

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

APPEAL SUIT No. 1609 OF 1996

JUDGMENT:

Aggrieved by the decree and judgment dated 24.11.1989, passed in Original Suit No.100 of 1980 by the Subordinate Judge, Khammam (for short, 'the trial Court'), the unsuccessful plaintiff therein preferred this Appeal.

2. The 1st appellant herein was the plaintiff and the respondents 1 and 2 herein were the defendants before the trial Court.

3. During pendency of the Appeal, 1st appellant died and appellants 2 to 4 herein were impleaded as his legal heirs, as per order of this Court in A.S.M.P. No.14798 of 2004, dated 06.12.2004; respondents 1 and 2 died and respondents 3 to 6 and 7 to 10 herein were impleaded as their legal heirs as per orders of this Court in A.S.M.P. Nos.2082 and 2086 of 2013, dated 25.11.2013.

4. For convenience of reference, the ranks given to the parties in O.S. No.100 of 1980 will be adopted throughout this judgment.

5. The 1st defendant, who is the owner of land admeasuring Ac.2.20 guntas situated in Survey Nos.298 and 299, which is more fully described in the schedule annexed to the plaint, offered to sell and the plaintiff agreed to purchase the same and, accordingly, they entered into an agreement of sale, dated 29.05.1977, marked as Ex.A-1 for sale consideration of Rs.30,000/- *i.e.*, at the rate of Rs.12,000/- per acre and, on the same day, the plaintiff paid entire sale consideration and took delivery of possession of the property but the 1st defendant agreed to execute the registered sale deed whenever demanded by the plaintiff. Thereafter, in spite of several demands by the plaintiff, the 1st defendant conveniently avoided to execute the sale deed. It is contended that there are village factions in Yedulapuram

and Vempati Rama Kotaiah was leading opposite group to the plaintiff. Few days after execution of the agreement of sale, Rama Kotaiah along with his supporters instigated the 1st defendant to turn hostile towards the plaintiff and created trouble in execution of regular sale deed.

6. While the plaintiff was sowing green-gram, the 1st defendant came to the schedule property and unyoked the ploughs of the plaintiff with his supporters Vempati Rama Kotaiah in the month of June, 1977 and thrown out the plaintiff from possession of the property, but in the last week of September 1977, Rama Kotaiah mobilized his men to support the 1st defendant, who has sown jowar crop and thus the 1st defendant continued to be in illegal possession and enjoyment of the suit schedule property. Vempati China Venkaiah, who is the 2nd defendant, is the cousin of Rama Kotaiah, made the 1st defendant to violate the terms of agreement with the active support of Rama Kotaiah. Thus, the 1st defendant committed breach of contract and highhandedly took illegal possession of the schedule property from the plaintiff. Therefore, the plaintiff having no other alternative, after making several demands, though served no purpose, filed the suit for the main relief of specific performance of agreement of sale, dated 29.05.1977 and in alternative to grant the relief of refund sale consideration of Rs.30,000/- and grant *mesne* profits at the rate of Rs.500/- p.a. from the date of filing suit till the date of recovery of possession.

7. The 1st defendant filed written statement and resisted the claim of the plaintiff on the following grounds:

a) The 1st defendant never executed the agreement of sale, dated 29.05.1977, never received any consideration there under, never delivered vacant possession of the schedule property to the plaintiff and

as such the plaintiff's alleged sowing of green-gram with two ploughs *etc.*, are all false; and

b) The 1st defendant asserted that he is in possession and enjoyment of the property being owner till he sold the same to 2nd defendant and that the plaintiff has no capacity to pay consideration under the agreement of sale;

C) The plaintiff was never ready and willing to perform his part of obligation under the agreement of sale and as such he is not entitled either to the relief of specific performance or for refund of Rs.30,000/- and prayed to dismiss the suit.

8. After filing written statement by the 1st defendant, the plaintiff filed I.A. No.1010 of 1980 under Order I Rule 10 of C.P.C. and impleaded the 2nd defendant, who is the alleged subsequent purchaser of schedule property, as per the order dated 16.09.1980. On his appearance, the 2nd defendant filed a separate written statement contending that:

a) The 1st defendant was the owner of suit schedule property and he never entered into agreement of sale with the plaintiff and delivered possession of the same;

b) The 2nd defendant purchased the suit schedule property under agreement of sale dated 15.12.1976, for consideration of Rs.20,000/- and the 1st defendant delivered vacant possession of the same to the 2nd defendant;

c) It is further contended that in pursuance of the agreement of sale dated 15.12.1976, the 1st defendant executed a registered sale deed, dated 08.06.1977, *vide* document bearing No.2081 of 1977. The 2nd defendant made necessary enquiry to know the ownership and in the course of enquiry, he verified the record of rights and having satisfied with the ownership of 1st defendant, purchased the property and obtained delivery of vacant possession of the property, obtained ryotwari pass-book in his favour; and

d) Thus, the 2nd defendant is the absolute owner of the property and *bona-fide* purchaser for valuable consideration without notice of the alleged contract between the plaintiff and 1st defendant and that the said document is a fabricated and ante-dated document and that there was no subsistence of contractual obligation between the plaintiff and the 1st defendant by the date of execution of agreement of sale, dated 29.05.1977, and on the date of execution of regular registered sale deed he was continuing in possession and enjoyment of the schedule property as lawful owner; the suit is barred by limitation and finally, prayed to dismiss the suit.

9. Thereafter, the plaintiff filed rejoinder, after obtaining necessary permission under Order 8 Rule 9 of C.P.C., almost reiterating the contentions raised in the plaint while contending that the 2nd defendant is not a *bona-fide* purchaser for valuable consideration and that he was never in possession and enjoyment of the schedule property. Therefore, the question of his continuous possession and enjoyment of the property from the date of alleged agreement of sale, dated 15.12.1976, and thereafter, in pursuance of the regular registered sale deed dated 08.06.1977 does not arise and prayed to pass a decree in his favour and against the defendants for the relief of specific performance of agreement of sale and other ancillary reliefs.

10. Based on the above pleadings, the trial Court framed the following issues on 19.02.1981:

- 1) Whether the alleged agreement of sale set up by plaintiff is genuine, valid and acted upon at any time and whether it is enforceable in view of the prior *bona fide* purchase made by D.2?
- 2) Whether D.1 with the support of Vempati Rama Kotaiah, entered into the suit schedule land in the last week of September, 1977 and he was in illegal occupation of the suit scheduled land?
- 3) What is the effect of *bona-fide* purchase made by D.2 and his possession thereof?

- 4) Whether the alleged sale set up by D.2, is sham and nominal one brought up for the purpose of defeating the claim of the plaintiff?
- 5) Whether the suit document is admissible in evidence and is enforceable under law?
- 6) Whether D.2 is entitled for exemplary costs?
- 7) To what relief?

11. Later, as per the order in I.A. No.1053 of 1988, dated 10.10.1988, the issues have been recasted as under:

1. Whether the plaintiff is entitled for specific performance of contract as per the agreement of sale dated 29.05.1977?
2. Whether in alternative the plaintiff is entitled for recovery of money alleged to have been advanced towards the sale consideration?
3. Whether the sale in favour of D.2 is prior to that of the plaintiff and whether there was in existence any such document, as on 15.12.1976?
4. Whether plaintiff had come into possession in pursuant to the agreement of sale dated 29.05.1977 in his favour and whether he was dispossessed as alleged by him?
5. Whether D.1 with the support of Vempati Rama Kotaiah, entered into the suit schedule land in the last week of September, 1977 and was in illegal occupation of the same?
6. Whether the suit document is admissible in evidence and is enforceable in law?
7. Whether the D.2 is entitled for exemplary costs?
8. To what relief?

12. On 06.10.1989, the following additional issue was framed:

Whether the suit is barred by limitation, as pleaded by D.2?

13. During course of trial, on behalf of the plaintiff, PWs.1 to 6 were examined and Exs.A.1 to A.5 were marked. On behalf of the

defendants, DWs.1 and 2 were examined and Exs.B.1 to B.10 were marked.

14. Upon hearing argument of both the counsel, considering oral and documentary evidence available on record, the trial Court decreed the suit against the 1st defendant, granting alternative relief of refund of sale consideration of Rs.30,000/- with interest at the rate of 12% *per annum* from the date of suit till the date of realization while declining to grant the main relief of specific performance and dismissed the suit against the 2nd defendant.

15. Dissatisfied with only granting of the alternative relief of refund of sale consideration but not the main relief of specific performance of agreement of sale, the unsuccessful plaintiff therein preferred the present Appeal raising the following contentions:

a) The trial Court having held that the agreement of sale is true, genuine and valid and enforceable ought not to have dismissed the suit for the main relief of specific performance. Unless there are specific grounds to deny the main relief of specific performance of agreement of sale, exercising discretion under Section 20 of the Specific Relief Act is erroneous; thus, the conclusion arrived at by the trial Court is an apparent error;

b) It is further contended that the transactions covered under the originals of Exs.B-1 and B-2 between defendants 1 and 2 are collusively brought into existence due to alleged factions. Therefore, the 2nd defendant, who is the subsequent purchaser, will not get any title over the schedule property and, hence, the trial Court ought not to have held that the 2nd defendant is a *bona-fide* purchaser for valuable consideration;

c) The trial Court also failed to consider delivery of

possession of the schedule property by the 1st defendant to the plaintiff, till he is dispossessed by the 1st defendant with the aid of the supporters of Vempati Rama Kotaiah, the opposite group leader in the village;

d) The trial Court also unnecessarily adverted to Section 48 of the Registration Act, 1908 and committed an error in denying the main relief of specific performance while granting alternative relief of refund of sale consideration and finally prayed to allow the Appeal, setting-aside the decree and judgment under challenge, by granting the main relief of specific performance of agreement of sale dated 29.05.1977.

16. During course of argument, Sri D. Jaipal Reddy, learned counsel for the plaintiff-appellants, contended that the trial Court having accepted the genuineness and enforceability of agreement of sale, Ex.A.1, not supposed to dismiss the suit, unless there are circumstances to exercise discretion not to grant decree in favour of the plaintiff under Section 20 of the Specific Relief Act, 1963, but the trial Court did not record any finding as to the grounds, which disentitled the plaintiff to claim discretionary relief of specific performance and no issue was framed by the trial Court and no finding was recorded. In the absence of any issue and finding, denial of main relief of specific performance is *ex-facie* error. It is further contended that the 2nd defendant, who is contesting the Appeal, is incompetent to challenge the validity and enforceability of agreement of sale, Ex.A.1, and that he is disentitled to question the readiness and willingness of the plaintiff to perform his part of obligation under Ex.A.1, being the subsequent purchaser. But, the trial Court, on erroneous appreciation of evidence, declined the main relief of specific performance.

17. It is further contended that from the beginning the plaintiff's

contention is that he was inducted into possession immediately after execution of agreement of sale and when he was dispossessed from the schedule property in the month of June, 1977, the 1st defendant highhandedly took possession of the schedule property and as such the plaintiff did not approach the Court with false plea of delivery of possession, which disentitled him to claim the main relief of specific performance, but the trial Court on wrong appreciation of facts denied the main relief of specific performance.

18. In support of his contentions, learned counsel for the plaintiff-appellants, placed reliance on several decisions of this Court in ***Kommisetti Venkatasubbayya Vs. Karamsetti Venkateswarlu and others***^[1], ***Mamidi Jagannadham Vs. Yelgani Shankaraiah and another***^[2], ***M. N. Mohammad Mirza alias Mirza Vs. B. Subhan Saheb***^[3], ***Krovidi Kameswaramma and others Vs. Kudapa Balaramayya and another***^[4], and decisions of Madras High Court in ***K. Krishnan Nair Vs. K. Parameswaran Pillai***^[5], ***Ramaswamy Gounder Vs. K. M. Venkatachalam and others***^[6].

19. Learned counsel for the plaintiff-appellants contended that the 2nd defendant is incompetent to challenge the agreement of sale and, in the absence of any Cross-objection or independent Appeal, the 2nd defendant is not entitled to question the adverse finding recorded by the trial Court against the 1st defendant regarding genuineness and enforceability of Ex.A.1, placed reliance on the decisions of the Apex Court in ***Banarsi and others Vs. Ram Phal***^[7], ***Zarina Siddiqui Vs. A. Ramalingam alias R. Amarnathan***^[8]. The conduct of defendants also be taken into consideration while deciding entitlement of the plaintiff to claim main relief of specific performance, but the trial Court

did not consider the same and drawn the attention of this Court to a decision of Apex Court in ***M. M. S. Investments, Madurai and others Vs. V. Veerappan and others***^[9].

20. Sri N. Subba Reddy, learned senior counsel, appearing along with Sri C. Subba Rao, learned counsel for the 2nd defendant-respondents, refuting the contentions of the learned counsel for plaintiff-appellants, would contend that the agreement itself is fabricated by the 1st defendant in collusion with the plaintiff, ignoring the prior agreement and subsequent execution of regular sale deed in favour of the 2nd defendant, and drawn the attention of this Court to various lacunas in the case of the plaintiff, more particularly, absence of name of the stamp vendor and seal of the Registrar's Office on Ex.A.1 to doubt the genuineness of the stamp papers.

21. It is further contended that since the plaintiff pleaded his readiness and willingness to perform his part of obligation, as required under Section 16(c) of the Specific Relief Act, it is for him to prove the same by adducing cogent and satisfactory evidence. Strangely, the plaintiff never got issued any legal notice calling upon the 1st defendant to execute registered sale deed, expressing his readiness and willingness to perform his part of obligation. Apart from that, the alleged delivery of possession and dispossession are not proved satisfactorily. However, the plaintiff himself filed an application for appointment of receiver, as he was out of possession. In the absence of proof of delivery of possession and subsequent dispossession of the plaintiff, allegedly by the 1st defendant, the alleged plea of delivery of vacant possession and dispossession are false and thereby the conduct of the plaintiff is blameworthy and on this ground alone the plaintiff is disentitled to claim the relief of specific performance placed reliance on a decision of the Madras High Court in ***S. V.***

Sankaralinga Nadar Vs. P.T.S. Ratnaswami Nadar and others^[10]

and a decision of this Court in ***Afzal Begum Vs. Ahmed Ali Khan and others***^[11].

22. He further contended that the 2nd defendant being a transferee of the 1st defendant and being a *bona-fide* purchaser for valuable consideration is entitled to question readiness and willingness pleaded by the plaintiff. Merely because it is lawful to do so, the Court cannot exercise its discretion in favour of the plaintiff and drawn the attention of this Court to another decision, which pertains to exercise of jurisdiction of this Court under Article 226 of the Constitution for grant of *certiorari* which is similar to the exercise of discretion for grant of relief of specific performance.

23. Learned senior counsel appearing for the 2nd defendant-respondents further contended that when the plaintiff approached the Court with false plea, the Court cannot exercise its discretion under Section 20 of the Specific Relief Act in view of the law declared by the Apex Court in ***Tek Chand and others Vs. Deep Chand and others***^[12] and ***H. P. Pyarejan Vs. Dasappa and others***^[13] and contended that the 2nd defendant is also competent to question the finding recorded by the trial Court though no Cross-objection or independent Appeal is preferred challenging the adverse finding, placed reliance on the decisions of Apex Court in ***Thepfulo Nakhro Angami Vs. Shrimati Revoluei alias Rani M.Shaiza***^[14], ***G. Jayashree and others Vs. Bhagwandas S. Patel and others***^[15], ***Azhar Sultana Vs. B. Rajamani and others***^[16], ***Sri Chandra Prabhuji Jain Temple and others Vs. Harikrishna and another***^[17], ***Ravinder Kumar Sharma Vs. State of Assam and others***^[18], and decisions of Madhya Pradesh High Court in ***Pannu Jeegania Vs.***

Dewi Prashad Sukh Chand^[19] and **Tej Kumar Jain Vs. Purshottam and another**^[20], and decisions of Madras High Court in **M. Manoharan Chetti and others Vs. M/s C. Coomaraswamy Naidu and others**^[21] and **Gaddem Chinna Venkata Rao and others Vs. Koralla Satyanarayanamurthy and another**^[22] and a decision of Bombay High Court in **Nana Tukaram Jaikar Vs. Sonabai and others**^[23].

24. Relying on the principle laid down in the decisions referred herein above, learned senior counsel, requested this Court to set-aside the adverse finding in directing the 1st defendant to pay Rs.30,000/-, sale consideration received under Ex.A.1, and dismiss the suit *in toto*.

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

1. Whether Ex.A.1, agreement of sale is true, valid and enforceable under law?
2. Whether the 2nd defendant, being the purchaser for valuable consideration in good faith, is entitled to question readiness and willingness pleaded by the plaintiff to perform his part of obligation?
3. Whether the 2nd defendant, against whom no finding was recorded, while granting the relief of refund of sale consideration of Rs.30,000/- by the 1st defendant, is competent to question such finding?
4. Whether the trial Court did exercise its discretion in negating the main relief of specific performance, strictly within the parameters under Section 20 of the Specific Relief Act? If so, the finding of trial Court in declining the main relief of specific performance calls for any interference of this Court?

5. Whether the plaintiff is entitled to the main relief of specific performance of agreement of sale dated 29.05.1977? If so, the decree and judgment of the trial Court be sustained?

26. **POINT No.1:** According to the plaintiff, 1st defendant, original owner of the property, entered into an agreement of sale with the plaintiff, agreeing to sell the schedule property in an extent of Ac.2.20 guntas situated in Survey Nos.298 and 299 for a total consideration of Rs.30,000/-, at the rate of Rs.12,000/- per acre; received entire sale consideration on the date of execution of Ex.A-1 itself, allegedly delivered possession of the property on the same day while agreeing to execute regular sale deed as and when demanded by the plaintiff, at his expenses. The 1st defendant filed his written statement admitting his ownership over the property and specifically denied execution of agreement of sale for Rs.30,000/- and that he never received any sale consideration and moreover the plaintiff has no capacity to pay any consideration. He also denied delivery of possession of the schedule property on the date of execution; whereas, the 2nd defendant who is the alleged subsequent purchaser on his impleadment filed written statement denying execution of agreement of sale for sale of the schedule property. Thus, the very genuineness of Ex.A-1 is in dispute. Therefore, the initial onus of proof is on the plaintiff who filed the suit setting up an agreement of sale Ex.A-1, to claim the relief of specific performance. Strangely, the trial Court framed issues on 19.02.1981 about the genuineness of Ex.A-1 but later recasted the issues as per order in I.A. No.1053 of 1988 dated 10.10.1988 as per which, no issue regarding genuineness of agreement of sale was framed and the parties went on trial but the trial Court in Para 12 of the judgment at internal page No.14, discussed about the genuineness of Ex.A-1 on the strength of admission made by 1st defendant, who was examined as DW.1. In the cross-examination, the said finding was challenged during argument before this Court. In any view of the matter, the

plaintiff is the purchaser who examined himself as PW.1 besides PW.4, licensed document writer, whose evidence is consistent as to the execution of Ex.A-1 and his scribing Ex.A-1 on the instructions given by the executant-1st defendant.

27. In the entire cross-examination by the learned counsel for 2nd defendant, nothing was elicited except suggesting that Ex.A-1 was not scribed by PW.4. PW.5 is the son of attestor who could identify the signature of his father. The evidence of PWs.1 and 4 is consistent with regard to execution of Ex.A-1 by 1st defendant. PW.5 also identified the signature of his father on Ex.A-1. DW.1 is the 1st defendant, who is competent to deny the execution of Ex.A-1. In the examination-in-chief, he asserted that he did not sell the property and never executed Ex.A-1, agreement of sale and received sale consideration of Rs.30,000/-. In the cross-examination, DW.1 admitted that he cannot read and write but he can sign in Telugu though he is an illiterate and can identify his signature. He admitted in the cross-examination that he signed on vakalath and written statement and can identify his signature but denied the signature on the registered sale deed executed in favour of 2nd defendant. Further, DW.1 admitted his signature on Ex.A-1 when confronted to him; therefore, taking advantage of the admission of signature of DW.1 on Ex.A-1, the trial Court concluded that the 1st defendant executed agreement of sale, Ex.A-1. In further cross-examination dated 16.06.1986, a suggestion was put to him that he executed Ex.A-1 receiving consideration mentioned therein and that he did not sell the property to 2nd defendant and sold the schedule property only to plaintiff under Ex.A-1 but denied by him. Even in the written statement filed by 2nd defendant, he contended that Ex.A-1 was brought into existence by plaintiff in collusion with 1st defendant; if it is accepted, execution is not in dispute. However, on over all consideration of the entire cross-

examination of DW.1, there is unequivocal admission of execution of Ex.A-1 and on the strength of the admission made by DW.1 about his signature on Ex.A-1 coupled with the evidence of PWs.1, 4 and 5, I can safely conclude that Ex.A-1 was executed by 1st defendant in favour of the plaintiff. The trial Court on appreciation of oral and documentary evidence rightly concluded that the 1st defendant executed Ex.A-1 in favour of the plaintiff and even after reappraisal of entire evidence, I have no alternative except to accept the finding recorded by the trial Court. Hence, I am totally in concurrence with the finding recorded by the trial Court. Accordingly, the finding of the trial Court regarding genuineness of execution of agreement of sale, Ex.A-1, is upheld, holding this point in favour of the plaintiff-appellants and against the defendants-respondents.

28. **POINT No.3:** The trial Court passed a decree granting alternative relief of refund of sale consideration of Rs.30,000/- by the 1st defendant. The 1st defendant did not prefer any Appeal challenging the decree passed against him but the plaintiff alone preferred this Appeal for not granting the main relief of specific performance. The 2nd defendant without filing any separate Appeal or Cross-objection challenged the finding recorded by the trial Court regarding refund of sale consideration paid under Ex.A-1.

29. According to Order XLI Rule 1 of C.P.C, any person aggrieved by the decree and judgment can prefer an Appeal. The plaintiff-appellant preferred an Appeal challenging the finding recorded against him but here the 2nd defendant-respondent is not an aggrieved person to challenge the decree passed against the 1st defendant. Even otherwise, according to Order XLI Rule 22 of C.P.C, any respondent, though he may not have appealed from any part of the decree, may not only support the decree but may also state that the "finding against him" in the Court below in respect of any issue ought to have been in

his favour; and may also take any cross-objection to the decree which he could have taken by way of appeal: Provided he has filed such objection in the Appellate Court within one month from the date of service on him or his pleader of notice of the day fixed for hearing the Appeal, or within such further time as the Appellate Court may see fit to allow.

30. The explanation annexed to Order XLI Rule 22 of C.P.C. clearly explained that a respondent aggrieved by a finding of the Court in the judgment on which the decree appealed against is based may, under this rule, file cross-objection in respect of the decree insofar as it is based on that finding, notwithstanding that by reason of the decision of the Court on any other finding which is sufficient for the decision of the suit, the decree, is, wholly or in part, in favour of that respondent.

31. So, from the language used in the explanation, any aggrieved person is competent to question the finding recorded by the trial Court against such aggrieved person. In the present case, the 2nd defendant is not an aggrieved person as no decree was passed against him but it is the 1st defendant who was aggrieved, being directed to repay the consideration received under Ex.A-1 to the plaintiff. Therefore, the 2nd defendant is not an aggrieved person; in such case, he is neither entitled to file an Appeal nor Cross-objection or question any finding recorded by the trial Court. If, for any reason, any adverse finding is recorded against the 2nd defendant, he can challenge such finding under Order XLI Rule 1 or under Order XLI Rule 22 of C.P.C. or at best challenge such adverse finding during argument, being an aggrieved person. In the present case, no adverse finding was recorded against 2nd defendant and he is not at all an aggrieved person. Therefore, 2nd defendant is not entitled either to file an Appeal or Cross-objection or challenge the finding recorded by the trial Court against the 1st defendant, in view of the language used under Order XLI Rule 1 and

explanation to Rule 22 of C.P.C.

32. Learned counsel for the plaintiff-appellants while contending that the 2nd defendant-respondent is not competent to challenge the finding recorded by the trial Court regarding refund of sale consideration under Ex.A-1, would submit that the 2nd defendant is not an aggrieved person and in the absence of Cross-objection or Appeal, the decree under challenge to the extent of refund of sale consideration received under Ex.A-1 by 1st defendant cannot be altered or modified, placing reliance on a decision of the Apex Court in ***Ram Phal***⁷, wherein the Apex Court while considering Section 96 and 100 of C.P.C. and Order XLI Rule 22(1) and Rule 33 of C.P.C. in Paragraphs 10 and 11 held as follows:

“10. The CPC Amendment of 1976 has not materially or substantially altered the law except for a marginal difference. Even under the amended Order 41 Rule 22 Sub-rule (1) a party in whose favour the decree stands in its entirety is neither entitled nor obliged to prefer any cross objection. However, the insertion made in the text of Sub-rule (1) makes it permissible to file a cross objection against a *finding*. The difference which has resulted we will shortly stated. A respondent may defend himself without filing any cross objection to the extent to which decree is in his favour, however, if he proposes to *attack* any part of the decree he must take cross objection. The amendment inserted by 1976 amendment is clarificatory and also enabling and this may be made precise by analysing the provision. There may be three situations:

(i) The impugned decree is *partly* in favour of the appellant and partly in favour of the respondent;

(ii) The decree is *entirely* in favour of the respondent though an issue has been decided against the respondent;

(iii) The decree is *entirely* in favour of the respondent and all the issues have also been answered in favour of the respondent but there is a *finding* in the judgment which goes against the respondent.

11. In the type of case (i) it was necessary for the respondent to file an appeal or take cross objection against that part of the decree which is against him if he seeks to get rid of the same though that part of the decree which is in his

favour he is entitled to support without taking any cross objection. The law remains so post amendment too. In the type of cases (ii) and (iii) pre-amendment CPC did not entitle nor permit the respondent to take any cross objection as he was not the person aggrieved by the decree. Under the amended CPC, read in the light of the explanation, though it is still not necessary for the respondent to take any cross objection laying challenge to any *finding* adverse to him as the decree is *entirely* in his favour and he may support the decree without cross objection; the amendment made in the text of Sub-rule (1), read with the explanation newly inserted, gives him a right to take cross objection to a *finding* recorded against him either while answering an issue or while dealing with an issue. The advantage of preferring such cross objection is spelled out by Sub-rule (4). In spite of the original appeal having been withdrawn or dismissed for default the cross objection taken to any *finding* by the respondent shall still be available to be adjudicated upon on merits which remedy was not available to the respondent under the unamended CPC. In pre-amendment era, the withdrawal or dismissal for default of the original appeal disabled the respondent to question the correctness or otherwise of any *finding* recorded against the respondent.”

33. The Apex Court again discussed about the Scope of Order XLI Rules 4 and 22 of C.P.C. and finally concluded as follows in Para No.14:

“14.The power is subject to at least three limitations: firstly, the power cannot be exercised to the prejudice or disadvantage of a person not a party before the Court: secondly, a claim given up or lost cannot be revived; and thirdly, such part of the decree which essentially ought to have been appealed against or objected to by a party and which that party has permitted to achieve a finality cannot be reversed to the advantage of such party. A case where there are two reliefs prayed for and one is refused while the other one is granted and the former is not inseparably connected with or necessarily depending on the other, in an appeal against the latter, the former relief cannot be granted in favour of the respondent by the appellate court exercising power under Rule 33 of Order 41.”

34. In view of the principles laid down by the Apex Court in **Ram Phal⁷**, it is incumbent upon the person to challenge any adverse

finding to prefer Cross-objection or Cross-appeal otherwise decree passed against such person cannot be modified. Whereas the learned Senior counsel appearing on behalf of the 2nd defendant-respondents vehemently contended that even in the absence of any Cross-objection the 2nd defendant can question the finding recorded against him, placed reliance on several decisions referred herein above of various High Courts in ***Tej Kumar Jain***²⁰, ***Nana Manoharan Chetti***²¹, ***Gaddem Chinna Venkata Rao***²², ***Tukaram Jaikar***²³ and ***Nanda Lal Agarwalla Vs. Rameswar Lal Sharma***^[24] and the Apex Court in ***Thepfulo Nakhro Angami***¹⁴, ***Sri Chandra Prabhuji Jain Temple***¹⁷ and ***Ravinder Kumar Sharma***¹⁸.

35. In all the above decisions, various High Courts and the Apex Court consistently took a view that the respondent in an Appeal can, without filing Cross-objection can attack an “adverse finding” upon which a decree in part has been passed against such respondent, for the purpose of sustaining the decree to the extent the lower Court had dismissed the suit against the defendant-respondent; the filing of Cross-objection, after 1976 Amendment is purely optional and not mandatory.

36. Even according to the law declared by the Apex Court and various High Courts in *catena* of decisions referred *supra*, if any adverse finding is recorded against any defendant, he can challenge the finding to sustain the judgment passed by the trial Court. Here, the 2nd defendant contended that passing of a decree for refund of sale consideration of Rs.30,000/- by the 1st defendant to the plaintiff is unsustainable as no consideration was passed under the alleged agreement of sale; the person aggrieved is only 1st defendant since an adverse finding was recorded against him for refund of Rs.30,000/- received under Ex.A-1 but the 2nd defendant is not an aggrieved

person, no adverse finding was recorded against him, thereby he is incompetent to challenge the finding recorded by the trial Court regarding refund of sale consideration of Rs.30,000/- under Ex.A-1. Even the 2nd defendant is incompetent to raise a contention that Ex.A-1 was not supported by consideration; at best, it is open to the 1st defendant to raise such contention either by filing Cross-objection or Cross-appeal or challenge such adverse finding, in the present Appeal. Strangely, the 1st defendant did not contest the Appeal, obviously for different reasons best known to him. Perhaps, he might have satisfied with the decree passed against him for refund of sale consideration. When the 1st defendant is not contesting the Appeal, the 2nd defendant, who is subsequent purchaser of the property, is not entitled to challenge the decree passed against 1st defendant since no adverse finding was recorded against him and as such he is not an aggrieved person. In view of the principles laid down by various High Courts and Apex Court referred hereinabove, I hold that the 2nd defendant is not entitled to challenge the impugned decree passed against the 1st defendant-respondent, who is not contesting the Appeal. Accordingly, the point is held against the 2nd defendant-respondents and in favour of the plaintiff-appellants.

37. **POINT Nos.2, 4 and 5:** As all these points are inter-connected with one another, I find that it is expedient to decide them by following common discussion. The plaintiff filed the suit claiming the main relief of specific performance of agreement of sale and in alternative for refund of sale consideration. The trial Court only granted the alternative relief of refund of sale consideration while declining to grant the main relief of specific performance of agreement of sale, exercising power under Section 20 of the Specific Relief Act.

38. The 1st defendant, while denying very execution of Ex.A-1,

agreement of sale, contended that the plaintiff was never ready and willing to perform his part of obligation and apart from that the 2nd defendant, after his impleadment, filed written statement denying execution of agreement of sale but contended that the plaintiff miserably failed to plead and prove the mandatory requirement under Section 16(C) of the Specific Relief Act *i.e.*, readiness and willing to perform his obligation under the agreement of sale.

39. According to my finding on Point No.1, the plaintiff proved execution of agreement of sale by 1st defendant in his favour. Therefore, it is obligatory on the part of the plaintiff to plead and prove his readiness and willingness, as mandated under Section 16(c) of the Specific Relief Act, which I feel at this stage apposite to extract the same for better appreciation:

“16. Personal bars to relief: Specific performance of a contract cannot be enforced in favour of a person:-

(a); or

(b); or

(c) who fails to aver and prove that he has performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him, other than terms of the performance of which has been prevented or waived by the defendant.

Explanation: For the purposes of clause (c),

(i) where a contract involves the payment of money, it is not essential for the plaintiff to actually tender to the defendant or to deposit in Court any money except when so directed by the Court;

(ii) the plaintiff must aver performance of, or readiness and willingness to perform, the contract according to its true construction.”

40. In the present case, as per Ex.A-1, total consideration agreed to be paid under Ex.A-1 is Rs.30,000/- and the plaintiff paid entire sale consideration and accordingly he was put in possession of the schedule property. Therefore, no money was due under the agreement of sale and in such case; the plaintiff need not prove his readiness and willingness to perform his part of obligation under the contract. At the

same time, the 1st defendant agreed under Ex.A-1 to execute regular sale deed as and when demanded by the plaintiff. At best, when the plaintiff paid total consideration, he has to obtain regular sale deed on proper value of non-judicial stamp papers from the 1st defendant. Therefore, the plaintiff need not plead and prove his readiness and willingness to perform his part of obligation under the agreement of sale, when he paid total consideration under agreement of sale. The plea of readiness and willingness of the plaintiff was supported by oral evidence of the plaintiff but the learned senior counsel Sri N. Subba Reddy, appearing on behalf of the 2nd defendant, contended that very passing of sale consideration under Ex.A-1 cannot be accepted basing on the evidence of DWs.2 and 3, who borrowed amount from the plaintiff and repaid the amount without any financial background but such plea is not open to the 2nd defendant; at best, the 1st defendant can raise such plea. Therefore, the material on record established readiness and willingness of the plaintiff to obtain registered sale deed on proper non-judicial stamp papers from the 1st defendant.

41. The main endeavour of learned counsel for the plaintiff-appellants is that the 2nd defendant is incompetent to question the readiness and willingness pleaded by the plaintiff as the 2nd defendant has nothing to do with the agreement of sale between the plaintiff and 1st defendant, placed reliance on a decision of the Apex Court in ***Ram Awadh and others Vs. Achhaibar Dubey and another***^[25], wherein it was held as follows in Para 6:

“6. The obligation imposed by Section 16 is upon the Court not to grant specific performance to a plaintiff who has not met the requirements of clauses (a), (b) and (c) thereof. A court may not, therefore, grant to a plaintiff who has failed to aver and prove that he has performed or has always been ready and willing to perform his part of the agreement the specific performance whereof he seeks. There is, therefore,

no question of the plea being available to one defendant and not to another. It is open to any defendant to contend and establish that the mandatory requirement of Section 16(c) has not been complied with and it is for the court to determine whether it has or has not been complied with and, depending upon its conclusion, decree or decline to decree the suit. We are of the view that the decision in *Jugraj Singh Case*¹ is erroneous.”

42. Even from the principle laid down by the Apex Court in the decision referred supra, any defendant can raise a contention that the plaintiff was not ready and willing to perform his part of obligation. The same was the contention raised before this Court by the 2nd defendant, who is the alleged subsequent purchaser. Hence, and in view of the principle referred supra, the 2nd defendant is also competent to question the readiness and willingness pleaded by the plaintiff.

43. In ***Dasappa***¹³, the Apex Court specifically held that the plaintiff has to plead and prove his readiness and willingness to perform his part of contract under the agreement of sale. However, in view of the principle laid down by the Apex Court in ***Ram Awadh***²⁵, the 2nd defendant being a party to the suit is competent to question the readiness and willingness pleaded by the plaintiff, as he has already performed his part of obligation under Ex.A-1 except to obtain registered sale deed. Therefore, the 2nd defendant is competent to question the readiness and willingness but the plaintiff performed his obligation already by paying entire sale consideration.

44. One of the major contentions of the 2nd defendant is that the relief of specific performance is purely discretionary under Section 20 of the Specific Relief Act and when the trial Court did not exercise such discretion to grant the relief of specific performance in favour of the plaintiff, in the absence of any perversity, the appellate Court cannot interfere with such exercise of discretion and that apart when

the plaintiff invented a story of delivery of possession of the property, which is not mentioned in Ex.A-1, the plaintiff is disentitled to claim the relief of specific performance on account of raising a false contention regarding delivery of possession. On this ground alone, the Court cannot grant the relief of specific performance in favour of the plaintiff.

45. Whereas the counsel for the plaintiff-appellants contended that when the plaintiff performed his part of obligation under the agreement of sale and delivery of possession is evidenced by the endorsement on Ex.A-1, the plaintiff cannot be said to have invented a false story of delivery of possession and on that ground the Court cannot decline the relief of specific performance.

46. In view of these contentions, it is necessary to look at the terms of agreement of sale. The description of the document itself indicates that it is a possessory agreement of sale and it is specifically mentioned that the property was delivered on the date of execution itself; however, the learned senior counsel, pointed out several corrections in survey numbers and drawn the attention of this Court to the evidence of PW.4, about the correction of survey No.298 and 299 in Ex.A-1 where he made certain admissions but those contentions are not relevant for deciding these points. As seen from the contents of Ex.A-1, agreement of sale, it is only a possessory agreement of sale but according to the contentions of defendants, the possession was not delivered to the plaintiff on the date of execution of Ex.A-1 and he was never in possession and enjoyment of the property. In the examination-in-chief of PW.1, he asserted that he is in possession and enjoyment of the property and later he was dispossessed. In the cross-examination by the learned counsel for the 1st defendant, a suggestion was put to him that possession of the property was not delivered to the plaintiff allegedly on the date of execution of Ex.A-1 but curiously the plaintiff himself filed a petition for appointment of an Advocate Receiver for management of the property contending that the property was being

wasted; then only the plaintiff came to know about the sale of the property in favour of the 2nd defendant and impleaded the 2nd defendant as subsequent purchaser.

47. In Para 2 of the plaint, the plaintiff asserted that in the last week of September, 1977 Rama Kotaiah mobilized his men in support of the 1st defendant and sown the jowar crop and since then the 1st defendant is continuing in possession and enjoyment of the property. Thus, from the last week of September, 1977, the plaintiff was admittedly not in possession. In the evidence of PW.1, he reiterated the same and filed a petition for appointment of an Advocate Commissioner due to his dispossession but the voluminous documentary evidence produced before this Court including Exs.B-3 to B-5 would go to show that the 2nd defendant was paying land revenue to the Government and obtained Pattadar pass book. At the same time, Ex.B-6 C.C. of pahani for the years 1977-78 to 1983-84 of Yedulapuram village clearly established that the 1st defendant was in possession and enjoyment of the property till execution of regular sale deed in favour of the 2nd defendant and thereafter the 2nd defendant is continuing in possession and enjoyment of the property. Thus, from the date of execution of Ex.B-2, the 2nd defendant alone is in possession and enjoyment of the property. At the same time, the plaintiff also produced Exs.A-2 to A-5 pahanies for the years 1976-77 to 1979-80. Curiously these documents would go to show that the plaintiff was in possession and enjoyment of the property. Ex.A-2 is the pahani for the year 1976-77, which established that one Mohd. Mahaboob Ali is the enjoyer as per Column No.16, who is pattedar but the name of Vempati Venkaiah was added with a different ink in Column No.16 after the name of Mohd. Mahaboob Ali. Similarly, Exs.A-3 to A-5, the documents produced by the plaintiff himself, would go to show that the 1st defendant was the pattedar and continuing in possession and

enjoyment as per Column No.16 and, later, the name of Vempati Venkaiah was included below the name of 1st defendant. None of the documents disclosed that the plaintiff is in possession and enjoyment of the property till the last week of September, 1977. Though delivery of possession to the 2nd defendant, Vempati Venkaiah is not correct, still it is for the plaintiff to establish that he is in possession and enjoyment of the property, when he is contending that the property was delivered in the month of May, 1977 till he is allegedly disposed in the month of September, 1977. Therefore, the plea of delivery of possession of schedule property on the date of execution of Ex.A-1 is highly suspicious and it is difficult to accept the said contention in view of the entries marked as Exs.A-2 to A-5, produced by the plaintiff himself. Except that no other convincing evidence is brought on record by the plaintiff to establish that he was inducted into possession and dispossessed later. The trial Court while deciding delivery of possession to the plaintiff and his dispossession, adverted to the evidence on record and, in Para 21 of the judgment, concluded that DW.1 received consideration of Rs.20,000/- from 2nd defendant under Ex.B-1, agreement of sale by way of cheque and delivered possession of the property; however, in the written statement filed by 1st defendant there was no reference about execution of Ex.B-1 in favour of 2nd defendant. Taking advantage of absence of such plea, learned counsel for the plaintiff-appellants would contend that Ex.A-1 was brought into existence subsequently.

48. No doubt there was no mention about execution of Ex.B-1 still it is the duty of the plaintiff to establish that he approached the Court with clean hands, without suppressing any material but the trial Court disbelieved delivery of possession to the plaintiff by the 1st defendant while appreciating the evidence on record. The said finding is challenged by the plaintiff in the present Appeal on the ground that in Para 38 of the judgment, the trial Court observed that the plaintiff was

in possession of the suit schedule property only for a period of one month after execution of Ex.A-1 and thereby it is impossible for him to produce any documentary proof evidencing delivery of possession of property under Ex.A-1 and his dispossession. On the other hand, Exs.A-2 to A-5 established that he was disposed by the 1st defendant; which finding is totally contrary to the finding recorded by the trial Court in the other issues. Therefore, the conclusion arrived by the trial Court in Para 40 of the judgment that the plaintiff came into possession and enjoyment of the suit schedule property in pursuance of Ex.A-1 and dispossessed by the 1st defendant after one month is inconsistent to the pleadings for the reason that the plaintiff was allegedly inducted into possession in the month of May, on the date of execution of Ex.A-1 but dispossessed in the last week of September, 1977. Thus, he rightly continued in possession and enjoyment of the property for a period of four months but the trial Court while observing that the plaintiff was in possession for one month concluded that 1st defendant is in illegal occupation of the property. This, finding is erroneous on the face of record. When the plaintiff's contention is consistent from the beginning that he was dispossessed in the last week of September, 1977, he would have cultivated the land by raising any crop during four months and his name would have been mutated in the revenue records but, obviously for different reasons, his name was not mutated. Thus, the evidence produced by the plaintiff regarding delivery of possession and dispossession is highly doubtful and on the strength of such evidence it is difficult to believe his contention.

49. The learned senior counsel appearing for the 2nd defendant-respondents specifically contended that when the plaintiff approached the Court with a false plea, he is disentitled to claim the relief of specific performance, which is purely discretionary in nature, placed reliance on decisions of this Court in ***Mamidi Jagannadham***² and ***K.***

Venkatasubbayya Vs. K. Venkateswarlu and others^[26],

Sririgneedi Subbarayudu Vs. Kopanathi Tatayya and others^[27]

and concluded that when the plaintiff's plea is false, discretion cannot be exercised in favour of the plaintiff to grant the relief of specific performance for the reason that the plaintiff who is capable of setting up a false case cannot expect a Court of equity to grant the relief.

50. Learned senior counsel further placed reliance on another decision of this Court in **Subhan Saheb**³, wherein it was held as follows in Para 16:

"16. It is thus clear that on vital and important aspects the plaintiff's case is false and equally false is his testimony as P W.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. However, we are of the view that he is entitled to refund of Rs.5,000/- paid by him as advance under Ex.A-1 to the appellant since time is not the essence of the contract."

51. In **K. Krishnan Nair Vs. K. Parameswaran Pillai**^[28], a Division Bench of Madras High Court had an occasion to decide a similar situation and held as follows in Para 7:

"7. Learned counsel for the respondents contended that the first appellant has not come to Court with clean hands as he has falsely stated that he is in exclusive possession of the entire property. According to the first appellant, possession was surrendered by respondents 1 and 2 in his favour on 25.09.1978. It is submitted that the evidence on record does not support the case and it is found to be false by the court below. No attempt has been made before us by the appellants' counsel to challenge such a finding. We find that the evidence on record is hardly sufficient to uphold the case of handing over possession by respondents 1 and 2 to the first appellant. Hence, it is clear that the first appellant has not come to court with clean hands. We have held in Chelliah Nadar Vs. Periasami Nadar {1993 (2) I.W. 84} and Nallaya Goundir Vs. Ramaswami Gounder {1976 (1) MadLJ 243}, that a plaintiff who comes to court with unclean hands by putting

forward a false case, in particular with regard to delivery of possession, is not entitled to get the equitable relief of specific performance. In the present case, we hold that the plaintiff has approached the court with a false case regarding delivery of possession and, hence, he is not entitled to get a decree for specific performance.”

52. In ***Ramaswamy Gounder Vs. K.M. Venkatachalam and others***^[29], the Madras High Court in Para 11 held as follows:

“Thus, with regard to very vital matters, such as his having tendered the amount, his having been present at the Sub-Registrar’s office and met the defendants, they having refused to execute the sale deed, and his having purchased the stamp papers for the purpose of completing the sale transaction, the first respondent has proved himself to be an absolute liar and has gone to the extent of even denying his own averments made in the plaint.”

53. When similar question came up before a Division Bench of this Court in ***Krovidi Kameswaramma***⁴, this Court in Para 11 held as follows:

“11. Any plaintiff must come to the Court with clean hands, more so in the case of a plaintiff who seeks an equitable relief of specific performance. The relief by way of specific performance lies within the discretion of the Court. It is absolutely necessary that the plaintiff should come to the Court with clean hands. In other words a plaintiff who sets up a false case cannot expect a Court of equity to grant him the relief. In view of the finding that the plaintiff has failed to pay the amount due by the end of January 1983 it is clear that he has come up setting out a false plea and that he has committed default of the terms of the contract. This again implies that he is not ready and willing to perform his part of the contract. It is axiomatic to infer that the plaintiff who sets up a false plea of payment and fails to substantiate that he is always ready and willing to perform his part of the contract cannot seek the relief of specific performance. In a similar case this Court in *K. Venkata Subbayya Vs. K. Venkateswarulu*, [MANU/AP/0150/1971](#), observed as follows:

“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 and that apart the plaintiff who seeks equitable remedy of specific performance must come to the Court with clean hands".

It is categorically observed there that 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 in *pari delicto potior est conditione defendentis* 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. From the above discussion it is clear that the first plaintiff has taken a false plea with a view to show that he has paid substantial sum of Rs.30,000/- which in fact he did not pay thereby he is exposed to falsehood while he is expected to come with clean hands before seeking equitable relief of specific performance. It also implies that he is not ready and willing to perform his part of the contract as per the terms of the agreement at all material times. As he has not come with clean hands he is not entitled to the relief of specific performance. For all these reasons we do not find any merit in the appeal."

54. In the present case, the contention of the plaintiff from the beginning is that possession of the property was delivered to him on the date of execution of Ex.A-1 and allegedly he was dispossessed in the last week of September 1977 but the trial Court concluded that he was dispossessed immediately after one month from the date of execution, which finding is contrary to the pleading and evidence on record, when such finding is perverse, the appellate Court can set-aside such finding, however, it is evident from the record that the plaintiff failed to establish delivery of possession of the property on the date of execution of Ex.A-1 and his dispossession but very filing of a petition for appointment of receiver for management of the property itself is suffice to conclude that he was out of possession. Therefore, the conduct of the plaintiff throughout the proceedings is doubtful. In

such case, the Court cannot exercise its discretion under Section 20 of the Specific Relief Act to grant the relief of specific performance.

55. Learned senior counsel appearing for the 2nd defendant-respondent further placed reliance on a decision of the Apex Court in **Jayashree**¹⁵ wherein in Paragraphs 30 and 34 of the judgment, it was held that the relief under Section 20 of the Specific Relief Act is purely discretionary and failure to file suit for specific performance immediately speaks volumes about the conduct and refusal of decree for specific performance can be sustained.

56. In the present case, the suit was filed on 09.06.1980; whereas, the alleged agreement of sale Ex.A-1 was obtained on 29.05.1977 almost after a lapse of 3 years and this is a strong ground not to exercise discretion in favour of the plaintiff to grant the relief of specific performance.

57. He further relied on the decision of the Apex Court in **Azhar Sultana**¹⁶, wherein the Apex Court was of the view that when the plaintiff failed to establish that she had all along been ready and willing to perform her part of contract, it would not be necessary to enter into question as to whether the defendants were *bona-fide* subsequent purchasers for value without notice or not and the defendants living in the property in question for more than 30 years in their own right, defendants cannot therefore be forced to vacate the said property by granting a decree for specific performance in favour of the plaintiff.

58. The facts in **Azhar Sultana**¹⁶ are almost identical to the present facts of the case. When the plaintiff approached the Court with false plea regarding delivery of possession and dispossession and from the date of execution of Ex.B-1 in the year 1976 the 2nd defendant is continuing in possession and enjoyment of the property for more than

35 years, the Court cannot exercise its discretion to grant the relief of specific performance in favour of the plaintiff to dispossess the person in possession under regular registered sale deed. If the principle laid down in the decisions referred *supra* is applied to the present facts of the case, certainly the plaintiff is disentitled to claim the relief of specific performance.

59. In ***R. Chinnadurai Vs. S. Rajalakshmi***^[30], learned single Judge of Madras High Court held that where the alleged agreement of sale bore signature of the vendor only and in spite of denial of execution of the agreement by vendor, the purchaser examined only scribe and not the surviving attesting witness, the document is not a genuine document enforceable in law particularly when there are improbable and unbelievable circumstances *i.e.*, grant of two years period for making payment of remaining meager balance of consideration without handing over possession to the intended purchaser.

60. The learned senior counsel further placed reliance on a decision of the Apex Court in ***Manjunnath Anandappa urf Shivappa Hansi Vs. Tammanasa and others***^[31], wherein it was held that the relief of specific performance under Section 20 of the Specific Relief Act is purely discretionary and when the plaintiff filed a suit almost after six years from the date of entering into agreement of sale and in the absence of any material to show that the plaintiff demanded the defendants to execute registered sale deed, the Court cannot exercise its discretion in favour of the plaintiff.

61. In the present case, though the suit was filed after a lapse of three years, during those 3 years period from the date of execution of Ex.A-1, no notice was issued by the plaintiff demanding the 1st defendant to execute registered sale deed, expressing his readiness and willingness to obtain registered sale deed on proper stamp

papers. Hence, on this ground also the Appeal is liable for dismissal.

62. In ***K.S. Vaidyanadam and others Vs. Vairavan***^[32], the Apex Court placing reliance on its earlier decision in *Chand Rani Vs. Kamal Rani* {1993 (1) SCC 519} held that when the plaintiff failed to pay balance of sale consideration within time, the plaintiff is disentitled to claim the relief of specific performance but the principle laid down in the above decision has no application to the present facts of the case for the reason that the plaintiff herein had already paid entire sale consideration at the time of execution itself.

63. Sri D. Jaipal Reddy, learned counsel for the plaintiff-appellants, contended that when the plaintiff filed the suit for specific performance without any delay and laches, the relief of specific performance cannot be denied by placing reliance on a Division Bench decision of this court in ***Damacharla Venkata Sessaiah Vs. Damacharla Venkayya and others***^[33], wherein it was held that two important considerations for grant of specific performance are length of the delay and nature of the acts done during the interval but this decision has no direct application to the present issues whether to exercise discretion or not under Section 20 of the Specific Relief Act.

64. In ***K. Prakash Vs. B.R. Sampath Kumar***^[34], the Apex Court is of the view that the conduct of both the parties shall be taken into consideration either to grant or to deny the relief of specific performance. The hardship of defendant or plaintiff or rise in price of the schedule property agreed to be sold are significant. However, the subsequent rise of price in the property would not be treated as a hardship entailing refusal of the decree for specific performance, taking note of the fact as to increase in price of the property and other facts and circumstances of the case, the Court while granting decree for specific performance can impose such condition which may to some

extent compensate the defendant, owner of the property. This principle has no application to the present facts of the case since rise in price alone is not the ground to exercise discretion in favour of the plaintiff to decline specific performance of agreement of sale. Even otherwise, in the present case, a specific contention was raised that there is an increase in price.

65. Further in Para 16 of the decision of the Apex Court in ***Sampath Kumar***³⁴, it was held as follows:

“16. The principles which can be enunciated is that where the Plaintiff brings a suit for specific performance of contract for sale, the law insists a condition precedent to the grant of decree for specific performance that the Plaintiff must show his continued readiness and willingness to perform his part of the contract in accordance with its terms from the date of contract to the date of hearing. Normally, when the trial court exercises its discretion in one way or other after appreciation of entire evidence and materials on record, the appellate court should not interfere unless it is established that the discretion has been exercised perversely, arbitrarily or against judicial principles. The appellate court should also not exercise its discretion against the grant of specific performance on extraneous considerations or sympathetic considerations. It is true, as contemplated Under Section [20](#) of the Specific Relief Act, that a party is not entitled to get a decree for specific performance merely because it is lawful to do so. Nevertheless once an agreement to sell is legal and validly proved and further requirements for getting such a decree are established then the Court has to exercise its discretion in favour of granting relief for specific performance.”

66. In ***S.V. Sankarlinga Nadar Vs. P.T. S. Ratnaswami Nadar and others***^[35], wherein the Madras High Court held that the question of hardship must be judged as on the date of the transaction and not in the light of subsequent events and the hardship should be one collateral to the contract and not in relation to a term of the contract such as the quantum of consideration. The subsequent rise in prices will not therefore be a relevant ground for refusing the specific performance of contract for sale.

67. In view of the principle laid down by the Madras High Court in ***Sankarlinga Nadar***³⁵, the consistent law laid down is that grant of specific performance is purely discretionary and when the plaintiff approached the Court with unclean hands, he is disentitled to claim the relief and hike in price is not a ground to deny the relief of specific performance. As the plaintiff failed to prove delivery of possession and dispossession, it can safely be concluded that the plaintiff approached the Court with unclean hands, which disentitled him to claim the discretionary relief under Section 20 of the Specific Relief Act. Further, the learned counsel for the plaintiff-appellants has drawn the attention of this Court to a decision of the Apex Court in ***Zarina Siddiqui***⁸, wherein it was held as follows:

“The remedy for specific performance is an equitable remedy. The court while granting decree of specific performance exercises its discretionary jurisdiction. Section 20 of the Specific Relief Act specifically provides that the court’s discretion to grant decree of specific performance is discretionary but not arbitrary. Discretion must be exercised in accordance with sound and reasonable judicial principles.

The equitable discretion to grant or not to grant a relief for specific performance also depends upon the conduct of the parties. The necessary ingredient has to be proved and established by the plaintiff so that discretion would be exercised judiciously in favour of the plaintiff. At the same time, if the defendant does not come with clean hands and suppresses material facts and evidence and misleads the court then such discretion should not be exercised by refusing to grant specific performance. If a party to a *lis* does not disclose all material facts truly and fairly but states them in distorted manner and misleads the court, the court has inherent power to exercise its discretionary jurisdiction in order to prevent abuse of process of law.”

68. In the present facts of the case, either of the parties did approach the Court with clean hands and both are guilty of misconduct and suppression of facts. In such case, by applying the legal maxim ‘*in pari delicto potior est condition defendentis*’ I am of the considered

view that it is difficult to exercise discretion conferred under Section 20 of the Specific Relief Act, to grant the relief in favour of the plaintiff.

69. On close analysis of the entire material and law laid down by the Apex Court and various High Courts, referred hereinabove, it is evident that the plaintiff and defendants approached the Court with unclean hands and more particularly when the plaintiff approached the Court for grant of equitable and discretionary relief under Section 20 of the Specific Relief Act failed to establish his positive case of delivery of possession and dispossession. In such case, it is difficult to exercise its discretion to grant the main relief of specific performance in favour of the plaintiff. Hence, the finding of the trial Court declining to grant the main relief of specific performance is hereby affirmed holding this point in favour of the defendants-respondents and against the plaintiff-appellants.

70. In view of my findings on above points, I find no ground warranting interference of this Court. Accordingly, the findings of the trial Court are hereby confirmed holding these points in favour of the defendants-respondents and against the plaintiff-appellants.

In the result, the Appeal Suit is dismissed confirming the decree and judgment dated 24.11.1989, passed in O.S. No.100 of 1980 by the learned Subordinate Judge, Khammam.

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

**M. SATYANARAYANA MURTHY,
J**

Date: 29-10-2015.
Dsh

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

29102015

APPEAL SUIT No. 1609 OF 1996

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Date. 29-10-2015

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- [\[1\]](#) AIR 1971 AP 279
 - [\[2\]](#) 2008 (1) ALD 1
 - [\[3\]](#) 1999 (3) ALT 634 (DB)
 - [\[4\]](#) 1998 (5) ALD 68 (DB)
 - [\[5\]](#) 1994 (2) MLJ 207
 - [\[6\]](#) 1976 (1) MLJ 243
 - [\[7\]](#) 2003 (9) SCC 606
 - [\[8\]](#) 2015 (1) SCC 705
 - [\[9\]](#) AIR 2007 SC 2663
 - [\[10\]](#) AIR 1952 Madras 389
 - [\[11\]](#) 1999 (1) AnWR 149
 - [\[12\]](#) AIR 2001 SC 1392
 - [\[13\]](#) AIR 2006 SC 1144
 - [\[14\]](#) AIR 1972 SC 43
 - [\[15\]](#) AIR 2009 SC 1749
 - [\[16\]](#) AIR 2009 SC 2157
 - [\[17\]](#) AIR 1973 SC 2565
 - [\[18\]](#) AIR 1999 SC 3571
 - [\[19\]](#) AIR 1963 MP15
 - [\[20\]](#) AIR 1981 MP 55
 - [\[21\]](#) AIR 1980 Madras 212 (1)
 - [\[22\]](#) AIR (30) 1943 Madras 698
 - [\[23\]](#) AIR 1982 Bombay 437
 - [\[24\]](#) AIR 1979 Calcutta 30
 - [\[25\]](#) 2000 (2) SCC 428
 - [\[26\]](#) AIR 1971 AP 279
 - [\[27\]](#) 1937 MWN 1158
 - [\[28\]](#) LAWS (MAD)-1993-8-58
 - [\[29\]](#) 1976 (1) MadLJ 243
 - [\[30\]](#) AIR 2004 Madras 313
 - [\[31\]](#) AIR 2003 SC 1391
 - [\[32\]](#) AIR 1997 SC 1751

[\[33\]](#) AIR 1974 AP 193

[\[34\]](#) 2015 (1) SCC 597

[\[35\]](#) AIR 1952 Madras 389