

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

APPEAL SUIT No. 2484 OF 1996

JUDGMENT:

The unsuccessful plaintiff in Original Suit No.60 of 1981 on the file of the Court of Subordinate Judge, Madanapalle, Chittoor District (for short, 'the trial Court'), preferred this Appeal against the decree and judgment dated 06.09.1996; whereunder, the suit filed by the plaintiff, for specific performance of agreement of sale dated 31.01.1979 including delivery of possession and damages, was dismissed.

2. During the pendency of the Appeal, 7th defendant-respondent died and respondents 8 to 11 herein were brought on record, as his legal heirs, *vide* order of this Court in A.S.M.P. No.330 of 2007, dated 04.06.2007.

3. The appellant herein was the plaintiff and the respondents herein were the defendants before the trial Court. For convenience of reference, the ranks given to the parties in O.S. No.60 of 1981 will be adopted throughout this judgment.

4. During pendency of the suit, the plaintiff impleaded 7th respondent herein, Sakala Prabhakar Gupta *vide* order in I.A. No.724 of 1982, who set-up a claim against Item 2 of the schedule property. During pendency of the Appeal, learned counsel for the plaintiff-appellant *vide* memo dated 12.12.2014 expressed his intention not to press the claim against the 7th defendant, on merits, and requested to dismiss the Appeal against 7th defendant with regard to claim in Item 2 of the schedule property.

5. In view of filing memo by the learned counsel for the plaintiff-appellant and recorded the same by this Court, there is no necessity to advert to the pleadings pertaining to 7th defendant and the defence set-up by him in his written statement.

6. The plaintiff filed the suit for specific performance of agreement of sale to direct the defendants 1 to 4 to execute a regular registered sale deed in his favour, in pursuance of the agreement of sale executed on 31.01.1979, and to deliver vacant possession of the same including damages, alleging that the defendants 1 to 4 offered to sell Item 1 of the plaint schedule property; thereupon, the plaintiff settled the bargain at Rs.98,000/-, paid advance of Rs.60,000/-, agreeing to pay balance of sale consideration of Rs.38,000/- on or before 31.07.1981 obtained an agreement of sale dated 31.01.1979. Receipt of Rs.6,000/-, as part of sale consideration, was endorsed on the reverse of the agreement, marked as Ex.A-2. The 5th defendant, though aware about execution of agreement of sale between the plaintiff and defendants 1 to 4, entered into an agreement of sale with defendants 2 and 4 to purchase Item 1 of the plaint schedule property. Thus, the 5th defendant, who is not a *bona-fide* purchaser, entered into an agreement of sale with defendants 2 and 4 to purchase the very same Item 1 of the plaint schedule property with full knowledge about execution of prior agreement of sale in favour of plaintiff by defendants 1 to 4. On coming to know about the agreement executed by defendants 2 to 4 in favour of 5th defendant through a Vysya gentleman, he kept quiet; thereafter, when the plaintiff came to know that the 5th defendant is going to obtain a regular registered sale deed on 18.05.1981, immediately, rushed to the Sub-Registrar's Office and filed his objection petition before the Sub-Registrar requesting him not to register the document; however, due to 5th defendant's influence, the Sub-Registrar ignored his objection petition and registered the sale deed in favour of 5th defendant, executed by defendants 2 and 4. The said sale deed in favour of 5th defendant is nominal, not supported by any consideration, and intended to defeat the rights of the plaintiff under the agreement. Thus, the 5th defendant is not a *bona-fide* purchaser for valuable consideration, without notice of prior agreement between the plaintiff and defendants 1 to 4. Hence, the 5th defendant has also joined in execution of regular registered sale deed in his favour for Item 1 of the plaint schedule property. At the time when the objections were filed before the Sub-Registrar, the plaintiff was informed that one Sakala Prabhakar Gupta, is trying to purchase Item 2 of the plaint schedule property nominally at the instance of 5th defendant and as such obtained a registered sale deed in his favour. The pleadings about purchase of Item 2 of the plaint schedule property by the 7th defendant needs no consideration in view of the

memo referred above.

7. The plaintiff is always ready and willing to perform his part of obligation under the agreement of sale but defendants 2 to 4 expressed their inability to secure the presence of 1st defendant to execute regular registered sale deed and, promising to execute regular registered sale deed after his arrival, entered into a nominal transaction with 5th defendant. The plaintiff also got issued a legal notice to defendants 1 to 4 and 5; receipt of the same was acknowledged by some defendants but did not perform their obligation under the agreement of sale, hence, the suit.

8. The 1st defendant resisted the claim of plaintiff, by filing separate written statement, denying material allegations of the plaint *inter-alia* contending that defendants 1 to 4 never agreed to sell the schedule property to the plaintiff and that the agreement is a forged document and adopted the written statement filed by defendants 2, 4 and 6. It is specifically contended that defendants 1 to 4 executed an agreement of sale for Item 1 of the plaint schedule property in favour of 5th defendant for a sum of Rs.85,000/-, on 04.03.1981, and received advance of Rs.15,000/-, which property was earlier mortgaged by defendants 1 to 4 to Balaramaiah Chetty for a sum of Rs.9,500/- under registered mortgage deed dated 21.01.1977. As this defendant was away from town, 5th defendant has obtained the deed in pursuance of the agreement dated 04.03.1981 from defendants 2, 4 and the General Power of Attorney holder of defendants 3 and 6 and another sale deed dated 16.06.1981 for consideration. This defendant had ratified the sale deeds executed by defendants 2 and 4. Thus, the registered sale deed executed in favour of the 5th defendant is valid and binding on him. Finally, it is contended that the agreement of sale is a forged document and never executed by the defendants 1 to 4 and they suspect that the plaintiff must have forged the agreement and the alleged endorsement on the reverse of it, taking advantage of the signatures obtained on the blank papers during the time when he used to look after the litigation on behalf of defendants 1 to 4. Thus, the agreement of sale is not enforceable under law; the plaintiff has no capacity to purchase the property, finally, prayed to dismiss the suit.

9. Defendants 2, 4 and 6 filed joint written statement denying the material allegations of the plaint *inter-alia* contending that defendants 1 to 4 never agreed to sell Item 1 of the schedule property to the plaintiff for Rs.98,000/- and never received Rs.60,000/- as advance; they never executed the alleged agreement of sale dated 31.01.1979, the alleged receipt of Rs.6,000/- dated 10.05.1981 by the 2nd defendant, endorsing the same on the reverse of agreement is false. The 5th defendant was a tenant in Item 1 of the plaint schedule property, not aware of the alleged agreement of sale executed by defendants 1 to 4 in favour of the plaintiff, since the defendants 1 to 4 never executed any agreement of sale in favour of the plaintiff. Initially, Item 1 of the plaint schedule property was mortgaged by defendants 1 to 4 under registered simple mortgage deed dated 21.01.1977, marked as Ex.B-21, borrowing Rs.9,500/-, the defendants 1 to 4 agreed to sell Item 1 of the schedule property to 5th defendant for Rs.85,000/- and executed an agreement of sale on the even date, received Rs.15,000/- as advance while agreeing to execute registered sale deed, on receipt of balance of sale consideration of Rs.70,000/-. The 5th defendant agreed to discharge the debt due by the defendants 1 to 4 to one S.P. Balaramaiah Chetty under registered simple mortgage deed and discharged the same; the amount paid towards discharge of the debt was adjusted towards balance of sale consideration. Later, in pursuance of agreement of sale dated 04.03.1981, 5th defendant obtained two registered sale deeds dated 18.05.1981, marked as Ex.B-18, dated 16.06.1981, marked as Ex.B-19, of schedule property, on payment of balance of sale consideration. Thus, the defendants executed registered sale deeds, voluntarily, in favour of 5th defendant only in pursuance of the agreement of sale dated 04.03.1981.

10. The suit agreement of sale is a forged document not enforceable under law. The plaintiff, pretending to be a well-wisher of the defendants or helping them in the earlier Court proceedings, obtained their signatures on blank stamp papers and on printed forms stating that they were prepared for the purpose of conducting litigation. The defendants 1 to 4 believing his representation signed on various papers, whenever the plaintiff had asked them. The defendants suspect that the plaintiff, taking advantage of the signed stamp papers, might have created an agreement of

sale. Thus, the agreement of sale is a forged document. The plaintiff has no capacity to purchase the property paying huge amount of Rs.60,000/- during those days.

11. The plaintiff was never ready and willing to perform his part of obligation under the contract of sale and that the suit agreement was not supported by consideration and it is *void*, un-enforceable under law. The plaintiff is not entitled to claim the relief of specific performance on the basis of the alleged forged agreement of sale created with an intention to grab the suit schedule property and as such description of the property is not correct, finally prayed to dismiss the suit.

12. The 3rd defendant filed separate written statement admitting execution of the agreement of sale dated 31.01.1979 and the readiness and willingness expressed by the plaintiff to obtain registered sale deed on payment of balance of sale consideration. She unequivocally reported no objection for passing a decree but without costs as the 3rd defendant is ready and willing to perform her part of the contract.

13. She specifically pleaded that the plaint schedule property and other property originally belongs to defendants 1 to 4 having acquired through a registered will dated 07.06.1961, executed by late Beedam Seethamma, grand mother of this defendant and by virtue of another settlement deed dated 10.02.1961 executed by Beedam Anjaneyulu, father of this defendant. Ever since, the defendants 1 to 4 were in possession and enjoyment of the plaint schedule property along with other property. While so, on 31.01.1979, the defendants 1 to 4 executed the suit agreement of sale in favour of the plaintiff for proper and valuable consideration, received advance of sale consideration as mentioned in the plaint. This defendant was married to one Ramanjulu of Gundigal of Punganur Taluk who has been working in Army and was staying at different places like Delhi, Ranchi *etc.*, and as such, this defendant was away from Mandanapalle even after the execution of the agreement of sale in favour of the plaintiff. While so, one D.R. Susheelamma, who is the mother-in-law of 6th defendant, came to Ranchi in or about 7 months ago along

with defendants 5 and 7, approached this defendant for execution of General Power of Attorney, misrepresenting her that it will be used for purpose of conducting Court litigation, which is pending against the family. Believing their representation, this defendant was forced to lend her signatures as directed by them. Thus, the 5th defendant and 6th defendant's mother-in-law, Susheelamma, along with 7th defendant, misrepresenting this defendant, obtained General Power of Attorney played fraud on this defendant. Apart from that, the said Susheelamma and 7th defendant along with 5th defendant obtained signatures of this defendant on some white papers and blank stamp papers, stating that they were required for the purpose of conducting litigation, in pending cases.

14. Subsequently, this defendant learnt that the plaintiff filed the suit on the basis of suit agreement and, after due ascertainment, this defendant further learnt that the Susheelamma in collusion with 5th defendant and other defendants seems to have created some nominal and spurious documents in respect of the plaint schedule property by fraudulent means. This defendant never intended to alienate the schedule property, at any time, subsequent to the agreement of sale executed by her in favour of the plaintiff on 31.01.1979 and it is only the defendants 1, 2, 4 and 5 who have brought into day light some nominal and spurious documents which are not binding on this defendant and finally prayed to pass a decree without costs.

15. The 5th defendant filed his written statement denying material allegations of the plaint *inter-alia* contending that the alleged agreement of sale in favour of the plaintiff for Rs.98,000/- to sell Items 1 and 2 of the schedule property is fabricated and brought into existence by the plaintiff fraudulently and by deceitful means. The 2nd defendant never received Rs.6,000/-, made any endorsement on the reverse of the agreement of sale and specifically denied about obtaining sale deed from the defendants 1 to 4 with notice of the prior agreement of sale and also denied obtaining agreement of sale and sale deed nominally and fraudulently.

16. It is finally contended that this defendant purchased Item 1 of the schedule property under the agreement of sale without notice about the alleged agreement of

sale and, therefore, he is a *bona-fide* purchaser for valuable consideration. In pursuance of the agreement of sale dated 04.03.1981, this defendant obtained sale deeds dated 18.05.1981 and 16.06.1981 for valid and legal consideration. The 3rd defendant is not residing at Madanapalle and she is residing with her husband at Ranchi but ratified the sale deed dated 18.05.1981 and has joined in execution of the sale deed dated 16.06.1981 in favour of the 5th defendant for Item 1 of the schedule property through her General Power of Attorney.

17. As Smt. D.R. Susheelamma was not available, the sale deeds were executed in favour of 5th defendant on 18.05.1981 and 16.06.1981 by the other defendants receiving full consideration, assuring the 5th defendant and undertaking to get separate sale deed executed or any other appropriate document executed by the 1st defendant, if necessary, on his return to Madanapalle in future. The 5th defendant has obtained sale deeds mentioned above on the strength of the said assurance and undertaking. Thus, the 5th defendant became lawful owner of the property and has been in un-interrupted possession of Items 1 and 2 of the schedule property paying property tax to the Government. The 5th defendant is a *bona-fide* purchaser for valuable consideration and that the suit agreement is fabricated and brought into existence, *ante* dated the same with dishonest intention and, therefore, the 5th defendant is not liable to join in execution of regular registered sale deed and that the 5th defendant is entitled to protection under Section 53-A of the Transfer of Property Act, 1882 and finally prayed for dismissal of the suit.

18. 7th defendant also filed written statement but the pleas of 7th defendant needs no consideration since the Appeal against the 7th defendant is withdrawn and not required to decide the Appeal against him in respect of Item 2 of the schedule property, on merits, in view of the memo filed by learned counsel for the plaintiff-appellant.

19. Basing on the above pleadings the trial Court framed several issues including 5 additional issues, after impleading 7th defendant on 12.08.1985, which needs no

consideration in view of the memo and, hence, those additional issues are ignored.

20. The issues, initially, framed by the trial Court, which are relevant alone are extracted hereunder:

- 1) Whether the suit agreement of sale dated 31.01.1979 is true, valid and supported by consideration and binding on the defendants?
- 2) Whether the part payment of Rs.6,000/- on 10.05.1981 and the endorsement on the suit agreement alleged by the plaintiff are true?
- 3) Whether the agreement of sale dated 04.03.1981 and the subsequent sale deeds dated 18.05.1981 and 17.06.1981 in the name of 5th defendant are true, valid and supported by consideration?
- 4) Whether the 5th defendant is a *bona-fide* purchaser for consideration and without notice of the prior agreement of sale in favour of the plaintiff?
- 5) Whether the plaintiff is entitled for the relief of specific performance of the suit agreement of sale?
- 6) Whether the plaintiff is entitled to claim any damages, and if so, to what amount and from which defendants?
- 7) To what relief?

21. During course of trial on behalf of the plaintiff, PWs.1 to 7 were examined and Exs.A-1 to A-9 were marked. On behalf of the defendants DWs.1 to 7 were examined and Exs.B-1 to B-55 were marked and Exs.X-1 to X-7 and Ex.C-1 were marked.

22. Upon hearing argument of both the counsel, considering oral and documentary evidence available on record, the trial Court dismissed the suit. Aggrieved thereby, the unsuccessful plaintiff therein preferred the instant Appeal seeking the relief of

specific performance of both items of schedule property. However, during pendency of the Appeal, his claim against 7th defendant ended in compromise, needs no examination in the present Appeal. Therefore, the grounds relevant for deciding the claim of plaintiff and defendants 1 to 5 alone need to be adverted and decided in this Appeal. The specific contentions raised in the grounds of appeal with regard to claim in respect of Item 1 of plaintiff schedule property are as follows:

a) The finding of the trial Court that Ex.A-1 is not true, valid and supported by consideration is not based on any material and the trial Court committed an error in disbelieving Exs.A-1 and A-2, without any material to arrive at such conclusion;

b) The trial Court did not consider oral and documentary evidence in proper perspective to disbelieve the claim of the plaintiff and the reasons assigned by the trial Court are not legal, not supported by any material. On this ground alone the Appeal is liable to be allowed *setting-aside* the decree and judgment in respect of Item 1 of the schedule property;

c) The trial Court, taking into consideration of the space between the lines in Ex.A-1, came to the conclusion that Ex.A-1 was filled or written taking advantage of the signed stamp papers but this was not the case of defendants 1 to 4 at any time and committed an error;

d) The trial Court did not consider admission of signatures on Ex.A-1 and it amounts to admission of execution but the trial Court on misconception concluded that Ex.A-1 is a fabricated document;

e) It is further contended that conclusion of trial Court that Ex.A-1 is not supported by consideration and that the plaintiff has no capacity to pay Rs.60,000/- on the date of execution is not based on material. However, voluminous evidence on record would show that the plaintiff borrowed Rs.60,000/- on the date of execution of Ex.A-1 from others and disclosed the names of his creditors and the accounts and income-tax returns also disclosed about borrowing of amount for payment of consideration under Ex.A-1; and

f) The plaintiff established execution of Ex.A-1 by examining PW.2 and DW.1 but on erroneous appreciation of facts and law disbelieved the case of the plaintiff and dismissed the suit erroneously. If the evidence available on record is appreciated in proper perspective, the trial Court would not have dismissed the suit and, finally, requested this Court to re-appreciate the evidence on record to come to an independent conclusion, un-influenced by the decree and judgment of the trial Court, and prayed to allow the Appeal setting-aside the decree and judgment under challenge.

23. The 2nd defendant-respondent, B.A. Ravi Babu, also died during pendency of the Appeal; thereupon, the plaintiff-appellant filed Petition to implead the legal heirs of deceased B.A. Ravi Babu in A.S.M.P. No. 1020 of 2007 and A.S.M.P. Nos.2129 and 2130 of 2007 for condonation of delay in filing petition to *set-aside* the abatement caused due to death of 2nd defendant-respondent. A.S.M.P. No.2129 of 2007 was dismissed while rejecting A.S.M.P. Nos.2130 and 1020 of 2007 observing that the 2nd defendant-respondent remained *ex parte* before the trial Court and no steps need be taken to implead the un-contesting defendant in this Court.

24. During course of argument, Sri B.V. Subbaiah, learned senior counsel appearing for the plaintiff-appellant, contended that when the defendants 1 to 4 admitted their signatures on Ex.A-1, the burden is upon them to prove that Ex.A-1 was brought into existence in the circumstances pleaded by them, as in their written statements, but no iota of evidence is brought on record to substantiate their contentions, but the trial Court basing on the space between lines in Ex.A-1, though no such plea was raised before the trial Court, concluded that the agreement is a fabricated document; that apart, the plea of the defendants is totally inconsistent for the reason that they, initially, contended that Ex.A-1 is a forged document and, later, contended that it is a fabricated document, taking advantage of signatures on the blank signed papers and stamp papers obtained by the plaintiff in connection with prosecution of earlier civil litigation pending before the Courts. These two pleas are inconsistent and irreconcilable. Even during trial, the defendants did not limit their plea to any one of their specific pleas. In those circumstances, either of the pleas raised by the

defendants are acceptable. On this ground alone, the suit is liable to be decreed.

25. The plaintiff examined the attesor, PW.2, and DW.1 also admitted about the execution of Ex.A-1 and acknowledging receipt of Rs.6,000/- under Ex.A-2 dated 10.05.1981. The evidence of PW.2 and DW.1 is suffice to establish execution of Ex.A-1 but the trial Court, on erroneous appreciation of oral and documentary evidence, concluded that Exs.A-1 and A-2 are fabricated documents. The contention of the defendants that the plaintiff obtained their signatures on blank papers is not believable for the reason that he is a Muslim by religion, unconnected with the family affairs of the defendants, who are Vysya by caste and Hindu by religion. On this ground alone the plea of the defendants that the plaintiff obtained their signatures on blank papers in connection with the previous litigation is to be rejected. The trial Court concluded that the plaintiff has no source of income to pay advance of Rs.60,000/- on the date of execution of Ex.A-1, but Exs.X-3 to X-6 clinchingly establish the plea of the plaintiff that he borrowed Rs.60,000/- from others but without assigning any reason Exs.X-3 to X-6 were not considered. Therefore, the finding arrived by the trial Court that the plaintiff has no source of income to pay advance of Rs.60,000/- on the date of execution of Ex.A-1 is erroneous.

26. Sri B.V. Subbaiah, learned senior counsel for the plaintiff-appellant, would further contend that the plea of forgery in obtaining Ex.A-1 was not specifically pleaded and not substantiated by the defendants, adducing any evidence. The 5th defendant is a subsequent purchaser and on the date of execution of the registered sale deed, Ex.B-18, objections were filed before the Sub-Registrar. Certified copy of the objections marked as Ex.A-7 established that the 5th defendant is aware about existence of Ex.A-1 and purchase of the property with notice of prior agreement between the plaintiff and defendants 1 to 4. Therefore, the finding of the trial Court that 5th defendant is a *bona-fide* purchaser for valuable consideration cannot be accepted but, the trial Court on erroneous appreciation of evidence believed the contention of 5th defendant that he is a *bona-fide* purchaser for valuable consideration. The trial Court also erroneously believed Ex.B-21, registered mortgage deed executed by defendants 1 and 2 on behalf of defendants 3 and 4; that apart, payment of consideration under the agreement of sale allegedly obtained

by 5th defendant from defendants 1 to 4 itself is sufficient to disbelieve his case and the agreement of sale allegedly executed in favour of 5th defendant is not supported by consideration and the question of adjusting any amount due under the mortgage deed was not pleaded and, therefore, 5th defendant is not a *bona-fide* purchaser, consequently the sale in favour of 5th defendant is not valid and would not confer any title on him; consequently, 5th defendant has to join in execution of regular registered sale deed in favour of the plaintiff in pursuance of the agreement of sale Ex.A-1 along with defendants 1 to 4.

27. The trial Court did not appreciate the oral and documentary evidence in proper perspective and committed an error in dismissing the suit only pointing out certain circumstances which are not pleaded by the defendants and, therefore, the decree and judgment passed by the trial Court are liable to be *set-aside* and prayed to pass a decree in favour of the plaintiff setting-aside the impugned decree and judgment of the trial Court.

28. The main contentions of learned counsel for defendants is that the defendants can raise any pleas or entitled to raise any pleas including inconsistent pleas and since the burden is heavily on the plaintiff to establish that Ex.A-1 was executed, when the plaintiff is claiming the relief of specific performance to establish execution of agreement but the plaintiff failed to establish valid execution of Exs.A-1 and A-2 by the defendants 1 to 4 and the finding of the trial Court is based on the material available on record; that too, the purpose of sale under Ex.A-1 is to meet the marriage expenses, improvement of business and for their livelihood but the sale consideration was Rs.98,000/-, out of which the plaintiff allegedly paid Rs.50,000/- for Item 1 and Rs.10,000/- for Item 2, in total Rs.60,000/- for both the items towards advance of sale consideration, agreeing to pay balance of Rs.38,000/- within two and half years from the date of execution *i.e.*, 31.07.1981. If really, the property was sold to meet the marriage expenses and for improvement of business and livelihood the question of postponing payment of balance of Rs.38,000/- for a period of two and half years is improbable to the natural circumstance and this clause itself indicates that Ex.A-1 was created taking advantage of the blank signed stamp papers of defendants 1 to 4 and others.

29. The plaintiff filed the suit on 15.06.1981 and issued notice marked as Ex.A-3 on 19.05.1981 demanding defendants 1 to 4 to execute registered sale deed and a reply dated 25.05.1981 was signed by 2nd defendant, marked as Ex.A-4, denying the execution of agreement of sale but the suit is filed within short time after expiry of the date mentioned in Ex.A-1 for payment of balance of sale consideration. During the two and half years period even under Ex.A-1, the plaintiff never issued any notice demanding execution of registered sale deed on receipt of balance of sale consideration. Therefore, the conduct of the plaintiff in maintaining silence during two and half years period mentioned in Ex.A-1 itself indicates that the plaintiff was not ready and willing to perform his part of obligation, even if the agreement is true. Hence, on the basis of the delay and laches, the suit is liable to be dismissed.

30. The main contention of learned counsel for the defendants is that in a suit for specific performance based on an agreement of sale jointly executed by defendants 1 to 4, all the parties and their legal heirs must be brought on record but the 2nd defendant's legal heirs were not brought on record and the Petition filed by the plaintiff-appellant to condone delay of 249 days to bring on record, the proposed respondents as his legal heirs was dismissed while rejecting the Petitions filed under Order XXII Rule 4 and 9 of C.P.C. Thereby, in the absence of legal heirs of 2nd defendant-respondent, who remained *ex parte* before the trial Court, no decree for specific performance be granted. On the other hand, no exemption was obtained by the plaintiff-appellant, from the trial Court, as required under Order XXII Rule 4(4) of C.P.C. and placed reliance on a judgment of the Apex Court in ***Sushil K. Chakravarty Vs. Tej Properties Private Limited***. He also further contended that the relief of specific performance to execute registered sale deed cannot be granted in the absence of all the executants and in the absence of 2nd defendant's legal heirs, the suit is not maintainable and placed reliance on a judgment of the Apex Court in ***Budh Ram and others Vs. Bansi and others***.

31. It is further contended that when the plaintiff approached the Court seeking the discretionary relief of specific performance, he has to approach the Court with clean hands, plead and prove that he is ready and willing to perform his part of obligation and that the 5th defendant is not a *bona-fide* purchaser for valuable consideration.

When the plaintiff failed to establish the same, he is not entitled to claim the discretionary relief of specific performance. The plaintiff-appellant, in the present suit, failed to establish his readiness and willingness to perform his part of obligation under the agreement of sale and approached the Court with tainted hands, the discretionary relief under Section 20 of Specific Relief Act, 1963 cannot be granted and prayed to dismiss the Appeal confirming the decree and judgment of the trial Court.

32. Considering rival contentions perusing the material available on record, the points that arise for consideration are as follows:

- 1) Whether the agreement of sale dated 31.01.1979, marked as Ex.A-1, and the endorsement made on the reverse of it, marked as Ex.A-2, are true and valid?
- 2) Whether failure to implead the legal heirs of un-contested 2nd defendant before the trial Court disentitled the plaintiff to claim the relief of specific performance?
- 3) Whether the plaintiff pleaded and proved his readiness and willingness to perform his part of obligation under Ex.A-1? If so, is he entitled to claim the relief of specific performance?
- 4) Whether the plaintiff sustained any damage on account of the failure of defendants 1 to 4 in performing their obligation? If so, at what rate?

33. **POINT No.1:** The suit is filed for specific performance of agreement of sale on the basis of agreement of sale, marked as Ex.A-1, and payment endorsement on the reverse of it, marked as Ex.A-2, the specific contention of defendants 1, 2 and 4 is two fold; at one stage, they pleaded that the agreement of sale is forged and at another stage, they contended that the agreement is fabricated with the help of signed blank stamp papers obtained by the plaintiff to look after the earlier litigation; whereas, the 3rd defendant contended that the defendants 1 to 4 executed Ex.A-1

agreement of sale and she has no objection to pass a decree but without costs. However, the 5th defendant confined to the plea of fabrication.

34. When the plaintiff filed the suit for specific performance of agreement of sale, marked as Ex.A-1, and when the defendants 1, 2, 4 and 5 denied its execution, as it is a forged or fabricated document, the initial onus of proof is on the plaintiff to establish due execution of Ex.A-1 by the defendants, Ex.A-1 is true, valid and enforceable under law. Strangely, the 1st defendant in Para 6 of his written statement contended that the agreement is a forged document and it was not executed by defendants 1 to 4 and that the defendants suspect that Ex.A-1 was fabricated taking advantage of the signatures obtained on the blank stamp papers, on which he had previously obtained signatures during the time he was looking after Court litigation on behalf of the defendants 1 to 4. So, the plea of 1st defendant in his written statement is clear that the document Ex.A-1 contained their signatures and it is a fabricated one. Similarly, defendants 2, 4 and 6 specifically contended in Para 6 of their written statement that Ex.A-1 is a forged document, not enforceable under law and that the plaintiff pretending to be well-wisher of these defendants and helping them in the earlier Court proceedings, had obtained their signatures on blank papers and on printed forms stating that they were prepared for the purpose of Court litigation; the defendants 1 to 4 believed his representation and signed on various papers. Therefore, the suit document, Ex.A-1, is brought into existence with the aid of those papers and, thereby, it is unenforceable under law. Similarly, 5th defendant, in Para 5 of his written statement, thrown the entire blame on the plaintiff and defendants 1 to 4 alleging that the suit agreement is a fraudulent fabrication and brought into existence *ante* dating the same with dishonest intention. The 5th defendant is not aware about execution of Ex.A-1. Thus, the specific contention of 5th defendant is that Ex.A-1 is fabricated fraudulently by the plaintiff and defendants 1 to 4 but not otherwise. The defendants 1, 2 and 4 raised inconsistent pleas but the 2nd contention is that Ex.A-1 is a fabricated document, taking advantage of the blank signed papers disproved the 1st plea of forgery since the defendants 1, 2 and 4 admitted the signatures of defendants 1 to 4 on Ex.A-1 but they explained how the signatures were obtained by the plaintiff. In such a case, the burden of proof heavily lies on the defendants 1, 2 and 4 to prove that Ex.A-1 is fabricated taking advantage

of signed blank papers *etc.*, in view of the principles laid down by this Court in ***Dr. Prashant K. Ravi and another Vs. S. Narasaiah (died) per LRs*** and ***Veeramreddy Nagabhushana Rao Vs. Jyothula Venkateswara Rao*** and ***B. Jogi Reddy Vs. Baldev Singh (died) by LRs***. Thus, the burden of proof is on defendants 1, 2 and 4 to substantiate their contention. If they discharged their burden, then the burden will shift to the plaintiff to rebut the same.

35. The major contention of learned senior counsel for the plaintiff-appellant is that the defendants 1, 2 and 4 did not enter into the witness box to substantiate their specific contention that Ex.A-1 is a fabricated document. When the defendants 1, 2 and 4 did not enter into the witness box, the plea of fabrication of Ex.A-1 cannot be accepted. Since, it is not proved by adducing any oral evidence in support of the plea. No doubt, the contention of learned senior counsel for the plaintiff-appellant is acceptable for the reason that the allegation made in their written statement remained as a plea but not substantiated by any evidence. Therefore, it is difficult to hold that the defendants 1, 2 and 4 discharged their initial burden of proof.

36. One of the contentions of learned senior counsel for the plaintiff-appellant is that when the defendants raised a specific plea and did not enter into the witness box, an adverse inference has to be drawn that what they pleaded is not true and placed reliance on a judgment of the Apex Court in ***Vidhyadhar Vs. Mankikrao and another***, wherein it was held as follows in Paragraphs 15 and 16:

“Where a party to the suit does not appear into the witness box and states his own case on oath and does not offer himself to be cross-examined by the other side, a presumption would arise that the case set up by him is not correct. In the instant case defendant No.1 alleged that the sale deed, executed by defendant No.2 in favour of the plaintiff, was fictitious and the whole transaction was a bogus transaction as only Rs.500/- were paid as sale consideration to defendant No.2. But this plea was not supported by defendant No.1 as he did not enter into the witness box. He did not state the facts pleaded in the written statement on oath in the trial Court and avoided the witness box so that he may not be cross-examined. This, by itself, is enough to reject the claim that the transaction of sale between defendant No.2 and the plaintiff was a bogus transaction.”

37. In another judgment of the Apex Court in ***Iswar Bhai C. Patel alias Bachu Bhai Patel Vs. Harihar Behera and another***, it was held as follows in Para 29:

“In the instant case also, the appellant had abstained from the witness box and had not made any statement on oath in support of his pleadings set out in the written statement. An adverse inference has, therefore, to be drawn against him. Since it was specifically stated by respondent No.2, in his statement on oath that it was at the instance of the appellant that he had issued the cheque on the account of respondent No.1 in the Central Bank of India Ltd., Sambalpur Branch, and the appellant, admittedly, had encashed that cheque, an inference has to be drawn against the appellant that what he stated in the written statement was not correct. In these circumstances, the High Court was fully justified in decreeing the suit of respondent No.1 in its entirety and passing a decree against the appellant also”.

38. In ***Vanteddu Venkateswara Rao and others v. Godavarthi Subhadramma and others***, this Court held as follows:

“Any person posted with facts and authorized by party can depose as witness on behalf of party to suit. Adverse inference can be drawn against a party only if he fails to depose wantonly in spite of his being in a position to depose.”

39. Thus, the law declared by the Apex Court and this Court is consistent that, when a party raised a specific plea, the party shall enter into the witness box and tender for cross-examination so as to enable the adversary to cross-examine the witness to elicit truth. When the party did not enter into the witness box, the Court is bound to draw an adverse inference that what they pleaded is not true. In the present case, the defendants 1, 2 and 4 raised a specific contention that Ex.A-1 is a fabricated document brought into existence with the aid of the blank signed papers obtained by the plaintiff in connection with earlier litigation. Therefore, the initial burden is upon them to establish the same in view of judgment of this Court referred *supra* and when they failed to examine themselves as witnesses to substantiate their contention, an adverse inference has to be drawn that what they pleaded is not true.

40. Though the 5th defendant raised a contention that the document marked as

Ex.A-1 is a fabricated document, fraudulently obtained by defendants 1, 2 and 4 and plaintiff, to defeat his agreement of sale, he is not competent to raise such plea in view of the law laid down by this Court in ***Jugraj Singh and another Vs. Labh Singh and others***, wherein it was ruled as follows:

“The plea that plaintiff was not ready and willing to perform his part of the contract is specifically available to the vendor/defendant. It is personal to him. The subsequent purchasers have got only the right to defend their purchase on the premise that they have no prior knowledge of the agreement of sale with the plaintiff. They are *bona-fide* purchasers for valuable consideration. Though they are necessary parties to the suit, since any decree obtained by the plaintiff would be binding on the subsequent purchases, the plea that the plaintiff must always be ready and willing to perform his part of the contract must be available only to the vendor or his legal representatives, but not to the subsequent purchasers.”

41. From the principle laid down by this Court in ***Jugraj Singh*⁹**, it is clear that the subsequent purchaser is not competent to raise any plea other than the plea that he is a *bona-fide* purchaser for valuable consideration, without notice of prior agreement. In ***Jugraj Singh*⁹** this Court did not deal with the situation, where the subsequent purchaser disproved the prior agreement on the ground that it is fabricated fraudulently by the alleged prior agreement holder and the vendor and the principle laid down by this Court in ***Jugraj Singh*⁹** is limited to the plea under Section 16(c) of the Specific Relief Act *i.e.*, readiness and willingness to perform his part of obligation. In such a case, the 5th defendant is not precluded from raising a contention that Ex.A-1 is fabricated document brought into existence fraudulently by defendants 1, 2 and 4 in collusion with the plaintiff.

42. According to Section 9 of the Specific Relief Act, any party to the suit for specific performance, is entitled to raise any defence which is available to him under any law relating to Contracts. Section 9 of the Specific Relief Act did not prohibit the alleged subsequent purchaser from raising any pleas under the law relating to Contracts but this Court in ***Jugraj Singh*⁹** limited the decision to Section 16(c) of the Specific Relief Act but not otherwise. In view of Section 9 of the Specific Relief Act, even the subsequent purchaser is entitled to raise all the pleas that are available to him under the law relating to Contracts and when he was not precluded from raising any other

plea, it is difficult to conclude that the alleged subsequent purchaser is not entitled to raise any plea except that he is a *bona-fide* purchaser for valuable consideration, without notice of prior agreement. Hence, I am unable to accept the contention of learned senior counsel for the plaintiff-appellant that the 5th defendant is not entitled to raise any of the pleas available under the law relating to Contracts, as per Section 9 of the Specific Relief Act.

43. The main endeavour of learned senior counsel for the plaintiff-appellant is that the reasoning given by the trial Court is based on surmises and those reasons would not stand to any legal scrutiny. No doubt, the trial Court assigned more than one reason to conclude that Ex.A-1 is a fabricated document. However, when the reasons assigned by the trial Court are challenged before this Court, this Court being the Court of first appeal is under an obligation to reappraise the entire material available on record to come to an independent conclusion. Therefore, I would like to advert to oral and documentary evidence on record, once again, to decide the real controversy regarding execution of Ex.A-1. Ex.A-1 is an agreement of sale dated 31.01.1979 written on three stamp papers worth Rs.3/-, 1/- and 1/-. When I glanced to the contents of Ex.A-1, there are some suspicious circumstances, about execution of Ex.A-1, by defendants 1 to 4, which compelled me to conclude that Ex.A-1 is a fabricated document and they are:

1) In the 1st page, first 15 lines of the agreement of sale are closer to one another and later 9 lines are not so closer to each other. Thus, the gap between the first 15 lines is varying from the gap between the later 9 lines;

2) Similarly, the size of the letters of first 15 lines in 1st page is varying from later 9 lines. In addition to that, the signatures of B. A. Sai Vara Prasad and G. Srimathi is almost touching the last line of the document on each page of Ex.A-1 while maintaining more gap between the signatures of B.A. Sai Vara Prasad and B.A. Ravi Babu and G. Srimathi and B.A. Nirmala;

3) Similarly, in the 2nd page of the document, there is unexpected gap

between the signatures. At the same time, no sufficient space is left after the signatures of B.A. Ravi Babu and B.A. Nirmala on the 1st and 2nd pages of Ex.A-1;

4) Yet, another strange circumstance is, the gap between the signatures of B.A. Sai Vara Prasad and running material. The signature of B.A. Sai Vara Prasad is almost touching the last line of the writing; whereas, the gap between the signatures of the executants is same as in other pages;

5) Strangely, the witnesses/attestors have signed almost at the verge of the 3rd page of Ex.A-1 and, at the same time, the word '*sakshulu*' is mentioned above the signature of B.A. Ravi Babu;

6) Similarly, on all the pages of Ex.A-1, before the signatures of executants, I find a dot. If really, the signatures were obtained after completion of drafting of Ex.A-1, the parties to the document would have maintained sufficient space between their signatures and the running matter and the question of putting dots before the signatures and mentioning the words '*sakshulu*' above the signature of B.A. Ravi Babu on the last page of Ex.A-1 and obtaining signatures of attestors almost at the verge of the 3rd page of Ex.A-1 itself indicates that Ex.A-1 is brought into existence taking advantage of the signed stamp papers from B.A. Sai Vara Prasad, B.A. Ravi Babu, G. Srimathi and B.A. Nirmala, defendants 1 to 4; and

7) If the document was written and obtained signatures of the executants, thereafter, the space between the running matter and signatures would not vary in natural circumstances. Similarly, the size of letters and gap between the first 15 lines and later 9 lines in the first page of Ex.A-1 is un-natural and it also creates any amount of suspicion about the execution of document, voluntarily, by defendants 1 to 4.

44. All the above circumstances led me to conclude that the document Ex.A-1 was brought into existence taking advantage of the signed stamp papers, in view of the

un-natural circumstances pointed out by me above. The trial Court also adverted to Ex.A-1 and found un-natural variation and other un-natural circumstances which might have led the trial Court to conclude that the document Ex.A-1 is a fabricated document taking advantage of signed blank stamp papers from defendants 1 to 4. I am also totally in concurrence with the finding of the trial Court in view of various abnormal and un-natural circumstances pointed out by me in Ex.A-1.

45. Undoubtedly, in a suit for specific performance, more particularly, when there are rival claims regarding purchase of the property, one must be the subsequent purchaser. In the present case, the plaintiff and 5th defendant contended that they are prior purchasers of Item 1 of the schedule property. In a suit for specific performance, when the plaintiff alleged that one of the defendants is a subsequent purchaser, it is for him to prove that his agreement was prior in point of time to the purchase of alleged subsequent purchaser. If the plaintiff is able to establish that the agreement of sale in his favour is prior in time, then the burden will shift to the alleged subsequent purchaser to establish that he is a *bona-fide* purchaser for valuable consideration without notice of prior agreement. In the present case, it is the duty of the plaintiff to establish that Ex.A-1 is prior in point of time. As seen from Ex.A-1, it was executed on 31.01.1979 and the stamp papers were purchased on 31.01.1979. Whereas, 5th defendant contended that he purchased the property on 04.03.1981, and in pursuance of the agreement, 5th defendant obtained the sale deeds dated 18.05.1981 and 16.06.1981, as pleaded in Para 5 of his written statement. If these facts are taken into consideration as it is, agreement marked as Ex.A-1 is prior in point of time than the agreement dated 04.03.1981 as pleaded by the 5th defendant in Para 5 of the written statement but the 5th defendant, during cross-examination of PWs.1 and 2 and DW.1, pointed out various circumstances which creates suspicion about execution of Ex.A-1 prior in point of time. As per the contents of Ex.A-1, the defendants 1 to 4 agreed that they will not alienate the property for a period of two and half years *i.e.*, up to 31.07.1981; whereas, the purpose of sale of the property is to meet the marriage expenses, improvement of the business and also for their livelihood. If really, the property was sold to meet the marriage expenses, improvement of the business and their livelihood, in normal circumstances, the time for execution of registered sale deed on payment of balance of sale consideration would not be so long *i.e.*, two and half years in the present

case. That apart, the condition incorporated at Page 3 of the document that the defendants 1 to 4 agreed not to alienate the property till 31.07.1981 and that, if any, alienation is made it is *void*, creates any amount of suspicion. Since the 5th defendant obtained registered sale deeds on 18.05.1981 and 16.06.1981, in pursuance of the agreement dated 04.03.1981, the plaintiff conveniently fixed two and half years time for performance of his obligation under the agreement of sale. The actual time agreed by them for performance is two and half years is a strong circumstance to conclude that the plaintiff conveniently covered the period of execution of the agreement of sale dated 04.03.1981, sale deeds dated 18.05.1981 and 16.06.1981.

46. In paragraphs 23 and 24 of the judgment, the trial Court discussed about the unnatural circumstances of the clauses mentioned in Ex.A-1 for purpose of deciding truth regarding execution of agreement of sale fixing two and half years time *i.e.*, up to 31.07.1981. Ex.A-1 was executed on 31.01.1979; it is a strong circumstance to disbelieve the voluntary execution of Ex.A-1 by defendants 1 to 4. Ex.B-13 is the agreement of sale dated 04.03.1981 obtained by 5th defendant from defendants 2, 4 and 6 under the guardianship of 4th defendant. Ex.B-18 is the sale deed dated 18.05.1981 for part of Item 1 of the schedule property. Under Ex.B-13, the vendors agreed to sell Item 1 of the schedule property in favour of 5th defendant. Though two and half years time was fixed under Ex.A-1, Ex.A-2 payment of Rs.6,000/- dated 10.05.1981 was conveniently brought into existence and the said payment was made to 2nd defendant who remained *ex parte* and no witnesses were examined to prove Ex.A-2 endorsement. Yet, Ex.B-24 is the public notice got published in Eenadu telugu daily dated 08.05.1981 by the vendors of 5th defendant through their advocate R. Srinivasa Sastry and, according to the contents of Ex.B-24, the 5th defendant executed Ex.B-21 on 21.07.1977, which was the earliest mortgage deed in favour of S.P. Balaramaiah Chetty (brother of the 1st defendant) and that, except Ex.B-13, they did not make any alienation either by way of execution of sale deeds based on execution of agreement of sale and, if any, document is brought into existence to defeat their rights, this document would not bind the parties.

47. Learned Senior Counsel appearing on behalf of the plaintiff-appellant contended that, if really, Ex.A-1 was not in existence, the question of issuing such public notice, marked as Ex.B-24, does not arise and, on the basis of Ex.B-24, the Court can infer about existence of Ex.A-1 but the same contention was urged before the trial Court and the trial Court did not draw any such inference about existence of Ex.A-1. The trial Court also observed that the 5th defendant alone paid publication charges but that by itself is not sufficient to draw any inference about existence of Ex.A-1, for the reason that 5th defendant is interested to protect his right or interest in the property, so he paid the amount for public notice in Eenadu telugu daily in Ex.B-24.

48. DW.1 filed her written statement admitting about execution of Ex.A-1 reporting no objection to pass a decree but her evidence was disbelieved by the trial Court assigning several reasons. In fact, she admitted in her pleadings about execution of Ex.A-1 while reporting no objection to pass a decree but without costs reiterating the same in her examination-in-chief. However, during cross-examination, she admitted that during the period of execution of Ex.A-1 she was at Ranchi, where her husband was working as a clerk in defence but, she conveniently avoided giving proper reply to the question put to her about her absence on the date of execution of Ex.A-1. She further testified that she came to Madanapalle in the year 1979 to see her mother and used to write letters to her and reply her frequently but did not disclose the date of her visit to Madanapalle in the month of January 1979; she admitted that there is no record to show that she visited Madanapalle and stayed at Madanapalle on 31.01.1979, when Ex.A-1 was executed. Admittedly, there was exchange of letters between DW.1 and her mother till 1981 and even she admitted, at one stage, that in the year 1981 she was not in talking terms with her mother and to prove the constant correspondence between DW.1 and her mother, DW.5 produced Exs.B-5 to B-8, inland letters addressed by DW.1 to her mother and also by her husband; the contents of those letters necessitate examination. In view of the evidence of DW.1, in the cross-examination, she admitted the correspondence marked as Exs.B-5 to B-8; Ex.B-6 is the inland letter addressed by DW.1 to her mother on 06.07.1981 from Ranchi but in the cross-examination when it is confronted to her she tried to avoid by explaining the reason for writing such letters and stated that due to influence of her mother she wrote the letters. Even the explanation offered by DW.1 for writing Ex.A-1 is not plausible. The contents of Ex.B-6 would not indicate that DW.1 addressed

the letter due to influence of her mother. On the other hand, it would not reflect any sort of undue influence of her mother in writing Ex.B-6. In other words, it indicates that Ex.B-6 was written by DW.1 at her volition. In Ex.B-6, she referred to her husband making a complaint with D.S.P., Collector and Sub-Inspector against PW.1 while referring the name of the plaintiff and 6th defendant with their names. Similarly, in Ex.B-8 letter dated 20.04.1981, written by DW.1 to her mother, the contents of the letter shows that Ex.A-1 was created by plaintiff and others. When Ex.B-6 was confronted to DW.1 she tried to avoid straight answer, however, she admitted as follows:

“I do not remember whether the words in Ex.B-8 *aanadu buddhi leni pani chasina daniki, eenadu anubhavinchavalasi vahhinadi* referred to our signing in blank stamp papers presented by PW.1 on the ground that the same was required as Collector has raised disputes in respect of Gunthakalva land purchased by PW.1 from us. It is not true to say that the words in Ex.B-8 *mee alludu garu chala badha paduchunnaru. Maaku echhina entiki kuda yemi chastooda ani bhayamugaa unnadi* referred to fear entertained by us with regard to the house bearing D.No.7/117 situate in Settivaristreet got by me by way of gift.”

49. From the contents of Ex.B-8 coupled with the evidence extracted above clearly indicates that Ex.A-1 was not executed out of free volition but the plaintiff obtained signatures on the blank stamp papers and fabricated Ex.A-1. In those circumstances, the evidence of DW.1 would not come to the aid of PW.1 to prove execution of Ex.A-1. Yet, Exs.B-9 and B-10 are the other letters where there was a reference about the mortgage and fabrication of Ex.A-1. All these letters directly point out the conduct of PW.1 in creation of Ex.A-1 and there were disputes between the plaintiff and defendants 1 to 4 with regard to property but still DW.1 supported the plaintiff about execution of Ex.A-1, obviously for different reasons known to her. Therefore, the evidence of DW.1 is neither wholly reliable nor un-reliable and basing on the testimony of DW.1, it is difficult to hold that Ex.A-1 is executed by defendants 1 to 4 in favour of the plaintiff. The plaintiff examined PW.2, the attester of Ex.A-1; according to his evidence, one Reddeppa is the scribe, obtained signatures of defendants 1 to 4 after putting a dot and, thereafter, defendants 1 to 4 were asked to

sign one after another at the place where the dots were put, on each occasion one below the other but PW.2 failed to explain the reason for leaving more space between the signatures. In normal course of events, if a document was executing, signing one after the other more particularly when the parties are educated, the question of putting dots or any other mark indicating the requirement of signatures does not arise. On the other hand, the gap between the signatures on all the pages of Ex.A-1 is uniform with dates before the signatures. In such case, the evidence of PW.2 regarding execution of Ex.A-1 is highly doubtful. The trial Court assigned its reason at the end of Para 32 of the judgment, as to why the evidence of PW.2 cannot be accepted; reasoning of the trial Court is based on appreciation of evidence and attending circumstances. Therefore, even after reappraisal of entire evidence, it is difficult for me to disagree with the conclusions arrived by the trial Court.

50. On overall consideration of the entire material available on record, it is clear that Ex.A-1 is a fabricated document, taking advantage of the signatures on the blank stamp papers or it was created with the collusion of one another by plaintiff and defendants 1 to 4. Though the defendants 1, 2 and 4 contended at one stage that Ex.A-1 is a forged document and at another stage it is contended that it is a fabricated document but, obviously for different reasons, the executants except DW.1 did not enter into the witness box so as to elicit the truth about execution of Ex.A-1 or to support the case of defendants regarding fraudulent creation of Ex.A-1, as pleaded by her in the written statement. In the absence of evidence of the executants, except DW.1, the Court must take into consideration of all the attending circumstances to decide whether Ex.A-1 is a fabricated document to defeat the rights of the plaintiff. According to my observations in the earlier paragraphs, several unnatural circumstances were found in Ex.A-1, more particularly, the style of writing Ex.A-1, obtaining signatures, putting dots and fixing time for performance of the obligation of the plaintiff within two and half years though it was sold to meet the immediate necessities, like marriage expenses, improvement of business and their livelihood. Therefore, I hold that Ex.A-1 was not in existence prior to Ex.B-13, agreement of sale, executed in favour of 5th defendant and execution of registered sale deeds marked as Exs.B-18 and B-19.

51. Learned senior counsel appearing on behalf of the plaintiff-appellant would

contend that the plaintiff established execution of Ex.A-1 by defendants 1 to 4 and in such case, at best, the 5th defendant can raise a plea that he is a *bona-fide* purchaser for valuable consideration without notice and the burden is upon him to prove the said fact by adducing evidence, placed reliance on a judgment of Privy Council in ***Bhup Narain Singh Vs. Gokul Chand Mahton and others***, wherein it was held as follows:

“Section 27 lays down a general rule that the original contract may be specifically enforced against a subsequent transferee, but allows an exception to that general rule, not to the transferor, but to the transferee, and therefore it is for the transferee to establish the circumstances which will allow him to retain the benefit of a transfer which prima facie, he had no right to get.”

52. Similarly, he placed reliance on Division Bench judgment of this Court in ***Damacharla Venkata Sessaiah Vs. Damacharla Venkayya and others***, wherein it was held as follows at Para 73:

“73. We also agree with the view of the trial Court that in Exhibit B-10 fictitious insertions were made. The appreciation of the evidence made by the trial Court seems to us quite correct and we entirely agree with the reasoning and conclusion of the trial Court in regard to Exhibits B-9 and B-10. These documents are not binding upon the plaintiff. Exhibit B-10 has been brought into existence with full knowledge of Exhibits A-1 and A-2. We agree with the trial Court that 2nd defendant is not a bona-fide purchaser without notice of Exhibits A-1 and A-2. Under Section 19(b) of the Specific Relief Act, therefore, the plaintiff can be given relief even against 2nd defendant.

53. The Division Bench of this Court in ***Damacharla*¹¹**, just accepted the finding recorded by the trial Court. Further, it indicates that the burden of proof is on the plaintiff to prove that he is a *bona-fide* purchaser for valuable consideration. Undoubtedly, the burden is on the 5th defendant to prove that he is a *bona-fide* purchaser for valuable consideration without notice of Exs.A-1 and A-2. According to the plaintiff, he submitted an objection petition before the Sub-Registrar on the date of execution of registered sale deed and certified copy of the objections filed before the Sub-Registrar is produced before the trial Court and the same is marked as Ex.A-7, dated 18.05.1981. This protest petition filed before the Sub-Registrar shows

that on the date of execution of registered sale deed dated 18.05.1981, marked as Ex.B-18, the plaintiff brought to the notice of Sub-Registrar about the execution of Ex.A-1 in his favour but the Sub-Registrar registered the conveyance marked as Ex.B-18 without considering the protest made by the plaintiff but, at best, it would impute knowledge about prior agreement to the 5th defendant. When I have recorded a finding that Ex.A-1, which is allegedly prior in point of time, is a fabricated document, it is difficult to accept the contention that the 5th defendant has to establish that he is a *bona-fide* purchaser for valuable consideration. Curiously, no copy of agreement was annexed to Ex.A-7 to substantiate his purchase before the Sub-Registrar but, referring the consideration agreed to be paid and time fixed for performance of obligation *etc.*, in the said petition would not assist the plaintiff to substantiate his contention that the 5th defendant is not a *bona-fide* purchaser. Since Ex.A-1 is a fabricated document and un-enforceable under law, the defendants need not prove that he is a *bona-fide* purchaser for valuable consideration. Yet, the learned senior counsel for the plaintiff-appellant pointed out several lacunae's in execution of Ex.B-18 dated 18.05.1981. Admittedly, Ex.B-18 was executed by defendants 2 and 4 as guardian of 6th defendant and, later, ratified the action of S.P. Radha Krishna by B.A. Sai Vara Prasad and executed Ex.B-23 by B. A. Sai Vara Prasad in favour of S.P. Radha Krishna relinquishing his right. No doubt, there are certain lacunae even in the execution of sale deed marked as Ex.B-18 but those lacunae would not come to the aid of the plaintiff when the plaintiff approached the Court for enforcing a fabricated document, Ex.A-1, in view of my foregoing discussion. Accordingly, the point is answered in favour of the defendants and against the plaintiff holding that Exs.A-1 and A-2 are fabricated and un-enforceable under law.

54. **POINT No.2:** One of the contentions of learned counsel appearing for 5th defendant is that, after death of 2nd defendant, who did not contest the suit before the trial Court, no permission was obtained in not impleading the legal heirs of deceased-2nd defendant and the petition filed by the plaintiff-appellant before this Court under Section 5 of the Limitation Act, 1963 to condone the abnormal delay in filing the petition to *set-aside* the abatement order was dismissed, while observing that the legal heirs of uncontested defendants need not be impleaded and it is

further observed that the ground assigned by the plaintiff for the abnormal delay and dismissed the Petition while rejecting the other two petitions, filed under Order 22 Rule 9 and under Order 22 Rule 4 of C.P.C. When no prior permission was obtained, as the obligation under the agreement of sale is joint, failure to implead the legal heirs of deceased-2nd defendant is fatal and the learned counsel for the 5th defendant placed reliance on a judgment of the Apex Court in ***Bharatha Matha and another Vs. R. Vijaya Renganathan and others***, wherein it was held as follows:

“Every co-owner has a right to possession and enjoyment of each and every part of the property equal to that of other co-owners. In theory, every co-owner has an interest in every infinitesimal portion of the subject matter, each has a right irrespective of the quantity of its interest, to be in possession of every part and parcel of the property jointly with others. A co-owner of a property owns every part of the composite property along with others and he cannot be held to be a fractional owner of the property unless partition takes place.”

55. When a joint decree is required to be passed and the Appeal is abated due to death of one of the respondents, the decree is un-enforceable and it abates against the other respondents also. In the present case, the 2nd defendant, B.A. Ravi Babu, who remained *ex parte* before the trial Court, died during pendency of the Appeal and his legal heirs were not brought on record and no prior permission was obtained to dispense with impleading of the legal heirs of deceased-2nd defendant. Therefore, the Appeal abates. Whereas, learned counsel for the plaintiff-appellant would contend that the Appeal would not abate and the exemption from impleading legal heirs of deceased-2nd defendant can be granted, at any time, placed reliance on a judgment of the Apex Court in ***Sushil K. Chakravarty Vs. Tej Properties Private Limited***, wherein it was held as follows:

“It is apparent that the trial Court was mindful of the factual position noticed above, and consciously allowed the suit to proceed further. When the suit was allowed to proceed further, without insisting on the impleadment of the legal representatives of S it was done on the Court’s satisfaction, that it was a fit case to exempt the plaintiff T from the necessity of impleading the legal representatives of the sole defendant S (represented by the appellants

herein). This could only have been done on the satisfaction that the parameters postulated under Order 22 Rule 4(4) CPC, stood complied with. The fact that the aforesaid satisfaction was justified has already been affirmatively concluded hereinabove.”

56. In view of the principle laid down by the Apex Court in **Sushil¹³**, when the Court proceeded to hear the matter without the legal heirs, it can be said that the Court satisfied that the suit can be proceeded without impleading the legal heirs of the deceased-sole defendant therein. Here, the 2nd defendant died immediately after filing of the Appeal in the year 1996, and no legal heirs were brought on record but this Court went on hearing the matter and proceeded further but, for the first time, the defendants raised the dispute about maintainability of the Appeal due to failure to implead the legal heirs of 2nd defendant, who remained *ex-parte* before the trial Court, without raising such objection at any time prior to the date hearing the Appeal. The argument advanced by learned counsel for the defendants is that if the principle laid down by the Apex Court in **Sushil¹³** is applied to the present facts of the case, I have no hesitation to proceed with the matter, without any objection being raised by them granting exemption from impleading the legal heirs of the deceased-2nd defendant. In view of the principle laid down by the Apex Court in **Sushil¹³**, I find that failure to implead the legal heirs of 2nd defendant would not amount to abetting the entire appeal. Accordingly, the point is answered in favour of the defendants.

57. **POINT Nos.3 and 4:** According to Order XX Rule 5 of C.P.C. it is the duty of the Court is 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 points 2 to 4 is avoided in this Appeal.

58. However, as per my finding on Point No.1, Ex.A-1 is a fabricated document and un-enforceable under law, consequently, readiness and willingness of the plaintiff pleaded in the plaint necessitates no examination. Further, the question of plaintiff sustaining damages does not arise since the agreement, Ex.A-1, itself is a fabricated document and un-enforceable under law. Hence, both the points are answered in

favour of the defendants and against the plaintiff.

59. In view of my foregoing discussion, I find no illegality or legal infirmity in the finding recorded by the trial Court, warranting interference of this Court and as such the Appeal is devoid of merits and liable to be dismissed.

In the result, the Appeal Suit is dismissed confirming the decree and judgment dated 06.09.1996, passed in Original Suit No.60 of 1981, by the learned Subordinate Judge, Madanapalle, Chittoor District.

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

M. SATYANARAYANA MURTHY, J

Date: 20-03-2015.

Dsh

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

APPEAL SUIT No. 2484 OF 1996

-

Date. 20-03-2015

DSH