

**THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA
RAO**

SECOND APPEAL No.5 of 2015

JUDGMENT:

This Second Appeal is preferred under Section 100 CPC questioning the judgment and decree dt.13-08-2013 in A.S.No.8 of 2012 of the I Additional District Judge, Kadapa confirming the judgment and decree dt.12-12-2011 of the III Additional Junior Civil Judge, Kadapa in O.S.No.432 of 2008.

2. The appellant herein is defendant in the above suit. The respondent/plaintiff filed the suit for specific performance of Ex.A-2 agreement of sale dt.10-12-1999 executed by appellant/defendant in his favour.

3. The parties will be referred to hereafter as per their array in the suit.

4. The plaint schedule property originally belong to one Sreeramulu Reddy. The appellant/defendant had purchased it from the said Sreeramulu Reddy under Ex.A-1 registered sale deed dt.07-10-1982.

5. It was contended by plaintiff that she approached the defendant to purchase it for Rs.95,000/-,

that she paid Rs.95,000/- on 10-12-1999 to defendant, and she then executed Ex.A-2 agreement of sale in her favour. She contended that the defendant undertook to execute a regular sale deed as and when demanded by her; on account of trust and confidence, the plaintiff did not insist the defendant to execute sale deed pursuant to Ex.A-2 as she had no reason to suspect the bonafides of defendant; Kadapa Town was upgraded into a Municipal Corporation resulting in enormous hike in prices; so the plaintiff thought that it would be better for her to get a regular sale deed executed by defendant; that the plaintiff also came to know that defendant was seriously attempting to alienate the plaint schedule property in favour of third parties; and when she requested the defendant to execute a regular sale deed, the defendant postponed the same on one pretext or the other. Then plaintiff issued a legal notice

Ex.A-3 dt.01-06-2008 calling the defendant to attend Sub-Registrar Office on 09-06-2008 and execute a regular sale deed in her favour, but the defendant failed to attend. She contended that she was always ready and willing to perform her part of contract and therefore, the suit for specific performance be decreed.

6. Defendant filed a written statement contending that she never agreed to sell the plaint

schedule property to plaintiff and never executed Ex.A-2. She alleged that Ex.A-2 is a rank forgery; plaintiff did not come to Court with clean hands; and Ex.A-2 did not disclose delivery of possession of property to plaintiff on 10-12-1999. She further alleged that the conduct of plaintiff in keeping quiet for 9 years reveals that the agreement of sale Ex.A2 dt.10-12-1999 is a forged document with ante-date and there was no whisper about it for 9 years prior to filing of suit. She contended that she is in possession of the plaint schedule property. She denied that the plaintiff approached her for execution of sale deed. She therefore sought for dismissal of the suit.

7. The Court below framed the following issues:

- “1. Whether the plaintiff is entitled for specific performance of execution of registered sale deed and delivery of possession of schedule mentioned property as prayed for?*
- 2. Whether the sale agreement dt.10-12-1999 is true, valid and binding on the defendant?*
- 3. To what relief?”*

8. The plaintiff examined P.Ws.1 to 3 and marked Exs.A-1 to A-4. Defendant examined herself as D.W.1.

9. By judgment and decree dt.12-12-2011, the trial Court decreed the suit with costs.

10. The trial Court held that the evidence of P.Ws.1 to 3 i.e. plaintiff, the attesor and scribe of Ex.A-2 proved that the defendant had executed Ex.A-2 in their presence in respect of the plaint schedule property after receiving Rs.95,000/-; that Ex.A-2 indicated that the sons of defendant by name M.Sivaiah and Murali Krishna attested it; P.W.2 also stated this fact; but defendant did not make any effort to examine the sons of defendant to disprove the version of P.Ws.1 and 2. It noted that defendant did not give evidence in the Court and that her evidence was recorded by Advocate-Commissioner. It held that no efforts are made by defendant to prove that Ex.A-2 is forged and that the certified copy of her link document dt.07-10-1982 Ex.A-1 was obtained by her son Sivaiah and handed over to plaintiff one day prior to execution of Ex.A2. It therefore accepted the case of plaintiff that plaintiff had paid full consideration under Ex.A-2 and that readiness and willingness of plaintiff is also proved by issuance of Ex.A-3 legal notice and decreed the suit.

11. Challenging the same, the defendant filed A.S.No.8 of 2012 before the I Additional District Judge, Kadapa.

12. By judgment and decree dt.13-08-2013 the said appeal was dismissed.

13. The lower appellate Court also confirmed the findings of the trial Court. Although before the lower appellate Court it was contended by defendant that P.W.2's wife and plaintiff are sisters and that P.W.3 is a friend of plaintiff's husband, no proof in that regard was placed before the Court. It held that although there are minor discrepancies in the evidence of plaintiff, it will not materially affect the plaintiff's case. It also held that the returned postal cover containing Ex.A-3 legal notice contains the same address as that mentioned in the plaint as belonging to the defendant and the said cover was got returned on the ground that the defendant was absent in that address continuously. It held that a perusal of Ex.A-1, certified copy of registered sale deed in favour of defendant, showed that it was obtained by the son of defendant on 09-12-1999 one day prior to Ex.A-1, and even though a suggestion to that effect was given to defendant in cross-examination by plaintiff, she denied it and the said denial is not acceptable. It held that the defendant did not examine her son Sivaiah to deny his signature or to prove that he was not present at the time of execution of Ex.A-2 and she has not received the sale consideration. It held that there is no enmity or ill-motive suggested to P.Ws.2 and 3 to speak falsehood against defendant. It therefore held that there is evidence to believe the case of plaintiff that she paid entire sale

consideration amount and she did not insist for immediate execution of registered sale deed may be out of trust and believe. It further held that the delay in demanding for execution of regular sale deed is not such as to deny relief to plaintiff and it cannot be said that she was not ready and willing to obtain it. It also held that defendant did not take any steps to send Ex.A-2 to Handwriting Expert or examine any witness to prove that her signature therein is forged and that Ex.A-2 was fabricated. It therefore dismissed the appeal.

14. Challenging the same, this Second Appeal is filed.

15. The learned counsel for appellant/defendant contended that the judgment of the Courts below is erroneous; that they erred in holding that plaintiff is entitled to the relief of specific performance; and that they ought to have held that Ex.A-2 is a forged and fabricated document. He contended that the suit was filed 8 years after the alleged execution of Ex.A-2 and therefore it was barred by limitation; that Ex.A-3 legal notice was not served on defendant and in the absence of such service, it has to be presumed that there was no demand for specific performance by plaintiff and consequently the relief of specific performance cannot be granted. He also contended that there is no cause of action to file the suit

and that the defendant was actually under a mistaken impression about the nature of transaction i.e plea of *non-est factum*. He also placed reliance on the judgment in **M.Rangaiah Vs. T.V.Satyanarayana Rao and another**^[1]. Another contention raised by the learned counsel for appellant was that Ex.A-2 is an unregistered agreement of sale and the suit for specific performance is not maintainable basing on such a document.

16. The learned counsel for respondent/plaintiff, on the other hand, supported the decisions of the Courts below and contended that on appreciation of evidence both Courts below have rightly decreed the suit of plaintiff; that having raised the plea of forgery of Ex.A-2, it was not open to defendant to raise the pleas of limitation/absence of readiness or *non est factum*. It was further contended that defendant had failed to establish that Ex.A-2 is a forgery by sending it to a Handwriting Expert for comparison with her admitted signatures; and the fact that certified copy of Ex.A-1 was obtained by the son of defendant one day prior to the execution of Ex.A-2 and handover the same to plaintiff, and non-examination of sons of defendant who attested Ex.A-2, would show that defendant's pleas are false.

17. I have noted the submissions of both sides.

18. The evidence of P.W.1 coupled with P.Ws.2 and 3 along with Exs.A-1 to A-4 clearly establish the execution of Ex.A-2 by defendant in plaintiff's favour and the receipt of total consideration of Rs.95,000/- by defendant from plaintiff. The defendant was unable to establish that PW2's wife and plaintiff are sisters and that P.W.3 is a friend of plaintiff's husband.

19. A reading of the written statement of defendant shows that the main defense of defendant is that the agreement of Ex.A-2 alleged to have been executed by her is a fabricated one and her signature thereon is forged. But the defendant did not get her admitted signatures compared with the signature purported to be hers on Ex.A2 by a handwriting expert to establish this fact.

20. The evidence on record clearly revealed that one of the sons of defendant attested Ex.A-2 but he was not examined by defendant to deny or disprove his signature on Ex.A-2.

21. Moreover, the certified copy of sale deed dt.07-10-1982 which is Ex.A-1 showed that it was obtained one day prior to the execution of Ex.A-2 by one of the sons of defendant and the fact that plaintiff is in possession of it shows that it must have been handed

over to plaintiff by defendant or her sons.

22. As regards the contention that Ex.A2 being unregistered was inadmissible in evidence, this contention has no basis because the proviso to Section 49 of the Registration Act, 1908 permits a suit for specific performance be filed on the basis of an unregistered agreement of sale.

23. There is no plea of *non est factum* in the written statement. Therefore, it is not open to defendant to raise the said plea for the first time in the Second Appeal particularly when she has pleaded that Ex.A-2 is a forged document.

24. Coming to the plea of bar of limitation, Article 54 of the Limitation Act, 1963 states that the suit for specific performance of an agreement of sale shall be filed within 3 years from the date fixed in such agreement of sale or from the date when performance is refused. Admittedly, no time is fixed in Ex.A-2 for execution of sale deed. It is not the case of defendant that she executed Ex.A-2 and that she had indicated her refusal to execute a sale deed pursuant to Ex.A-2 at any point of time to plaintiff. Therefore, the suit cannot be said to be barred by limitation even though it was filed on 24-7-2008 more than 8 years after the execution of Ex.A-2 dt.10-12-1999.

25. It is true that legal notice Ex.A-3 sent by plaintiff to defendant prior to filing of suit was returned under Ex.A-4 postal acknowledgment and so Ex.A-3 was not served on defendant. But it is not disputed that the address shown on Ex.A-4, the returned postal cover as that belonging to defendant, matched with the address given in the plaint of defendant. The plaintiff has addressed the letter by Registered Post to the correct address of defendant. Obviously, to evade its receipt, the defendant had managed to get it endorsed on the postal cover that she was absent continuously at that address. All that is required of the plaintiff under law is to plead and prove that there was a demand for execution of sale deed and non-cooperation or refusal by defendant. There is specific plea in plaint that plaintiff had approached the defendant since 3 months prior to filing of suit and requested the defendant to execute regular sale deed and the defendant had postponed the same on one pretext or the other. The plaintiff had also marked Ex.A-3 in proof of making of demand by her on defendant. Therefore, the contention of counsel for appellant/defendant that there was no demand for performance of contract, is incorrect.

26. In **M.Rangaiah (1 supra)**, cited by learned counsel for appellant, no notice at all had been issued by plaintiff therein before filing of suit asking defendant to

perform his part of contract. In that context the Court took the view that plaintiff was not entitled to relief of specific performance. Such a situation does not exist in this case. Therefore, that judgment has no application to the present case facts.

27. In view of the above discussion, I do not find any question of law much less substantial question of law in the judgments of the Courts below.

28. Therefore, the Second Appeal is without any merit and accordingly it is dismissed. No costs.

29. As a sequel, the miscellaneous petitions pending, if any, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 19-02-2015

Vsv/*

[\[1\]](#) CDJ 2009 APHC 839