

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

APPEAL SUIT No. 1891 OF 1995

JUDGMENT:

The unsuccessful plaintiffs in Original Suit No.30 of 1985 on the file of the Court of Subordinate Judge at Suryapet, Nalgonda District (for short, 'the trial Court'), preferred this Appeal challenging the decree and judgment dated 24.02.1995; whereunder and whereby the suit filed by the plaintiffs, for specific performance of agreement of sale dated 23.06.1982, was dismissed.

2. The appellants herein were the plaintiffs and the respondent herein was the defendant before the trial Court. For convenience of reference, the ranks given to the parties in O.S. No.30 of 1985 will be adopted throughout this judgment. During pendency of the suit, 1st plaintiff died and her legal heirs *i.e.*, plaintiffs 2 to 5 were brought on record as per order in I.A. No.87 of 1991, dated 03.07.1991.

3. The 1st plaintiff filed the suit, for specific performance of agreement of sale dated 23.06.1982, directing the defendant to execute registered sale deed, after receiving the balance of sale consideration and put him in possession of the suit premises bearing D.Nos.3-3-2/2 and 3-3-2/3 situated at Suryapet, alleging that the 1st plaintiff is the owner of the suit schedule premises which consists of 4 shops and ante rooms. Initially, the defendant's husband was good friend of the 1st plaintiff; the defendant inherited the property of her mother at Suryapet and surrounding villages. As such the defendant is living along with her husband and children at Suryapet and the property is being looked after by her husband.

4. The 1st plaintiff was carrying on business at Suryapet possessing agricultural land at Balemla village and due to her close friendship with the husband of the defendant, the defendant's husband borrowed a sum of Rs.31,000/- from the 1st plaintiff in the year 1977 for renovation of shops and subsequently leased out the

schedule premises bearing D.Nos.3-3-3, 3-3-3/1 to the 1st plaintiff for a period of 10 years under the registered lease deed No.278/78, dated 28.03.1978. Later, the defendant borrowed amount on several occasions from the plaintiff for her family necessities. Despite demands of 1st plaintiff, the defendant did not discharge the debts. After some time, the defendant and her husband paid some amount by way of cheque towards the debt due and the 1st plaintiff passed a receipt dated 28.02.1982 acknowledging receipt of the amount, wherein it is mentioned that the total amount due was Rs.45,501.06 p.s. as on that date.

5. Due to inability to discharge the debts, despite demands, the defendant agreed to sell the suit schedule premises for a consideration of Rs.1,30,000/- and agreed to adjust the amount due to the 1st plaintiff and received total amount of Rs.1,10,000/-, executed an agreement of sale dated 23.06.1982 while agreeing to receive balance of sale consideration of Rs.20,000/- and execute registered sale deed on or before 25.02.1983.

6. Since the date of execution of agreement of sale, the 1st plaintiff was always ready and willing to perform her part of obligation but the defendant did not co-operate to complete the sale transaction; thereafter, disputes arose between the 1st plaintiff and defendant and thereupon surprisingly the defendant got issued a legal notice dated 14.07.1982 calling upon the 1st plaintiff to vacate the leased premises alleging that she failed to pay the rent, sublet a portion thereof and that the premises was required for personal occupation of defendant and for recovery of rent due. The 1st plaintiff issued a reply notice dated 08.08.1982 disclosing about execution of agreement of sale, also furnished a copy of agreement. Thereupon, the defendant issued a notice dated 18.08.1982 calling upon the plaintiff to furnish the photostat copy of the notice and immediately the 1st plaintiff handed over the photostat copy on 19.08.1982; receipt of the same was acknowledged by the defendant. After receiving the document, the defendant got issued another notice dated 01.09.1982 denying very execution of agreement of sale, declining to execute registered sale deed. Hence, the 1st plaintiff filed the suit for the aforesaid reliefs.

7. The defendant filed written statement denying material allegations of the plaint while admitting that she is the owner of 6 mulgies bearing door Nos.3-3-3/2, 3-3-3/3, 3-3-3/1, 3-3-3, 3-3-2/2 and 3-3-2/3 and a house at Suryapet; out of the 6 mulgies, she let out mulgies bearing door Nos.3-3-3 and 3-3-3/1 to the 1st plaintiff on 28.03.1978 in the first instance and mulgies bearing door Nos.3-3-2/2 and 3-3-2/3 and a room and veranda from out of her house portion on 01.04.1978. Subsequently, she also leased out mulgi bearing door No.3-3-3/2 to one K. Narsimha and mulgi bearing door No.3-3-3/3 to one K. Ratnam in or about March or April, 1978. At the end of November, 1980 the 1st plaintiff vacated mulgies bearing door Nos.3-3-2/2 and 3-3-2/3 and the house portion, which are occupied by her. Subsequently, the 1st defendant was in occupation of the said 2 mulgies till they were leased out to Electricity Department and Panasa Goverdhan respectively. The Electricity Department is in occupation of mulgi bearing door No.3-3-2/3 since October, 1982; the Electricity Department was using the premises as Fuse Call office and while so P. Goverdhan, who was a tenant of mulgi bearing door No.3-3-2/2, vacated the same in the month of November, 1983; later, the same was let out to one Nanu in the month of November 1983 and occupied till 15.06.1984. Later, on 16.08.1984 one Wadapalli Venkateshwarlu and his son Suryam have been in occupation of the said mulgi as tenants. The lessee of mulgi bearing door No.3-3-3/3 purchased from defendant in 1983 but took the registered sale deed from her in the year 1984. The mulgi bearing No.3-3-3/2 was sold by this defendant to P. Ratnamala in the year 1983 but the registered sale deed was obtained in the year 1984.

As the 1st plaintiff committed default in payment of rent in respect of mulgies bearing door Nos.3-3-2/2 and 3-3-2/3 and sublet the same to others and as the defendant required the said mulgies for her sons, she filed eviction suit in O.S. No.636 of 1982 and it was pending. The 1st plaintiff never purchased the suit schedule property for consideration of Rs.1,30,000/- and never paid any consideration except advancing loan of Rs.31,000/- to the defendant in the year 1977 obtaining promissory note in the name of N. Lakshmi Narasimha Reddy, who filed the suit in O.S. No.197 of 1984 before the Court for recovery of Rs.32,081-50 p.s. on the foot of the promissory note but the same was dismissed on the ground that the suit is barred by limitation. Therefore, the question of adjusting the amount

towards sale consideration is false. The 1st plaintiff did not pay any amount as alleged in the plaint towards consideration on the date of alleged execution of agreement of sale dated 23.06.1982. The defendant admitted about registered correspondence between them.

The 1st plaintiff did not approach the Court with clean hands; since 01.01.1979 she did not pay monthly rent for the mulgies and other premises. Incidentally, the defendant had to pay the debt due under the promissory note executed in favour of N. Laxmi Narasimha Reddy and thereupon the account was settled and the 1st plaintiff became due for a sum of Rs.23,411-80 p.s. to the defendant towards arrears of rent for the entire premises which was leased out to her and agreed to adjust the said amount towards part payment of the debt due under the promissory note thereby the 1st plaintiff vacated mulgies bearing door Nos.3-3-2/2 and 3-3-2/3 and the house portion consisting of veranda room in the month of November, 1980 while retaining mulgies bearing door Nos.3-3-3 and 3-3-3/1 with her. Subsequently, the husband of the defendant issued two cheques for Rs.5,000/- in favour of the 1st plaintiff. Therefore, the contention that the 1st plaintiff passed a receipt dated 28.02.1982 to the defendant mentioning the amount due as Rs.45,501-06 is false; no such receipt was ever passed by the 1st plaintiff to the defendant. Consequently, the payment of alleged amount under the agreement of sale is false. The defendant also pleaded several disputes which led to filing of criminal cases and suits against one another but they are not relevant for the purpose of deciding this suit.

The defendant specifically contended that she never executed the agreement of sale dated 23.06.1982 for Rs.1,30,000/-, acknowledging receipt of Rs.1,10,000/- by way of adjustment of pronote debt as advance of sale consideration; the agreement of sale is a cooked up and forged document brought into existence by the plaintiffs to defeat the claim of the defendant over the said mulgies.

The defendant never agreed to execute registered sale deed on or before 25.02.1983, receiving balance of sale consideration of Rs.20,000/- and that the

alleged readiness and willingness of the 1st plaintiff is false and further she was never in possession and enjoyment of the mulgies bearing door Nos.3-3-2/2 and 3-3-2/3 and they were already sold to different persons as stated above. Hence, the 1st plaintiff approached the Court with unclean hands thereby disentitled to claim the relief of specific performance and prayed to dismiss the suit.

8. On the strength of the above pleadings, the trial Court framed the following issues:

1. Whether the agreement dated 23.06.1982 is true, valid, supported by consideration and binding on the defendant?
2. Whether the plaintiff is entitled to specific performance?
3. Whether the plaintiff is entitled to possession of D.Nos.3-3-2/2 and 3-3-2/3?
4. To what relief? (*extracted*)

9. During course of trial on behalf of the plaintiffs, PWs.1 to 3 were examined and Exs.A-1 to A-13 were marked. On behalf of the defendant DWs.1 to 3 were examined and Exs.B-1, B-1/1, B-1/2 and Ex.X-1 was marked.

10. Upon hearing argument of both the counsel, considering oral and documentary evidence available on record, the trial Court disbelieved the very execution of agreement of sale, marked as Ex.A-8 and dismissed the suit declining to grant the reliefs claimed by the plaintiffs.

11. Aggrieved thereby, the unsuccessful plaintiffs therein preferred the instant Appeal raising various contentions mainly contending that:

- a) The trial Court without assigning any reason disbelieved execution

of agreement of sale, Ex.A-8. No reason was assigned to discredit the testimony of PWs.2 and 3 and, if their evidence is accepted, the trial Court ought to have accepted execution of Ex.A-8, agreement of sale;

b) The trial Court further concluded that in view of the criminal complaints the agreement was brought into existence, such conclusion is not supported by any legal reasoning. Thus, the reason for disbelieving Ex.A-8 and evidence of PW.2 is erroneous. Finally, it is contended that the 1st plaintiff purchased stamps on 21.06.1982, whereas Ex.A-8 was obtained on 23.06.1982 *i.e.*, just two days before executing agreement of sale, which is not a suspicious circumstance to disbelieve execution of Ex.A-8.

c) If the trial Court appreciated the evidence in proper perspective, the trial Court would not have dismissed the suit and requested this Court to reappraise the entire evidence on record and pass a decree in favour of the plaintiffs for specific performance of agreement of sale and other reliefs.

12. During course of hearing, Sri M. Rajamalla Reddy, learned counsel for the plaintiffs-appellants, while reiterating the grounds urged in the grounds of Appeal would contend that the trial Court exercised power under Section 73 of the Indian Evidence Act, 1872 to compare the admitted signatures with the disputed signatures and concluded that agreement of sale, Ex.A-8, was not executed by the defendant and such power can be exercised sparingly. When the plaintiffs examined independent witnesses *i.e.*, PWs.2 and 3 to prove execution of Ex.A-8, it is sufficient to substantiate the contention of the plaintiffs that Ex.A-8 is executed by the defendant but the trial Court without assigning any reason held that Ex.A-8 was not executed by the defendant, such approach of the trial Court is erroneous and the learned counsel requested this court to reappraise the entire evidence, afresh, and pass a decree in favour of the plaintiffs.

13. *Per contra*, learned counsel for the defendant-respondent argued totally in support of the finding recorded by the trial Court, relying on the decisions of the Apex Court in ***M/s. Bihar Supply Syndicate Vs. Asiatic Navigation and others, State***

Bank of India and another Vs. M/s. Emmsons International Limited and another, Madhukar and others Vs. Sangram and others and **Kalvakolanu Tarakamma (died) by L.Rs Vs. Pulichintala Narsimha Reddy** and decision of this Court in **Gorige Ailamma Vs. Utkoori Somaiah and others**. The learned counsel for the defendant-respondent further drawn the attention of this Court to a judgment of this Court in Second Appeal No.572 of 1995, preferred against the decree and judgment in A.S. No.2 of 1990, which was preferred against the decree and judgment in O.S. No.636 of 1982, filed by the plaintiffs-appellants herein, wherein the Courts below disbelieved the agreement of sale, Ex.A-8 and held that the 1st plaintiff was never a tenant and ordered her eviction. When once the finding is recorded by the Courts below disputing the very same agreement of sale, the plaintiffs cannot now raise the same contention that the 1st plaintiff is purchaser of the property and on this ground alone the plaintiffs-appellants are disentitled to claim the relief and finally prayed to dismiss the Appeal confirming the decree and judgment of the trial Court.

14. Considering rival contentions, perusing oral and documentary evidence including the decree and judgment under challenge, the points that arise for consideration are:

1) Whether the agreement of sale dated 23.06.1982, marked as Ex.A-8 is true, valid and binding on the defendant?

2) Whether the 1st plaintiff is always ready and willing to perform her part of obligation under the agreement of sale dated 23.06.1982 and, whether the 1st plaintiff was in possession and enjoyment of the mulgies bearing door Nos.3-3-2/2 and 3-3-2/3? And if so, is she entitled to claim possession of those mulgies?

3) Whether the 1st plaintiff is entitled to claim the relief of specific performance of agreement of sale dated 23.06.1982?

15. **POINT No.1:** Admittedly, the suit is based on agreement of sale dated

23.06.1982 marked as Ex.A-8 but the trial Court disbelieved execution of Ex.A-8 by the defendant and passing of any consideration thereunder. Now, the said finding is challenged on the ground that the trial Court did not assign any reason for rejecting the evidence of PWs.1 to 3 and the exercise undertaken by the trial Court under Section 73 of Indian Evidence Act is exercise of excessive power. Undoubtedly, when the plaintiffs filed the suit for specific performance of agreement of sale, it is for them to prove both execution of the agreement of sale and passing of consideration thereunder.

16. To substantiate the contentions of the plaintiffs, the 2nd plaintiff who was brought on record subsequent to death of the 1st plaintiff was examined as PW.1. In his examination-in-chief, as usual, he testified about execution of agreement of sale and so far as passing of consideration is concerned, according to him, the defendant received Rs.1,10,000/- only towards advance of sale consideration and the 1st plaintiff paid Rs.1,10,000/- on four occasions which includes the debt due under the promissory note for Rs.31,000/- and interest accrued thereon at the rate of 12% p.a. and that the total amount due under the promissory note was Rs.46,000/-. It is further testified that the 1st plaintiff paid Rs.30,000/- on one occasion, Rs.20,000/- and Rs.14,000/- on two different occasions almost one and half months earlier to execution of Ex.A-8 dated 23.06.1982. The 2nd instalment was paid 15 days after payment of Rs.30,000/- and Rs.14,000/- was paid two or three days earlier to the execution of agreement of sale. Thus, in total, paid Rs.1,10,000/- and the 1st plaintiff returned the promissory note to the defendant. In the cross-examination of PW.1, learned counsel for the defendant could elicit that PW.1 had no account to show the details of amount to prove the amount paid to the defendant which he maintained in his shop and submit the accounts to income tax and sales tax authorities for assessment and he cannot file the income tax returns. The amount advanced to the defendant was mentioned in the accounts of the defendant so maintained in the business of 1st plaintiff. He further admitted in the 7th page, 5th line onwards, as follows:

“Now, I do not have any book, or any document to prove the advancement of the loan of Rs.31,000/- to the defendant. In the Income tax returns it is

mentioned that Rs.31,000/- loan was advanced to the defendant. Now, I cannot file the Income tax return. Even if time is granted to me to file the Income Tax returns, I cannot file it.”

17. This piece of evidence clearly goes to show that no amount was advanced to the defendant in the name of deceased 1st plaintiff and, if really, the amount was paid from the business, an entry would have been made in the accounts maintained in the business of PW.1 and would have shown in the Income Tax returns. Obviously for different reasons, PW.1 expressed his inability to produce the Income Tax returns and account books and evidently it is only to avoid proof of payment from the business account.

18. According to PW.1, initially, there was no written agreement and on the 3rd day of the said oral agreement, the deceased 1st plaintiff paid Rs.30,000/- to the defendant and the source of payment was amount realized from sale of gold and agricultural produce and 1st plaintiff sold 10 tulas of gold but he does not know to whom it was sold and did not produce any scrap of paper to substantiate the said contention. He asserted that they sold agricultural produce worth Rs.42,000/- and out of the same paid Rs.10,000/- towards 1st instalment, again on 05.06.1982 they paid Rs.20,000/- and on 18.06.1982 they paid Rs.14,000/- but no details were produced and not even pleaded in the plaint but for the first time these dates and details were disclosed in the cross-examination of PW.1 by the learned counsel for the defendant.

19. In the cross-examination at Page 8, PW.1 admitted about the disputes between the plaintiffs and defendant and that on 21.05.1982 at about 03.00 p.m. PW.1 and his father were arrested and taken to the police station in connection with one petty case. About one and half months after filing the petty case, the defendant has filed another criminal case and the 3rd case was filed one month after the 2nd case was filed and they were arrested and released on personal bond but whereas Ex.A-8 was allegedly executed on 23.06.1982. When there was a bitter enmity between the plaintiffs family and defendants family and filed criminal cases against one another within a span of three months and the 1st plaintiff and PW.1 were arrested on 21.05.1982 in connection with criminal cases and released on personal bond, the

question of executing the agreement of sale within one month from the date of arrest is improbable to the natural circumstances. It is evident from the admissions of PW.1, 3 criminal cases were filed within a span of 4 months from 21.05.1982 onwards. Therefore, filing of criminal complaints continued for 3 months after 21.05.1982, that means almost till the end of August and those cases were pending for two years. In those circumstances, the defendant coming forward to execute the agreement of sale cannot be accepted and this circumstance is a strong piece of evidence to disbelieve the plea of the plaintiffs about execution of Ex.A-8 on 23.06.1982. Further, even on 21.05.1982, the 1st plaintiff and PW.1 were called to the police station and enquired about commission of offence but within 2 days, execution of the alleged agreement of sale by the defendant cannot be accepted, while such bitter enmity is continuing.

20. The other strong circumstance is that PW.1 failed to produce the accounts relating to his business where entries were made regarding payment of advance of sale consideration of Rs.31,000/-. If really, such amount was advanced as loan from the business and obtained promissory note, a relevant entry would have been made in the accounts and it would have been shown in the Income Tax returns. Non production of Income Tax returns and account books is another strong circumstance to disbelieve execution of promissory note borrowing Rs.31,000/- and appropriating the same towards advance of sale consideration.

21. At this stage, I find that it is appropriate to advert to Ex.A-8 to find out how the sale consideration was paid. As per the recitals of Ex.A-8, at 2nd page, the defendant agreed to sell the property for Rs.1,30,000/- and that the defendant received Rs.1,10,000/- on instalment basis till the date of execution of Ex.A-8 and agreed to receive balance of sale consideration of Rs.20,000/- on or before 25.02.1983 and execute a registered sale deed but Ex.A-8 is totally silent as to the dates of payment of amount as contended by the 1st plaintiff. In the absence of any details both in the plaint and Ex.A-8, it is difficult to believe the alleged payment of advance of sale consideration of Rs.1,10,000/-. Even in the registered correspondence between the 1st plaintiff and defendant, the 1st plaintiff did not disclose the details of payment. In

those circumstances, it is difficult to believe the evidence of PW.1 with regard to passing of consideration and execution of Ex.A-8.

22. The plaintiffs also examined PWs.2 and 3, who are the scribe and attestors respectively. PW.2 testified about execution of Ex.A-8 in favour of 1st plaintiff and the same was scribed by him, attested by Y. China Gopaiah and Patel Venkat Rama Narsimha Reddy and he could not disclose the value of sale consideration made in Ex.A-8 but on verifying the document Ex.A-8, he stated that Rs.1,10,000/- said to have been received by the defendant which was mentioned in Ex.A-13, but as on the date of execution of Ex.A-13 and that Janakamma took the receipts from Indra Reddy, the husband of 1st plaintiff on the same date and after hearing the particulars from the deceased 1st plaintiff and husband of the defendant, he prepared the draft agreement and thereafter PW.2 prepared Ex.A-13. In the cross-examination, PW.2 admitted that he is resident of Berlapenta Bazar, studied 7th class and by the time he went to the shop of the 1st plaintiff one Patel Venkata Rama Narasimha Reddy was present and Rama Narasimha Reddy was staying in the shop of the 1st plaintiff and had casual discussion. Then PW.2 advised the 1st plaintiff to call third party to attest the document and further testified that sons, daughters and sons-in-law of the defendant were present when Ex.A-13 was written and it was not mentioned in Ex.A-13 that the 1st plaintiff has returned papers to the defendant. In the evidence of PW.2, further it was suggested to the witness that Exs.A-8 and A-13 were not executed and they are forged documents with the assistance of the attestors but denied by him.

23. Similarly, PW.3 testified in the same lines, however, he could not identify the person who executed Ex.A-8 but he was under the impression that who executed Ex.A-8 was the defendant Janakamma and he believed that the person who signed on Ex.A-8 is the defendant. In his cross-examination at Page 1, he further admitted that he does not know anything about the sale consideration and no amount was paid in his presence on the date of alleged execution of Ex.A-8 but by the date of his examination, O.S. No.636 of 1982 was pending. Therefore, evidence of PW.3 is of no use and the evidence of PWs.2 and 3 is silent regarding passing of consideration

before execution of Ex.A-8; that apart, it is not the case of PW.1 that he was present at the time when the amount was paid on different occasions but his father allegedly paid the amount making necessary entries in the accounts maintained in the business. In such case, much credence cannot be attached to the testimony of PW.1 regarding passing of consideration and so also the evidence of PWs.2 and 3, as their evidence do not inspire confidence of this Court. Strangely, by the date of examination of PW.1 on 04.03.1993, he was aged 32 years but the promissory note was allegedly obtained in the year 1977, as such by the date of execution of the promissory note, he might be aged around 16 years and not a person of participating in the family affairs. Therefore, the evidence of PW.1 regarding appropriating consideration passed under the promissory note dated 14.11.1977, towards advance of sale consideration, is not believable.

24. The defendant also examined DWs.1 to 3 and DW.1 is the defendant, who asserted about sale of two shops to different persons but the 1st plaintiff was in possession of two shops only and vacated the shops bearing door Nos.3-3-2/2, 3-3-2/3 and that she specifically denied about execution of Exs.A-8 and A-13 and apart from that, she asserted that she filed O.S. No.636 of 1982 for eviction of the 1st plaintiff herein from the shops in her possession. In the cross-examination of DW.1, nothing could be elicited by the plaintiffs counsel to prove passing of consideration under Ex.A-8, except suggesting that the 1st plaintiff purchased 4 shops for Rs.1,30,000/- and passing of consideration of Rs.1,10,000/- etc., and got denial of it.

25. DW.2 is husband of DW.1, whose evidence is consistent with regard to the plea of the defendant and DW.3 is the person who can identify the signature of DW.1 and specifically testified that the signature appearing on Exs.A-8 and A-13 is not the signature of defendant but his evidence is not much relevant. In the evidence of defendant, they marked Exs.B-1, B-1/1 and B-1/2 *i.e.*, part of deposition of P. Venkata Rama Narasimha Reddy in O.S. No.636 of 1982. Ex.B-1 is the certified copy of deposition, B-1/1 is an admission at Page 3 of Ex.B-1 where the said Venkata Rama Narasimha Reddy stated that except 5 or 6 putties of paddy and 5 to 6 putties of groundnut DW.1 does not get any other agricultural produce and that he never saw the area where the property is situated. Similarly, Ex.B-1/2 shows that 1st

defendant wrote directly on the stamp paper and no draft was prepared by him. After Ex.B-1 was written, DW.1 did not hand over the papers to pay any amount to PWs.1 and 2. If really, Ex.A-8 was written by DW.1 in the said suit *i.e.*, the 1st plaintiff herein, the document referred by Venkata Rama Narasimha Reddy in O.S. No.636 of 1982 is different document than the document produced before the trial Court and marked as Ex.A-8. Thus, the evidence of plaintiffs is totally discrepant not supported by any material and appears to have been invented for the purpose of filing the present suit.

26. In view of the strange circumstances and improbability in the evidence pointed out by me in the earlier paragraphs, it is difficult to believe the evidence adduced by the plaintiffs to accept that Ex.A-8 was executed by the defendant, agreeing to sell the schedule property and that the plaintiffs miserably failed to establish passing of advance sale consideration under Ex.A-8. Though, a petition was filed in I.A. No.230 of 1990 in O.S. No.30 of 1985 to send the disputed signatures and admitted signatures of defendant to hand writing expert, the same was dismissed by the trial Court on 27.07.1994. The plaintiffs did not prefer any Revision challenging the finding recorded by the trial Court in I.A. No.230 of 1990. Therefore, in the absence of any expert evidence, in view of the circumstances pointed by me in the earlier paragraphs, the trial Court had no option except to compare the admitted signatures with the disputed signatures of defendant; such power has to be exercised sparingly. Therefore, exercise of power under Section 73 of the Indian Evidence Act by the trial Court cannot be found fault with, as there is no other evidence of an expert and the evidence of PWs.1 to 3 is totally discrepant and not believable. Hence, exercise of power under Section 73 of Indian Evidence Act by the trial Court is not an illegality to *set-aside* the judgment under challenge.

27. On close analysis of the entire material available on record, I find no illegality in the findings of the trial Court warranting interference of this Court and the plaintiffs miserably failed to establish execution of agreement of sale, Ex.A-8, by the defendant and passing of advance of sale consideration thereunder.

28. Though the learned counsel for the defendant-respondent placed reliance on the decisions referred *supra*, the law declared therein is not in quarrel and needs no

consideration for deciding the *lis* before me.

29. Yet, the learned counsel for the defendant-respondent contended that this question was already decided in a separate suit filed by the defendant for eviction of the plaintiffs herein in O.S. No.636 of 1982 *vide* judgment of District Munsif Court, Suryapet, dated 08.03.1992 and confirmed by this Court in A.S. No.2 of 1990, dated 24.02.1985 and in S.A. No.572 of 1995, wherein the agreement set-up by the 1st plaintiff herein was totally disbelieved and ordered eviction of the plaintiff. When once, the plea of the 1st plaintiff was disbelieved in the earlier suit, she is estopped to contend that she is purchaser of the property under Ex.A-8. On this ground also the plaintiffs are disentitled to claim the relief of specific performance of agreement of sale. Accordingly, the point is answered in favour of the defendant and against the plaintiffs.

30. **POINT Nos.2 and 3:** As the plaintiffs failed to establish the very execution of agreement of sale, Ex.A-8, and passing of advance sale consideration thereunder the question of plaintiffs entitlement to claim the relief of specific performance of agreement of sale does not arise.

31. According to Order XX Rule 5 of C.P.C. it is the duty of the Court to record finding on each and every issue but, if a finding on one issue is sufficient for decision in any Suit or Appeal, the Court need not record separate finding on the other issues. Hence, in view of the same, detailed and elaborate discussion on these points is avoided in this Appeal. Hence, these issues are not answered.

32. In view of my foregoing discussion and finding on Point No.1, the Appeal Suit is not maintainable and deserves to be dismissed.

In the result, the Appeal Suit is dismissed confirming the decree and judgment dated 24.02.1995, passed in Original Suit No.30 of 1985 by the learned Subordinate Judge at Suryapet.

In consequence, miscellaneous petitions, if any, pending in this Appeal, shall stand dismissed. No order as to costs.

M. SATYANARAYANA MURTHY, J

Date: 30-06-2015.

Dsh

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

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Date. 30-06-2015

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