

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

SECOND APPEAL No.205 of 1996

JUDGMENT :

The plaintiff in O.S.No.91 of 1980 on the file of Senior Civil Judge, Rajahmundry (Subordinate Judge), who is the appellant herein, filed the suit for specific performance of the contract for sale dated 25.11.1965 and succeeded before the trial Court by judgment and decree dated 29.10.1991, aggrieved by the appeal reversal judgment and decree dated 29.10.1991 in A.S.No.127 of 1991 passed by the

II Additional District Judge, East Godavari at Rajahmundry, maintained the present second appeal, against the sole defendant, since by pending appeal defendant's legal representatives, wife and son are brought on record as respondent Nos.2 and 3, since representing by their G.P.A. holder one Srinivas vide order dated 17.12.2008 in C.M.P.No.17476 of 2001 as per the original appeal record endorsement of the Registry.

2. The second appeal involving the question of law raised from the grounds and admission of the same there from in nut shell are that the finding of the lower appellate court reversing the trial Court's decree and judgment from the admission of Ex.A.1-sale agreement with endorsements, as true, for holding the same is sham and nominal including by holding the Land Reforms Tribunal

disbelieved Ex.A.1 agreement as set up and it was never intended to act upon in the absence of other documentary evidence to support said finding is perverse and unsustainable. The question of law involved in this second appeal is thus on the legal effect of the Ex.A.1-sale agreement as true or nominal and sham and not intended to act upon from reconsideration of the material evidence on record in respect of the contradictory findings by the two Courts below. In fact the three Judge Bench of the Apex Court in **Kulwant Kaur v. Gurdial Singh Mann (dead) by LRs**^[1] observed that perversity of the finding raised itself is a substantial question of law worth for adjudication in second appeal as per the Section 100 C.P.C.

3. Heard both sides and perused the material on record.

4. The factual background in deciding the question of law supra from hearing at length of both sides to answer is :

4(A). The plaintiff Smt.Madineedi Anitha, w/o. Doraprasad of Kotikesavaram Village of Rajahmundry Rural/Mandal/Taluq claiming in the suit that during her minority represented by her father as guardian entered into an agreement for sale dated 25.11.1965 with the defendant-Sri Adapa Subrahmanyam R/o.Rajavaram Village, Rajahmundry Rural/Mandal/Taluq in relation to the

plaint schedule property of full extent of Ac.4.35 cents dry land in Sy.No.61/1 of Kotikesavaram Village, Korukonda Taluq and Sub Registrar, Kotikesavaram Village of East Godavari District, for Rs.13,000/- by payment of Rs.3,000/- as advance by fixing six months time for payment of balance, later made part payments of Rs.2,000/- on 01.05.1966, Rs.1,000/- on 06.06.1967, Rs.6,000/- on 20.10.1968, Rs.500/- on 01.03.1971 and Rs.500/- on 10.01.1973 and thereby paid entire sale consideration by then was put in possession by the defendant of the schedule property on 20.10.1968 and the defendant having received the entire consideration he could not execute the register sale deed because the subject land is covered by the agricultural land ceiling declaration, filed by him under the Andhra Pradesh Land Reforms Ceiling on Agricultural Holdings Act (for short, 'the Act') before the Tribunal and the transaction was not accepted by the Tribunal as genuine and by saying he would show the land pursuant to the decision of Land Reforms Tribunal, as excess land for surrender to the Government though he is estopped from disputing the plaintiff's right to enjoy the land after obtaining registered sale deed and the plaintiff even ready and willing to perform her part of the contract which the defendant cannot deny.

4(B). The written statement filed by the defendant was

with the contest of he never intended to sell away the schedule property to the plaintiff, it is after defendant's father's death, defendant and his mother shifted to Rajavaram from Kesavaram and plaintiff's father, who is the junior paternal uncle of the defendant, was looking after the immovable property affairs of the defendant also. While so, plaintiff's father died in the year, 1973 and the maternal uncle of the plaintiff by name Ketineedi Visweswara Rao assumed management of all the properties and at the instance of said K. Visweswara Rao, the defendant mentioned in the land ceiling declaration filed before the Land Reforms Tribunal of his schedule property was sold to the plaintiff as said K. Visweswara Rao was looking after the land ceiling affairs and that the defendant only a signatory on the papers whatever and whenever asked to sign by said K. Visweswara Rao and it is the said K. Visweswara Rao, who procured the stamp papers for the suit agreement with suitable recitals and made the defendant to sign on the agreement and on the endorsements, which are not to act upon and with no consideration and defendant never delivered possession of the property to the plaintiff and still the defendant is in possession in his own right and plaintiff absolutely has no right or interest therein and the suit sale agreement is only a nominal and sham one and never acted upon, however, taking advantage of the existence of the agreement, it is

K. Visweswara Rao through plaintiff got filed the suit even the Land Reforms Tribunal held that the agreement was nominal and was intended to avoid the land ceiling laws and not genuine and the suit claim is thereby liable to be dismissed including from barred by law.

4(C). The trial Court from the pleadings framed the four issues as follows:

1. Whether the suit agreement of sale is sham and nominal and whether it was not acted upon?
2. Whether the defendant is not estopped to raise such a plea?
3. Whether the relief for specific performance is barred by time?
4. To what relief.

4(D). From the pleadings and in support of the controversy to be resolved by the issues supra in the course of trial, the plaintiff was examined as PW.1 and cause examined five more witnesses viz., Mandri Jaggarao, Manne Ramachandra Rao, Mulagada Tirupathirayudu, Nagubandi Veerabhadra Rao and N.Vyagreswara Rao as PWs.2 to 6 and relied upon Exs.A.1 to A.7 viz., Sale agreement executed by defendant in favour of plaintiff, payment endorsements on Ex.A-1 referred in the plaint pleadings supra covered by Exs.A.2 to A.6 and one land revenue receipt for the first time dated 09.08.1991 as Ex.A.7. On behalf of the defendant, he was examined as DW.1 and placed

reliance by Exs.B.1 to B.15. Ex.B.1 is the certified copy of No.14 account for fasli, 1383, Ex.B.2 is C.C. of No.14 account for fasli 1384, Ex.B.3 is C.C. of No.14 account for fasli 1385, Ex.B.4 is the tax receipt for fasli 1389, Ex.B.5 is the tax receipt for fasli 1390, Ex.B.6 is the tax receipt of fasli 1391 and 1392, Ex.B.7 is C.C. of No.2 adangal 1378, Ex.B.8 is the C.C. of No.2 adangal 1379, Ex.B.9 is the C.C. of No.2 adangal 1380, Ex.B.10 is the C.C. of No.2 adangal 1381, Ex.B.11 is the C.C. of No.2 adangal for fasli 1382, Ex.B.12 is the C.C. of No.2 adangal for fasli 1384, Ex.B.13 is the C.C. of No.2 adangal for fasli 1385, Ex.B.14 is the certified copy of judgment in L.R.A.Nos.175 of 1985 and 197 of 1985 passed by the Land Reforms Appellate Tribunal, Rajahmundry dated 25.10.1988 and Ex.B.15 is the certified copy of judgment in the Revision Petition No.1557 of 1989 passed by the High Court of Andhra Pradesh dated 06.07.1990.

5. The finding of the trial Court (Subordinate Judge, Rajahmundry) from said evidence on record in answering the issues after hearing both sides is that, by the time of agreement dated 25.11.1965 executed for a consideration of Rs.13,000/-, the plaintiff was minor and unmarried by then as her marriage was later performed in the year, 1975 and Rs.3,000/- paid at the time of agreement as mentioned in Ex.A.1 and from the subsequent payment endorsements as referred in Exs.A.2 to A.6 are showing

payment of full consideration and the plaintiff was put in possession of the property as per the claim on 20.10.1968. The claim of the plaintiff is that the defendant was postponing saying the matter covered by the Land Reform proceedings and later from the same held by the Land Reforms Tribunal as sham and nominal in not recognizing that of trying to avoid, which made the plaintiff to file the suit. The contest of the defendant is that the plaintiff's maternal uncle, K. Visweswara Rao, used to deal with after death of plaintiff's father including the Land Reforms proceedings of the defendant in cause creating the agreement for sale with consultation of the advocate in using the stamp purchased in the name of advocate's clerk wayback in scribing by another clerk of the advocate to answer concerned, the Article 54 of the Limitation Act on the aspect of the limitation from the agreement fixed six months time to perform; once the subsequent endorsements made by the defendant showing payments received, the limitation under Article 54 of the Limitation Act of three years after expiry of six months from the agreement that too from the Land Reform proceedings pending to perform if otherwise for no refusal to the performance to commence limitation of three years therefrom for no suit notice by the plaintiff before filing the suit, it cannot be said agreement claim is barred by limitation. The crux to decide from the evidence on record

is, the defendant not disputing his signatures on the agreement and the payment endorsements covered by Exs.A.2 to A.6, but for contending nominal and never intended to act upon and for that except the defendant as DW.1 with reference to Exs.B.1 to B.13 revenue records showing the property standing in his name by payment of taxes, did not examine any scribe or attestor of Ex.A.1 agreement or Exs.A.2 to A.6-payment endorsements. The defendant's father died during 1950-1955 and it is the claim that thereafter, the plaintiff's father by name Adapa Suryanarayana till his death in the year, 1973 was looking after the defendant's property affairs and even later it was the plaintiff's maternal uncle K. Visweswara Rao that was looking after including in submission of the land ceiling declaration under the Land Reform proceedings in the year, 1975 through the Advocate by name Sri Madduri Nagabhusana Rao. It is in saying, in that connection the agreement is created by him nominally so as to claim exemption of the extent under the agreement. The trial Court observed the payment endorsements are scribed by one of the villagers in different pen with different inks though claimed as per the legal advice with no payment but for nominal for said purpose of claiming exemption, there is no record filed showing the person in whose name the stamp lies is clerk of Advocate Sri M. Nagabushana Rao or the scribe is also clerk of said

advocate Sri M. Nagabushana Rao and said M.Nagabushana Rao was advocate for defendant in the Land Reform proceedings. PW.6 is the scribe of Ex.A.1, who is no doubt clerk of said M.Nagabushana Rao, however said M.Nagabushana Rao was Government Pleader by then. For saying M.Nagabushana Rao got filed through some other advocate, PW.6 denied said suggestion and defendant could not prove the same by any better evidence. DW.1's evidence in the cross-examination is that there is excess land of Ac.15.00 cents beyond the ceiling limit of the defendant and the suit land is for Ac.4.35 cents and if at all there is legal advice to believe, it must be for entire Ac.15.00 cents of land but not for Ac.4.35 cents and there is no enmity even to PWs.2 to 5 with the defendant to not to rely on their evidence of whom PW.3 is one of the attestors of Ex.A.1, PW.4 is the attestor of Ex.A.6. PW.5 is the scribe of Exs.A.2, A.4 and A.6 and undisputedly DW.1 pleaded before Land Reforms Tribunal by filing the sale agreement as genuine in claiming exemption and they cannot claim as nominal and not acted upon and thereby he is estopped under law to turn round against it. The plaintiff thus from the evidence on record of PWs.1 to 6 proved the agreement and the payment endorsements in decreeing the suit for specific performance with costs in directing the defendant to execute sale deed within one month from the date of

decree and judgment dated 29.10.1991.

6. Before the lower Appellate Court the contentions of the unsuccessful defendant in impugning the trial Court's decree and judgment are that the trial Court failed to appreciate the factum of the sale agreement is a sham and nominal and never acted upon and there is no possession and there is no estoppel that is applicable under law. The plaintiff as respondent in the appeal supported the trial Court's finding in decreeing the suit. The lower appellate Court there from observed that the so-called sale agreement dated 25.11.1965 shown executed on the stamp purchased way back dated 02.02.1959 in the name of one Atreyapurapu Ram Rao, no other than the clerk of advocate Sri M. Nagabushana Rao, and the scribe was another clerk of the said advocate and the contest is those endorsements in agreement for sale were cause prepared in consultation with the advocate by the plaintiff's maternal uncle K. Visweswara Rao and in cause filing on behalf of the defendant for claiming exemption of the property covered by the agreement from the ceiling limit, out of the close relationship between the plaintiff and defendant, no other than the cousins. Further contest is that there was no real transaction to sell the property, much less, with any need, neither the agreement nor the endorsements are supported by consideration; for those are not intended to

sell and not acted upon, but for to execute for the purpose of claiming exemption of the extent in the Land Reform proceedings and beyond that there was no any need to execute the same and thus it cannot be enforced. It was the contest of plaintiff's father was looking after the properties after the death of the defendant's father, however the property stands in the name of the defendant by payment of taxes. The agreement executed was in the year 1965, the payment endorsements were made till 1973 and there was no reason even to obtain sale deed by the alleged date of possession on 20.10.1968, with only Rs.1,000/- remained, if at all true for the plaintiff to enforce the agreement with no disability to enforce as presenting through guardian in obtaining the agreement if true. There is no notice even given at any point of time, much less before filing of suit by plaintiff against the defendant. The factum of some of the office receipts shown of payment by the father of the plaintiff supports the contentions of the defendant of plaintiff's father earlier managing with possession till his death in 1973 or so after the death of defendant's father during 1950's. The lower appellate Court also observed impugning the trial Court finding as not correct of the alleged payments for the property standing in the name of the defendant for no sale deed obtained, the taxes paid in the name of the defendant by the plaintiff even cannot be believed as the

tax receipts are produced by the defendant and not by the plaintiff. Undisputedly, the said sale agreement was filed before the Land Reforms Tribunal showing in the name of the plaintiff in claiming exemption of the land and this is the only extent of the land in the village Kotikesavaram the defendant got for other lands are at different villages and Kotikesavaram village is the place of the plaintiff and defendant originally since their parents and defendant later shifted to Rajahmundry for the probability in showing the same under the agreement. It is also observed that the Land Reforms Tribunal rightly disbelieved the agreement as not genuine and created and the High Court of Andhra Pradesh also confirmed the same in the Land Reform proceedings of the finding of the Tribunal by Ex.B.14 dated 25.10.1988 and Ex.B.15 dated 06.07.1990. The suit is filed in the year 1980. The last payment under Ex.A.6 was dated 10.0.1973 of Rs.500/- and the other earlier payment of another Rs.500/- was on 01.03.1971 after substantial three payments during 1966-1968 under Exs.A.2 to A.4, if genuine there is no meaning not to enforce after 1968 till 1980. The lower appellate Court further observed that the property cultivating by the plaintiff through PW.2 is proved false, as from the evidence of PW.2, who is no other than the plaintiff's brother-in-law and also Illatum son-in-law, further there are any number of infirmities in the evidence of PWs.1 to 6 on

proper analysis and appreciation in the factual background. The relationship between the parties not in dispute for plaintiff's father and defendant's father are own brothers and they are hailing from Kotikesavaram and there is no other property other than the plaint schedule of the defendant in the village Kotikesavaram, where the plaintiff resides and PW.1-plaintiff deposed that as on the date of agreement in the year 1965 she was hardly 13-14 years, which if not correct, for she was below 15 years, as she deposed as PW.1 on 19.12.1988 shown her age as 28 years and the evidence of plaintiff as if she got personal knowledge of everything at the stage is highly improbable to give any credence to her oral versions with reference to Exs.A.1 to A.6 including by the Ex.A.6 dated 10.01.1973, she was hardly 11-12 years. DW.1 in his deposition stated that his age is 44 years to say hardly he was 17 years by the date of Ex.A.1 sale agreement (a minor). PW.4 admitted that by the date of Ex.A.6 i.e., 10.01.1973 defendant was aged about 23 or 24 years to say by the year, 1965 he was aged between 15-17 years only a minor. PW.3 also admitted in his cross-examination that by the date of Ex.A.1 the age of the defendant was 16 years or 17 years only and he does not remember who acted on behalf of the defendant minor by then as guardian. PW.1 in her cross-examination regarding custody of Ex.A.1 and its filing in the suit

deposes that, she never parted with the Ex.A.1 at any time before filing into the Court in the suit and she has not filed the same in any other proceedings other than the suit and she had not filed the same before the Land Reforms Tribunal and she does not know whether her husband filed it or not and she did not take delivery of Ex.A.1 from the Land Reforms Authority or other Court, which clearly proves the document was in possession of the defendant in its filing before the Land Reforms Tribunal to get over from surplus land serving to the extent possible in creating and filing the nominal sale agreement with endorsements. The lower appellate Court observed there from that the trial Court misread the evidence and proceeded under misconception in saying from the evidence showing the defendant filed Ex.A.1 agreement, which contains endorsements Exs.A.2 to A.6 before the Land Reforms Tribunal in saying the defendant could not have filed before the Land Reforms Tribunal and in fact it was taken return by the Advocate of DW.1 from the Land Reforms Tribunal that also not accepted by the plaintiff and that was not properly considered by the trial Court, which is one of the crucial aspects regarding the custody of Ex.A.1 document, Exs.A.2 to A.6 endorsements and what PW.1 deposed of the agreement as if in her custody and she never parted with and she did not file before any Court or Tribunal earlier and not received from the Court or

Tribunal, thereby proved false that was mis-considered by the trial Court. Ex.A.1 itself contains the endorsements showing it was filed before the Land Reforms Tribunal in the application to receive in the year 1977 in L.R.A.No.378 of 1976 by Sri M.S.S. Rao (Sri M.Siva Subba Rao), who is the advocate, no other than the son of the advocate Sri M.Nagabushan Rao, was by then Government Pleader. It was observed therefrom that the defendant created the agreement in the year 1977 and cause filed by Sri M. Nagabushana Rao, through another advocate engaged in the Land Reform proceedings to claim exemption of the land by showing as if real agreement and that also substantiate the factum of the agreement was created on the stamp purchased more than seven years before in the name of the clerk of Sri M.Nagabushana Rao and the scribe is also another clerk of Sri M. Nagabushana Rao and even there is no involvement of Sri M. Nagabushana Rao, atleast there is advice for Sri M.Siva Subba Rao for the agreement to be created by the defendant in the name of the plaintiff, his own cousin, no other than the junior paternal uncle's daughter by then minor and the village where the property situated by then through the advice of her maternal uncle, who was well wisher for both, and looking after the properties. The lower appellate Court also observed in this regard from that of PW.1 claimed her father looked after the affairs and made the payments

covered by Exs.A.2 to A.6 endorsements from the other version even to appreciate. Coming to the evidence of PWs.2 to 6 in this regard what is discussed supra, the fact remains, plaintiff's father was managing even the properties of the defendant including the sale agreement property till his death in the year 1973 as junior paternal uncle of the defendant and if really he made the payments, there is nothing to prevent to obtain sale deed for most of the payment except Rs.1,000/- remained even by the year 1968 covered by Ex.A.4 dated 20.10.1968 thereafter atleast in the lifetime of her father till 1973 for nothing to wait as Land Reform proceedings not even commenced by then as also one of the other strong circumstances apart from the genuineness of the agreement, the very agreement is belying from the stamp not in the name of the plaintiff or her father, but for in the name of third party that too old stamp of more than seven years by then (in the name of clerk of defendant's advocate) as discussed supra. The lower appellate Court also observed in taking judicial notice or atleast an inference that for the Land Reform proceedings, landlords seeking advice and creating agreements to several properties from excess holding with anti date agreements and there is no exception from the plaintiff or atleast from her husband leave about other witnesses among PWs.1 to 6 as to why the old stamp of the year 1959 in the name

of the Advocate's clerk of the defendant was in use if it is a genuine and true agreement entered by plaintiff through her father being minor in the year 1965 for nobody's case of stamps are available in the year 1965.

7. From the above, it is also important to note there is nothing from the plaintiff to explain how the person in whose name it is purchased in the year 1959 is acquainted to plaintiff or her father to get the same and that too he was not even created but for another Advocate's clerk of defendant and as observed by the lower Court that also probablises the defence of the defendant and the agreement was sham and nominal and only created for the Land Reform's case purpose to surrender of excess land by showing in the name of plaintiff and his cousin for the only land in that village though the excess is nearly Ac.15.00 cents including the property of Ac.4.35 cents as other properties are at other villages. In fact, a perusal of the endorsements under Exs.A.3 and A.4 in showing what the trial Court observed is not correct of Adapa Subrahmanyam in own hand of defendant for Exs.A.3 and A.4 are scribed by one Adapa Subrahmanyam and that Adapa Subrahmanyam is different to the defendant as he was scribe for Ex.A.3 and attesor for Ex.A.4 which contains the signature of the defendant A. Subramanyam as executant and the executant cannot be attesor for Ex.A.4 that also rightly

pointed out by the lower appellate Court in saying had it been by the defendant himself scribe of Ex.A.3 he could have mentioned as 'dasturi swahastam' i.e., scribed by himself and not with signature as Adapa Subrahmanyam, scribe, and the trial Court there from also misread the evidence and from the factual scenario in coming to the wrong conclusion as pointed out by the lower appellate Court. PW.2, no other than husband of PW.1, deposed regarding Exs.A.3 and A.4 also not correct and while saying at one breadth of his father-in-law i.e., plaintiff's father paid Rs.1,000/- for the endorsement under Ex.A.3, which he attested and in the cross-examination deposed he does not know where Ex.A.3 endorsement was prepared and he simply attested later on the request of his father-in-law to say he is not witness to Ex.A.3 transaction of any payment of consideration or execution and attestation by the other person and simply accommodated to subscribe his signature that also belies the plaintiff's case regarding the payment endorsements is a false plea as also observed by the lower appellate Court in this regard and to that extent. The lower appellate Court therefrom even rightly observed that, what PW.2 deposed of as if he is attestor to the transaction proved false from his admission for he did not witness executant putting signature or other attestor signing on Ex.A.3 endorsement to say he has no personal knowledge as only attestor

covered for Ex.A.3 and it falsifies his evidence that was also misread by the trial Court as if of with own hand of the defendant and proved; Thus said conclusion of the trial Court is incorrect and untenable. The lower appellate Court rightly held there from that also substantiates the defence of the defendant of Ex.A.1 agreement for sale, Exs.A.2 to A.6 endorsements are only nominal and the agreement is a sham and nominal and never intended to act upon to create any right in favour of the plaintiff to enforce. However, PW.4-Mulagada Tirupathirayudu, attester of Ex.A.6 says that Rs.500/- ie., last payment as if present and saw the defendant signing on Ex.A.6 and defendant also signed putting signature as attestee, which is proved false for no executant can be an attester and in his cross-examination that of the chief examination proved false as PW.4 admitted nothing was written in his presence under Ex.A.6, but for Rs.500/- paid. If what he deposed of that is only endorsement not true from of the Ex.A.6 contents of there is State Government ban for registration of agreement and the sale agreement can be registered by executing of sale deed only after lift of the ban by State to say nothing taken place before PW.4 and he is an accommodated witness not speaking truth and not a credible person that also probablises the defence of the defendant as observed by the lower appellate Court. PW.4 deposed in the cross-examination further of Exs.A.4

to A.6 were executed on one and the same date, he does not know for such a suggestion he did not deny categorically and as rightly observed by the lower appellate Court, there is nothing for the trial Court to ignore the deposition of PW.4 as of no material importance. Even coming to PW.5 scribe by Exs.A.2, A.4 and A.6-payment endorsements, he categorically deposed of nothing taken place in his presence regarding obtaining of sale deed and regarding possession, whereas Ex.A.4 alleged that possession of the property was delivered under it and Ex.A.6 speaks to obtain sale deed there is a ban from Government to be lifted. The lower appellate Court there from by total scanning of the evidence on record by re-appreciation of facts in its findings arrived a right conclusion in support of the contest by the defendant of the suit sale agreement is a nominal and sham one and never intended to act upon, much less, created any right in favour of the plaintiff to enforce and she did not come with clean hands and her claim is not true and correct and her plea is false.

8. Thus the defendant even was minor by the date of agreement i.e., 25.11.1965, he cannot execute the agreement for sale for not shown represented by guardian and if plaintiff hardly aged 5 years to 13 years only from her evidence as discussed supra and it is her father no other than the junior paternal uncle to the defendant for

the father of the defendant is died in 1950's, he was looking after and managing the properties by looking after the affairs. Out of the tax receipts some of the tax receipts in the name of the defendant are shown paid by the plaintiff's father as his junior paternal uncle. It substantiates the defence that he was in management of the property and its affairs and later the plaintiff's uncle. If really possession is delivered to the plaintiff as contended in the endorsement Ex.A.4 dated 20.10.1968, atleast thereafter taxes could have been paid by the plaintiff even in the name of defendant for the property not transferred and she could have been filed the same and but for Ex.A.7 a stray tax receipt dated 09.08.1999, there is nothing filed by her to show she is in possession or paid any taxes for the land. On the contrary, the revenue record covered by Exs.B.1 to B.13 is categorically proving the properties is standing in the name of the defendant and he has been paying the taxes and even the revenue adangal is showing the defendant's possession and personal cultivation and the land is not in the possession of plaintiff much less through her husband or uncle. The fact that Ex.A.1 sale agreement with Exs.A.2 to A.6 endorsements for the first time filed that too by the defendant in the Land Reforms Tribunal as discussed supra only in the year, 1977 shows the same also thereafter received back by the defendant through his

Advocate M.Siva Subba Rao, no other than the son of the advocate Sri M.Nagabushana Rao and the stamp purchased in the name of the clerk of the said advocate way back in the year, 1959 in making use of in creating the agreement with anti date in 1977 as if in the year 1965 and there is no proof regarding the means and payments for the endorsements Exs.A.2 to A.4 during 1966-68 for most of the sale consideration and if after Ex.A.4 if true dated 20.10.1968 consideration allegedly paid and only Rs.1,000/- remained by then is a paltry sum and possession alleged taken, there is no meaning for not enforcing the sale agreement if true and not nominal. Further, there is no readiness and willingness and there is no notice of demand even and if really it is the agreement acted upon obtained by the plaintiff and in her possession the property with alleged payments under Exs.A.2 to A.4 supra if true, leave about subsequent amounts of the years 1971 and 1973 under Exs.A.5 and A.6 when the same were filed by defendant in the year, 1977 in the Land Reforms Tribunal which disbelieved the said agreement by holding as sham and nominal and created to get over from the excess land surrendering, that also confirmed by the High Court's revision order covered by Exs.B.14 and B.15, the clear findings once the Land Reforms Tribunal held that Ex.A.1 is a nominal one and the payment endorsements are also sham and nominal to

get over the land reforms proceedings excess land surrender if possible, there is nothing for the plaintiff to sleepover. The suit claim of the plaintiff is thus unsustainable. The trial Court in fact went wrong in decreeing the suit. There is no prima facie material of payment of the amounts for an alternative relief, much less with prayer and any proof of the payments where under, as discussed supra. The lower appellate Court has thus right in reversing the trial Court's decree and judgment, in setting aside the trial Court's judgment by allowing the appeal dismissing the suit claim. From the question of law formulated in deciding the second appeal there is nothing to sit against the lower appellate Court's judgment much less to concur any findings of the trial Court as the sale agreement and the endorsements are sham and nominal. There is no estoppel that applies against the defendant from his filing of the sale agreement in the land reforms tribunal proceedings as the very purpose of its existence is to so serve to claim exemption. The law in this regard is well settled by the three Judge Bench expression of the Apex Court in **Mrs. Rukhmabai v. Lala Laxminarayana**^[2] at para-19 by relying upon the Privy Council's expressions **Alluri Venkatapathi Raju v. Danthuluri Venkata Narasimha Raju**^[3] that, it sometimes happens that persons make statements which

serve their purpose or proceed upon ignorance of the true position; and there it is not their statements, but their relations with the estate, which should be taken into consideration in determining the issue. Further, the Apex Court in **Provident Investment Co. Ltd. v.**

Commissioner of I.I. ^[4] at para-3 observed that the Court has not confined merely to look into the form of the transaction between the parties, but the true legal position that arise out of it by looking into the surrounding circumstances and facts. The expression in **Garre**

Mallikharjuna Rao (dead) by L.Rs. and others v.

Nalabothu Punniiah ^[5], is also supports to the conclusion in holding in a suit for specific performance of sale of immovable property, agreement alleged by proposed vendor is untrue document and plaintiff's pleas mutually inconsistent stipulating from the agreement four months time for performance to obtain sale deed and it was contra to the evidence of any stipulation to obtain sale deed after expiry of oral lease and stamp papers purchased 11 months prior to the agreement not showing if in whose name and who purchased for showing in the name of plaintiff even and the attesting witnesses evidence show not knowing the contents thereof attested for discretion of jurisdiction to grant specific performance cannot be exercised, such exercise cannot be justified to sustain.

Having regard to the above, there are no merits in the second appeal contentions of the plaintiff, to interfere with the lower appellate Court's reversal judgment of trial Court's decree for specific performance. Accordingly, the point for consideration is answered.

9. Accordingly and in the result, the second appeal is dismissed.

10. Miscellaneous petitions pending, if any, shall stand dismissed. No costs.

Dr. B. SIVA SANKARA RAO, J

Dt:03.06.2016.

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[\[1\]](#) AIR 2001 SC 1273

[\[2\]](#) AIR 1960 SC 335

[\[3\]](#) AIR 1936 PC 264

[\[4\]](#) AIR 1954 Bom.95 = ILR 1953 Bom. 1281

[\[5\]](#) (2013) 4 SCC 546