HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

CCCA Nos.66 of 1995 & 12 of 1997

Common Judgment:

These two appeals—C.C.C.A.Nos.66 of 1995 and 12 of 1997 are directed against the common judgment dated 31.08.1994 passed by Additional Chief Judge, City Civil Court, Hyderabad whereby and whereunder the learned Judge has, in O.S.No.3 of 1993, rejected the relief OF specific performance of agreement to sell and in lieu, partly decreed the suit for recovery of Rs.87,000/- by way of damages from defendants 1 to 4 and dismissed the suit against defendants 5 to 9 and also dismissed the other suit—O.S.No.440 of 1983 rejecting the relief of specific performance of agreement to sell.

Aggrieved, the plaintiffs in O.S.No.3 of 1993 and plaintiff in O.S.No.449 of 1983 filed C.C.C.A.Nos.66 of 1995 and C.C.C.A.No.12 of 1997 respectively.

2) Brief facts of the case are as under:

a) Plaintiffs' case is that the suit property is a building situated opposite to Secunderabad Railway Station, which was originally belonged to one Masetty Venkanna who bequeathed the same under a Will dated 31.01.1944 to his grand son—Masetty Hanumantha Rao. The said Hanumantha Rao died and the property devolved on defendants 1 to 4 who are his mother, wife and two minor children respectively.

b) Plaintiffs 1 and 2 are partners of a firm which is running a Bar and Restaurant under the name and style M/s. National Bar and Café in the suit premises since a long time. Originally the fathers of plaintiffs took the premises on rent. Defendant No.7 is running a lodge adjacent to the suit premises under the name and style Everest Lodge. Defendant No.1 is the paternal grandmother and defendant No.2 is the mother of defendant Nos.3 and 4 who are the minors. Defendant No.3 became major during the pendency of the suit. Defendant No.5 is added as a party to the sale agreement. Defendant No.6 is the broker, defendant No.7 is the plaintiff in other suit—O.S.No.440 of 1983 and defendant Nos.8 and 9 are the legal representatives of defendant No.6.

c) While so, defendants 1 to 5 agreed to sell the plaint schedule premises to the plaintiffs for a sum of Rs.87,000/- vide agreement dated 05.01.1978 and the defendants received Rs.60,000/- from the plaintiffs as advance towards part of sale consideration and plaintiffs undertook to waive and give up the sum of Rs.10,000/- spent by them for improvement and alterations and the said fact was recited in the sale agreement. The earlier agreement dated 09.11.1977 entered with defendant No.7 was cancelled and the same was also recited in the sale agreement. The defendants 1 to 4 put the plaintiffs in possession of the said premises which is in their occupation as tenants. While so, defendant No.2 filed a petition in O.P.No.607 of 1980 under Guardians and Wards Act and Hindu Minority and Guardians Act before the Chief Judge, City Civil Court, Hyderabad seeking permission of the Court to alienate the minor's share (D3 and D4) to the plaintiffs. The learned Judge allowed the said OP on 25.03.1981. The plaintiffs paid the balance amount of Rs.17,000/- on 01.03.1978. In spite of the same, the defendants were evading to execute the sale deed. Hence, the plaintiff issued legal notice dated 13.07.1981 to the defendants 1, 2 and 6. Defendants 1 and 2 gave a reply dated 03.08.1981 contended that plaintiffs have no right to seek specific performance and stated that defendant No.7 already filed a suit in O.S.No.1121 of 1981 against them in the Court of III Additional Judge, City Civil Court, Secunderabad for specific performance of sale agreement in respect of same property and they were contesting. The plaintiffs on the plea that they were ready and willing to perform their part of contract for completing the registration of sale deed, filed the suit—O.S.No.3 of 1993 for specific performance of agreement of sale dated 05.01.1978 and additional sale agreement dated 01.03.1978 allegedly executed by defendants 1 and 2 on their behalf and defendant No.2 on behalf of her minor children—defendants 3 and 4 in favour of plaintiffs with the alternative relief for refund of sale consideration of Rs.87,000/- with interest @ 2% p.m. by way of damages.

d) Defendants 1 to 6 filed common written statement contending that agreement dated 05.01.1978 was the outcome of fraud, misrepresentation and undue-influence played by the plaintiffs. Defendants 1 to 6 had not given their free consent and accord for sale of the suit property. They also contend that alleged sale was not at all beneficial to the minor defendants 3 and 4. The alleged sale agreement is void *ab initio*, unenforceable, unlawful and not binding on the defendants. It is contended that there was no necessity for them to sell the suit property and the amounts advanced by the plaintiffs will be refunded by them. It is also contended that defendants 1 to 4 have no right to sell the suit property, as Masetty Venkanna executed a Will dated 31.01.1944 in respect of suit property and the defendants 1 to 4 are bound to keep the suit property without any kind of alienation for their benefit or for the maintenance of their family. It is further contended that the plaintiffs being old tenants of defendants 1 to 4 and being in occupation of the suit property under the guise of mortgage, got created the said agreement of sale from defendants 1 to 4 to grab the property and deprive the defendants 1 to 4 from the benefits of the suit property. They further contended that the husband of defendant No.2—Masetty Hanumantha Rao (grandson of original owner—Masetty Venkanna) died on 25.12.1972 and as such his parents, wife and children i.e. Masetty Kanakaiah and defendants 1 to 4 succeeded to the suit property. It is also contended that defendants 5 and 6 have nothing to do with the family of the defendants 1 to 4 and they have no right or interest in the suit property. Masetty Kanakaiah was a necessary and property party to the suit and as such the suit was bad for non-joinder of the necessary party and further the suit of the plaintiffs is barred by limitation.

e) Defendant No.7 filed a separate written statement contending that alleged agreement dated 05.01.1978 was not true, valid or binding on him and the same was the result of collusion between defendants 1 to 5 and the plaintiffs. The present suit was filed as a counter blast to the suit filed by him in O.S.No.1121 of 1980 for specific performance of agreement dated 09.11.1977 executed by defendants 1 and 2 in respect of same suit property. In the additional written statement he stated that the plaintiffs have not averred in the pliant that they were ready and willing to perform their part of contract and as such the suit was liable to be dismissed.

f) Defendants 8 and 9 who are the LRs. of deceased defendant No.6 filed a common written statement stating that the defendant No.8 is the adopted son of defendant No.9 and defendant No.9 was the elder sister of defendant Nos.2 and 5 and except that relationship, defendants 8 and 9 have nothing to do with the family affairs of Masetty Kanakaiah and their property. Defendant No.6 was not a party to the alleged agreement dated 05.01.1978 and 01.03.1978. Defendants Nos.6, 8 and 9 are neither necessary nor proper parties to the suit.

g) Defendant No.3 after attaining majority, while adopting the written statements filed by defendants 1 to 6 and 8 & 9, filed a separate written statement stating that on the date of agreement of sale there was no permission from the court of Chief Judge, City Civil Court, Hyderabad for sale of minors' property. The alleged subsequent permission of the Court in that respect cannot validate the void agreements entered into without there being permission. It is stated that late Masetty Venkanna executed two wills dated 31.01.1944 and 24.09.1946 respectively in view of which the legal beneficiaries thereto have no right to sell the suit property. The said two wills were in the possession and custody of plaintiffs. The suit was not maintainable in law and on facts and the same was liable to be dismissed with costs.

3) Basing on the above pleadings, the trial Court framed following issues.

1) Whether the agreement of sale dated 05.01.1978 is true valid and binding on the defendants?

2) Whether the suit is not maintainable against the minor defendants 3 and 4?

3) Whether the suit is barred by time?

4) Whether the plaintiffs are entitled to specific performance of the agreement as prayed for?

5) Whether the plaintiffs are entitled to damages in the alternative as prayed for by them?

6) To what relief?

The following additional issue is settled for trial on 09.08.1991.

1) Whether D1 to D4 have no right to sell in view of the Wills dated 31.01.1944 and 24.09.1946 executed by Masetty Venkanna as alleged by D3?

4) OS.No.440 of 1983 is filed by defendant No.6 in O.S.No.3 of 1993 for specific performance of sale agreement dated 09.11.1977 allegedly executed by defendant Nos.1 and 2.

5 a) The plaintiff's case was that suit premises bearing Old No.5603 and New No.09-04-46 situated in Syed Abdulla Street, Secunderabad originally belonged to late Masetty Venkanna and said Venkanna bequeathed the suit house to his grandson —Masetty Hanumantha Rao s/o Kanakaiah and any younger brother that may be born subsequently to Masetty Hanumantha Rao. As the said Venkanna died about 30 years prior to 06.11.1980 and no younger brother was born by that time or subsequently, Masetty Hanumantha Rao became the absolute owner. The said Hanumantha Rao married defendant No.2 and defendants 3 and 4 are the children of Hanumantha Rao through defendant No.2. Defendant No.1 is the mother of late Hanumantha Rao. He died intestate in the year 1972 leaving behind defendants 2 to 4.

b) It is further pleaded that the plaintiff is the co-owner of the adjacent premises where he was running a lodge. The defendants agreed to sell the premises to the plaintiff under an agreement dated 09.11.1977. As per the said agreement, the plaintiff paid an advance of Rs.5,000/- and undertook to pay further advance of Rs.15,000/- on the defendants 1 and 2 obtaining permission from the Chief Judge, Hyderabad on behalf of minor defendants 3 and 4 to enable them to discharge the mortgage created on the suit house. The defendants 1 and 2 also undertook to obtain permission from the competent authority under Urban Land (Ceiling and Regulation) Act. It is averred that plaintiff was always ready and willing to perform his part of agreement but the defendants 1 and 2 were evading to perform their part of contract on some pretext or the other.

c) The defendants 1 to 4 filed common counter stating as per the Will of late Masetty Venkanna dated 31.01.1944 the defendants have no right to sell the suit house to any person. The alleged agreement dated 09.11.1977 was the outcome of undue influence by the plaintiff on the defendants and it was not at all in the interest and benefit of the minor defendants 3 and 4. The husband of defendant No.1—Masetty Kanakaiah was also a share holder of the suit property and he was not a party to the alleged agreement and as such the same was void, illegal and unenforceable against the defendants. It was also stated a relative of defendants viz. Garapalli Veeresham refunded the sum of Rs.5,000/- to the plaintiff and ultimately he accepted the same treating the agreement dated 09.11.1977 as cancelled. It was also averred that suit is barred by limitation.

d) Defendants 5 and 6 who are plaintiffs in O.S.No.3 of 1993, filed a separate written statement stating that they filed a suit—

O.S.No.945 of 1981 against the plaintiff and defendants 1 to 4 and another person for specific performance of agreement of sale dated 05.01.1978 contending that defendants 1 to 4 have already received Rs.60,000/- on 05.01.1978 and balance of Rs.17,000/- on 01.03.1981 and the defendants 1 to 4 put these defendants in possession of the said premises.

e) Defendants 1 to 4 filed additional written statement alleging that the sale of the suit property to the defendants 5 and 6 was not at all beneficial and not in the interest of the minor defendants 3 and 4 and denied the written statement averments of defendants 5 and 6.

f) Defendant No.3 after attaining majority filed his written statement adopting the written statement of defendants 1 to 4.

6) On the basis of above pleadings, the trial Court settled the following issues for trial.

1) Whether the suit agreement of sale dated 09.11.1977 is void, illegal and unenforceable?

2) Whether the defendants have no right to sell the suit house absolutely by themselves to the plaintiff as per the Will dated 31.01.1944 by late Masetty Venkanna?

3) Whether the suit agreement of sale in respect of the suit house was not in the interest and beneficial to the minor defendants 3 and 4?

4) Whether Masetty Kanakaiah and K.Krishna and Xavier Desourza are the necessary and proper

parties to the suit. If so, whether the suit is bad for their non-joinder?

5) Whether the suit is barred by limitation?

6) To what relief?

The following additional issues are settled for trial on 21.10.1982.

1) Whether the defendants 5 and 6 are entitled to the suit property by virtue of the agreement of sale dated 05.01.1978 from D1 to D4?

2) Whether the plaintiff is entitled to specific performance of the agreement dated 09.11.1977 prayed for?

3) Whether the plaintiff is entitled to possession of the suit property prayed for?

7) Common trial was conducted and evidence was recorded in O.S.No.3 of 1993 and the same is treated as evidence in the other suit. PWs.1 to 3 were examined and Exs.A1 to A22 were marked on behalf of plaintiffs. No oral or documentary evidence was adduced on behalf defendants 1 to 6, 8 and 9. DWs.1 and 2 were examined and Exs.B1—sale agreement dated 09.11.1977 was marked on behalf of defendant No.7.

8) The trial Court basing on the entire evidence on record dismissed the suit—O.S.No.3 of 1993 to the extent of relief of specific performance of agreement of sale dated 05.01.1978 and in lieu thereof granted recovery of Rs.87,000/- by way of damages from defendants 1 to 4. The suit was dismissed against defendants 5 to 9.

The trial Court also dismissed the suit—O.S.No.440 of 1983.

Hence, the present appeals.

9 a) **CCCA No.66 of 1995**: Heard arguments of Sri K.Mahipathy Rao, learned counsel for appellants; Sri A.Sudershan Reddy, learned counsel for R1 and R2; Sri D.Madhava Rao, learned counsel for R3 and R4; None for R5; Appeal against R7 and R8 was dismissed for default; R6 died. Notice sent to R9 to R14 (LRs. of R6) was served but no representation on their behalf.

b) **CCCA No.12 of 1997**: Heard arguments of Sri E.Srinivas, learned counsel for appellant; Sri A.Sudershan Reddy learned counsel for R1 to R4 and Sri K.Mahipathy Rao, learned counsel for R6; Appeal against R.5 was dismissed for default.

10) The parties in the appeals are referred as they were arrayed in O.S.No.3 of 1993 before the trial Court.

11) It may be noted that O.S.No.3 of 1993 is concerned, the trial Court settled all issues except Issue Nos.4 and 5 in favour of the plaintiffs. Issue Nos.4 and 5 are concerned, they relate to the question whether the plaintiffs are entitled to specific performance of agreement as prayed for and if not damages alternatively. On this crucial aspect, the trial Court on an elaborate and exhaustive discussion of the facts and evidence, described the wretched plight of the defendants 1 to 4 stating

that defendant Nos.1 and 2 are widows and defendants 3 and 4 are only minors and they have no other property except the suit schedule building and though it has the potentiality of fetching more than Rs.3,000/- as monthly rent in view of its location quite opposite to Secunderabad Railway Station, but the plaintiffs paid only Rs.300/- p.m and the plaintiffs for decades together enriched themselves at the cost of defendants 1 to 4 by running a Bar and Restaurant in the suit premises and they have caused untold hardship to the helpless and hapless ladies who could not go around the Courts to get the plaintiffs who are powerful liquor lords, evict from the suit premises and held that though contract was not voidable, still specific performance and also damages cannot be ordered but in lieu, the purchase money can only be ordered to be refunded.

12) Sofaras O.S.No.440 of 1983 filed by D.7 is concerned, the trial Court decided issue Nos.2 to 5 in his favour but issue no.1 and additional issues 2 and 3 which touch the aspect as to whether the suit agreement of sale dt: 09.11.1997 is void, illegal and unenforceable and whether plaintiff is entitled to specific performance of the agreement and possession of the suit property are concerned, the trial Court decided these issues against defendant No.7 on the observation that Ex.B.1—agreement was executed only by defendants 1 and 2 and the minor defendants 3 and 4 were not parties thereto and therefore, defendants 1 and 2 alone were bound to the extent of their share in the suit property and further the defendant No.7

paid an advance of only Rs.5,000/- at the time of execution of Ex.B.1 though the sale consideration was Rs.75,000/- and the said amount was sent back in December, 1997 to him which he encashed and further, defendant No.7 did not show his bonafides as to readiness in taking the regular sale deed and hence he was not entitled to the specific performance of agreement to sale.

The above are precisely the findings of the trial Court in respect of the two suits.

13 a) CCCA No.12 of 1997 filed by D.7 is concerned, the docket order dt:05.12.2013 in the connected appeal C.C.C.A.No.66 of 1995 shows that it was represented that about 5 years prior to that date the appellant—B.G.Laxman died and it was posted for steps. However, no steps were taken in C.C.C.A.No.12 of 1997 and finally on 09.06.2015, Sri E.Srinivas, Junior of Sri E.S.Rama Chandra Murthy, learned counsel for sole appellant submitted that his Senior passed away in the year 2006 and he informed his L.Rs but none have come to take steps and therefore, he was helpless. Hence, C.C.C.A.No.12 of 1997 is dismissed as abated.

b) Coming to C.C.C.A.No.66 of 1995, pending appeal first appellant died and his LRs are brought on record as appellant Nos.3 to 5. So also respondent No.6 (B.G.Laxman—sole appellant in C.C.C.A.No.12 of 1997) died and his LRs were brought on record as respondent Nos.9 to 14.

So we are now concerned with C.C.C.A.No.66 of 1995 only.

14) C.C.C.A.No.66 of 1995 is concerned, since other issues went in favour of plaintiffs and as there were no cross objections on those issues, learned counsel for appellant mainly concentrated his argument on the findings which were recorded against the plaintiffs by the trial Court. He vehemently argued that the trial Court having given finding that the suit agreement to sell is true, valid and genuine and the plaintiffs have paid the entire sale consideration to defendants, ought to have decreed the suit and ordered specific performance. Instead it rejected the specific performance on assumptions and presumptions that the plaintiffs exercised undue influence over the defendants and ordering specific performance would cause severe hardship to them and that the suit property is a valuable property and due to its location quite opposite to Secunderabad Railway Station, it would fetch much higher rents than the one paid by the plaintiffs etc. He argued that though defendants 1 to 6 pleaded as if the suit agreement to sell was outcome of fraud, misrepresentation, undue influence etc, they did not adduce any evidence in this regard and in fact they did not enter the witness box. So the fraud, undue influence etc allegations could not have been taken into consideration at all. Sofaras escalation of the value of the property and its potentiality to fetch high rents is concerned, he argued, that alone cannot be a ground to reject the specific

performance when the plaintiffs are otherwise eligible. He thus argued that on any count negativing the plaintiffs claim is not sustainable under law. He relied upon the following decisions to buttress his argument:

1) ***Prakash Chandra vs. Narayan***[1]
2) ***Narinderjit Singh vs. North Star estate Promoters Ltd.***[2]
3) ***Shanker Singh vs. Narinder Singh and others***[3]
4) ***Indian Bank, Chittoor vs. V.R.Venkataraman and others***[4]
5) ***Kirpal Singh vs. Mst. Kartaro and others***[5]

He thus prayed to allow the appeal.

15) Per contra, learned counsel for respondents 1 to 4 while supporting the judgment argued that the defendants were hapless and helpless women inasmuch as defendants 1 and 2 were uneducated widows and defendants 3 and 4 were minors and the property even prior to the date of agreement to sell was a costliest property situated opposite to Railway Station of Secunderabad and in normal course it would fetch thousands of rent but the plaintiffs occupied the building some decades prior to the agreement to sell and paid only a pittance of Rs.300/- p.m and during the lifetime of the Hanumanth Rao, the husband of D.2, himself and his mother i.e, D.1 executed a mortgage deed in favour of plaintiffs for their necessities and after his death the family virtually had no income to sustain and whereas plaintiffs occupied the suit property and doing a

lucrative business i.e, running Bar and Restaurant and earning lakhs of rupees and they did not wish to quit the suit property to allow the defendants either to lease out the property to third parties or to sell the same and in those circumstances, the plaintiffs taking advantage of the mortgage deed coerced and forced the defendants to enter into Ex.A.5—agreement to sell for a paltry sum of money and thus they exercised unfair advantage over the defendants. While admitting that the defendants did not adduce evidence, he submitted that the above all facts were admitted and borne out from the record and so the defendants' failure to adduce evidence will not effect their case adversely. Considering all these facts, he argued, the trial Court rightly rejected their claim for specific performance and ordered only return of the purchase amount and therefore, there are no merits in the appeal and hence the same may be dismissed. He relied upon the following decisions to shore up his argument that specific performance is discretionary relief which the Court can refuse when the comparative loss or hardship to the vendor is more:

1) ***V.Muthusami (dead) by LRs. vs. Angammal and others***[6]
2) ***Satya Jain (dead) through LRs and others vs. Anis Ahmed Rushdie (dead) through LRs and others***[7]
3) ***Vimaleshwar Nagappa Shet vs. Noor Ahmed Sheriff and others***[8]

16) In the light of above rival arguments, the point for determination in this appeal is:

> *"Whether the judgment of the trial Court in refusing the specific performance of suit agreement to sell and alternatively ordering repayment of purchase amount is factually and legally sustainable?"*

17) **POINT**: Section 20 of Specific Relief Act, 1963 (for short "the Act") deals with the discretionary powers of the Court as to when a decree for specific performance can be granted or refused. It lays down as follows:

> ***"Section 20 - Discretion as to decreeing specific performance:—***
>
> *(1) The jurisdiction to decree specific performance is discretionary, and 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.*
>
> *(2) The following are cases in which the court may properly exercise discretion not to decree specific performance:--*
>
> > *(a) where the terms of the contract or the conduct of the parties at the time of entering into the contract or the other circumstances under which the contract was entered into are such that the contract, though not voidable, gives the plaintiff an unfair advantage over the defendant; or*
> >
> > *(b) Where the performance of the contract would involve some hardship on the defendant which he did not foresee, whereas its non-performance would involve no such hardship on the plaintiff; or*
> >
> > *(c) Where the defendant entered into the contract under*

circumstances which though not rendering the contract voidable, makes it inequitable to enforce specific performance.

Explanation 1.--Mere inadequacy of consideration, or the mere fact that the contract is onerous to the defendant or improvident in its nature, shall not be deemed to constitute an unfair advantage within the meaning of clause(a) or hardship within the meaning of clause(b).

Explanation 2.--The question whether the performance of a contract would involve hardship on the defendant within the meaning of clause (b) shall, except in cases where the hardship has resulted from any act of the plaintiff subsequent to the contract, be determined with reference to the circumstances existing at the time of the contract.

(3) The court may properly exercise discretion to decree specific performance in any case where the plaintiff has done substantial acts or suffered losses in consequence of a contract capable of specific performance.

(4) The court shall not refuse to any party specific performance of a contract merely on the ground that the contract is not enforceable at the instance of the other party."

a) A scrutiny of the above section gives an understanding that—

(i) Relief of specific performance lies purely within the discretionary powers of the Court but the Court shall exercise its discretion judiciously but not arbitrarily

(ii) The Specific Performance relief can be rejected by the Court

a) When the terms of the contract, or the conduct of the parties at the time of entering into contract or other circumstances under which the contract was entered into project that though contract was not voidable but gives the plaintiff an unfair advantage over the defendant.

However, mere inadequacy of consideration or the contract is onerous to the defendant or improvident in its nature shall not be deemed to constitute an unfair advantage.

b) Where the performance of the contract comparatively involve some hardship to the defendant whereas its non-performance would not involve such hardship to the plaintiff.

c) Where the circumstances under which the defendant entered into the contract makes the contract inequitable to enforce.

(iii) The Court may grant specific performance where the plaintiff has done substantial acts or suffered losses in consequence of the contract and it shall not refuse the specific performance merely on the ground that the contract is not enforceable at the instance of other.

18) From the written statement of defendants 1 to 4, it would appear that they were not altogether denying the execution of the agreement to sell but their plea is that the agreement dated 05.01.1978 was the outcome of the fraud, misrepresentation, undue influence and misleading played by the plaintiffs upon

them and the defendants had not given their free consent and agreed for the sale of the suit property and the plaintiffs were the old tenants of the defendants 1 to 4 and under the threat of mortgage, the plaintiffs got the suit agreement to sell and there was no necessity for the defendants 1 to 4 to sell the suit property and further, the defendants 1 to 4 were ready to refund the amount advanced by the plaintiffs and above all, the sale transaction was not for the benefit of the minor defendants 3 and 4. Further, in view of the will dated 31.01.1944, they had no right to sell the suit property.

a) So the crux of the above pleadings is that the plaintiffs exercised unfair advantage over them, the execution of the sale deed will cause hardship to them, the sale is not for the benefit of the minor defendants 3 and 4 and in view of the will dated 31.01.1944, they have no right to alienate the property. The trial Court negatived the last two contentions and considered their case in respect of prior two contentions only. As can be seen from the Section 20 of the Act, mere inadequacy of consideration or mere onerousness of the contract to the defendant cannot be considered as unfair advantage to the plaintiff. So when a person due to his own pressing needs, voluntarily comes forward and sells his property and the intending purchaser bargains to purchase at a lesser value than the real value of the property, it will not amount to unfair advantage. As the word itself says, unfair advantage is something more. In a given circumstance, if the purchaser having regard to his dominant position over the vendor, coerces or forces the otherwise unwilling vendor to sell his property at a lower price, that will amount to taking unfair advantage by the purchaser. Though pleaded unfair advantage and hardship, as argued by counsel for appellants, the defendants have not entered the witness box to establish these aspects. However, the contention of counsel for respondents is that such unfair advantage and hardship to the defendants 1 to 4 is writ-large from the facts which can be found from the evidence adduced by the plaintiffs themselves and therefore, inspite of defendants not letting in any independent evidence in this regard, still the Court can take notice of those aspects. Therefore, it has to be seen whether the defendants could substantiate their stand from the evidence already available on record.

19) The admitted facts in this case are that defendants 1 and 2 are widows and they are the grandmother and mother of the minor defendants 3 and 4 respectively. Defendant No.3 became major during pendency of the suit. Suit property is a building situate opposite to Secunderabad Railway Station and hence it is located in a busy marketing place. The suit property originally belonged to Maseti Venkanna who bequeathed it under the will dated 31.01.1944 to his grandson M. Hanumanth Rao. After his death, the suit property devolved upon defendants 1 to 4 as they being his mother, wife and minor children. As already stated, their plea that they have no right to alienate the property could not be substantiated. Be that it may,

plaintiffs 1 and 2 are partners of firm running a Bar and Restaurant under the name and style of M/s. National Bar and Cafe in the suit premises since long time i.e, more than 50 to 55 years. In fact the respective fathers of the plaintiffs originally took the premises on rent. Defendant No.7 was a businessman running a lodge adjacent to the suit premises under the name and style Everest Lodge. Initially, defendants 1 and 2 executed Ex.B.1—sale agreement dated 09.11.1977 in favour of defendant No.7. The minor defendants 3 and 4 were not parties to said agreement. The suit O.S.No.440 of 1983 was filed on the strength of Ex.B.1 which was dismissed and the consequential C.C.C.A.No.12 of 1997 was also abated on the death of defendant No.7. It is also an admitted fact that during the lifetime of M.Hanmanth Rao, himself and his mother i.e, D.1 executed Ex.A.1—mortgage deed dated 04.04.1966 in favour of 1st plaintiff i.e, M. Krishna. Hanumanth Rao died on 25.12.1972 and as the mortgage debt was not discharged, the 1st plaintiff obtained Ex.A.2—supplemental mortgage deed dated 01.07.1974 from defendants 1 to 4. Thereafter, 1st plaintiff got issued Ex.A.3—legal notice dated 11.11.1977 to defendants 1 to 4 setting up an oral agreement to sell dated 10.10.1977 said to have been entered into by defendants 1 to 4 in his favour in respect of plaint schedule property. Defendants issued Ex.A.4—reply notice dated 17.11.1977 denying said oral agreement. Sometime thereafter plaintiffs 1 and 2 obtained Ex.A.5—sale agreement dated 05.01.1978 from defendants 1 to 4 to purchase the suit property for Rs.87,000/- and paid an advance of Rs.60,000/- and obtained receipt under Ex.A.5(a) from the defendants 1 to 4. Sometime thereafter they paid another Rs.17,000/- under Ex.A.6—receipt dated 01.03.1978 and obtained Ex.A.7—deed of further agreement. Then the contention of plaintiffs is that inspite of obtaining permission from the District Court for selling the shares of the minors by the defendants 1 and 2 and inspite of plaintiffs getting ready in all respects by preparing draft sale deeds and applications to be submitted under U.L.C Act, the defendants have not come forward and hence they issued Ex.A.18—notice and defendants issued Ex.A.22—reply notice with false averments.

20) Then some of the documentary evidence show the plight of defendants and how they were forced to sell the property in unavoidable circumstances. For instance Ex.A.1—mortgage deed would show that defendant No.1 and her son Hanumanth Rao had to borrow Rs.6,000/- from 1st plaintiff to effect repairs to the plaint schedule property which was already under the tenancy of 1st plaintiff and which was in a dilapidated condition. The 1st plaintiff advanced loan of Rs.6,000/- to enable them to effect the repairs to the leasehold premises and also to discharge their debts. This would show that even during the lifetime of Hanumanth Rao, the defendants had no other source of income and except the suit schedule property they had no other property. They could not even effect the repairs to the

rented building with their own funds. Be that it may, as already stated, Hanumanth Rao died on 25.12.1972 and defendants 1 to 4 could not discharge the debt amount which soared up with interest to Rs.10,000/- and so the 1st plaintiff obtained a supplemental deed of mortgage from defendants 1 to 4 under Ex.A.2. Ex.A.2 would show the plight of defendants 1 to 4 as it was recited that mortgage debt could not be discharged and Hanumanth Rao died on 25.12.1972 leaving behind his mother, widowed wife and two minor children. In those circumstances, the amount due with interest as on the date of Ex.A.2 was fixed at Rs.10,000/- and some concession in the rate of interest was given by reducing the rate of interest from 12% to 6%. In Ex.A.2 time for redemption was fixed as 6 years from 01.07.1974.

21) However, surprisingly within short period after Ex.A.2, the plaintiffs got issued Ex.A.3—legal notice on 11.11.1977 as if the defendants expressed their inability to redeem mortgage deed and that they were in further need of money for their legal necessities and hence they sent word to plaintiffs through defendant No.6 offering to sell their house and after discussions, the bargain was struck at Rs.70,000/- and plaintiff demanded them to execute a sale deed. The defendants staunchly denied the said oral agreement in their reply notice under Ex.A.4. When in Ex.A.2 time for redemption was fixed as 6 years, it will be quite unbelievable as to why the defendants will rush to sell away their property within short period. It shows the oblique motive of 1st plaintiff to somehow knock away the

suit property by putting the defendants in some sort of pressure or coercion. Be that it may, within short period after their reply notice under Ex.A.4 wherein the defendants stated that they never entered into any oral agreement with Plaintiff No.1, they entered into a written agreement under Ex.A.5—sale agreement dated 05.01.1978. The defendants no doubt are not denying the execution of Ex.A.5—sale agreement but their plea is that it was outcome of fraud, misrepresentation and undue influence etc. A perusal of Ex.A.5 and other attending circumstances which were already spelt out from the admitted facts and Exs.A.1 and A.2 would show that though there was no exercise fraud on the part of plaintiffs in entering Ex.A.5 with defendants 1 to 4 but there certainly appears existence of unfair advantage by applying coercion and undue influence on the defendants to enter into the sale agreement. Ex.A.5 shows the plight of the defendants. It is recited that they belonged to traditional Vysya family and their avocation was trade only. Their premises was in occupation of the tenants (plaintiffs) since about 45 years and they were paying only Rs.300/- as rent which was not at all sufficient to carry on their livelihood and they were not able to maintain the building and meet the soaring taxes imposed by the Government. Above all, they had no other source of income and therefore, to find out someway to eke-out their livelihood, they decided to sell away their house for their livelihood and to meet the legal necessities of the minors. This shows that plaintiffs have been in occupation of the suit property since decades together and were paying only Rs.300/- p.m which was not even sufficient to pay taxes and maintain the property, leave aside meeting their other requirements. It was in this backdrop they were selling the property. The noted feature is that the agreement was executed even without obtaining permission from the District Court to sell the shares of minor defendants 3 and 4. Surprisingly sum of Rs.60,000/- was paid as an advance even before filing permission petition before the District Court and even without knowing whether such a permission would be given or not. It is an instance of the plaintiff putting the defendants in a fix and hurry.

a) It is to be noted that the permission was sought after a long time under Ex.A.9—application in O.P.No.607 of 1980 before the Chief Judge, City Civil Courts, Hyderabad. In the said permission petition, the helplessness of the petitioners/defendants was mentioned in Para 7. After mentioning that the suit property was agreed to be sold at Rs.87,000/- to plaintiffs, the defendants further stated that they may not be able to find any other purchaser for a better price than the instant one in view of the fact that they were not in a possession to deliver vacant possession of the premises which was in the occupation of the tenants (plaintiffs). This implies that the plaintiffs took the tenancy as an unfair advantage i.e, to say they refuse to the property if the defendants sold the premises to third parties at higher price. Since the defendants were not in a possession to give vacant possession to the intended purchaser, they were compelled to sell the property to the plaintiffs. As already stated supra, if a purchaser takes the advantage of vendor's pressing needs and purchases the property at a low rate that may not be termed as unfair advantage. However, if the purchaser by virtue of his dominating position, forces the vendors to sell his property substantially at a low rate, that can be certainly termed as unfair advantage within the meaning of Section 20. It is true that the defendants have not adduced separate evidence to establish all these facts but their plight and compelling circumstances under which they were forced to enter into sale transaction is manifest from the record and other attending circumstances. Further, the value of the property even by the date of agreement to sell was quite higher than what was offered by the plaintiffs, as admittedly, the property was situated quite opposite to Secunderabad Railway Station within a stones throw and even by then it was one of the busiest places in the twin cities. It may be not be out of context to say that even the bearer working in the Bar and Restaurant of the plaintiffs would earn more than Rs.300/- p.m by way of tips but the defendants who are the owners of the property were getting only Rs.300/- p.m as rent which was stopped after entering into the agreement to sell.

22) In view of all these circumstances, the contention of counsel for appellant that the defendants failed to establish any of their contentions cannot be countenanced. The citations filed by the appellants can be distinguished on facts.

(i) In ***Prakash Chandra***'s case (1 supra) though the trial Court granted decree for specific performance, the first appellate Court reversed the judgment which was approved by the High Court on the ground that the defendant was having only the suit land and he would become landless if the specific performance decree was allowed to stand. However on appeal, the Apex Court observed that the defendant has not established the hardship by adducing any evidence and on the other hand in the cross-examination he admitted that after reaching agreement with the appellant, he sold 4 Acres of land and even thereafter he was having 2.25 hectares of cultivable land, apart from 0.88 hectares of uncultivable land. In that context, Apex Court held that the respondent/defendant could not establish any hardship. However, the case on hand is different one.

(ii) The ***Narinderjit Singh***'s case (2 supra) also can be distinguished. It was held therein that subsequent escalation of price was not a ground to deny the specific relief particularly when seller has not pleaded any hardship nor produced any evidence in that regard. That proposition is not in dispute. The point in this case is the plaintiffs by virtue of their position as tenants obtained unfair advantage by forcing the defendants to enter into agreement to sell which is manifest from the plaintiffs record.

(iii) The ***Shanker Singh***'s case (3 supra) also will not come to the aid of the plaintiffs. In that case, Apex Court negatived the relief of specific performance of the agreement on the ground that it as incapable of being performed and instead ordered payment of earnest money and some interest.

(iv) In ***Indian Bank, Chittoor***'s case (4 supra), it was observed that the burden of proof is on the person who pleaded fraud, misrepresentation etc. This proposition of law is not in dispute. As already observed, though the defendants have not adduced evidence separately, the facts, circumstances and evidence on record, as already stated would reveal the unfair advantage tried to be reaped by the plaintiffs out of the suit agreement to sell.

(v) The ***Kirpal Singh***'s case (5 supra) also is of no avail to the plaintiffs.

23) So on a conspectus of the facts and evidence, the trial Court was right in rejecting the specific performance of the suit agreement to sell and instead directing the defendants 1 to 4 to pay back Rs.87,000/- to the plaintiffs.

24) In the result, both the appeals are ordered as follows:

i) C.C.C.A.No.66 of 1995 is dismissed by confirming the judgment passed by the trial Court in O.S.No.3 of 1993.

ii) C.C.C.A.No.12 of 1997 is dismissed as abated.

iii) No costs in both the appeals.

As a sequel, miscellaneous applications pending, if any, shall stand closed.

U. DURGA PRASAD RAO, J

Date: 18.09.2015
Murthy / scs

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[1] 2012 (4) ALD 161 (SC)
[2] 2012 (5) ALD 21 (SC)
[3] 2012 (5) ALD 108 (SC)
[4] 2004 (4) ALD 307 (DB) (AP)
[5] AIR 1980 Rajasthan 212
[6] AIR 2002 Supreme Court 1279
[7] AIR 2013 Supreme Court 434
[8] AIR 2001 Supreme Court 2057