HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

C.C.C.A.Nos.78 of 1996, 130 of 1998 and 130 of 2000

COMMON JUDGMENT:

All the three appeals are arisen out of a common judgment and decree in O.S. No.868 of 1978. (i) CCCA No.78 of 1996 was filed by defendant Nos.3 to 8 as appellants 1 to 6 against plaintiff (R-1), defendants 1, 2 and 9 brought on record as appellants 7 to 18. Further 1st defendant (R2) died and her L.Rs brought on record is the R-5 to the appeal. (ii) CCCA No.130 of 1998 was filed by 1st defendant against plaintiff (R-1) and defendants 2 to 9 (R-2 to 9) and the respective L.Rs of D-1 and D-4 are co-appellant and as co-respondents brought on record and (iii) CCCA No.130 of 2000 was filed by 2nd defendant against plaintiff, defendants 1, 3 to 9 and the L.Rs of D-1, D-4 & D-6 are brought on record as co-respondents.

2) The suit was filed on 19.10.1978 by the sole plaintiff Dr.K.P.Ranga Rao against two defendants originally viz., Muneerunnisa Begum and the Secretary, A.P.Wakf Board, both residents of Hyderabad, in the City Civil Court, Hyderabad for the reliefs, to direct the defendants 1 and 2 supra to execute sale deed on the basis of the proceeding No.C3/42/77, dated 05.10.1978 and to register the same in favour of the plaintiff and for costs and such other just reliefs. The cause of action para in support of the plaint pleadings show 1st defendant

received part of sale consideration having agreed to sell the property in favour of the plaintiff on 02.11.1975 and the Wakf Board accorded permission for the sale of the land on 15.07.1978 and the proceedings were issued on 05.10.1978 to deposit Rs.10,250/- for the costs of the land of Ac.1-01 guntas and consequently plaintiff paid the same by demand draft on 06.10.1978. However, 2nd defendant returned the same on 12./13.10.1978 and plaintiff got issued telegraphic notice requesting to register the land which was on 17.10.1978 and within the jurisdiction of the Court where the defendants are residing.

3) During pendency of the suit before filing of written statement by defendant Nos.1 and 2, the defendant Nos.3 to 8 all belong to Medak District viz., K.V.Venkatesam Ashok, S/o.Rajaram, B.Sivayya, S/o.Narayana, S.Vitta Reddy, S/o.Venkat Reddy, A.Chandra Sekhar, S/o.Vittal, P.Rama Kistaiah, S/o.Laxmaiah and K.Venkatesham, S/o.Narasimhulu were impleaded as per orders in I.A. No.250 of 1979, dated 28.07.1981 and subsequently 9th defendant was also added as per orders in I.A. No.1117 of 1980 dated 14.10.1981. After the defendants supra are impleaded the plaint prayer consequently amended saying defendants 3 to 8 illegally and fraudulently got sale deed executed in their favour in spite of notice and order of injunction and the defendants 6 to 8 also illegally sold out of it an extent of 500 Square yards in that survey number to the 9th defendant through registered sale deed

dated 02.11.1978 and the alienations in favour of the defendant Nos.3 to 9 are illegal and defendants 3 to 8 gave an undertaking in C.M.A. No.39 of 1979 on the file of the District Court, Medak at Sangareddy that in case of decree of the suit relief, they would remove the constructions made pending the suit and thereby the constructions are subject to result of the suit to remove as also held by the High Court in C.R.P. No.2451 of 1980 dated 13.08.1982. The amendment of the prayer portion substituted accordingly was after 31.03.1992 as per orders in I.A. No.259 of 1991.

4) A perusal of the plaint originally filed shows plaint was returned saying suit land as per plaint schedule viz., Ac.1-01 guntas in S.No.582 is situated in Medak town within the boundaries described as per order in I.A. No.259 of 1991 supra dated 31.02.1992 of the extent 2210 square yards with the boundaries East: Manik Prabhu Mandir, North: Municipal road, West: Passage to grave yard and South: P.W.D Road leading to Nizamsagar. The plaint was represented to the return and subsequently it was numbered after hearing at bench as per the order of the Court dated 20.10.1978 to number the suit if otherwise in order.

5) As referred supra, after impleadment of the defendants 3 to 9 also respectively in the year 1981 only with the consequential amendments, the separate written statement of the defendants 1 and 2 were filed on

26.02.1982 and later written statement filed by D-3 to D-8 and memo of 9th defendant adopting the written statement of D-3 to D-8 filed on 11.02.1982.

6) The averments in the plaint in brief were that 1st defendant represented by her G.P.A holder no other than her son (Ex.A-2, G.P.A) dated 25.11.1974 executed the sale agreement (Ex.A-1, dated 02.11.1975) to sell the plaint schedule property of 2210 square yards vacant site in S.No.582 of Medak town described supra, being the Muthavalli of the property that can alienate and received a sum of Rs.1000/- in cash and Rs.5,000/- by cheque bearing No.D45535 and passed receipt Ex.A-9=Ex.A-10 dated 02.11.1975, (and the certificate issued by the Indian Bank, Medak of the cheque supra of Rs.5,000/- dated 02.11.1975 was not presented to encash), that the 1st defendant Muthavalli also the inamdar of the property and she made application to the 2nd defendant Wakf Board who accorded permission for alienation of the property in favour of the plaintiff of the said extent of Ac.1-01 guntas at a fixed sale price which is pursuant to the application of the plaintiff to the 2nd defendant and the 2nd defendant issued proceedings directing the plaintiff to deposit Rs.10,250/- on dated 05.10.1978 towards cost of the land of Ac.1-01 gts (Ex.A-11 memo), based on the Government of Andhra Pradesh issued G.O.Ms.No.1231, dated 15.07.1978 (Ex.A-29) according permission for sale of the

land at Rs.10,000/- per acre and pursuant to which plaintiff paid the same by account payee demand draft obtained in favour of the 2nd defendant respectively covered by Ex.A-30 dated 05.10.1978 and Ex.A-5 dated 06.10.1978 and 2nd defendant also acknowledged the same on that even date under Ex.A-12. However, later it is informed by the 2nd defendant on 12.10.1978 under Ex.A-13 memo saying that the 1st defendant submitted a petition stating she is not willing, to sell, in returning the said demand draft which made the plaintiff to issue Ex.A-4 telegram notice dated 17.10.1978 to the 2nd defendant by marking copies Ex.A-14 to the 1st defendant and her son-cum-G.P.A holder and plaintiff also cause issued Ex.A-15 and Ex.A-6 legal notices to them and also issued Ex.A-3 paper publication dated 28.08.1978 besides Ex.A-6 notice to 1st defendant and her son acknowledged by them under Exs.A-7 and A-8 and Exs.A-16 and A-17. It is averred further that 1st defendant in spite of executing sale agreement Ex.A-1 tried to alienate the property in favour of third parties despite notice and it is during pendency of the suit from the amendment made supra with additional pleading. The 1st defendant alienated to defendants 3 to 8 and D-6 to D-8 sold out of the same 500 square yards again to D-9 viz., Exs.A-25 to A-27 registration extract of the sale deed executed by defendant Nos.1 and 2 in favour of D-3, D-4, D-5 and D-6 to D-8 respectively dated

19.10.1978 and plaintiff cause issued legal notices to them under Ex.A-18 covered by Exs.A-19 to A-24 acknowledgements and unclaimed return covers. It is further averred that plaintiff is always ready and willing to perform his part of contract, but the defendants are avoiding, hence to grant decree in the suit for specific performance of the contract for the sale by directing all the defendants to execute sale deeds and to remove the constructions made by other defendants pursuant to the undertaking given by them in C.M.A. No.39 of 1979.

7(a) The sum and substance of the written statement separately filed by defendant Nos.1 and 2 almost with similar allegations are that the City Civil Court, Hyderabad has no territorial jurisdiction, 1st defendant is Muthavalli of Ashook Khana though inamdar, though it is land burdened with service and Sayyed Mohammed Hussain Bagdadi is no doubt her son, to her knowledge her son-cum-G.P.A holder did not execute the sale agreement in favour of plaintiff and she did not ratify, though he received the amount of Rs.6,000/- and passed receipts, the same did not constitute valid agreement to bind the 1st defendant, the agreement was not filed with plaint, no application was filed by plaintiff to 2nd defendant to purchase, but for 1st defendant filed with 2nd defendant to accord general permission to alienate the inam lands in Sy.Nos.571, 582, 678, 679 and 680 as some persons

were encroaching and it is difficult to protect from the encroachments and G.O.ms.No.1231 dated 15.07.1978 was issued by the Government according permission to sell the lands total Ac.7-12 guntas at market rate of Rs.10,000/- per acre, subject to conditions and 2nd defendant has no power to alienate or enter into any agreement of the wakf properties to issue the proceedings dated 05.10.1978 requesting the plaintiff for payment, as said G.O.Ms.No.1238 of Government is nothing to do with the alienation in favour of plaintiff alleged, plaintiff played fraud with Wakf Board in obtaining the proceedings dated 05.10.1978 (Ex.A-11 and A-30) without mentioning the alleged suit sale agreement for Rs.25,000/- dated 02.11.1975 for Ac.1-01 guntas of land in S.No.582. It is also averred that on coming to know of the fraud, 1st defendant addressed the 2nd defendant for not to sell to plaintiff as already entered agreement with 6th defendant for 2489 square yards for Rs.50,000/- and delivered possession and there from 2nd defendant issued proceedings informing plaintiff on 12/13.10.1978 of 1st defendant's unwillingness to sell to the plaintiff, for 2nd defendant has no independent authority to sell; the telegram notice and legal notice issued by plaintiff to the defendants no way vest any right, so also from the alleged G.P.A of 1st defendant in favour of her son (Ex.A-2), 6th

defendant deposited sale consideration with 2nd defendant on 16.10.1978 and sale deeds were executed in favour of D-3 to D-8 by defendants 1 and 2 on 19.10.1978 (original of Exs.A-25 to A-27), there was some other proceeding in Medak Court in O.S. No.236 of 1978 and the sale in favour of 9th defendant by defendant Nos.3 to 8 was even prior to filing the suit in Medak Court. It is also averred that out of the said Ac.1-01 guntas in S.No.582, there is a grave yard of 400 square yards since times immemorial over which none of the defendants got any right, the defendants 3 to 8 purchased 2489 square yards and remaining 2000 square yards in those survey numbers out of total Ac.7-12 guntas, in possession of other persons with structures raised long back in their seeking to dismiss the suit.

7(b). The defendants 3 to 8 written statement adopted by 9th defendant is in saying they were impleaded after filing of the suit against defendants 1 and 2, there is no G.P.A executed by D-1 in favour of her son for entering into the suit agreement with plaintiff and the G.P.A is incompetent to alienate and the defendants purchased 2489 square yards for valid consideration of Rs.50,000/- with Government permission bonafide having deposited the sale consideration with 2nd defendant on 16.10.1978, obtained registered sale deeds on 19.10.1998 and since then in possession and enjoyment

and they were unnecessarily added in the suit, the suit claim is barred by limitation though the amendments even allowed by the High Court and the Supreme Court in C.R.P. No.2284 of 1992, dated 27.10.1992 against the High Court's order allowing the amendments, made left open to the defendants to file additional written statement to take any plea and sought for dismissal of the suit.

8) From the pleadings the trial Court framed the following 11 issues and again after the amendment in 1992 at the revision stage allowed by the High Court and confirmed by the Supreme Court, two more issues were framed from the additional written statement of defendant Nos.3 to 9 as follows:

1. *Whether this Court has no territorial jurisdiction to entertain the suit?*
2. *Whether Sd.Md.Hussain Bhagdadi is valid holder of G.P.A of defendant No.1, and whether the agreement of sale by the G.P.A holder is valid and binding on the 1st defendant?*
3. *Whether the property is service Inam land, and, if so, whether the 1st defendant can alienate the said property?*
4. *Whether the application alleged to have been made by the 1st defendant before the 2nd defendant is for permission to sell the suit land?*
5. *Whether the G.O.Ms.No.1231 (Revenue) dated 15.07.1978 was in respect of the suit land, and whether it was obtained by fraud?*
6. *Whether the 2nd defendant is entitled to sell the suit land?*
7. *Whether the suit against the 1st defendant is not maintainable, and whether the plaintiff is not entitled to recover Rs.1,000/- from the 1st defendant?*

8. *Whether there is land of 400 sq. yards in the suit land styled as grave yard, and if so, whether that can be alienated?*

9. *Whether sale deeds executed in favour of defendants-3 to 8 are valid and binding on the plaintiff?*

10. *Whether the plaintiff is entitled to a decree for specific performance of contract, as prayed for?*

11. *To what relief?*

12. *Whether the suit claim as against the defendants 3 to 9 is in time?*

13. *whether petition filed subsequent to the filing of the suit for amendment of the plaint are hit by Order II Rule 2 C.P.C?*

9) It is from above pleadings and in answering the issues, in the course of trial, on behalf of the plaintiff besides himself as P.W-1, K.Narasinga Rao as P.W-2, witness to the payment of Rs.6,000/- under the sale agreement (Ex.A-1 dated 02.11.1975) to the son of 1st defendant who passed Ex.A-9 receipt of even date of agreement as G.P.A holder (Ex.A-2 dated 25.11.1974) of D-1, were examined and Exs.A-1 to A-30 referred supra were marked. On behalf of defendants one A.Vittal i.e., father of D-7 as P.W-1, D-3 K.V.Venkatesam as D.W-2, one Hasan Yahea as D.W-3 and D-8 P.Rama Kistaiah as D.W-4 were examined and Exs.B-1 to B-11 were marked viz., notarized G.P.As executed by 1st defendant in favour of D.W-1 (D-7's father) dated 30.11.1987 and 22.09.1988, copy of complaint filed by plaintiff against defendants 1 to 9 with Municipal Commissioner dated 03.12.1986, certified copy of the order in I.A. No.431 of 1980 in O.S.

No.236 of 1978 and C.M.A. No.39 of 1979 order against it, certified copy of docket proceedings in O.S. No.236 of 1978, certified copy of the orders in I.A. No.477 and 478 of 1980 in that suit for amendment order at revision in C.R.P. No.2451 of 1988, certified copy of order in I.A. No.473 of 1984 in O.S. No.150 of 1984, copy of G.O.Ms.No.1231 i.e., Ex.B-11=Ex.A-29, the two documents as Court documents marked viz., out of order petition in SR.2686 of 1978, dated 19.10.1978 and notice dated 29.06.1993 of plaintiff to counsel for D-3 to D-8 to produce the original sale deeds dated 19.10.1978 (of Ex.A-25 to 27).

10) It is after trial from said evidence and hearing arguments, the trial Court decreed the plaintiff's suit with costs directing the defendants 1 and 2 to execute registered sale deeds in favour of the plaintiff in relation to the plaint schedule property pursuant to Ex.A-1 sale agreement dated 02.11.1975 executed by 1st defendant through her G.P.A holder-cum-son and pursuant to the (Ex.A-11) proceedings of the 2nd defendant dated 05.10.1978 and also in directing defendants 3 to 9 to join with defendants 1 and 2 in execution of the sale deed in favour of the plaintiff, for the plaint schedule property and in ordering for recovery of possession from defendants 1 to 9, after removing the constructions made by them, and in directing the plaintiff to deposit the balance sale consideration Rs.24,000/- with interest at 12% p.a. as the cheque was not encashed but for cash of Rs.1,000/- was

received and the payment of amount by demand draft to 2nd defendant was returned; in further directing the defendants 1 to 9 after plaintiff's deposit of the balance sale consideration supra within two months from the date of judgment and decree dated 28.06.1996 for their executing sale deeds within one month thereafter.

11) It is needful to say in this context that, out of the issues referred supra one of the issues i.e., issue No.1 is in relation to the jurisdiction. The trial Court from para No.10 of the judgment answered the same also by observing this the issue was already tried as per Order XIV Rule 2 CPC as a preliminary issue dismissing the application on merits by order dated 08.09.1986, holding that the city civil court got jurisdiction and even the same was impugned before the High Court in C.R.P. No.2618 of 1986, same was also dismissed on 26.09.1986 holding the order warrants no interference and the same became final for holding the trial Court at Hyderabad got jurisdiction.

12) Impugning the trial Court's decree and judgment supra, defendants 3 to 8 filed C.C.C.A. No.78 of 1996, 1st defendant filed CCCA No.130 of 1998 and 2nd defendant filed CCCA No.130 of 2000 against the plaintiff and other respective defendants and the legal representatives of some of the parties died as referred supra also were brought on record.

13) By common hearing and disposal of all the three appeals, this Court by common appeal judgment and decrees dated 01.08.2006 allowed the three appeals setting aside the trial Court's decree and judgment in O.S. No.868 of 1978 dated 28.06.1996 holding that the trial Court i.e., II Additional Judge, City Civil Court, Hyderabad has no territorial jurisdiction for the property covered by the sale agreement is situated in Medak town of Medak District in directing the trial Court to return the plaint along with Court Fees and documents filed by plaintiff and documents filed by defendant to enable the plaintiff to present the plaint in proper Court i.e., at Medak District to permit respective parties to withdraw the amounts deposited by them and time granted to present the same in Medak Court for six weeks after receipt of returned plaint. It is to say in this context that during the pendency of the three appeals before above appeal judgment dated 01.08.2006, the matter was referred by one of the learned Single Judge of the High Court to answer a reference on the preliminary issue once decided on territorial jurisdiction that carried out in C.R.P. by confirming the same in negating the objection on territorial jurisdiction, again is it left for decision especially with reference to the expression in ***Harshad Chimanlal Modi V. D.L.F Universal Limited***[1] and the Division Bench answered the reference by order dated 24.03.2006 holding, in view

of the proposition in ***Harshad Chimanlal Modi*** supra, the orders of the trial Court on the finding not attained finality even the preliminary issue was impugned in revision for the appellant/defendants are entitled to raise said question and assail the finding of the trial Court and there from the learned Single Judge of this Court by common judgment of the three appeals on 01.08.2006 as per the reference answered supra held by reconsidering the material, of having no territorial jurisdiction in asking to return the plaint by the trial Court (II Additional Judge, City Civil Court, Hyderabad) to the plaintiff to represent in proper Court of Medak District.

14(a). The common appeals judgment and decrees dated 01.08.2006 detailed supra was assailed by the plaintiff before the Apex Court in Civil Appeal No.10589 of 2014. It was observed by the apex Court that the trial Court after amendment of the plaint pursuant to the orders in the suit for specific performance originally filed against two defendants and later by joining defendants 3 to 9 and on amendment including of prayers and after full dressed trial, decreed for specific performance against defendants 1 to 9 and observed in answering issue No.1 on jurisdiction that it was as a preliminary issue, that was again adverted to, has been already decided and reached finality. The 1st appellate Court by sitting against said trial Court's decree and judgment from re-agitating the contention of no territorial jurisdiction to the Court at

Hyderabad with reference to ***Harshad Chimanlal*** supra where at para Nos.15 to 19 observed referring to proviso of Section 16 of CPC from the well established principle recognized of actions against *res* or property should be brought in the forum where *res* is situate and a Court has no jurisdiction over dispute in which it cannot give an affective judgment, however as per the proviso a relief in *rem* still to grant by entertaining a suit where relief sought can be obtained through personal obedience of the defendants, based on the well known maxim equity acts in personam, recognized by Chancery Courts in England; equity Courts have jurisdiction to entertain certain suits respecting immovable properties situated abroad through personal obedience of the defendant, to enforce by process in personam referring to the expression in ***Ewing V. Ewing***[2] and in saying the proviso to Section 16 is thus an exception to the main part of Section 16 that cannot be interpreted or construed to enlarge the scope of the principal provision, and in that instant case the proviso has no application in the suit relief for specific performance of the agreement relating to immovable property in directing to execute sale deed and to deliver possession covered by Section 16D of C.P.C.

14(b). The Apex Court in the appeal covered by present lis thereby with reference to ***Harshad Chimanlal*** supra at para No.7 observed

"it was thus contended before the High Court in appeal that

this Judgment covers the present fact situation and that notwithstanding that the preliminary issue has been decided finally in favour of the plaintiff, yet the judgment would have to be followed. The High Court accepted this plea and followed this judgment holding that the Court in Hyderabad had no territorial jurisdiction. As a result, the appeal was allowed and the plaint was ordered to be filed in the appropriate Court."

14(c). It was further observed by the Apex Court on the scope of Section 21 C.P.C in para Nos.8 & 9 and by relying on the expression in ***Pathumma V. Kunthalam Kutti***[3] with reference to Section 16 and 21 C.P.C, in answering the respective rival contentions, observed at para No.10 as follows:

"We find that *Pathumma (supra)* really concludes the matter before us. In paragraphs 5 and 6 of the judgment, it is stated as under:

"In order that an objection to the place of suing may be entertained by an appellate or revisional court, the fulfilment of the following three conditions is essential:

(1) The objection was taken in the Court of first instance.
(2) It was taken at the earliest possible opportunity and in cases where issues are settled, at or before such settlement.
(3) There has been a consequent failure of justice.

All these three conditions must co-exist. Now in the present case conditions Nos. 1 and 2 are no doubt fully satisfied; but then before the two appellate Courts below could allow the objection to be taken, it was further necessary that a case of failure of justice on account of the place of suing having been wrongly selected was made out. Not only was no attention paid to this aspect of the matter but no material exists on the record from which such failure of justice may be inferred. We called upon learned counsel for the contesting respondents to point out to us even at this stage any reason why we should hold that a failure of justice had occurred by reason of Manjeri having been chosen as the place of suing but he was unable to put forward any. In this

> view of the matter we must hold that the provisions of sub-section above exracted made it imperative for the District Court and the High Court not to entertain the objection whether or not it was otherwise well founded. We, therefore, refrain from going into the question of the correctness of finding arrived at by the High Court that the Manjeri Court had territorial jurisdiction to take cognizance of the application praying for final decree."

14(d). There from the Apex Court at para No.11 of the Judgment observed that obviously Section 21 will apply in the three situations refers to pecuniary limits of the Court's jurisdiction and the third reference to limits of Court's jurisdiction and in each of the cases it is stated that, appellate Court or revisional Court shall not allow an objection to the place of suing unless such objection was taken in the Court of first instance at the earliest possible opportunity and in all cases where issues are settled, at or before such settlement. What follows is important, an objection as to place of issuing cannot be allowed unless there has been consequent failure of justice. At para No.12 referring to ***Kiran Singh V. Chaman Paswan***[4] referring to Section 21 and 9 of CPC (old) and Section 11 of the Suits Valuation Act stating policy of the legislature has been to treat objections to jurisdiction both territorial and pecuniary as technical and not open to consider by an appellate Court, unless there has been a prejudice on the merits.

14(e) It is there from the Apex Court in the subject lis in answering the appeal, against the first appeal judgment

of the learned Single Judge of the High Court holding no territorial jurisdiction is not correct in setting aside the trial Court's decree and judgment on that aspect (with a direction to return the plaint). It is thus, the Apex Court by setting aside the High Court's 1st appeal judgment, observed as follows:

> "13. In the present case, we find this statement of law would apply on all fours. The judgment of the trial Court has been decided issue wise, on the merits, after hearing both parties. The suit has finally been decreed. Consequently this judgment cannot be reversed purely on technical grounds unless there is a failure of justice, which we have been, is nobody's case.
>
> 14. The High Court had not adverted to this aspect of the matter at all and this being the case, we set aside the judgment dated 1st August, 2006 passed by the High Court and restore the various appeals to the file of the High Court to be disposed of on merits.
>
> 15. The appeal is disposed of in the above terms."

14(f) From the conclusive paras of the Apex Court civil appeal judgment in this lis, on 25.11.2014 particularly from the para No.14 with reference to para No.13 supra, laid down the law while setting aside the 1st appeals common judgment and decrees of the High Court dated 01.08.2006 and by restored the three appeals to the file of the High Court with a direction to dispose of on other merits same is very clear particularly from the reading of para Nos.13 and 14 of the Judgment of the Apex Court as in the para No.13, it was held consequently this judgment

(of the trial Court decreed the suit finally) cannot be reversed purely on technical grounds unless there is a failure of justice, which we have seen is nobody's case.

14(g) The Apex Court's Judgment thereby is very clear in its conclusion that the finding on territorial jurisdiction arrived before the trial Court is conclusive, for the appellate Court to interfere there is nothing showing failure of Justice and with that observation while remanding the matter to decide the appeals in relation to other merits in answering with reference to other contentions. It is needless to repeat again there from that the finding of the trial Court on territorial jurisdiction thus reached finality and not left open to the defendants for no prejudice shown caused there from to any of the defendants-appellants was the conclusion of the Apex Court and it did not ask or observe anything further to decide any prejudice caused or not even.

15) Having regard to the above, the appeal lis is now concerned with other than issue No.1 of the trial Court for the jurisdiction aspect has reached finality and not left open to answer from the Apex Court closed the shutter with no vent opened to raise again on the jurisdiction aspect for no prejudice shown caused before the trial Court after the preliminary issue on jurisdiction decided or even in 1st appeal before the trial Court or High Court, muchless before the Apex Court in the appeal against

reversal judgment of the appellate Court on jurisdiction and as such it is not even again left open to the defendants-appellants to contend any possible prejudice and or to re-agitate the issue on territorial jurisdiction that attained finality, more particularly for this Court to act as per direction in the remand order of the Apex Court and within the scope of the remand only and not beyond the scope of remand, for the scope of the remand appeal lis is specified by the Apex Court to decide on other merits, other than territorial jurisdiction.

16) Thus, now in the appeal lis pursuant to the remand scope to answer; even arguments were advanced by the respective appellants-defendants 1 to 9 and any of legal representatives of few of them including 1st defendant died pending appeal in relation to the territorial jurisdiction aspect covered by issue No.1 of the trial Court, since that vent was closed by giving a final finding in the expression of the Apex Court as detailed supra it is not permitted by the Apex Court's appeals remand common order to go into it again by this Court, it requires nothing more to answer on the jurisdiction aspect reached finality. Thus, the appeal lis to decide is in relation to the other issues before the trial Court by sitting against, to decide legality and correctness of the trial Court's judgment and the decree, from the Apex Court remand judgment scope supra.

17) Heard both sides at length and perused the material on record. The scope of respective contentions are covered by the respective pleadings and contentions in the facts referred supra, which no way requires repetition, but for to answer the contentions and refer to the expressions and also the written submissions respectively as per context in so answering.

(1) Whether the suit sale agreement executed by the 1st defendant through her son-cum-G.P.A holder Sayyed Mohammed Bagdada is not true, valid, binding and enforceable including on validity of the G.P.A in relation to the suit property in S.No.582 which is part of the properties covered by the permission to sell several of the properties accordingly the 2nd defendant (wakf Board) to the 1st defendant vide G.O.ms.No.1231, Revenue, dated 15.07.1978 and any of it is a grave yard to exclude and on any of the grounds the trial Court's decree and judgment holding and in directing the defendants 3 to 9 are also bound to join along with the defendant's 1 and 2 to submit the suit reliefs for the specific performance in favour of the plaintiff is unsustainable as contending by the respective appellants-defendants in the three appeals (under remand)?

(2) Whether the impleadment of the defendants 3 to 9

by amendment subsequent to the filing of the suit to submit the reliefs along with the 1st defendant through G.P.A and the 2nd defendant is barred by limitation or hit by non-joinder of cause of action under Order II Rule 2 C.P.C as contended by the respective defendants-appellants and otherwise any contention of respective appellants defendants 3 to 9 they are the respective bonafide purchasers of respective extents for value and not bound to submit to the suit reliefs even otherwise plaintiff is entitled is sustainable and if so to what extent the trial Court's decree and judgment requires interference and with what observations?

(3) Whether the plaintiff is entitled to any alternative relief, if not entitled to the main relief of specific performance including on the contention of any ambiguity to the extent for this Court while sitting in the appeal and if so against whom and with what observations?

(4) To what result?

POINTS 1 to 3:

18) Needless to repeat the pleadings including the amended pleadings supra, coming to the Ex.A-2 G.P.A concerned, the main person if at all to dispute the G.P.A is

the 1st defendant. In the plaint it is the specific pleading that the 1st defendant represented by her own son-cum-G.P.A holder agreed to sell the site of 2210 square yards therein S.No.582. The 1st defendant is Muthavalli and the land is a *kidmat inam* and the plaint schedule land is in existence of the extent of Ac.1-01 guntas are not in dispute from her written statement paras4 to 8. In the written statement of the 1st defendant, it is no where denied the execution of the Ex.A-2 G.P.A by 1st defendant in favour of her son dated 25.11.1974. What all stated in para 4 of the written statement of 1st defendant is that Syed Mohd. Hussain Bhagdadi (her son) is not her G.P.A holder and plaintiff is put to strict proof of the allegation. Once as per Order VIII Rules 3 to 5 C.P.C where there is no specific denial and even any vague or evasive denial is not denial and it tantamounts to admission and once such is the case with reference to Sections 17 to 23 read with Section 58 of Indian Evidence Act, admitted facts need not be proved as she did not state that she never executed the (Ex.A-2) G.P.A. In the written statement of the 1st defendant paras 5 to 17 in relation to the G.P.A sent sale agreement and permission accorded by 2nd defendant to alienate the lands, what all further averred is, the allegation of her son represented by her as her G.P.A executed (Ex.A-1) sale agreement dated 02.11.1975 is not correct for no agreement entered by her or by her

G.P.A and even such agreement was answered as executed and Rs.1,000/- cash and Rs.5,000/- cheque received as advance and passed receipt, she did not ratify the agreement to bind her and the agreement also not filed with plaint, but for the receipt (Ex.A-10 of even date on 02.11.1975) in the suit for specific performance. The permission to sell the lands applied by her and accorded by 2nd defendant, is not to alienate any land out of it to plaintiff and the 2nd defendant could not have issued proceedings to deposit the amount of Rs.10,250/- by plaintiff for the Ac.1-01 cents entire land in S.No.582 and on her request and unwilling to sell to plaintiff-2nd defendant returned the Demand Draft to plaintiff and the giving of telegram notice and followed by it legal notices does not create right in plaintiff, muchless to seek for specific performance to enforce the agreement against her to bind. What all further averred in para No.7 of the written statement of 2nd defendant, the permission under G.O.Ms.No.1231, dated 15.07.1978 issued by 2nd defendant to 1st defendant to alienate several lands including the suit agreement land in S.No.582, has no relevance and, had the plaintiff in his application dated 15.10.1978 brought to the notice of 2nd defendant, of Ex.A-1 sale agreement for 2210 Square Yards in S.No.582 of Ac.1-01 guntas dated 02.11.1975, for Rs.25,000/- the 2nd defendant could not have fixed the

lands value at Rs.10,000/- per acre as market value and in directing the plaintiff by 2nd defendant (under Ex.A-11 memo) dated 05.10.1978, based on the Ex.A-29, G.O.Ms.No.1231, dated 15.07.1978. What all at para No.7 of the 1st defendant's written statement further says is that she rushed to 2nd defendant (on the Ex.A-11 memo dated 05.10.1978) and complained of not intending to sell the land in S.No.582 to plaintiff as entered agreement with 6th defendant and others to sell for Rs.50,000/- extent of 2489 square yards out of total permitted extents in various S.Numbers and there upon 2nd defendant returned the demand draft for Rs.10,250/- deposited by plaintiff with 2nd defendant. As per the trial Court's decree and judgment, she was alive by the date of suit and by the date of decree and judgment dated 28.06.1996 leave about even subsequently by her filing CCCA No.130 of 19998 which is one of the appeals, apart from appeared as one of respondents in other two appeals also not in dispute. The 1st defendant by name Munneerunnisa Begum did not choose to come to witness box. Her G.P.A holder-cum-son by name Sayyed Mohammed Hussaini Bagdadi <u>also did not come to witness box to dispute the G.P.A if at all not genuine</u>. The fact that the 1st defendant was the inamdar and she made an application to the wakf board-2nd defendant for permission to alienate several of

the items for benefit of the wakf which include the property covered by the plaint schedule also not in dispute. Even to say by her of it is not the permission accorded based on the application of the plaintiff as claimed the 2nd defendant categorically stated in the written statement para No.7 is that plaintiff applied for permission and the permission is accorded. Once such is the case what the plaintiff contended of on the basis of list application, the permission was accorded by the 2nd defendant, Government of Andhra Pradesh, Revenue Department, represented Wakf Board pursuant to G.O.Ms.No.1231 issued to sell the land at Rs.10,000/- per acre and the Ex.A-11 proceedings of 2nd defendant referring to said G.O. speaks the plaintiff was directed to deposit an amount of Rs.10,250/- for Ac.1-01 guntas in S.No.582, by bank draft and plaintiff submitted the bank draft. According to the plaintiff, he obtained demand draft for the said amount dated 06.10.2008 and delivered to the 2nd defendant who undisputedly acknowledged the same. It is at this stage instead of approving the draft submitted by the plaintiff what 2nd defendant later replied was 1st defendant in between submitted a petition stating she is not willing to sell the land to the plaintiff and thereby the demand draft was returning. The application of the 1st defendant was dated 12.10.1978 and the proceedings of the 2nd defendant was also of even date. In this context it

is necessary to refer the contest of the defendants 1 and 2 by separate written statements, but already referred in detail, to the extent necessary again that 1st defendant being Muthavalli of the Ashurkhana and inamdar of the land in S.No.582 of about Ac.1-01 guntas or so along with other properties saying the same is inam pertained to service and while admitting Sayyed Mohammed Hussainin Bagdadi is no other than her son. She did not specifically deny about any non-execution of G.P.A by her in favour of her son of what is discussed supra from her written statement. She did not even shown stated in her application dated 12.10.1978 addressed to the 2nd defendant of she never executed any G.P.A in favour of her son or her son never executed the sale agreement in favour of plaintiff from any enquiry she made with her son as to truth or otherwise of it and of his so informing. She did not even cancel the G.P.A standing in favour of her son executed by her and she did not even issue any reply to Ex.A-14 either the telegram notice dated 17.10.1978 or to Ex.A-15 notice or to later Ex.A-6 notice dated 28.08.1978 served on her and her son can G.P.A referring to the G.P.A and the agreement in the notice vide Exs.A-16, 17, A-7 and A-8 respectively postal receipts and acknowledgements. The non-giving of reply to the notices also leads to adverse inference against defence of defendant No.1 in particular and also of 2nd defendant

and also by son of 1st defendant to the extent that but for truth of contents and its binding nature with no defence to reply, they could have replied for no prudent person would keep quiet-vide ***Chaparla Hanumaiah V. Kavuri Venkateswarlu***[5] and also from para 15 of the 3 JB expression of the Apex Court in ***Rangappa V. Mohan***[6]. What she stated is so also the 2nd defendant that to their knowledge, no such agreement was executed by the G.P.A holder of the 1st defendant in favour of the plaintiff. What further stated is the agreement said to have been executed is not ratified by the 1st defendant. Once there is a G.P.A executed by her and the G.P.A holder acted on her behalf by that authorization and pursuant to the G.P.A, there is no need of any further ratification. Needless to say again that, when there is no specific denial of the G.P.A in existence and its binding nature on her for acts of her son G.P.A holder and not even replied to the legal notices and not even stated she enquired with her son-cum-GPA and he stated of not executed said agreement, suffice to say from Ex.A-9 and A-10 receipt not even disputing passed by her son, suffice to say there is an agreement by the 1st defendant through her son-cum-G.P.A holder of G.P.A in force in favour of the plaintiff for the G.P.A not even in dispute apart from 1st defendant and her son not even choosen to come to witness box for

any oath against oath from the evidence of plaintiff P.W-1 and his witness P.W-2 with reference to Ex.A-1 to A-18 and A-28 to A-30 even not in dispute, suffice to say plaintiff proved his case for the suit claim against the defendants 1 and 2. What is further contested even though Rs.6,000/- received by the G.P.A holder under Ex.A-9 not in dispute as if not binding on the 1st defendant, having admitted the G.P.A and also about receiving of Rs.1,000/- cash and Rs.5,000/- by cheque bearing No.45535 covered by Ex.A-9 separate receipt dated 02.11.1975 on the very agreement date there is no question of denying as not binding for not a case of G.P.A dated 25.11.1974 cancelled before the date of entering into the sale agreement on 02.11.1975, for what the principal can act, the agent being the G.P.A holder can legally act by virtue of the authority and once acted upon it is binding on the principal, who cannot deny for the acts of the agent, while the authority is in enforce, that too for the agreement entered for consideration and received amounts and further at the cost of the repetition the 2nd defendant addressed the later asking the plaintiff by according permission to submit the draft for approval with demand draft for Rs.10,250/- and accordingly he obtained and submitted on 12.10.1978. What 2nd defendant returned is later 1st defendant changed her mind in addressing to the 2nd defendant of not willing to proceed

with the contract for sale in favour of plaintiff and it is pursuant to which the 2nd defendant on next date, on the even date 12.10.1978 returned the demand draft to the plaintiff. Ex.A-1 is the agreement and Ex.A-2 is G.P.A in force and the agreement is in relation to survey No.582 and the G.P.A executed by the 1st defendant in favour of her son under Ex.A-2 is nearly an year before the agreement and it is for several items of the land in several survey numbers which include survey No.582. Ex.A-5 is the demand draft for Rs.10,250/- drawn in favour of the 2nd defendant on 06.10.1978 that what 2nd defendant returned as referred supra. In fact, Rs.1,000/- by cash and Rs.5,000/- by cheque pursuant to the agreement already received by the 1st defendant through her son-cum-G.P.A holder covered by Exs.A-9 and A-10 dated 02.11.1975 which is on the date of Ex.A-1 agreement. Ex.A-12 is the receipt issued by the 2nd defendant Wakf Board in favour of the plaintiff for the demand draft received which was on 16.10.1978 and Ex.A-11 is the letter of the 2nd defendant to the plaintiff directing to deposit the land cost of Rs.10,250/- to execute the sale deed thereafter. For the Wakf Board 2nd defendant to issue the proceeding covered by Ex.A-11 memo dated 05.10.1978 also in the written statement of 2nd defendant stated plaintiff addressed letter from which permission accorded.

19) A perusal of the said memo Ex.A-11 also clear in this regard, as it is referring No.C3/42/77, Andhra Pradesh Wakf Board represented by Secretary; in saying Ac.1-01 guntas of land in S.No.582 of Medak Town, Mashrutul Hidmat Inam land belongs to Ashurkhana and the sale of the lands and request of Smt.Munneerunnisa Begum (D-1) accepted regarding and it refers among the three references first one as petition of K.P.Ranga Rao, plaintiff in this regard and reference No.2 is the G.O.Ms.No.1232, Revenue Department dated 15.07.1978 and reference No.3 is the office proceedings of the Wakf Board in this regard in saying with reference to the petition cited by plaintiff, the addressee is hereby informed that Government, Revenue Department through G.O 2nd cited (1231) have accorded permission for the sale of the land of Ac.1-01 guntas in S.No.582 for Rs.10,250/- cost of the land at Rs.10,000/- per acre, hence to deposit said amount in the Treasury of the Andhra Pradesh Wakf Board through Bank draft and sale deed will be executed on any appointed date thereafter and also to submit draft of sale deed in approval of the office (Wakf Board). This Ex.A-11 is crystal clear of the 1st defendant applied for the sale of the lands and her request was accepted and pursuant to which and also from the plaintiff's petition, the permission is accorded, in directing to deposit the amount and to submit draft sale deed. Ex.A-12 is the Andhra Pradesh Wakf Board receipt of draft of Rs.10,250/-

received from plaintiff towards cost of Ac.1-01 guntas of land in S.No.582 for sale to plaintiff-K.P.Ranga Rao dated 06.10.1978. In this context, coming to Ex.A-13 memo of the Wakf Board dated 12/13.10.1978 in same file C2/42/77 and the subject is for sale of the land of the Ac.1-01 guntas in S.No.582, and request of Smt.Munnirunnisa Begum (1st defendant) and reference therein is the Ex.A-11 office copy of letter dated 05.10.1978 in saying in continuation to the reference supra, on informing the (plaintiff) K.P.Ranga Rao that Muthavalli (D-1) submitted petition to the Wakf Board on 12.10.1978 that she is not willing to sell the land to the plaintiff. Therefore, the demand draft received dated 06.10.1978 for Rs.10,250/- towards the cost of the land is returning with a request to acknowledge. It clearly speaks even there from there is no dispute by the 1st defendant of sale agreement not executed to the plaintiff by her son as her G.P.A holder but for simply stated not willing to sell. The letter of her not even seen light of the day and there is nothing by defendants 1 and 2 from not filing the letter, if at all anything mentioned of sale agreement Ex.A-1 dated 02.11.1975 not true. The non-filing of the material documents, irrespective of on when the burden lies, leads to adverse inference from such withholding by persons in custody instead of filing to unfold the truth vide decision of the Constitution Bench of the Apex Court to

Gopalakrishnaji ketkar Vs Mahammad Haji Lathief[7].

Thus, from Ex.A-13 referring to the 1st defendant's very letter ratifies the Ex.A-1 suit sale agreement by her through G.P.A-cum-son under Ex.A-2 G.P.A and at best withdraws from the contract for sale unilaterally, which she cannot, without showing any breach of the terms of the contract for sale by plaintiff to cancel the agreement, that too only by giving notice to plaintiff. It is pursuant to Ex.A-13 of 2nd defendant to plaintiff, within no lapse of time, plaintiff issued telegram notice Ex.A-14 on 17.10.1978 to defendants 1 and 2 and to the G.P.A holder-cum-son of 1st defendant and also legal notice of even date under Exs.A-15 to A-17 to the 1st defendant and her G.P.A holder-cum-son and also to the 2nd defendant Wakf Board from the telegram nothing legible Ex.A-14 but for from legal notices Ex.A-15 to A-17 saying the sale agreement entered between plaintiff and 1st defendant under (Ex.A-1) and the 1st defendant was represented through her G.P.A holder-cum-son and the land agreed for sale in question is in S.No.582 of Medak town for consideration of Rs.25,000/-, subject to condition of the vendor to obtain permission for the sale of the land from the Wakf Board (2nd defendant) and the vendor already received Rs.6,000/- on the date of the agreement that was also acknowledged by the stamped receipt (Ex.A-9=A-10).

The legal notice further speaks after entering into the Ex.A-1 sale agreement, the vendor and plaintiff approached the wakf board for permission for the alienation and permission is accorded by proceedings dated 05.10.1978 (Ex.A-11=A-30) for the sale of the land of Ac.1-01 guntas only at Rs.10,000/- per acre for Rs.10,250/- to submit the same with draft sale deed and he obtained the demand draft dated 06.10.1978 for said land and submitted, that was also acknowledged by the 2nd defendant (Ex.A-12) and after receipt of the same while plaintiff was making preparations to get sale deed, the 2nd defendant Wakf Board issued the memo dated 12/13.10.1978 (Ex.A-13) saying the 1st defendant is unwilling to sell the land to plaintiff in the Wakf Board returning the draft with the amount covered by the demand draft, and so called copy of her petition of not willing to sell not even furnished and also any other information as to how having entered the sale agreement that once approved by the Wakf Board she could withdraw in so saying even the sale agreement is subsisting since 02.11.1975 and that too the Wakf Board after examining the documents and material given the clearance by proceedings dated 05.10.1978 (Ex.A-11) to send demand draft for the amount and draft sale deed and accordingly even submitted by him, thereby not justified in saying the Muthavalli is not interested to alienate simply, hence to register the sale deed by

committing to the proceedings, also pursuant to the sale agreement. Similar notices were even given under Ex.A-18 dated 28.10.1978 to the defendants 3 to 8 saying plaintiff already entered with the 1st defendant the sale agreement dated 02.11.1975 for purchase of the land in S.No.582 and Wakf Board accorded permission for the sale of Ac.1-01 guntas by the proceedings dated 05.10.1978 (Ex.A-11) in favour of the plaintiff and he paid the earnest money also by draft and that plaintiff also filed O.S. No.868 of 1978 it is the subject suit on the file of II Additional Judge, City Civil Court, Hyderabad and there is an interim injunction petition in I.A. No.810 of 1978, against the 1st defendant, as there is an attempt to sell to third parties including the defendants 3 to 8 if any and in view of the agreement of sale in favour of the plaintiff (Ex.A-1), plaintiff is entitled to get sale deed obtained and it appears D-3 to D-8 the intending purchasers obtained sale deeds fraudulently or trying to create documents in favour of third parties and in the circumstances neither the 1st defendant nor 2nd defendant can create any rights in favour of anybody including defendants 3 to 8, so long as the (Ex.A-1) sale agreement dated 02.11.1975 in favour of the plaintiff is in subsistence, that subsequent alienations are only fraudulent and void and at own risk if at all obtained and that plaintiff is taking steps to implead them as parties to the suit. Said Ex.A-18 notice was dated

28.10.1978, served or returned covered by Exs.A-19 to 24, however the certified copies of sale deeds covered by Exs.A-25 to A-27 in favour of defendants 3 to 8 respectively were earlier to it dated 19.10.1978. From this it is crystal clear that the Wakf Board, 2nd defendant vis-à-vis the 1st defendant are clearly aware of the suit sale agreement of the plaintiff Ex.A-1 dated 02.11.1975 and part payment made by plaintiff of even date thereunder received vide receipt Ex.A-9=A-10 having executed the agreement by the 1st defendant through her son-cum-G.P.A holder as per Ex.A-2-G.P.A dated 25.11.1974 and when it is not even the case of cancellation of the Ex.A-1 sale agreement of plaintiff by giving any notice by D-1 and D-2 to the plaintiff. What Ex.A-13 memo of the 2nd defendant is simply saying return of the draft by saying 1st defendant is unwilling that is not suffice to say repudiation or cancellation of muchless it cannot at all be cancelled unilaterally or to make it unenforceable thereby itself. It is unknown in the factual scenario as to how D-5 vendee under Ex.A-25 for 510.67 Square yards for Rs.10,000, D-3 and D-4 vender under Ex.A-26 for 529 Square yards for Rs.18,000/- and D-6 to D-8 vendees under Ex.A-27 for 1408 square yards for Rs.22,000/- can be called bonafide purchasers for value without notice under the three sale deeds. It could be believed that the Wakf Board 2nd defendant did not inform them apart from the 1st

defendant and is not their duty as a bonafide purchasers if at all to enter any contract of sale for consideration to enquire about the existing Ex.A-7 sale agreement between plaintiff and 1st defendant through her son-cum-G.P.A and pertaining to it earlier proceedings and correspondence between defendants 1 and 2 and also between plaintiff and 2nd defendant as referred supra. It clearly envisages the subsequent alienations are not at all bonafide and they cannot be called from mere contest as bonafide purchasers for value without notice of the existing Ex.A-1 suit sale agreement of plaintiff since 02.11.1975 with Ex.A-9=A-10 receipt of even date of part-payment received by defendant No.1 through her G.P.A-cum-son under Ex.A-2 dated 25.11.1974. As had they made any enquiry with defendants 1 and 2 from existing written correspondence also of them with plaintiff, they could have known the same. Once no such enquiry they cannot be called bonafide purchasers without making bonafide enquiries. It is not a case of Ex.A-25 to A-27 sale deeds executed by 1st defendant only by suppressing the facts and earlier sale agreement with plaintiff by her through G.P.A-cum-son. It is because 2nd defendant Wakf Board also one of executants of the sale deeds with 1st defendant in favour of D-3 to D-8 supra. There is already the written correspondence with 2nd defendant covered by Ex.A-1, A-10, A-11, A-12, A-13, A-

30 which are till dated 13.10.1978 to say prior to Ex.A-25 to A-27 sale deeds dated 19.10.1978. Thus, these Exs.a-25 to 27 sales dated 19.10.1978 and in turn later to D-9 are nothing but fraudulent within the purview of Section 53 of the Transfer of Property Act covered by the expression of the Apex Court in ***Abdul Shukoor V. Arji Papa Rao***[8]. It is also mention in this context that, it is not that the property with permission of Wakf Board even cannot be alienated, once it is alienable and once there is an agreement as a contract for sale in subsistence in favour of the plaintiff executed by the 1st defendant through her son under Ex.A-1 and the son is as G.P.A holder validly represented by the authority covered by Ex.A-2 G.P.A in force and not even shown cancelled and once binding and once that is the case and once the record shows the 1st defendant approached the 2nd defendant. Coming further attack on genuineness of Ex.A-1 sale agreement, as discussed supra, it is proved and there is nothing to rebut the evidence proving the same. Regarding its non-filing with plaint, it does not mean it was not in existence. Once the Ex.A-9=A-10 receipt when filed. In this context it is also to refer that the Ex.A-1 sale agreement dated 02.11.1975 it was executed on stamp papers of Rs.62/- in five pages. As on that date, the sale agreement can be executed on a single stamp paper worth Rs.5/-. The stamps shown purchased on different dates all earlier to

the agreement date. It clearly reflects the 1st defendant representing by her son G.P.A holder the self same address of 1st defendant at D.No.23-2-662/3, Moghalpura, Hyderabad and plaintiff address as vendee shows Medak Town. It refers the vendor possesses 2200 square yards Masjid inam land bearing S.No.582 of Medak city (town) and agreed to sell the property to the vendee for Rs.25,000/- as agreed sale consideration for the entire extent and the vendee paid Rs.1,000/- as cash and also paid Rs.5,000/- by cheque and the balance amount of Rs.19,000/- was agreed to pay at the time of registration and meantime the vendor has to seek permission to sell from Wakf Board at their expense and final instalment of Rs.19,000/- will be taken only after getting clearance from the Wakf Board for first and second instalments have been received as aforesaid (Rs.1,000/- cash and Rs.5,000/- by cheque). No doubt, it is a conditional sale agreement to enforce subject to permission of wakf board as a precedent for receiving balance and to execute sale deed. The power of the 1st defendant's son to execute sale agreement as G.P.A holder is covered by Ex.A-2 G.P.A dated 25.11.1974 reads as R/o.23-1-662/3, Moghalpura and the 1st party 1st defendant Munneerunnisa Begum aged about 48 years, wife of late Sayyed Shab Abdul Kazeena Hussaini Bagdad household appoints the second party, her son, as her

G.P.A holder saying she is a Paradaseen woman and due to age and ill-health and not possible to attend the works and to do Pairavis in various Courts, Tribunals and offices and to consult advocates, so executing the G.P.A in favour of her son to deal with all matters pertaining to the property and any works in Hyderabad city and in all other Districts in Andhra Pradesh and also any other suits in India and she authorized and empowers her son as G.P.A holder to act in her name and on her behalf including to sign and execute sale agreements, leases, assignments or conveyance concerning to the properties situated in Hyderabad city and other districts of Andhra Pradesh and other cities in India and to receive money, receipts or give discharge arising out of the property and to appear before any registering authority and person before whom any instrument to execute and sign and admit execution of sale deeds or receipt by consideration or to do any act or deed or thing necessary to complete registration of the deeds arise out of the properties and to commence, carry compromise or defend legal actions or other proceedings whatsoever necessary including to engage advocate and contest concerning the properties and works and to sign and file pleadings in Courts and Tribunals and other offices and withdraw and receive documents and monies from Courts, Tribunals, Offices or from opposite party either in execution of decrees or otherwise and on receipt of payment thereof sign and deliver on her behalf receipts

and discharge for the same concerning the properties, cases or shares and all other works and for any of the purposes to act to deposit, draw, endorse and sign for sums payable to her and also generally to do, execute and perform every other matters whatsoever to be done in her name as she is personally present and do the same concerning the properties, cases, shares and works and she thereby declare the power of attorney is executed on 25.11.1974 and it becomes operative from that day. Same is the three pages G.P.A with her left thumb impressions in every page and it is a registered one before the Sub-Registrar, Ajampura, Hyderabad, where also she put her thumb impression as executant by admitting the same at the time of registration on 26.11.1974 and it was identified by Dr.Mohammed Ahmed and one Mohammed Ahmed Khan, S/o.Dr.Abdul Waheed Khan. It is pursuant to which (Ex.A-2), the Ex.A-1 sale agreement was executed by the 1st defendant through G.P.A, same is binding on the 1st defendant. But for execution of Ex.A-2 pursuant to the power under Ex.A-1 registered G.P.A, plaintiffs getting the G.P.A from son of 1st defendant and 1st defendant and passing of Ex.A-9=A-10 receipt for part payment of not only Rs.1,000/- cash but also by cheque for Rs.5,000/- does not arise and the same not even in dispute as discussed supra and Ex.A-28 certified issued by the Indian Bank, Medak not only proves the amount covered by the cheque not encashed,

but also of mainly proving the factum of the cheque for Rs.5,000/- issued from the S.B account of the plaintiff on 02.11.1975 of cheque bearing No.D45535 coupled with it, the Ex.A-10 (A-9 is copy) receipt passed as G.P.A holder of his mother-defendant No.1 by her son also referring about sale of the land (plot) of 2210 Square yards in S.No.582 of Medak under sale agreement of even date and the amount of Rs.1,000/- cash and Rs.5,000/- by cheque supra received is towards the sale agreement as advance. All these as concluded supra proves the case of the plaintiff. Plaintiff clearly relied upon Ex.A-1 sale agreement for Rs.25,000/- consideration in seeking for specific performance by mentioning for Rs.5,000/- cheque not encashed but for Rs.1,000/- cash received. The 2nd defendant once accorded permission for sale. The conditional contract for sale is unilaterally irrevocable by 1st defendant and for same enforceable and as per direction of 2nd defendant plaintiff paid as required Rs.10,250/- by D.D and submitted draft sale deed and from even return later on 1st defendant's alleged unwillingness to sell, notices referred supra issued by the plaintiff is by relying upon Ex.A-1 sale agreement with all above facts referred supra and the suit claim is also with all facts supra so also the evidence of P.W-1-Plaintiff in enforcing the sale agreement for Rs.25,000/- and not even based on letter of 2nd defendant fixing market rate at

Rs.10,250/- for Ac.1-01 cents at Rs.10,000/- per acre. The contention of the defendants that there is a false plea of plaintiff is not only baseless but also a mischievous contention, to cover up their collusive and fraudulent sale transactions under Ex.A-25 to A-27 if possible.

20) In the factual scenario, from the defendants 3 to 8 were impleaded as per orders in I.A. No.250 of 1979 passed subsequently on 28.07.1981, and later from the 9th defendant purchased 500 square yards from out of the extent purchased by D-6 to D-8 on 19.10.1978, covered by subsequent sale deed dated 02.11.1978 is thereby subsequently impleaded as per orders in I.A. No.1117 of 1980 dated 14.10.1981. No doubt in the plaint originally the prayer sought is for specific performance of Ac.1-01 guntas in S.No.582 for what the permission accorded by the Wakf Board under Ex.A-11 dated 05.10.1978 is to that extent though under Ex.A-1 agreement what plaintiff entered as discussed supra is for total 2210 square yards of the S.No.582 for a total consideration of Rs.25,000/- that was also the amendment plaintiff sought for and was allowed by that even there is no any false plea. In fact there is though originally under Ex.A-1 agreement for 2210 square yards for Rs.25,000/- what the permission accorded by wakf board, 2nd defendant, pursuant to the Ex.A-1 conditional agreement terms is not for 2210 square yards of S.No.582 for a total consideration of Rs.25,000/-

that was also the amendment plaintiff sought and was allowed. Here once there is a first agreement for sale under Ex.A-1 a conditional one and the condition is fulfilled by according permission by Wakf Board under Ex.A-11 for part of it for Ac.1-01 guntas only and the same complied by acted upon by plaintiff by taken demand draft for its value of Rs.10,250/- and submitted by acted upon that is what is enforceable and what is the title, the defendants 3 to 9 to get from defendants 1 and 2 is only for the rest, after deduction of alleged grave yard extent out of that rest of extent, subject to enforceability of the contract for sale under Ex.A-1 coupled with Ex.A-11 and Ex.A-5 compliance by the plaintiff for Ac.1-01 guntas. It is because as referred supra subsequent to the permission accorded the 1st defendant cannot unilaterally address 2nd defendant to withdraw from the agreement entered with plaintiff by her through G.P.A for which vide under Ex.A-11 Wakf Board accorded permission, even for the Wakf Board to issue memo of intimating her withdrawal for returning the demand draft under Ex.A-13 on 13.10.1978 referring to her letter dated 12.10.1978. That letter even not seen light of the day nor D-1 or D-2 filed it muchless by any of the other defendants contesting the suit claim of what she has written as discussed supra from non-filing of the material document by the defendants in their custody irrespective of burden of proof to unfurl the truth as a duty bound leads to adverse interference as laid down by the

Three Judge bench of the Apex Court in **Gopalakrishnaji ketkar** referred supra. For the legal notices issued by the plaintiff firstly telegram to defendants 1 and 2 and followed by legal notice, again subsequently on 28.10.1978 to D-3 to D-8 which they acknowledged by some even returned of some covered by no reply, anyhow, they were impleaded as co-defendants to the suit immediately after the plaintiff's coming to know of the same as referred supra. The claim by plaintiff is no doubt pursuant to Ex.A-1 and Ex.A-9=Ex.A-10 dated 02.11.1975, however from the receitals of Ex.A-1 conditional agreement, permission of Wakf Board granted was dated 05.10.1978 (Ex.A-3=A5) communicated to plaintiff for its enforceability and for compliance sought, plaintiff paid under Ex.A-12 on next day obtained demand draft and submitted draft sale agreement with no lapse of time and it is from that on 2nd defendant's communication on 12/13.10.1978 under Ex.A-13, of 1st defendant is not willing, plaintiff issued the telegram notice and legal notice on 17.10.1978 and on further notices under Ex.A-18 dated 28.10.1978 to all defendants and the suit filed with no lapse of the followed by telegram and legal notice supra, it is suffice to say not only from pleading but also from proof plaintiff as required by law is always ready and willing to perform the part of the contract under Ex.A-1 sale agreement in seeking for specific performance and for its entitlement pursuant to

Ex.A-11, original plaint claim made and later pursuant to Ex.A-1 it is amended as discussed supra, the enforceability is pursuant to Ex.A-11 of original plaint claim in that regard subject to otherwise entitlement to the relief of specific performance and it is made clear thereby the suit claim even against D-3 to D-9 no way barred by limitation even by the respective dates of impleadment of D-3 to D-8 on 28.07.1981 and of D-9 alienee from D-6 to D-8 on 14.10.1981, to commence the limitation from 17.10.1978, telegram notice of refusal after permission for performance, leave about the amendment if not relates back to date of suit, atleast to date of filing applications to implead respectively to say well within limitation, vide decisions ***Prithipal Singh V. Anurik Singh***[9] and ***Satya Jain V. Anis Ahmed Rushdie***[10] as to whom from limitation under Article 54 of the limitation of three years to compute. What the Ex.A-29 G.O.Ms.No.1231 dated 15.07.1978 issued is no doubt general and from that general permission even what the agreements entered are enforceable, even the agreement Ex.A-1 entered dated 02.11.1975 which is as conditional one subject to 2nd defendant Wakf Board permission and the Ex.A-29 G.O is enough to get enforceability to Ex.A-1 as Ex.A-1 refers the 1st defendant to obtain the permission. Further, 2nd defendant in Ex.A-11 dated 05.10.1978, specifically accorded permission to plaintiff referring to the plaintiff's

application, same substantiates plaint claim and there is no false plea of plaintiff even in this regard thereby, though it is the contest of the defendants in saying the G.O nowhere refers as plaintiff applied, when Ex.A-11 proceedings dated 05.10.1978 speaks pursuant to plaintiff applied and Ex.A-29 and A-11 reflects S.No.582 and when Ex.A-11 includes a reference about plaintiffs letter pursuant also to the G.O supra about 1st defendant applied for permission to sell, what permission accorded to the plaintiff by the Wakf Board specifically under Ex.A-11 in pursuance of the general permission to the 1st defendant to alienate under the G.O several extents in several survey numbers, confined to plaintiff is for Ac.1-01 guntas of the S.No.582 instead even for saying the Ex.A-1 sale agreement extent of 2210 square yards of S.No.582 and what the consideration mentioned is pursuant to the G.O. at Rs.10,000/- per acre, instead for the 2210 square yards for Rs.25,000/-. Once permission is accorded and the agreement is enforceable under Ex.A-11 and acted upon from plaintiff's compliance by submitting to the 2nd defendant as required by the 2nd defendant while according permission to sell to the plaintiff Ac.1-01 guntas for Rs.10,250/-, pursuant to the general permission under the G.O from the request made by the 1st defendant, it is equally pursuant to Ex.A-1. Even ignoring Ex.A-1 and A-2 for the time being, once that permission is accorded and

acted upon that is binding against the D-1 and D-2 to enforce by plaintiff and merely because D-3 to D-8 were permitted to obtain sale deeds executed by D-1 and D-2 for a price higher than that if any even, that no way a consideration and plaintiff's contract for sale with D-1 and D-2 no way be called distress sale muchless to come in the way for equitable enforcement of specific performance, as it is the price fixed by the 2nd defendant Wakf Board, as per the prevailing market rate at Rs.10,000/- per acre in the year 1978 as per G.O. of July, 1978 and as per the permission of October, 1978.

21) Now, coming to the other contention of there is a bar under Order II Rule 2 C.P.C for not making entire claim as per the Ex.A-1 agreement, but for as per Ex.A-11 permission, Ac.1-01 guntas for Rs.10,250/- and not for 1210 square yards for RS.25,000/- to say that portion plaintiff deemed given up by novation of the contract itself of Ex.A-1 under Ex.A-11 that too before filing of the suit by acted upon and the subsequent amendment even made does not give entitlement to the equitable relief to claim for 2210 sq. yards for Rs.25,000/- under Ex.A-1 but for as per Ex.A-1 read with Ex.A-11 and the G.O.Ms.No.1231 and Ex.A-6 for Ac.1-01 gts. for Rs.10,250/-. Thus, said contention is also baseless and untenable. Thus from the alleged say of the defendants 1 and 2 by Ex.A-13 memo dated 13.10.1978, to that extent of Ac.1-01 guntas out of

S.No.582 other than the grave yard as a first contract for sale from that extent, plaintiff is entitled to specific performance for the Ex.A-1 sale agreement extent of 2210 square yards for Rs.25,000/- and what remained if any, the other defendants could get title from D-1 and D-2 and also on the principal of subsequent sale deeds in favour of D-3 to D-9 are fraudulent as discussed supra, apart from the same are subject to the submitting of the relief of specific performance to the plaintiff by defendants 1 and 2 for which as in between after the agreement with plaintiff and after accorded permission by Wakf Board in favour of the plaintiff as discussed supra, D-3 to D-8 and from D-6 to D-8 by D-9 obtained the sales from D-1 and D-2 is hit by lis pendence and also fraudulent and cannot be regarded as bonafide purchasers, they are also bound to join. Plaintiff having performed his part of the contract in toto by submitting the demand draft for the entire amount as required by the 2nd defendant under Ex.A-11 covered by Ex.A-5 and as discussed supra, the cause of action and counting of limitation of three years under Article 54 of the Limitation Act for the plaintiff in force against the defendants commenced after receiving of Ex.A-13 memo dated 13.10.1978 on 17.10.1978 and immediately after receiving the same on 17.10.1978, plaintiff cause issued Ex.A-14 telegraphic notice and also Ex.A-15 to A-17 legal notice to D-1, D-2 and D-1's G.P.A which they acknowledged and later they executed the sales under

Ex.A-25 to 27 in favour of D-3 to D-8 on 19.10.1978 for their not bonafide transactions as referred supra that made the plaintiff by then already suit filed by reference the fact including about already issued Ex.A-3 general paper publication on 28.08.1978 itself of already entered the agreement and others have no right in view of the agreement between plaintiff and D-1, in respect of the land in S.No.582, defendants 3 to 8 or 9 cannot claim as bonafide purchasers for consideration and after the notices by plaintiff to that on 28.10.1978 referring to the alienations on 19.10.1978 they were impleaded and subsequently on knowing about D-6 to D-8 executed out of the extent they allegedly purchased of 1408 square yards part of it 500 square yards on 02.11.1978 by also impleaded and there was already an injunction and there was already an undertaking also for constructions or improvements made are subject to the result of suit of the plaintiff's entitled to the specific performance if any and as he complied with and is always ready and willing to obtain sale deed but for D-1 and D-2 went back by Ex.A-13 letter dated 13.10.1978 received by plaintiff on 17.10.1978 and issued telegram notice of even date for cause of action to commence thereafter to compute the period of limitation and thus the suit for specific performance filed by plaintiff not only by readiness and willingness but also proved from the above as always ready and willing to perform his part of the contract entitled to the relief of specific

performance and what the trial Court decreed thereby within its judicial discretion is perfectly valid as laid down in ***Hemanth Mandal V. Ganesh Chandra Naskar***[11] though on facts the result therein was otherwise and no way thus it requires interference for this Court while sitting in appeal as there is evidence showing plaintiffs conduct is blemishless throughout as per the principle of law laid down in ***Prakash Chandra V. Narayan***[12] and ***Sitaram V. Radhay Syam***[13] though on facts of that case result was otherwise and also as per the principle of law laid down in ***S.Kesari Hanuman Goud V. Anjum Jehan***[14] in directing the defendants 3 to 9 to join with defendants 1 and 2 in executing sale deed on deposit of balance in ordering specific performance. Thereby the three appeals are liable to be dismissed. Accordingly the points 1 to 3 are answered.

22) In the result, the three appeals are dismissed with costs of the appeal to plaintiff confirming the trial Court's decree and judgment dated 28.06.1996. Miscellaneous petitions, if any, in all the appeals shall stand closed.

DR.JUSTICE B.SIVA SANKARA RAO

Dt.03.06.2016
ksh

[1] (2005)7 SCC 791

[2] 1883(9) AC 34

[3] (1981)3 SCC 589

[4] AIR 1954 SC 340

[5] 1971(1) AWR-65

[6] AIR 2010 SC 1898

[7] AIR 1968 SC 1413

[8] AIR 1963 SC 1050

[9] (2013)9 SCC 576

[10] (2013)8SCC 131

[11] (2016)1 SCC 567

[12] (2012)5 SCC 403

[13] AIR 2008 SC 143

[14] (2013)12 SCC 64