

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

Appeal Suit No.810 of 1994

Judgment:

The defendants in O.S. No.283 of 1980 on the file of the Subordinate Judge's Court, at Ramachandrapuram, have preferred this appeal challenging the judgment and decree, dated 22.02.1994, passed in the said suit, whereby and whereunder they were directed to execute registered sale deed by receiving balance of sale consideration and deliver vacant possession of the suit schedule property to the plaintiff.

2. For convenience of reference, the ranks given to the parties in OS No.283 of 1980 before the trial Court will be adopted throughout this judgment.

3. The plaintiff filed the suit originally against S. Chandramma, the first defendant seeking the relief of specific performance of agreement of sale, dated 18.03.1979, and alternatively for refund of advance of sale consideration paid under the agreement of sale together with interest at 18% p.a., and for future profits or mesne profits etc., alleging that the first defendant, who was the owner of the suit schedule property, agreed to sell the same to her for a sum of Rs.1,25,000/-, received advance of Rs.5,000/- and executed an agreement of sale, dated 18.03.1979, in her favour. Usual terms and conditions of agreement of sale were incorporated in the agreement of sale and, as per the terms agreed between the plaintiff and the first defendant, out of the sale consideration amount payable under the agreement of sale the first defendant has to take a promissory note for Rs.50,000/- payable with interest at 9% p.a., and the balance amount has to be paid at the time of registration of the sale deed. However, the term relating to obtaining promissory note for Rs.50,000/- was not

incorporated in the agreement, due to oversight, but it was mentioned in the endorsement made on the reverse of agreement of sale subsequently on 18.04.1979, when the plaintiff paid Rs.5,000/- towards part of sale consideration and endorsed the same on the reverse of Ex.A1, which is marked as Ex.A2, regarding liability of the plaintiff to execute a promissory note for Rs.50,000/- in favour of the first defendant to pay the same together with interest at 9% p.a., as part of sale consideration.

4. As per the terms and conditions of the agreement of sale, the first defendant agreed to deliver vacant possession of the suit schedule property to the plaintiff after evicting the tenants in occupation of the shops, except PS Krishna Murthy, who is carrying on hotel business in the name and style of 'Volga Restaurant', as his tenancy was subsisting till 30.04.1980. The Plaintiff agreed to get the said tenant vacated at her expenses, whereas the first defendant has to get the other tenants vacated by the date of registration of sale deed and deliver vacant possession of the same.

5. Though the plaintiff is always ready and willing to perform her part of obligation under the agreement of sale and demanded the first defendant to perform her part of obligation under the agreement of sale, she postponed the performance on one pretext or the other.

6. While the matter stood thus, the first defendant got issued a legal notice, dated 31.10.1979, with false and untenable allegations and contrary to the terms and conditions agreed under Ex.A1 - agreement of sale and conditions endorsed on the reverse of it, called upon the plaintiff to pay the balance sale consideration and obtain registered sale deed within a specified time. A contentious reply was issued by the plaintiff to the said notice reiterating the terms and conditions of the agreement of sale, while expressing her readiness and willingness to perform her part of obligation under the agreement of sale. After the

plaintiff got issued reply notice, the first defendant requested the plaintiff not to proceed against her, as she got issued the notice at the instigation of her grand children, and she would execute sale deed after getting the other tenants vacated and after settling the southern boundary wall dispute.

7. The first defendant, instead of getting the tenants vacated other than PS Krishna Murthy who is running Volga Restaurant and settling the boundary wall dispute, informed the plaintiff that she extended the lease of Volga Restaurant and also inducted new tenants in other shops without any authority and in flagrant violation of the conditions incorporated in the agreement of sale, dated 18.03.1979, and endorsement, dated 18.04.1979. Immediately, the plaintiff got issued a telegram notice, dated 12.08.1990, followed by a legal notice complaining the violation of the terms and conditions by the first defendant and calling upon her to execute registered sale deed by receiving balance sale consideration and pay damages @ Rs.12,000/- . The first defendant got issued a reply to the telegram through her advocate with false allegations contending that the plaintiff has no capacity even to purchase the non-judicial stamps to obtain a registered sale deed for the entire property and that the plaintiff committed default in payment of balance sale consideration to obtain registered sale deed, thereby the plaintiff is disentitled to claim the relief of specific performance.

8. The plaintiff while pleading her readiness and willingness to perform her obligation under the agreement of sale and pay the balance sale consideration complained that the first defendant is not co-operating to perform her part of obligation under the agreement of sale, hence, she filed the present suit claiming the aforesaid reliefs.

9. The first defendant filed written statement denying the material allegations made in the plaint and resisted the claim on several

grounds;

(a) She admitted the execution of agreement of sale for Rs.1,25,000/- and receipt of Rs.5,000/- as advance of sale consideration on 18.03.1979 (Ex.A1). As per the terms of agreement of sale, the balance sale consideration has to be paid on or before 18.06.1979 and the first defendant has to execute regular sale deed on stamp papers either in favour of the plaintiff or in favour of her nominee. It was further agreed that the possession of the portion of the plaint schedule property that was let out to the Hotel was to continue till expiry of the lease period and the plaintiff has to get the tenant, who was running hotel, evicted after expiry of the lease period.

(b) She denied the agreement to execute a promissory note for Rs.50,000/- and endorsing the same on the reverse of the agreement on 18.04.1979 while acknowledging the receipt of Rs.5,000/- as false. She sold the property to meet her immediate necessities, in such case there was no necessity to keep Rs.50,000/- with the plaintiff on nominal interest for a long time, therefore, the alleged condition, on the face of the record, is false and on this ground alone the suit is liable to be dismissed.

(c) She agreed to deliver vacant possession of the property soon after execution of registered sale deed i.e., on or before 18.06.1979 on receipt of balance sale consideration of Rs.1,20,000/-, but the plaintiff did not pay the balance sale consideration as agreed, however paid Rs.5,000/- on 18.04.1979 and endorsed the same on the reverse of the agreement. Further, at the time of agreement, two shops on the east of Volga hotel were lying vacant, as the tenants therein vacated the same as she intimated them that she would sell away the property. Later, the plaintiff failed to comply with the terms and conditions of the agreement of sale, therefore, she let out those two shops to different tenants in the month of October 1979 and April 1980 respectively, as such the allegation that she let out the shops instead of delivering possession to the plaintiff is false.

(d) Despite several demands made by her, the plaintiff had neither paid the balance sale consideration to obtain registered sale deed nor tendered the amount to show her readiness and willingness, but strangely the plaintiff sent a word that she could get ready to obtain sale deed for Rs.75,500/- while withholding Rs.50,000/-, as agreed on 18.04.1979, till December 1979. Therefore, this fact itself indicates that the plaintiff is not ready and willing to perform her part of obligation under the agreement of sale. Purchase of stamps worth Rs.7,550/- by the plaintiff to obtain registered sale deed in her name is highly improbable and that itself indicates her unwillingness to obtain registered sale deed for the entire property and on this ground also the plaintiff is disentitled to claim the relief of specific performance.

(e) The plaintiff invented a story of resolving the southern boundary wall dispute, which is not mentioned anywhere in the agreement of sale, only to avoid payment of balance of sale consideration. When the plaintiff approached the Court with a false plea, she is disentitled to claim the relief of specific performance and on this ground also the suit is liable to be dismissed.

(f) The registered correspondence between her and the plaintiff would clinchingly establish that the plaintiff was not ready and willing to perform her obligation under the agreement of sale and consequently she is disentitled to claim the main relief of specific performance and finally prayed to dismiss the suit.

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

1. Whether the plaintiff is entitled to specific performance of the contract under sale agreement dated 18.03.1979?
2. If not whether the plaintiff is entitled to the refund of the amounts paid to the defendant with interest?
3. Whether the plaintiff is entitled to claim damages? If so, to what amount?
4. Whether the defendant is entitled to exemplary costs?
5. To what relief.

11. Subsequently, the first defendant died leaving behind the defendants 2 to 13 to succeed her estate. Accordingly, they were brought on record, as per the orders of this Court passed in CRP Nos.3710 and 3720 of 1988, dated 03.07.1992. On appearance, defendant No.8 filed separate written statement. The same was adopted by the defendants 2, 3, 5, 6, 9, 11, 12 and 13 by filing adoption memo, dated 07.04.1993.

12. Defendant No.8 has specifically contended that the agreement between the plaintiff and the original first defendant to execute a promissory note for Rs.50,000/-, endorsing the same on the reverse of the agreement of sale on 18.04.1979 is false and there is no privity of contract between the plaintiff and the defendants 2 to 13 and there is no obligation on their part to execute registered sale deed in favour of the plaintiff and that the plaintiff has no right to continue the suit as she is disentitled to claim any relief and finally prayed to dismiss the suit.

13. Based on the written statement filed by the defendants 2 to 13, the following additional issue was framed on 16.07.1993.

1. Whether the relief of damages can be claimed against D2 to D13, the LR's of D1?

14. During the course of trial, on behalf of the plaintiff, she herself was examined as PW.1 and marked Exs.A1 to A30 and, on behalf of the defendants DWs.1 to 3 were examined and Exs.B1 to B11 were marked.

15. Upon hearing the argument of both the counsel and considering the evidence on record, the trial Court decreed the suit directing the defendants to execute registered sale deed in favour of the plaintiff conveying the suit schedule property by receiving the balance sale consideration and deliver vacant possession of the same to the plaintiff

while giving liberty to the plaintiff to obtain registered sale deed through process of the Court in the event of defendants failure to comply with the directions.

16. Aggrieved by the decree and judgment of the trial Court the defendants 2 to 13 preferred the present appeal raising several contentions. The grounds of appeal is running about 25 pages consisting of 117 grounds, but during the course of arguments the learned Senior Counsel Sri J. Prabhakar, representing Sri A. Gopala Krishnamacharyulu, learned counsel for the appellants/defendants, confined his argument to the aspect of readiness and willingness pleaded by the plaintiff and contended that the plaintiff has approached the Court with unclean hands suppressing the real facts and inventing a story of resolving the southern boundary wall dispute between the first defendant and her southern boundary owner and postponement of payment on account of it. He further contended that the trial Court did not appreciate the conduct of the plaintiff and violation of the terms and conditions of Ex.A1 for payment of balance sale consideration on or before 18.06.1979, thus, the plaintiff has committed breach of terms and conditions of the contract, in such case she is disentitled to claim the equitable relief of specific performance of agreement of sale under Section 20 of the Specific Relief Act.

17. Whereas, the contention of Sri P. Durga Prasad, learned counsel for the respondent/plaintiff, is that as per the terms of the agreement of sale the first defendant has to get the tenants vacated and deliver vacant possession on or before execution of the registered sale deed and get the southern boundary wall dispute resolved between the first defendant and her neighbouring owner, but on account of failure of the first defendant to get the tenants vacated from three shops and her failure to get the boundary wall dispute resolved, the plaintiff did not perform her part of obligation. Apart from that, his contention is that purchase of stamps worth Rs.7,550/- to obtain registered sale deed is

not a ground and it was only due to non-availability of the non-judicial stamps for engrossing the registered sale deed. Thus, the defendants alone committed breach of terms and conditions of the agreement, thereby the plaintiff is entitled to the main relief of specific performance and supported the decree and judgment in all respects and prayed to dismiss the appeal confirming the decree and judgment of the trial Court.

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

1. Whether the plaintiff committed breach of terms and conditions of the agreement of sale - Ex.A1 in payment of balance sale consideration to obtain registered sale deed? If so, is she entitled to claim the relief of specific performance?
2. Whether the plaintiff pleaded and proved her readiness and willingness to perform her part of obligation as required under Section 16(c) of the Specific Relief Act? If so, is she entitled to the relief of specific performance of agreement of sale?

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19. **Points 1 and 2:**

Since points 1 and 2 are interlinked, they are taken up together for consideration. The undisputed fact is that the first defendant agreed to sell the suit schedule property, the plaintiff purchased the same for Rs.1,25,000/- and paid advance of Rs.5,000/- on the date of execution of agreement of sale - Ex.A1, dated 18.03.1979. The terms and conditions of Ex.A1 are also not in dispute, but a strange contention was raised in the plaint by the plaintiff before the trial Court that there was a boundary wall dispute between the first defendant and her neighbour and the first defendant agreed to resolve the dispute and then only the plaintiff has to pay the balance sale consideration besides other terms for eviction of the tenants, except PS Krishna Murthy, who is running Volga Restaurant, as his lease period was subsisting by the date of execution of Ex.A1. The first defendant denied the term pertaining to resolving the boundary wall dispute

between her and her neighbour, while contending that it was an invention of the plaintiff to avoid payment of balance sale consideration.

20. In view of the controversy between the parties it is necessary to advert to the terms and conditions of the agreement of sale, marked as Ex.A1, and the specific pleas raised in the plaint and in the written statement. Ex.A1 is the agreement of sale, dated 18.03.1979, for Rs.1,25,000/-, executed by the first defendant in favour of the plaintiff. On the date of execution of Ex.A1 the first defendant received a sum of Rs.5,000/- as advance, while agreeing that on payment of balance sale consideration of Rs.1,20,000/- on or before 18.06.1979 to execute registered sale deed and deliver vacant possession of the schedule property to the plaintiff by vacating the tenants except the tenant PS Krishna Murthy who is running Volga Restaurant and whose tenancy period would expire by 30.04.1980 and the plaintiff agreed to get him vacated at her own expenses after expiry of lease period. In the entire document Ex.A1, there was no reference about the southern boundary wall dispute between the first defendant and her neighbour and resolving the same as a precondition for payment of balance of sale consideration. Even as per the endorsement on the reverse of Ex.A1, which is marked as Ex.A2, there is absolutely no reference about the southern boundary wall dispute between the first defendant and her neighbour and resolving the same for payment of balance sale consideration, but strangely, in paragraph No.13 of page No.8 of the plaint, the plaintiff invented a story of settlement of southern boundary wall dispute for payment of balance sale consideration as a precondition. Further, in paragraph 7 of the plaint a bald allegation is made that the condition precedent for execution of registered sale deed is that the first defendant should get the tenants, other than the owner of Volga Restaurant, vacated and deliver vacant possession and that it is also stipulated that a promissory note is to be taken for

Rs.50,000/- out of the balance sale consideration and about the dispute in regard to southern side boundary wall etc. Thus, the plea of the plaintiff in paragraphs 7 and 13 of the plaint is that there is a southern boundary wall dispute between the first defendant and her neighbour which is required to be resolved for payment of balance sale consideration to execute registered sale deed. The first defendant denied such condition which is not born out from Ex.A1. It is not the case of the plaintiff that there was any subsequent agreement for resolving the southern boundary wall dispute between the first defendant and her neighbour.

21. At this stage, it is appropriate to advert to the registered correspondence between the plaintiff and the first defendant. Ex.B10 is the legal notice, dated 31.10.1979, got issued by the first defendant to the plaintiff complaining that the plaintiff failed to pay balance sale consideration on or before 18.06.1979, but paid only Rs.5,000/- and endorsed the same on the reverse of Ex.A1, which endorsement is marked as Ex.A2, and failure to pay the amount, despite the demands made by the first defendant by herself and through mediator, amounts to breach of contract and called upon the plaintiff to pay balance sale consideration within one week from the date of receipt of notice to obtain registered sale deed. A reply was got issued by the plaintiff on 26.11.1979, which is marked as Ex.B1. For the first time, in this reply notice at page No.2, the plaintiff invented the story of settlement of southern boundary wall dispute between the first defendant and her neighbour as condition precedent for executing the registered sale deed, while raising several contentions which are not relevant for the purpose of deciding the present controversy.

22. Later, the plaintiff again issued a notice – Ex.A3, dated 12.08.1980, based on Ex.A1 agreement of sale, and in paragraph 2 of the said notice she specifically asserted as follows.

“When the southern side owner of the said

building raised some dispute with respect to the southern side compound wall of the building and when my client brought it to your notice you promised to settle it and execute the sale deed. But, you with ulterior motive evaded to do so and got a registered notice issued with false and untenable averments for which my client got a reply issued with true set of facts.”

23. From the above recitals it is evident that the plaintiff reiterated about the failure of the first defendant to settle the southern boundary wall dispute for payment of balance sale consideration. Later, a reply notice – Ex.A4, dated 13.08.1980, was issued by the first defendant complaining the breach committed by the plaintiff in payment of balance sale consideration and that the first defendant sold the property only to discharge the debts but on account of failure to pay the balance sale consideration she could not discharge the debts and that the agreement was stood cancelled.

24. On consideration of the registered correspondence between the parties it is clear that for the first time in the reply notice the plaintiff has pointed out about the failure of first defendant to settle the southern boundary wall dispute between her and her southern neighbour, so as to pay the balance sale consideration. In fact, in Ex.A1 the first defendant never agreed to settle the southern boundary wall dispute between herself and her southern neighbour for payment of balance sale consideration. Therefore, failure of the plaintiff to pay balance sale consideration on or before 18.06.1979 amounts to breach of terms and conditions of the agreement of sale – Ex.A1. When adverted to the oral evidence on record, the plaintiff asserted that the first defendant agreed to settle the southern boundary wall dispute between herself and her southern neighbour D. Kondala Rao before execution of registered sale deed. In the cross-examination a suggestion was put to the plaintiff (PW.1) that there was no term or condition for payment of balance sale consideration to settle the

southern boundary wall dispute and she denied the same. In her evidence, the plaintiff explained the reasons for non-payment of balance sale consideration. She assigned the reason for her failure to pay the balance sale consideration as the first defendant failed to get the tenants evicted and settle the boundary wall dispute as mentioned in Ex.A3 notice.

25. The first defendant was examined as DW.1 at the age of 93 years on 11.07.1984, but she was unable to testify due to her old age as noted at the end of her examination. Even in the cross-examination of DW.1 she admitted that her grand son knows the facts as she was acting at the instance of her grand son. She asserted in her examination-in-chief that she executed the agreement of sale and the parties thereto have to abide by the terms and conditions incorporated therein. She admitted payment of Rs.5,000/- on two occasions within three months from the date of execution of Ex.A1, while denying approaching her by the plaintiff for payment of balance sale consideration to obtain registered sale deed.

26. DW.2 is the grand son of the first defendant whose evidence is consistent about the agreement of sale, terms and conditions contained therein. However, his evidence is not relevant for the purpose of deciding the real controversy at this stage regarding the southern boundary wall dispute.

27. As per the terms and conditions of Ex.A1 the reciprocal obligations of both the parties are clear and the parties are bound to adhere to the terms and conditions of Ex.A1. As per the terms and conditions of Ex.A1 the plaintiff agreed to pay the balance sale consideration on or before 18.06.1979 and the first defendant agreed to deliver vacant possession of the schedule premises after evicting the tenants in occupation except PS Krishna Murthy, who is running a hotel in the name and style of "Volga Restaurant" and whose lease

was subsisting at the time of execution of agreement of sale. There is a thin difference between the contentions of both the parties regarding delivery of possession after evicting the tenants, as the plaintiff contended that the possession of the property is agreed to be delivered before execution of the registered sale deed, but whereas the first defendant's contention is that soon after execution of registered sale deed she has to deliver vacant possession of the property except the part of property in possession of PS Krishna Murthy who is running Volga Restaurant. At this stage it is relevant to advert to the terms and conditions of Ex.A1, dated 18.03.1979. The relevant term in Ex.A1 is that the first defendant agreed to deliver vacant possession of the property after execution of registered sale deed. The specific term relating to delivery of possession is relevant for deciding the real controversy. Therefore, the same is translated and extracted hereunder for better appreciation.

“.....Today, I have received a sum of Rs.5,000/- (Rupees Five Thousand only) from you towards advance sale consideration, out of the total sale consideration of Rs.1,25,000/-. If you are ready with the balance sale consideration amount of Rs.1,20,000/- on or before 18.06.1979, I will execute the sale deed on proper stamp papers and got it registered in your favour or in favour of your nominee at your expenses and deliver the vacant possession of the schedule property.....”

28. From the above term, it is clear that the first defendant agreed to deliver vacant possession after execution of registered sale deed on payment of balance of sale consideration. Therefore, there is no agreement between the parties for settlement of southern boundary wall dispute and eviction of tenants, delivery of possession as a precondition for payment of balance sale consideration of Rs.1,20,000/-, however it is certain that the plaintiff has to pay balance sale consideration on or before 18.06.1979, but the plaintiff invented a different story to settle southern boundary wall dispute between the first defendant and her neighbour Kondala Rao for the first time in the

reply notice Ex.B11. Therefore, non-payment of balance sale consideration by the plaintiff on account of failure of the first defendant to settle the southern boundary wall dispute is only a lame excuse to justify her failure to pay balance sale consideration, since, it was never agreed by the first defendant for settlement of such dispute and the plaintiff also failed to establish any subsisting dispute with regard to southern boundary wall between the first defendant and her neighbour Kondala Rao. Therefore, non-payment of balance sale consideration on the above ground cannot be accepted as a justifiable cause, within the time stipulated under Ex.A1. Thus, the plaintiff approached the Court with unclean hands and with a false plea. When the plaintiff approached the Court with a false plea and with unclean hands, she is disentitled to the relief of specific performance in view of the principle laid down by the Division Bench of Madras High Court in **Sririgneedi Subbarayudu v. Kopanathi Tatayya**^[1]. While relying on the said judgment, the Division Bench of this Court in a decision reported in **Kommiseti Venkatasubbayya v. Karamsetti Venkateswarlu**^[2], held in paragraph 4 as follows.

“.....The statement that he had already paid Rs.1500/- has now been found to be not true by both the courts and that finding of fact cannot be disturbed and in fact was not seriously challenged by Mr.A.Gangadhara Rao, learned counsel for the appellant. That being so, it must be taken that the averment in the plaint that he had paid a sum of Rs.1500/- on 14-10-1960 is not true. In stating that he was ready and willing to perform his part of the contract, it must be taken that he was ready and willing to pay Rs.272-50 Ps. which was the balance payable according to him under Ex. A-1 and not that he was ready and willing to pay Rs.1772-50 Ps. which was due and payable by the plaintiff according to the finding of the court below. Unless the readiness and willingness of the plaintiff was to pay the entire balance of the purchase money he is not entitled to a decree for specific performance. In issuing the demand notice dated 10-10-

1961 also what he could have mean was that he was ready and willing to pay Rs.272-50 Ps. and not Rs.1771-50 Ps. that was really due from him. Irrespective of any other fact, the averment in the plaint and the notice is sufficient to hold that he was not ready and willing to perform his part of the obligation under Ex. A-1. That apart, the plaintiff who seeks equitable remedy of specific performance must come to the court with clean hands.....

.....When the plaintiff approached the Court with unclean hands he is disentitled to the discretionary relief not only on the ground that he has set up a false plea but also on the ground that he was not ready and willing to perform his part of the contract.”

29. In another judgment reported in **Mamidi Jagannadham v. Yelgani Shankaraiah died by LRs**^[3], the learned single Judge of this Court held that when the plea that the plaintiff paid balance sale consideration on or before a particular date is unfounded and he took a false plea to avoid payment of the balance sale consideration, the Court cannot exercise discretion to grant relief of specific performance. The learned single Judge of this Court relied on **Sririgneedi Subbarayudu’s** case (1 supra), wherein the Madras High Court held that the plaintiff who is capable of setting up a false case cannot expect a Court of equity to grant him relief. In the light of the above legal position, the learned single Judge of this Court held that the plea of the plaintiff that he paid the balance sale consideration is false, thereby not entitled to equitable and discretionary relief of specific performance.

30. In **M.N. Mohammad Mirza @ Mirza v. B. Subhan Saheb**^[4], the Division Bench of this Court reiterated the principle laid down by the Madras High Court in **Sririgneedi Subbarayudu’s** case (1 supra) and held in paragraph 16 of the judgment as follows.

“It is thus clear that on vital and important aspects the plaintiff’s case is false and equally false is his

testimony as PW.1. He came to the Court with unclean hands. He is, therefore, not entitled to the equitable relief of specific performance under Section 20 of the Act.....”

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31. In **Krovidi Kameswaramma v. Kudapa Balaramayya**^[5], the Division Bench of this Court specifically held as follows.

“The plaintiff who had set up a false plea of payment of a major portion of the purchase money was not only disentitled to the discretionary relief on the ground that he has set up a false plea but also on the ground that, that discloses that he was not ready and willing to perform his part of the contract. We are in respectful agreement with the view taken in this decision. The principle that *Impari delicto potior est conditio defentis* is also to the effect that in case of equal guilt the defendant alone should succeed. So on application of this principle also the plaintiff must fail for setting up a false plea. From all the above principles it is clear that the plaintiff who does not come to the Court with clean hands cannot succeed.....”

32. The law consistently laid down by the Division Bench of this Court and other Courts is that, when the plaintiff set up a false plea to claim the relief of specific performance, he is disentitled to claim the relief of specific performance. In the present case, for the first time in the reply notice, marked as Ex.B11, the plaintiff explained the reason for non-payment of balance sale consideration on two grounds. The first ground is that the first defendant failed to settle the southern boundary wall dispute between her and her southern neighbour Kondala Rao and the second ground is that she did not get the tenants vacated to deliver vacant possession of the property before execution of registered sale deed as agreed. On the face of record, the plea of settlement of southern boundary wall dispute for payment of balance sale consideration on or before 18.06.1979 is false and it is an invention. So far as the second explanation is concerned, as per the

terms of Ex.A1 the first defendant agreed to deliver vacant possession of the property after execution of registered sale deed. Therefore, as per the order of performance of reciprocal promises under agreement of sale in respect of immovable property, the first defendant has to deliver vacant possession of the property only after execution of registered sale deed but not before execution of registered sale deed as contended by the plaintiff. Hence, the plea raised by the plaintiff for non-payment of balance sale consideration to obtain registered sale deed on or before 18.06.1979 is a false one, which disentitles her to claim the relief of specific performance.

33. Undisputedly, as per the settled law, the agreement of sale of immovable property is a reciprocal agreement and both parties have to perform their respective obligations agreed thereto. When the order of specific performance is fixed, the parties have to perform their obligation in the order fixed as per the terms of the agreement of sale. In the present case, the order of performance is; payment of balance sale consideration by the plaintiff on or before 18.06.1979 to obtain registered sale deed and, thereafter, the first defendant has to execute registered sale deed and deliver vacant possession of the property except part of the property in possession of PS Krishna Murthy, who is running a hotel. According to Section 52 of the Indian Contract Act, 1872, when the order of performance is fixed in the agreement of sale the parties must adhere to the order. A similar question came up before the Apex Court in a judgment rendered in **Saradamani Kandappan v. S. Rajalakshmi**^[6], wherein the Apex Court discussed about the order of performance and obligation of each of the parties to the agreement to perform and ultimately concluded that when the plaintiff agreed to pay balance sale consideration within the time fixed under the agreement of sale delinking with his other grounds, the plaintiff is disentitled to claim the relief of specific performance and held as follows.

“The order of performance of reciprocal promises does not depend upon the order in which the terms of the agreement are reduced into writing. The order of performance should be expressly stated or provided, that is, the agreement should say only after performance of obligations of vendors, the purchaser will have to perform her obligations. In the present case the agreement of sale expressly provided that the purchaser shall pay the balance sale consideration within time schedule as specified. The payment of sale price was delinked from execution of sale deed. The purchaser had to fulfill her obligation in regard to payment of price and thereafter vendors were required to perform their reciprocal promise of executing the sale deed, whenever required by the purchaser. The agreement provided specifically that having paid the balance price, if the purchaser is not satisfied about the title and on being intimated about the same if the vendors fail to satisfy the purchaser about their title, all amounts paid towards the price should be refunded to purchaser. This clearly demonstrates that the payment of balance of sale price in terms of the contract was not postponed nor made conditional upon the purchaser being satisfied about the title, but that payment of the balance price should be made to the vendors as agreed unconditionally. In such circumstances the plea of purchaser that since clause providing that execution of the sale deed shall depend upon the purchaser getting satisfied regarding title to the lands and that property is not subject of any encumbrance; precedes clause requiring payment of balance consideration in three installments, the satisfaction of the purchaser in regard to the vendor's title to the land and encumbrance, was a condition precedent for payment of the balance consideration cannot be accepted. Since Section 52 cannot come in aid of purchaser to save his non-payment of balance consideration within time fixed when time was essence of contract. Therefore, the failure of the appellant purchaser to pay the balance sale consideration within time fixed, clearly amounted to breach of contract. As the time for payment was, the essence of the contract, the respondents were justified in determining the agreement of sale. The rejection of the prayer for specific

performance was, therefore, proper.”

34. If the principle laid down in the above judgment is applied to the present facts of the case, the obligation of the first defendant to deliver vacant possession of the property except part of the property in possession of PS Krishna Murthy would arise only after execution of registered sale deed on receipt of balance sale consideration and not before the execution of sale deed. Therefore, the explanation offered by the plaintiff for non-payment of balance sale consideration on or before 18.06.1979 as agreed, cannot be accepted.

35. In **Chand Rani (dead) by LRs v. Kamal Rani (dead) by LRs**^[7], the Constitutional Bench of the Hon'ble Apex Court held as follows.

“In case of immovable property, there is no presumption as to time being the essence of the contract. Even if it is not of the essence of the contract the court may infer that it is to be performed in a reasonable time if the conditions are (1) from the express terms of the contract (2) from the nature of property and (3) from the surrounding circumstances.

Where in an agreement to sell the immovable property it was stipulated that amount in part was to be paid within 10 days of the execution of the agreement and the balance has to be paid at the time of registration of deed and it was agreed that the vendor would redeem the property which was mortgaged and also obtain the Income Tax clearance certificate and the word ‘only’ was used twice i.e., to qualify the amount and to qualify the period of payment of such amount i.e., ten days it was held that the intention of the parties was to make time as essence of contract and in such case, when the purchaser was not ready and willing to pay the amount in part as agreed, before delivery of possession and income tax clearance certificate and redemption of property, it was contrary to the conditions of the agreement and the purchaser was not entitled to the specific performance of contract.”

36. Relying on the principle laid down in **Chand Rani's** case (7 supra), the Hon'ble Apex Court in the judgment reported in **K.S. Vidyanadham v. Vairavan**^[8], reiterated the same principle.

37. In view of the principles laid down in the above judgments, when the plaintiff approached with a false plea and with unclean hands in a suit for specific performance he is disentitled to claim the relief of specific performance.

38. In the present case, the plaintiff agreed to pay the balance sale consideration on or before 18.06.1979, but paid only Rs.5,000/- each on two occasions, endorsed the same on the reverse of Ex.A1 and invented a story of resolving the southern boundary wall dispute between the first defendant and her southern neighbour Kondala Rao and also delivery of possession prior to registration of sale deed. So far as first explanation is concerned, it is an invention made by the plaintiff subsequent to execution of agreement of sale and on the face of it, it is a false plea. So far as the second explanation is concerned, it is contrary to the terms of agreement of sale since the first defendant agreed to deliver vacant possession after execution of the registered sale deed on receipt of balance sale consideration. Therefore, any of the explanations offered by the plaintiff for non-payment of balance sale consideration are not acceptable and they are invented to avoid payment of balance sale consideration within the stipulated time as agreed under Ex.A1.

39. Apart from the above inherent defects in the case of the plaintiff, the first defendant got issued a notice marked as Ex.B10 demanding the plaintiff to pay balance of sale consideration to obtain sale deed within one week from the date of receipt of the notice. The plaintiff did not come forward to pay the balance sale consideration to obtain

registered sale deed, but suddenly invented a story of resolving the southern boundary wall dispute between the first defendant and her neighbour Kondala Rao and delivery of possession on vacating the tenants before payment of balance sale consideration. In fact, since the payment of balance sale consideration on or before 18.06.1979 is delinked with the vacation of tenants in possession and delivery of property, the question of delivery of vacant possession of the property by the first defendant that is a reciprocal obligation on the part of the first defendant would arise only after execution of the registered sale deed on receiving the balance sale consideration. Therefore, the explanations offered by the plaintiff for non-payment of balance sale consideration are not plausible explanations for her failure to pay balance of sale consideration.

40. The false explanation offered by the plaintiff for non-payment not only discloses her conduct but also discloses that she was not ready and willing to perform her part of contract within the time stipulated under Ex.A1 i.e., on or before 18.06.1979. Thus, the plaintiff failed to prove her *bona fides* tendering the balance sale consideration even after receipt of notice, marked as Ex.B10, but issued a contentious reply with a false plea of settlement of southern boundary wall dispute as a condition precedent for payment of balance sale consideration.

41. The trial Court granted decree for specific performance on the ground that the first defendant miserably failed to get the tenants, except PS Krishna Murthy, vacated within the stipulated time and during the course of arguments, Sri P. Durga Prasad, learned counsel for the respondent/plaintiff, supported the finding of the trial Court as the first defendant failed to evict the tenants which is a condition precedent for payment of balance sale consideration and at one stage the first defendant evicted the tenants of other shops but let out the shops to some other tenants instead of delivering possession of the property to the plaintiff. Even assuming for a moment that the first

defendant let out the shops to other tenants after evicting the tenants in occupation, since delivery of possession is delinked with the payment of balance sale consideration, the explanation offered by the plaintiff for non-payment of balance sale consideration is not a sufficient cause to prove her readiness and willingness to perform her obligation to pay the balance sale consideration and, on the other hand, it is a false plea set up by the plaintiff so as to avoid payment of balance sale consideration which directly falsify the plea of readiness and willingness of the plaintiff. Thus, the plaintiff failed to pay balance sale consideration within the time stipulated under Ex.A1 and invented two false pleas referred above. In such case she is disentitled to claim the relief of specific performance.

42. In view of the law laid down by the Hon'ble Apex Court, as mentioned supra, the relief of specific performance is purely an equitable and discretionary relief and unless the plaintiff approaches the Court with clean hands she is not entitled to claim the relief of specific performance.

43. In a similar situation, the Hon'ble Apex Court in **G. Jayashree v.**

Bhagwandas S. Patel^[9], held as follows.

“When the plaintiff did not choose to file a suit for specific performance of contract at first instance speaks volumes about his conduct. However civil Courts, in matter of enforcement of an agreement to sell, exercise a discretionary jurisdiction. The plaintiff was expected to approach Court with clean hands and his conduct plays an important role in the matter of exercise of discretionary jurisdiction by a court of law. He has to approach the court within reasonable time.”

44. Thus, it is clear that when the plaintiff did not approach the Court with clean hands discretionary jurisdiction cannot be exercised for grant of specific performance.

45. In **Nirmala Anand v. Advent Corporation (P) Limited**^[10], the Hon'ble Apex Court, in paragraph 6 of the judgment, held thus.

“It is true that grant of decree of specific performance lies in the discretion of the Court and it is also well settled that it is not always necessary to grant specific performance simply for the reason that it is legal to do so. It is further well settled that the Court in its discretion can impose any reasonable condition including payment of an additional amount by one party to the other while granting or refusing decree of specific performance.”

46. Thus, in view of the law declared by the Hon'ble Apex Court, the relief of specific performance is purely discretionary and equitable in nature and such discretion should be exercised in favour of the party, who approached the Court with clean hands. The law declared by the Apex Court is not in dispute. However, in the present case, the plaintiff set up a false plea to explain the reason for non-payment of balance sale consideration within the time stipulated under Ex.A1 and that itself is suffice to decline the relief of specific performance by exercising discretion conferred on this Court under Section 20 of the Specific Relief Act. Apart from that, non-payment of balance sale consideration within the stipulated time amounts to breach of terms and conditions of the agreement of sale under Section 16(b) of the Specific Relief Act. On this ground alone the plaintiff is disentitled to claim the relief of specific performance.

47. Learned counsel for the respondent/plaintiff contended that when the plaintiff is able to prove her readiness and willingness to pay balance sale consideration the relief of specific performance cannot be denied and he placed reliance on a judgment of the Hon'ble Apex Court reported in **K. Prakash v. B.R. Sampath Kumar**^[11], wherein the Hon'ble Apex Court, while discussing Sections 16(c) and 20 of the

Specific Relief Act, held that the relief for specific performance is an equitable remedy and while granting such relief court has to exercise discretion in accordance with sound and reasonable judicial principles and where the plaintiff brings a suit for specific performance of contract for sale, law insists a condition precedent to grant of decree for specific performance that the plaintiff must show his continuous readiness and willingness to perform his part of contract in accordance with its terms from the date of contract to the date of hearing. Normally, when trial Court exercises its discretion in one way or other after appreciation of entire evidence and material on record, appellate Court should not interfere unless it is established that discretion has been exercised perversely, arbitrarily or against judicial principles. The appellate Court should also not exercise its discretion against grant of specific performance on extraneous considerations or sympathetic considerations.

48. He also placed reliance on another judgment reported in **Laxman Tatyaba Kankate v. Taramati Harishchandra Dhatrak**^[12], wherein the Hon'ble Apex Court held that the relief of specific performance is purely discretionary and equitable in nature and the conduct of the parties plays an important role. When the defendants failed to prove the claim before the Courts below by raising proper pleas in their pleadings the Court has to draw adverse inference and the plea set up by the defendants for the first time cannot be accepted and discretion has to be exercised to grant relief of specific performance.

49. He also placed reliance on a judgment reported in **Zarina Siddiqui v. A. Ramalingam @ R. Amarnathan**^[13], wherein the Hon'ble Apex Court held that the conduct of both the parties has to be taken into consideration either to grant the relief of specific performance or deny the same.

50. There is no dispute regarding the law laid down by the Hon'ble Apex Court in the judgments referred supra, but those principles are not applicable to the facts of the present case for the reason that the plaintiff failed to pay balance sale consideration on or before 18.06.1979 as agreed and the payment is delinked with delivery of possession. On the other hand, the first defendant agreed to deliver vacant possession only after execution of registered sale deed on receipt of balance sale consideration. Further, the plaintiff set up a false plea of settlement of southern boundary wall dispute between the first defendant and her neighbour Kondala Rao for non-payment of balance sale consideration. Therefore, non-payment of balance sale consideration within the stipulated time in the order of performance as agreed under Ex.A1 is fatal to the case, but the trial Court did not analyse the terms and conditions of Ex.A1 regarding order of performance of contract and granted specific performance of agreement of sale erroneously and such wrong appreciation of facts with reference to the terms and conditions contained in Ex.A1 is nothing but perversity which warrants interference of this Court in view of the law declared by the Hon'ble Apex Court in **K. Prakash's** case (11 supra).

51. The learned Senior Counsel Sri J. Prabhakar in support of his contentions drawn the attention of this Court to a judgment reported in **Rudram Builders, Secunderabad v. Mir Asharafuddin (died) by LRs** [\[14\]](#), wherein this Court held thus.

“.....Thereafter, if the conduct of the plaintiff is to be taken into consideration, the payment as reflected under Exs.A16 to A60 till 1992 shows that as if some installments were paid as if towards the discharge of debt and not as a consideration for the purchase of the property. When the property was purchased at the rate of Rs.75,000/- per acre and only Rs.3,50,000/- is payable towards balance sale consideration and any person who

is interested in specific performance must prove his readiness and willingness to pay the amount substantially. One fails to understand as to how monthly payments or periodical payments in thousands are given and receipts were obtained. This clearly goes to show that the plaintiff was not offering the entire sale consideration at one time and his preparedness and willingness to pay the amount and get the registered sale deed executed in his favour and thereby disentitling himself for the discretionary relief. The sale of the properties for a price is for better investment or in the hope of purchasing other properties, when the values of the land are increasing and particularly so, where the suit lands are situated, the payment of consideration as a pittance at irregular intervals as if some mercy is shown on the vendors, does not show the bona fides of the plaintiff and it is highly inequitable to grant relief of specific performance in favour of the plaintiff since the plaintiff will have better advantage and vendor will be loser.”

52. Similarly, he relied on a decision reported in **T.V. Ratnakar Rao v. Hemantha Kumar**^[15], wherein the Division Bench of this Court in identical facts held in paragraph 59 as follows.

“59. Therefore, we are of the view that the contention of the learned Counsel is wholly untenable and the finding recorded by the trial Court that it is impossible for the defendant to perform his part of the contract is not sustainable and unwarranted. In fact, impossibility to perform the contract and the decree passed by the Court below for specific performance are incompatible.”

53. The learned Senior Counsel further drawn the attention of this Court to a judgment rendered in **I.S. Sikandar (dead) by LRs v. K. Subramani**^[16], wherein the Hon’ble Apex Court held that when Clause in agreement fixed five months time period for execution, on completion of sale transaction providing extension of period of two

months in case of delay in obtaining permission from Urban Land Ceiling and Income Tax authorities, non-payment of balance sale consideration within seven months stipulated time amounts to breach of terms and conditions of the agreement of sale, which disentitled the plaintiff to claim discretionary relief of specific performance.

54. Though both the advocates drawn the attention of this Court to several judgments, the consistent principles laid down by all the Courts is that when time is fixed for payment of balance sale consideration, delinked with the obligation imposed on the first defendant, non-payment of balance sale consideration by the plaintiff raising a false plea amounts to breach of terms of the agreement under Section 16(b) of the Act, which disentitles her to claim discretionary relief of specific performance and the Court shall not exercise its discretion for grant of specific performance of agreement of sale. As discussed in the earlier paras, the plaintiff agreed to pay balance sale consideration on or before 18.06.1979 which is delinked with delivery of possession since the first defendant agreed to deliver vacant possession only after execution of registered sale deed on receipt of balance sale consideration. Therefore, the plaintiff, who approached the Court with unclean hands and with a false plea, has committed breach of terms and conditions of the agreement of sale - Ex.A1. Consequently the plaintiff is disentitled to claim an equitable and discretionary relief of specific performance under Section 20 of the Specific Relief Act.

55. Though the plaintiff produced evidence regarding her capacity to pay balance sale consideration it is irrelevant for the purpose of deciding the controversy between the parties in view of the admitted facts. Therefore, the voluminous evidence produced by the plaintiff to prove her readiness and willingness to pay balance sale consideration is not considered.

56. The trial Court only based on the specific contentions raised by the plaintiff without advertent to the terms and conditions contained in the agreement of sale - Ex.A1 about reciprocal obligation of both the plaintiff and the first defendant and order of performance of obligation by both the plaintiff and the first defendant granted the specific performance erroneously and it is nothing but perverse or arbitrary exercise of discretion to grant the relief of specific performance in favour of the plaintiff. In such situation, the appellate Court by exercising its power under Order 41 Rule 33 CPC can interfere with such finding. Hence, the decree and judgment of the trial Court are liable to be set aside holding these two points in favour of the defendants/appellants and against the respondent/plaintiff.

57. As the decree and judgment of the trial Court, granting main relief of specific performance, is reversed, the plaintiff is entitled to recover the amount paid on various dates under the agreement of sale. The plaintiff paid Rs.5,000/- (Rupees Five Thousand only) on 18.03.1979, Rs.5,000/- (Rupees Five Thousand only) on 18.04.1979, in total paid Rs.10,000/- (Rupees Ten Thousand only) towards advance. The suit was filed in 1980, hence the claim for refund of advance is within limitation, consequently the plaintiff is entitled to recover an amount of Rs.10,000/- together with interest @ 9% p.a., from the respective dates of payment till realization.

58. The plaintiff also claimed damages for breach of contract at Rs.50,000/- (Rupees Fifty Thousand only) but as per my discussion the plaintiff herself committed breach of contract/agreement of sale but not the first defendant, hence, the plaintiff is not entitled to recover any amount towards damages for breach of contract.

59. In the result, the appeal is allowed setting aside the judgment and decree, dated 22.02.1994, passed by the Senior Civil Judge's Court, at Ramachandrapuram, in OS No.283 of 1980, for specific

performance of agreement of sale dated 18.03.1979, however, passing a decree for refund of advance of sale consideration of Rs.10,000/- (Rupees Ten Thousand only) together with interest @ 9% p.a., on the principal amount from the respective dates of payment till realization, while negating the relief of damages for breach of contract, without costs.

60. As a sequel thereto, the miscellaneous petitions, if any, pending in this appeal shall stand closed.

M. SATYANARAYANA MURTHY, J

Date: 29th October 2015

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- [\[1\]](#) 1937 Mad. WN 1158
 - [\[2\]](#) AIR 1971 AP 279
 - [\[3\]](#) 2008(1) ALD 1
 - [\[4\]](#) 1993(3) ALT 634(DB)
 - [\[5\]](#) 1998(5) ALD 68(DB)
 - [\[6\]](#) AIR 2011 SC 3234
 - [\[7\]](#) AIR 1993 SC 1742
 - [\[8\]](#) AIR 1997 SC 1751
 - [\[9\]](#) 2009(3) SCC 141
 - [\[10\]](#) (2002) Supp. (2) SCR 706
 - [\[11\]](#) 2015(1) SCC 597
 - [\[12\]](#) (2010) 7 SCC 717
 - [\[13\]](#) 2014(10) SCJ 5
 - [\[14\]](#) 2011 (5) ALD 554
 - [\[15\]](#) 2007(4) ALD 334(DB)
 - [\[16\]](#) (2013) 15 SCC 27