. When the defendants failed to prove the claim before the Courts below by raising proper pleas in their pleadings the Court has to draw adverse inference and the plea set up by the defendants for the first time cannot be accepted and discretion has to be exercised to grant relief of specific performance.

91. In support of his contentions, he has drawn the attention of this Court to a judgment reported in **Rudram Builders, Secunderabad v. Mir Asharafuddin**

(died) by LRs, wherein this Court held thus.

> *"……….Thereafter, if the conduct of the plaintiff is to be taken into consideration, the payment as reflected under Exs.A16 to A60 till 1992 shows that as if some installments were paid as if towards the discharge of debt and not as a consideration for the purchase of the property. When the property was purchased at the rate of Rs.75,000/- per acre and only Rs.3,50,000/- is payable towards balance sale consideration and any person who is interested in specific performance must prove his readiness and willingness to pay the amount substantially. One fails to understand as to how monthly payments or periodical payments in thousands are given and receipts were obtained. This clearly goes to show that the plaintiff was not offering the entire sale consideration at one time and his preparedness and willingness to pay the amount and get the registered sale deed executed in his favour and thereby disentitling himself for the discretionary relief. The sale of the properties for a price is for better investment or in the hope of purchasing other properties, when the values of the land are increasing and particularly so, where the suit lands are situated, the payment of consideration as a pittance at irregular intervals as if some mercy is shown on the vendors, does not show the bona fides of the plaintiff and it is highly inequitable to grant relief of specific performance in favour of the plaintiff since the plaintiff will have better advantage and vendor will be looser."*

92. Similarly, he relied on a decision reported in **T.V. Ratnakar Rao v. Hemantha Kumar**, wherein the Division Bench of this Court in identical facts held in paragraph 59 as follows.

> *"59. Therefore, we are of the view that the contention of the learned Counsel is wholly untenable and the finding recorded by the trial Court that it is impossible for the defendant to perform his part of the contract is not sustainable and unwarranted. In fact, impossibility to perform the contract and the decree passed by the Court below for specific performance are incompatible."*

93. The learned Counsel further drawn the attention of this Court to a judgment rendered in **I.S. Sikandar (dead) by LRs v. K. Subramani**, wherein the Hon'ble Apex Court held that when Clause in agreement fixed five months time period for execution, on completion of sale transaction providing extension of period of two months in case of delay in obtaining permission from Urban Land Ceiling and Income Tax authorities, non-payment of balance sale consideration within seven months stipulated time amounts to breach of terms and conditions of the agreement of sale, which disentitled the plaintiff to claim discretionary relief of specific performance.

94. In view of the law declared by the Apex Court and this Court, when the plaintiffs approached the Court with false case, they are disentitled to claim the discretionary relief. In view of the various circumstances narrated above, as the plaintiffs

approached the Court with false case and also failed to prove their readiness and willingness, the plaintiffs are disentitled to claim discretionary and equitable relief of specific performance under Section 20 of the Specific Relief Act, 1963. Hence the plaintiffs are disentitled to claim any of the reliefs claimed in the plaint.

95. The trial court though dismissed the suit on the ground that the suit claim was settled outside the Court and the plaintiffs cancelled the agreement, thereby the defendants are not under obligation to execute registered sale deed even for an extent of Ac.1.18 cents, but after reappraisal of voluminous evidence, material available on record, it is established that the plaintiffs approached the court raising false contentions thereby disentitled to claim relief. Hence these points are held against plaintiffs and in favour of the defendants.

96. In view of my foregoing discussion, the plaintiffs are disentitled to claim specific performance and the decree and judgment in O.S. No.5 of 1992 passed by the Additional Senior Civil Judge, Rajahmundry are free from any illegality, thereby the findings are hereby confirmed, consequently the appeal deserves to be dismissed.

97. In the result, the appeal is dismissed confirming the decree and judgment in O.S. No.5 of 1992 passed by the Additional Senior Civil Judge, Rajahmundry but in the circumstances without costs.

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

M. SATYANARAYANA MURTHY, J

Date: 13-11-2015

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