

THE HON'BLE SRI JUSTICE K.C. BHANU
AND
THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

—
APPEAL SUIT No.110 OF 2010

JUDGMENT:(per Hon'ble Sri Justice K.C.Bhanu)

This appeal, under Section 96 of the Code of Civil Procedure, 1908 (for short, 'CPC') is directed against the judgment and decree, dated 09.09.2008, in Original Suit No.68 of 2004 passed by the IV Additional District Judge, Guntur, whereunder and whereby the suit filed for enforcement of specific performance of contract based on the agreement of sale was dismissed.

2. Appellants herein are plaintiffs and respondents herein are defendants in the Original Suit. For better appreciation of facts, the parties are hereinafter referred to, as they are arrayed before the trial Court.

3. Brief facts that are necessary for the disposal of the present appeal may be stated as follows:

The 1st defendant is owner of the land to an extent of Acs.10.21 cents situated at Sultanabad village, Tenali Taluk, Guntur District. Out of which, he agreed to sell an extent of Acs.5.10 ½ cents in Sy.Nos.49/1, 2B, 49/3, 4, 6 to 9, 107 and 108 to the plaintiffs for Rs.30,00,000/- and also executed an agreement of sale on 02.08.2001. Plaintiffs paid an amount of Rs.10,00,000/- as advance and the same was endorsed on the agreement and further agreed to pay Rs.5,00,000/- within a period of six months. The entire remaining balance amount of Rs.15,00,000/- should be paid within one year and the 1st defendant should bring the 2nd

defendant to execute the sale deed. In pursuance of the said agreement, the plaintiff paid Rs.5,00,000/- on 20.01.2002. Subsequently, though the plaintiffs were ready and willing to perform their part of contract, the defendants did not execute the regular registered sale deed in pursuance of the agreement of sale, dated 02.08.2001. Hence the suit.

4. Defendants filed written statement stating that in connection with the loan transaction, plaintiffs obtained the signatures of the 1st defendant on blank papers; that there is no agreement of sale; that the huge amount would not have been paid by way of cash and therefore, he prayed to dismiss the suit.

5. Basing on the above pleadings, the following issues have been framed for trial:

1. "Whether the first defendant agreed to sell the plaint schedule property to the plaintiffs for Rs.30,00,000/- on 02.08.2001 and received Rs.10,00,000/- as advance from the plaintiffs and executed the sale agreement?
2. Whether the plaintiffs made part payment of Rs.5,00,000/- on 20.01.2002 as part of sale consideration?
3. Whether the plaintiffs have been ready and willing to perform their part of contract?
4. Whether the suit without seeking the relief of declaration is not maintainable?
5. Whether the plaintiffs are entitled for specific performance as prayed for?
6. To what relief?"

6. To substantiate the case of the plaintiffs, PW.1 was examined and Exs.A.1 to A.7 were got marked. On behalf of the defendants, no oral or documentary evidence was let-in.

7. The trial Court, considering the fact that though time was stipulated for payment of the balance sale consideration under Ex.A.1, the same was not fulfilled by the plaintiffs and therefore, denied to grant the discretionary relief of specific performance, but alternatively the Court ordered refund of the earnest money. Challenging the same, the present appeal is filed.

8. Now the points that arise for consideration are:

- 1) Whether the agreement of sale, dated 02.08.2001 is correct and proper?
- 2) Whether the Plaintiffs are ready and willing to perform their part of contract?
- 3) Whether plaintiffs are entitled for specific performance as prayed for?
- 4) Whether the judgment and decree of the trial Court is right and proper and based upon admissible evidence on record?
- 5) To what relief?

POINTS 1 to 5:

9. Learned counsel for the appellants contended that there is a specific pleading and evidence to show that the plaintiffs were ready and willing to perform their part of contract from the date of agreement of sale; that there is no need to challenge the settlement deed because it was not marked in the trial Court; that the evidence of PW.1 remained un-challenged; that in the absence of cross-examination, the trial Court ought to have accepted the evidence of PW.1 and decreed the suit and hence he prays to allow the appeal. He also placed reliance on the decision of the

Hon'ble Supreme Court reported in **Mademsetty Satyanarayana Vs. G.Yelloji Rao and others**^[1], which will be referred to at appropriate time.

10. Under Section 20 of the Specific Relief Act, 1963 (for short, 'the Act'), grant of decree for specific performance is a discretionary one. However, that discretion has to be exercised judiciously. Similarly, Section 16(c) of the Act envisages that the plaintiff must plead and prove that he had 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 those terms the performance of which has been prevented or waived by the defendant. The continuous readiness and willingness on the part of the plaintiff is a condition precedent to the grant of relief of specific performance. Right from the date of execution of the agreement till the date of the decree, he must aver and prove that he is ready and willing to perform his part of readiness. There must be a pleading and evidence to show that plaintiff was always ready and willing and continues to be ready and willing to pay the balance of sale consideration as prescribed in Form Nos.47 and 48 of Appendix-A of CPC and it appears to be mandatory in view of the decision of the Hon'ble Supreme Court reported in **Manjunath Anandappa Urf Shivappa Hansi Vs. Tammanasa and others**^[2], wherein it is held thus (Para No.15):-

“15. Forms 47 and 48 of the Appendix A of the Code of Civil Procedure prescribe the manner in which such averments are required to be made by the plaintiff. Undisputedly, the plaintiff has not made any averment to that effect. He, as noticed hereinbefore, merely contended that he called upon defendant No.2 to bring defendant No.1 to execute a registered sale deed. Apart

from the fact that the date of the purported demand has not been disclosed, admittedly no such demand was made upon defendant No.1. We may notice, at this juncture, that the plaintiff in his evidence admitted that defendant No.1 had revoked the power of attorney granted in favour of defendant No.2. In his deposition, he merely stated that such revocation took place after the agreement for sale was executed. If he was aware of the fact that the power of attorney executed in favour of defendant No.2 was revoked, the question of any demand by him upon the defendant No.2 to bring the defendant No.1 for execution of the agreement for sale would not arise at all. Furthermore, indisputably the said power of attorney was not a registered one. Defendant No.2, therefore, could not execute a registered deed of sale in his favour. The demand, if any, for execution of the deed of sale in terms of the agreement of sale could have been, thus, made only upon the Defendant No.1, the owner of the property. The balance consideration of Rs.10,000/- also could have tendered only to Defendant No.1. As indicated hereinbefore, the purported notice was issued only on 8-8-1984, that is, much after the expiry of period of three years, within which the agreement of sale was required to be acted upon.”

From the above decision, it is clear that there must be a pleading that the plaintiffs were always ready and willing to perform their part of contract and continue to ready to pay the remaining balance till the date of decree. Though it is pleaded in the plaint that the plaintiffs were ready and willing to perform their part of contract, that has not been specifically stated by PW.1 in the evidence. The agreement of sale is dated 02.08.2001 entered into between the plaintiffs and the defendants. One of the conditions mentioned in the agreement of sale reads as follows:

“3. The purchasers agreed to pay remaining balance sale consideration within one year from today and vendor accepted for the same.”

As seen from the record, the above condition has not been complied with and for about two long years, the plaintiffs kept silent and they have not given any explanation as to why they did not offer or tender to pay the remaining sale consideration within one year from the date of agreement of sale. The property involved being immovable one, ordinarily the presumption would be that the time was not the essence of contract unless from the term of agreement and other facts and circumstances of the case, it can be safely found that the parties intended the time to be the essence of contract. There is no pleading or evidence to the effect that the 1st defendant has violated or not adhered to any one of the conditions mentioned in the agreement of sale.

11. Learned counsel for the appellants placed reliance on **Mademsetty Satyanarayana Vs. G.Yelloji Rao and others** (1 supra), wherein it is held thus (Para No.12)-

“.....Therefore, except for some delay, there are no circumstances within the meaning of the aforesaid decisions which should induce a Court to refuse in its discretion to give a relief of specific performance. The High Court rightly held that it was a fit case where the plaintiff should have been given a relief of specific performance.”

That is a case, where the delay has been properly explained by the parties therein, which is uncontradicted. In this case there is neither pleading nor evidence adduced by the plaintiffs to show that as to why they were not ready and willing to pay that amount within one year from the date of agreement of sale.

12. With regard to readiness and willingness, it is pertinent to refer to the decision reported in **A.K. Lakshmipathy (Dead) and**

others Vs. Rai Saheb Pannalal H.Lahoti Charitable Trust and

others^[3], wherein it is held thus (Para No.28):-

“28. Next is the question whether the appellants were ready and willing to complete their part of the agreement. It is well settled that in a suit for specific performance of a contract for sale, it has to be proved that the plaintiff who is seeking for a decree for specific performance of the contract for sale must always be ready and willing to complete the terms of the agreement for sale and that he has not abandoned the contract and his intention to keep the contract subsisting till it is executed. This readiness and willingness on the part of the appellants in the facts and circumstances of the case, in our view, cannot be found in favour of the appellants. In this case, not only the trial court as well as the High Court on concurrent findings of fact and on consideration of the evidence on record came to the conclusion that the appellants were not ready and willing to perform the terms and conditions of the agreement for sale.”

In **K.S. Vidyanadam and others Vs. Vairavan**^[4], wherein it is held thus (Para No.13) –

“13. In the case before us, it is not mere delay. It is a case of total inaction on the part of the plaintiff for 2 ½ years in clear violation of the term of agreement which required him to pay the balance, purchase the stamp papers and then ask for execution of sale deed within six months. Further, the delay is coupled with substantial rise in prices – according to the defendants, three times –between the date of agreement and the date of suit notice. The delay has brought about a situation where it would be inequitable to give the relief of specific performance to the plaintiff.”

It is pertinent to refer to a decision in **Syed Dastagir Vs T.R. Gopalakrishna Setty**^[5], wherein it is held thus (Para No.9)-

“So whole gamut of issue raised is, how to construe a plea specially with reference to Section 16(c) and what are the obligations which the plaintiff has to comply with reference to his plea and whether the plea of the plaintiff could not be construed to conform to the requirement of the aforesaid Section, or does this section require specific words to be pleaded that he has performed or has always been ready and is willing to perform his part of the contract. In construing a plea in any pleading, Courts must keep in mind that a plea is not an expression of art and science but an expression through words to place fact and law of one's case for a relief. Such an expression may be pointed, precise, some times vague but still could be gathered what he wants to convey through only by reading the whole pleading, depends on the person drafting a plea. In India most of the pleas are drafted by counsels hence aforesaid difference of pleas which inevitably differ from one to other. Thus, to gather true spirit behind a plea it should be read as a whole. This does not distract one from performing his obligations as required under a statute. But to test, whether he has performed his obligations one has to see the pith and substance of a plea. Where a statute requires any fact to be pleaded then that has to be pleaded may be in any form. Same plea may be stated by different persons through different words then how could it be constricted to be only in any particular nomenclature or word. Unless statute specifically require for a plea to be in any particular form, it can be in any form. No specific phraseology or language is required to take such a plea. The language in Section 16 (c) does not require any specific phraseology but only that the plaintiff must aver that he has performed or has always been and is willing to perform his part of the contract. So the compliance of “readiness and willingness” has to be in spirit and substance and not in letter and form. So to insist for mechanical production of the exact words of an statute is to insist for the form rather than essence. So absence of form cannot dissolve an essence if already pleaded.”

So from the above decision, it is clear that unless statute requires for a plea to be taken in any particular form, it can be in any form. In this case, statute requires that a pleading shall be in accordance with Form No.47 and 48 of Appendix.A of CPC.

13. As seen from the agreement of sale, there is no obligation on the part of the 1st defendant to fulfil his promise except to produce the original title deeds and the relevant documents pertaining to the property prior to the execution of the regular conveyance deed i.e., sale deed. It is not the case of the plaintiffs that the 1st defendant never produced those original title deeds or other relevant documents pertaining to the property covered under the agreement of sale. Except the oral evidence of PW.1 which is interested in nature, there is no material filed to show that he is ready and willing to pay the balance sale consideration of Rs.15,00,000/-. If really he offered to pay the balance sale consideration and defendants refused, he would have got issued a notice or approached the competent civil Court to seek redressal of his grievance immediately. There is no need to wait for nearly three long years. So, in the absence of any evidence, the trial Court rightly dismissed the suit.

14. The findings of the Court below are based upon proper appreciation of evidence on record. None of the findings is shown to be perverse or contrary to the evidence on record. The Court below rightly exercised its discretion in refusing to grant specific performance of contract of sale. That discretion needs no interference by this Court.

15. Accordingly, the Appeal Suit is dismissed. There shall be no

order as to costs. Miscellaneous Petitions, if any, pending in this appeal shall stand closed.

JUSTICE K.C. BHANU

-

-

JUSTICE M.SEETHARAMA MURTI

Date:28.01.2015
INL

[\[1\]](#) AIR 1965 SC 1405

[\[2\]](#) AIR 2003 SC 1391

[\[3\]](#) (2010) 1 SCC 287

[\[4\]](#) AIR 1997 SC 1751

[\[5\]](#) AIR 1999 SC 3029