

HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

LETTERS PATENT APPEAL No.98 OF 2002

JUDGMENT: (Per Hon'ble Sri Justice A. Shankar Narayana)

This Letters Patents Appeal is directed against the judgment and decree, dated 13.03.2002, of a learned single Judge of this Court in regular Appeal Suit No.709 of 1995 against the judgment and decree, dated 28.04.1995, in Original Suit No.6 of 1989, a suit for delivery of possession with alternative remedy for recovery of money.

2. Originally, respondents - plaintiffs herein filed suit in O.S. No.6 of 1989 on the file of Additional Subordinate Judge, Tenali, Guntur District, claiming recovery of an amount of Rs.37,556/- with a first charge over the plaint schedule property which consists of Acs.5-69 cents comprised of Ac.1-06 cents in D. No.205/1, Ac.0-73 cents in D. No.205/3, Acs.36-¾ cents in 205/2 and 205/3, Ac.0-81 cents in D No.203/1, Acs.1-12 cents in D. No.204/2, Ac.1-00 in D No.206/B6, Ac.0-60¼ cents in 2/6/B7 within specific boundaries with *pendente lite* interest at 18% per annum and post decree interest at 6% per annum till realisation, against the appellant - defendant.

3. For the sake of convenience, the parties are hereinafter referred to as they arrayed in the Original Suit before the trial Court.

4. Thus, it is clear that when the suit was laid, originally, the relief sought was for recovery of money based on an agreement of sale dated 01.10.1976, executed by the plaintiffs' maternal great grand mother Smt. Talasila Lakshamma in favour of the defendant. The plaint was presented on 01.10.1988. It was returned on 03.10.1988 for payment of deficit fee. Having paid Rs.2,025/- towards deficit Court fee, it was resubmitted on 20.10.1988. Certain objections were taken and plaint was returned on 13.10.1988. It was re-presented on 25.10.1988. With certain objections, it was again returned and thereafter resubmitted.

5. The basic facts needed for disposal of the present appeal are that one Talasila Lakshamma was the great grand mother of the plaintiffs. She was owner of the plaint schedule property. Her death occurred in the month of May 1977. She executed Will on 19.01.1976 bequeathing the plaint schedule property in favour of the plaintiffs. The said Lakshamma had contracted to sell the suit property at the rate of Rs.13,500/- per acre and the defendant paid Rs.12,000/- on the same day. The defendant paid another sum of Rs.10,000/- on 24.09.1976. The defendant further paid a sum of Rs.14,500/- on 1.10.1976, on which day, Lakshamma and the defendant entered into the suit agreement with a counter part between them. Lakshamma put the defendant in possession of the suit property on that day itself.

(a). The agreement of sale contains certain conditions. One month time was provided therein for payment of balance sale consideration with a default condition that the defendant will have to pay the same with interest at the rate of 18% per annum, if the payment of balance amount was not cleared. Further condition was, in case the executant, Lakshamma during her lifetime fails to execute and register the sale deed, the defendant has to get the sale deed executed and registered by the plaintiffs being legatees under the Will. Still, further condition was that the suit property has to be measured according to 'G' line measurement. The land was measured during Summer in 1976.

(b) The plaintiffs, thus, claimed that during the life time of Lakshamma, the aforesaid amounts totally Rs.36,500/- were paid and the subsequent payments made by the defendant, as projected by the plaintiffs are as follows:

Sl. No.	Date	Amount Rs.
1.	12-07-1977	1,800-00
2.	15-09-1979	7,500-00
3.	02-07-1980	10,000-00
4.	11-08-1980	5,000-00
5.	06-05-1981	5,000-00
6.	26-06-1985	5,000-00 5,000-00

(c). The plaintiffs, state that despite repeated demands, the defendant failed to pay the balance sale consideration and obtain registered sale deeds and even the attempts made through mediators,

proved abortive, and the defendant has been enjoying the profits from the suit property since 01.10.1976 and avoiding to obtain a sale deed. The contract is twelve (12) years old, prices of the lands have gone up by leaps and bounds, and, therefore, they were constrained to get a registered notice, dated 21.09.1988, issued to the defendant demanding payment of balance sale consideration and get the sale deed executed and registered. Though, that notice was received by the defendant on 23.9.1988, it stood unanswered. Hence, they laid the original suit in O.S. No.6 of 1989. As could be seen from the concluded two sentences of paragraph No.6 of the plaint, the plaintiffs sought recovery of balance sale consideration under the suit contract of sale; further seeking creation of first charge over the suit property under Section 55(4) of the Transfer of Property Act, 1882.

(d). The plaint was returned by the office raising certain objections on 03.10.1988 initially and again for payment of deficit Court fees.

(e). The plaintiffs, while resubmitting the plaint at a later stage inserted paragraph No. 6(a) stating therein that twenty (20) days after presentation of the plaint, they received a reply from the defendant setting up a false plea of payment of Rs.10,000/- on 10.10.1979 under a receipt which, the plaintiffs termed as a 'forged receipt' and another payment of Rs.5,000/- on 14.06.1982 and yet another payment of Rs.200/- on 01.01.1980 in the form of paddy. The plaintiffs claim that the said payments are invented and the receipt, dated 10.10.1979, is

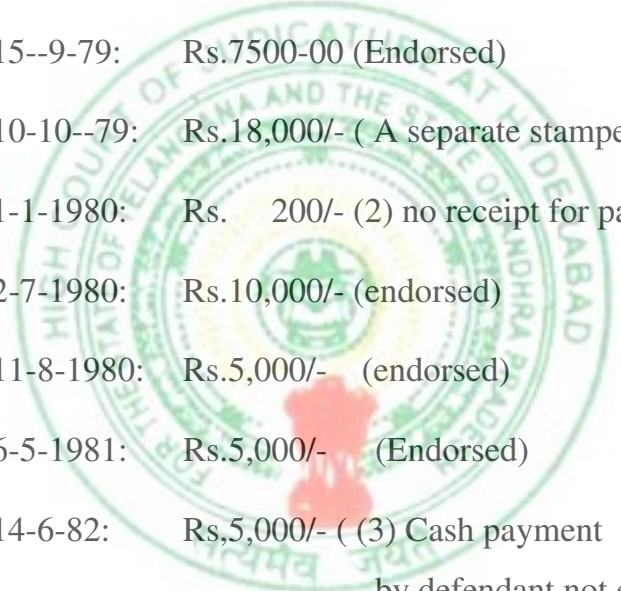
got up by forging their signatures (plaintiffs) to make wrongful gain and the said conduct of the defendant, according to the plaintiffs, constrained them to put an end to the suit contract and to sue for the primary relief of recovery of possession of the suit property. The plaintiffs also alleged that the defendant, since has been in possession, the income derived there-from is to be set off against the payments totalling Rs.75,800/- made by the defendant under the suit contract, and, therefore, there was no need to refund any amounts to the defendant.

(f). Thus, the plaintiff introduced the relief of recovery of possession and the original relief of recovery of suit amount with a first charge over the suit property is shown as alternative relief; of course, he sought interest at 18% per annum *pendente lite* and post decree interest at 6% per annum till payment.

6. The sole defendant, in her written statement, admits entering into contract of sale between them and delivery of possession of the suit property in her favour on 01.10.1976 with standing paddy crop. She states that on the date of agreement of sale, it was represented to her that the suit land was Acs.5.50 cents and after 'G' line measurements was agreed upon and in the presence of Ex. Village Karnam, the suit property was measured in the 'Summer of 1986', but not in the 'Summer of 1976' and it was found that an extent of Acs.5.44 cents was actually available. She disputes the stipulation of payment of interest at the rate of 18% per annum as illegal and states

that the plaintiffs are not entitled to seek interest in excess of 12% per annum.

(a). According to the defendant, the total consideration due for Acs.5.44 cents was Rs.73,440/- and interest was to be paid after expiry of one month from the date of contract i.e., from 01.11.1976. She claims that she made the following payments towards sale consideration on the respective dates:

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- “1. 12-7-79: Rs.1800-00 (Endorsed on contract)
 2. 15--9-79: Rs.7500-00 (Endorsed)
 3. 10-10--79: Rs.18,000/- (A separate stamped receipt)
 4. 1-1-1980: Rs. 200/- (2) no receipt for paddy)
 - 5) 2-7-1980: Rs.10,000/- (endorsed)
 - 6) 11-8-1980: Rs.5,000/- (endorsed)
 - 7) 6-5-1981: Rs.5,000/- (Endorsed)
 - 8) 14-6-82: Rs,5,000/- ((3) Cash payment
by defendant not endorsed)
 - 9) 26-6-85: Rs.10,000/- (through demand drafts to 2
plaintiffs)”

(b). According to the defendant, the plaintiffs admit the payments except the three (3) payments made on 10.10.1979, 01.01.1980 and 14.06.1982 of Rs.18,000/-, Rs.200/- and Rs.5,000/- respectively.

(c). Concerning payment of Rs.18,000/- dated 10.10.1979, her case is that her husband has paid the said amount by cash to the

plaintiffs and token of in receipt thereof, a stamped receipt was passed by them. Concerning payment of Rs.200/-, dated 01.01.1980, her case is that the father of the plaintiffs viz., Sivarama Krishnaiah took two (2) bags of new variety of *sarva* paddy, seedlings and M.T.U.4569 at a cost of Rs.100/- per bag on 01.01.1980 promising to include the cost in the sale consideration.

(d) Concerning payment of Rs.5,000/-, she states that on 14.06.1962, she paid the amount to the plaintiffs at their house. According to her, plaintiffs promised to get the said payments endorsed later, on the ground that their father was not available then and later they evaded to get the payments endorsed.

(e) Thus, according to the defendant, all these three (3) payments constitute part of balance sale consideration paid to the plaintiffs.

(f) Additional Written Statement was filed on 10.08.1994. Concerning the last Will and testament, dated 19.01.1976, propounded by the plaintiffs said to have executed by Lakshamma in their favour, she put them to strict proof of its execution by the testatrix in a sound disposing state of mind.

7. Controverting the allegations in the additional written statement, the plaintiffs filed rejoinder on 30.08.1994. They lay stress on the particular circumstance that the defendant has not denied either specifically or in any other manner as to execution of the Will in her

original written statement, besides not questioning in her evidence about its execution and, therefore, it was not open to her either to question its execution by the testatrix or requiring them to prove the same.

8. The Court of first instance settled originally the following four (4) issues on 18.08.1989:

“1. Whether the plaintiffs are entitled for possession of the plaint schedule property and alternatively for the suit amount from the defendant?

2. Whether the payments of Rs.18000/- on 10.10.79 and Rs.200/- on 1.1.80 and Rs.5000/ on 14.6.82 to the plaintiffs are true?

3. Whether the plaintiffs received excess of sale consideration of Rs.35989/- from the defendant?

4. To what relief?”

(a). By allowing I.A. No.1029 of 1994 on 19.09.1994, subsequent to filing of additional written statement and rejoinder, settled the following four (4) additional issues:

“1. Whether Talasila Lakshamma, executed her last Will and testament on 19-01-1976, in a sound and disposing state of mind?

2. Whether plaintiffs are entitled to unilaterally cancel the suit contract of sale dt.1-10-76, without notice and opportunity to the defendant?

3. Whether that cancellation of contract is legal and valid?

4. What is the extent of the suit land, on measurement, whether Ac.5-69 or Ac.5-48 cents?”

9. The parties went to trial. In order to substantiate their respective cases, plaintiff Nos.1 and 2 have examined themselves as PWs.2 and 1, respectively, besides examining one Gaddipati Seetharamaiah, a resident from their village, to speak about his presence when the suit land was measured, as PW.3, and Gaddipati Satyanarayana as PW.4, an attester along with his father to the Will who is none other than the great grandson on maternal side, and, one Alapati Siva Prasada Rao, an identifying witness to the Will under Ex.A-9 as PW.5, and, marked Exs.A-1 to A-12, whereas, the defendant examined herself as DW.1, her husband as DW.2, one Bommaraju Sambasivarao, Ex.Karnam of suit village, who measured the suit land in 1985, as DW.3 and her son as DW.4 to prove payment of Rs.5,000/- said to have made in the month of June 1982 and exhibited Exs.B-1 to B-14. Ex.C-1 was also marked which consists of rough calculations made towards sale consideration of Acs.5-48 cents of land without the signatures of the parties.

10. The trial Court on appraisal of evidence, tendered the findings as hereunder:

(1) Issue No.1 and Additional Issue No.3 were taken up for common discussion and observing that the defendant, since failed to prove the three (3) payments, in relation to which issue No.2 was decided and set up false claims, by her conduct, disentitled to retain possession and seek protection under Section 53-A of the Transfer of Property Act and, thereby, held

both the issues against the defendant and based on the finding rendered, arrived at the conclusion to decree the suit for the primary relief of recovery of possession and accordingly did so, directing the defendant to deliver possession of the suit schedule property within two (2) months.

(2) On issue No.2, dealing with whether the plaintiffs were entitled to unilaterally cancel the suit contract of sale without notice and opportunity to the defendant, referring to the ruling relied on by the learned counsel for the defendant in **Mulla Badruddin v. Master Tufail Ahmed**¹, observing that, time is not essence of the contract under Ex.A-1 and unilateral cancellation of contract of sale by the plaintiffs without giving opportunity to the defendant to perform her part of contract was not valid.

(3) On issue No.3, held that there was no basis to view that the defendant had, in fact, made excess payment of Rs.35,989/-.

(4) On issue No.4, held that no measurement of suit land at all did take place either in 1976 as pleaded by the plaintiffs or in 1986 as pleaded by the defendant and thus, answered it.

(5) On Additional Issue No.1, the trial Court felt that the testatrix executed Ex.A-9 in a sound disposing state of mind and thus, held it in favour of the plaintiffs.

11. The above judgment and decree, dated 28.04.1995, were challenged before this Court through a regular first appeal in A.S. No.709 of 1995, wherein the following questions were formulated for consideration:

- “1. Whether there was any illegality in the insertion of Para 6(A) in the plaint and inclusion of relief of recovery of possession?
2. Whether there was any repudiation of contract on the part of the defendant?
3. Whether the plaintiffs were entitled to seek the remedy of recovery of possession without seeking the relief of repudiation?
4. Whether the defendant is entitled for the protection under Section 53-A (*Sic.* 53) of the Transfer of Property Act (for short ‘the Act’)?”

12. On the first question that fell for consideration, the learned Single Judge, while mentioning that the endeavour of the plaintiffs was only to recover balance consideration calculated in accordance with the terms of the agreement and even the pleadings and the relief claimed, originally, indicate the same, but observing that since the reply under Ex.A-8, got issued by the defendant was received subsequent to presentation of the suit plaint and its return and in Ex.A-8, the defendant put-forth the plea of illegality of the clause providing for interest at 18% per annum and discharge of the liability under the agreement, the plaintiffs have modified their claim in the plaint and sought recovery of possession by pleading that they have accepted the

¹. AIR 1963 MP 31

repudiation by the defendant and have put an end to the contract. The learned single Judge taken a view, that if the alterations were made in the body of the plaint or in the relief portion before acceptance of the plaint and its registration, the said alterations do not require filing of an application for amendment of pleadings, and, therefore, there was no infirmity in incorporating paragraph No.6(A) in the plaint on the basis of the stand taken by the defendant in her reply after the plaint was returned and before its registration.

13. On the second question, referring to the stand taken by the defendant in her reply that she being an agriculturist was not liable to pay interest at 18% per annum and the maximum that can be charged was 6% felt that it amounts to denial of her liability and the plaintiffs treating the said refusal to pay interest at 18% per annum, which is stipulated in the agreement, inferred it as repudiation of the contract and have chosen to accept the same and thereby invoking their right under Section 39 of the Contract Act, chosen to put an end to the contract. The learned single Judge concluded that it was not open to the defendant to unilaterally declare that she was not liable to pay the interest at the contracted rate and by declaring so, she had only repudiated the contract and committed breach of the same.

14. On the third question, the learned single Judge, opining that the plaintiffs were left with the twin options viz., either to require the defendant to abide by the terms of the contract or to accept refusal or repudiation by the defendant and put an end to the contract as

provided for under Section 39 of the Contract Act and the plaintiffs have elected the latter course of action and placing reliance on the ruling of the Hon'ble Supreme Court in **Ranchhoddas Chhaganlal v. Devaji Supdu Dorik and others**², held that the suit for recovery of possession of the suit property without seeking the relief of rescission of contract is maintainable.

15. On the last question as to entitlement of the benefit of Section 53-A of the Transfer of Property Act, holding that refusal to pay interest as provided for in Ex.A-1, is sufficient to construe that the defendant was not ready and willing to perform her part of contract under the agreement, concluded that the defendant disentitles herself from the protection of Section 53-A of the Transfer of Property Act.

16. Thus, the learned Single Judge having reappraised the evidence on record, both, oral and documentary, let in by the rival parties, refused to interfere with the judgment and decree of the trial Court. But, while dealing with the relief claimed by the plaintiffs in C.M.P. No.11293 of 1995 filed under Order - VI Rule - 17 of the Code of Civil Procedure 1908, to amend the plaint to include the relief of future *mesne* profits from the date of suit till the date of delivery of possession, acceding to the submission of the learned counsel for the plaintiffs that they inadvertently did not include the relief for future *mesne* profits and it is permissible in law for inclusion of the same by way of a petition, placing reliance on the decision of a Division Bench

². AIR 1977 SC 1517

of this Court in **Kalepu Subbarajamma v. Tiguti Venkata Padiraju**³, held that the plaintiffs are entitled to future *mesne* profits also which needs to be ascertained in a separate application that will be filed by the plaintiffs before the appropriate Court.

17. The aforesaid judgment of the learned Single Judge is under challenge in the instant Letters Patent Appeal on the grounds agitated by the defendant that;

- i. the learned Single Judge, somehow, overlooked to appreciate the exceptions to Section 39 of the Indian Contract Act, 1872, i.e., substantial performance, as observed by the trial Court in paragraph No.30 as to making a payment of Rs.90,000/- and balance being Rs.23,000/-;
- ii. unilateral rescission of contract was opted to grab the possession of land enjoyed by the defendant since inception of contract was not appreciated;
- iii. the very object of Specific Performance Act that who seeks equity must do equity was not appreciated in the light of the fact that the plaintiffs without depositing or tendering the amounts already received, approached the Court;
- iv. the suit agreement, dated 01-10-1976, will confer on the plaintiffs only right to receive 18% interest on the remaining sale consideration and to register the same, was not appreciated by the learned Single Judge and

³. 1983 (1) APLJ 333 (DB)

ordered for recovery of possession contrary to the contract of sale;

- v. in the circumstances occurring in the instant case, the learned Single Judge deviated in appreciating that the defendant is entitled for possession of property as per Section 53-A of the Act;
- vi. it is stated that the learned Single Judge, somehow, omitted to observe that the plaintiffs are duty bound to restore the benefits in case of rescission or repudiation under Section 39 of the Indian Contract Act; as per Section 64 of the Indian Contract Act to quote 'Lord Wright' "though, the defendant has been fraudulent, he must not be roped, nor must be the plaintiffs be unjustly enriched, as he would be if both got back what had parted with and kept what he received in return", and the purpose of relief is possession but not punishment and the judgment of the learned Single Judge, thus, runs contrary to the spirit of the Act;
- vii. it is also stated that the learned Single Judge deviated in appreciating the purport of Sections 27, 28 and 29 of Specific Relief Act, and Section 9 which provides the defendant to take any defence, and even deviated in appreciating the doctrine of "relative hardship" and concept of "discretionary nature of relief" in the facts and circumstances occurring in the instant case;
- viii. it is stated that the learned Single Judge, somehow, overlooked to gather the intention of plaintiffs, who without waiting for reply notice, rushed to the Court only in order to get the possession of the land than to

realize the amount due under contract and register the sale deed.

18. The question of law formulated by the appellant are thus:

- i. Whether the appellate Court passed the judgment properly in the light of Section 53-A of the Act;
- ii. Whether the Courts grossly erred in not at all appreciating the instant case in the light of Limitation Act?
- iii. Whether the first appellate Court was right in totally overlooking the aspect of adverse possession, which was framed as an issue by the trial Court?

19. Heard Sri C. Hanumantha Rao and Sri L. Karunakar Reddy, learned counsel for the appellant, and Sri N. Sri Ram Murthy, learned counsel for the respondents.

20. The learned counsel for the appellant referred to the ruling of the Hon'ble Supreme Court in **Mahadeva and others v. Tanabai**⁴, that merely because the suit for specific performance at the instance of the vendee has become barred by limitation, that by itself is not enough to deny the benefit of the plea of part performance of agreement of sale to the person in possession, following the ruling in its earlier decision in **Shrimant Shamrao Suryavanshi v. Pralhad**

⁴. AIR 2004 SC 3854

Bhairoba Suryavanshi (dead)⁵, and would submit that the finding recorded by the learned Single Judge, that the appellant was not entitled to seek protection of Section 53-A of the Act, merely basing on the assumed inference as to the intention of abandonment of contract of sale by the defendants from the contents of Ex.A-8 is incorrect.

21. On the other hand, the learned counsel for the respondents relies on the decision of the Hon'ble Single Judge of this Court in **N. Tyagaraju and others v. S. Narayana Swamy and others**⁶, to support his submission that there is no bar for introducing new details which were not mentioned in the earlier version and the leave of this Court is not necessary before numbering of the plaint and, therefore, the alteration of the original relief of recovery of the amount as an alternative relief by introducing primary relief of recovery of possession when the plaint was returned before it was numbered, cannot be viewed as an infirmity going to the root of the case of the plaintiffs.

22. On facts, the learned counsel for the respondents also places reliance on **Kommiseti Venkatasubbayya v. Karamsetti Venkateswarlu, Ranchhoddas Chhaganlal's Case** (Supra 2), **Achal Reddy v. Ramakrishna Reddiar, K. Ramabrahmam v. G. Narsing Rao, T.K. Mohammed Abubucker v. P.S.M. Ahamed Abdul**

⁵. (2002) 3 SCC 676

⁶. 2014 (1) ALD 108

Khader, Kalepu Subbarajamma's Case (Supra 3), Mohan Lal v. Mirza Abdul Gaffar, Ram kumar Agarwal v. Thawar Das, and V.P. Subramaniam v. Smt. P. Saraswathi, for the proposition that the party, who fails to prove readiness and willingness to perform his part of contract, cannot claim benefit under Section 53-A of the Act, and vendee under agreement of sale cannot be permitted to plead adverse possession; and party, who sets up a false plea, on proof so found, and also when pleadings and evidence disclose that he was not ready and willing to perform his part of contract, disentitles to the discretionary relief of enforcing the agreement of sale. Thus, these decisions are based on fact-situation occurring therein. We intend to advert to these authorities having examined the findings recorded by the Court below and the learned Single Judge.

23. We have perused the judgments and decrees rendered by the Court of first instance and the learned Single Judge of this Court and the evidence on record, both, oral and documentary, let in by the respective parties.

24. We find that,

(1) the initial dispute between the parties is in regard to payment of Rs.18,000/- on 10.10.1979, supply of paddy seedlings worth Rs.200/- on 01.01.1980 and Rs.5,000/- on 14.06.1982, which the defendant alleges to have been paid and the plaintiffs firmly denied;

(2) the second is, in regard to stipulation of payment of interest at 18% per annum on the balance amount due after expiry of one month period, within which, the parties were required to fulfil their respective obligations, as provided in the contract of sale under Exs.A-1 and B-1;

(3) the third controversy between the parties is in regard to inference drawn by the plaintiffs as to repudiation of contract of sale by the defendant, from the contents of reply notice got issued by the defendant under Ex.A-8 and inserting the primary relief of recovery of possession and making the relief of recovery of balance amount as alternative relief.

25. We are of the view, that the findings recorded by the trial Court on Will, Ex.A-9, is of any consequence in deciding the relief of recovery of possession for the reason that in express terms in Exs.A-1 and B-1, the executant Smt. T. Lakshamma got recited that in case the contract of sale was not completed during her life time, the legatees under the Will would perform the obligations which she was supposed to perform. Therefore, we are not inclined to advert to the question whether the Will is true and proved and its effect on contract of sale.

26. On examination of the findings recorded by both the Courts, we are of the opinion that the following two (2) questions

would require determination to resolve the controversy between the parties.

- (1) Whether the conduct of the defendant evinces an intention no longer to be bound by the contract of sale under Ex.A-1 before she can be taken to have abandoned it?
- (2) Whether the finding recorded by the learned Single Judge that Section 39 of the Indian Contract Act helps the plaintiffs in treating the reply notice got issued by the defendant would amount to rescission of the contract of sale under Ex.A-1.

27. At the outset, we would like to state that, though, the present appeal is under Letters Patent, still, if, on an intrinsic examination of the findings recorded by the Court of first instance and the learned Single Judge on appreciation of evidence and on question of law, it is found that the findings are infirm or erroneous, can resort to reappraisal of evidence on record and tender findings.

28. Since the present questions, incidentally involve the dispute in regard to the three (3) payments mentioned above, we, initially, intend to resolve the same.

29. The trial Court and the learned Single Judge recorded findings that the payments were not proved by the defendant. But, it appears to us that such a finding recorded by the trial Court is not based on proper appreciation of evidence and the facts and

circumstances occurring in the case, for the reasons we indicate hereunder.

30. The payment of Rs.18,000/- alleged to have made by the defendant relates to the date 10.10.1979. Second payment was in kind by way of supply of paddy seedlings worth Rs.200/- to the father of the plaintiffs on 01.01.1980, and the third payment of Rs.5,000/- was on 14.06.1982.

31. The schedule of payment incorporated in the plaint would show that the defendant paid Rs.10,000/- through two (2) demand drafts i.e., one in favour of plaintiff No.1 and the other in favour of plaintiff No.2 on 26.06.1985. These payments are not disputed by the plaintiffs. The admitted payments are Rs.7,500/- on 15.09.1979 mentioned in the plaint and further payments of Rs.10,000/- on 02.07.1980, Rs.5,000/- on 11.08.1980 and Rs.5,000/- on 06.05.1981.

32. Thus, the first two disputed payments i.e., payment of Rs.18,000/- and supply of paddy seedlings worth Rs.200/- fall prior to payment of Rs.10,000/- made on 02.07.1980, whereas the disputed payment of Rs.5,000/- on 14.06.1982, falls after the payment of Rs.5,000/- on 06.05.1981 and before 26.06.1985, on which date, payment of Rs.10,000/- was made. Though, endorsements were made concerning certain payments, payment of Rs.10,000/- on 26.06.1985 was not endorsed. But, the plaintiffs in categorical terms admit the said payment. The trial Court, though, referred to the submission of

the learned counsel for the defendant, before it, that the defendant need not make a false averment in regard to these three (3) payments and the amount paid by the defendant was substantial, when the total consideration amount was kept in view, still, the trial Court, somehow, did not accept the same and even suspected payment of Rs.18,000/-.

33. We would like to express our opinion that when even the payment of Rs.10,000/- made on 26.06.1985, was not disputed by the plaintiffs, and other admitted payments would constitute substantial part of sale consideration under Ex.A-1, certainly, the stand of the defendant as to making these three (3) payments cannot be viewed with suspicion unless there are certain strong circumstances that give rise to an irresistible inference to view adversely. We find the stand of the plaintiffs as unnatural in denying these three (3) payments for the reasons that they, with an oblique motive, intended to do so, as could be gathered from their conduct in inserting paragraph No.6(A) and the other additions when the plaint was returned and before it was resubmitted and registered; the oblique motive being that they do want to get the agreement of sale annulled by making out some case, in which direction, they did attempt to take advantage of the contents in reply notice got issued by the defendant.

34. In our view, Exs.A-7 and A-8 are documents of vital significance in assessing intention of both parties, more particularly, the inference sought to be drawn by the plaintiffs from the contents of Ex.A-8, the reply got issued by the defendant, as to abandonment of

the contract of sale under Ex.A-1. A perusal of Ex.A-7 would show that the plaintiffs merely mentioned payments and the dates, contents of agreement of sale, details of land to be sold and payments made by the defendant during the life time of Smt. T. Lakshamma and the subsequent payments made to the plaintiffs. In paragraph No.5, what all they got stated was, the amount of Rs.10,000/- through two (2) demand drafts on 26.06.1985 in the names of the plaintiffs 1 and 2 was received by them and the said payment was not endorsed on the back of the contract. Then, paragraph No.6 shows that despite repeated demands made by the defendants personally and through mediators, the defendant has not paid balance sale consideration with interest and herself and her husband were postponing the payment of balance sale consideration and obtain the sale deed, that the husband of the defendant is well versed in litigations and with ulterior motive and with a view to get wrongful gain, postponing execution and payment of balance sale consideration due to them. In the concluding paragraph, they demand that in case the defendant fails to pay the balance sale consideration with interest at the rate mentioned in the contract of sale on or before 30.09.1988, they will file a suit against the defendant for appropriate reliefs and she will be liable for costs. Mentioning the schedule with description of the property, the notice was concluded.

35. Thus, the notice under Ex.A-7's original is not clear as to what exactly was the balance sale consideration due from the

defendant and the amount towards interest thereon at the rate as stipulated in Ex.A-1. Thus, the very notice under Ex.A-7 is vague without clear indication as to relevant details and the relief which the plaintiffs intend to seek. Even the evidence of PW.1 when carefully examined, certainly, does not lead to the conclusion that the denial of three disputed payments was purposely made. Though, he disputed these three payments in his chief examination, but, he expresses ignorance to a question stating thus:

“I do not know about the payment of Rs.18000/- on 10-10-1979.”

The said payment is the first disputed payment; certainly, such an answer was not expected from him when he presented the plaint alleging that the defendant did not make that payment. No doubt, he denies the suggestion made to him that the husband of the defendant approached him at his residence and paid Rs.18,000/- and demanded for a receipt, but on the premise that his father was not available and after seeking advise from his father he would give receipt, he did not pass the receipt.

36. Like-wise, concerning the second payment, which was in kind by supply of paddy seedlings, worth Rs.200/-, he again expresses his ignorance answering in his cross-examination thus:

“I do not know if the husband of the defendant delivered two bags of paddy to my father.”

Concerning the third payment of Rs.5,000/-, dated 14-06-1982, he denies the suggestion that the defendant herself approached him at his

house and paid the said amount in the presence of Bathula Isreal and Moparthi Jayabus. The trial Court as to payment of Rs.18,000/-, somehow, side-lined the vital aspect of ignorance expressed by PW.1, who is no other than plaintiff No.2 in the suit. Therefore, in our view, not only the trial Court, but also the learned Single Judge, somehow, took a different view, which is not based on appreciation of evidence in accordance with the evidentiary rule.

37. Now, turning to the inference drawn from Ex.A-8, reply as to the intention to abandon the contract, we refer to Ex.A-8 contents in the context of taking the assistance of Section 39 of the Contract Act. The time fixed for completion of the obligation by the defendant was 30.09.1988. The plaint was presented on 01.10.1988 which was just immediately after the expiry of the date 30.09.1988. Thus, the conduct of the plaintiffs is explicit in rushing to the Court in post-haste. The plaint was returned for non-payment of deficit Court fee on the relief of recovery of the amount which invariably ought not to have occurred as the relief was sought for ascertained amount. Later, only on the premise that they received reply notice under Ex.A-8, from which, they state, that the defendant and her husband did not intend to perform her obligation. Construing the same as abandonment of contract under Ex.A-1, the plaintiffs inserted paragraph Nos.6(a) and 8(a) seeking the primary relief of recovery of possession on the assumed abandonment of contract under Ex.A-1 by the defendant.

38. Therefore, it is pertinent to refer to the contents of Ex.A-8 to examine whether such an intention can be inferred from the contents therein.

39. Ex.A-8, reply notice, dated 14.10.1988, contains admitted payments and disputed payments up to paragraph No.6. In paragraph No.7, the defendant raised the dispute in regard to payment of interest at the rate of 18% per annum contending that she being an agriculturist, the plaintiffs are entitled to claim interest at 6% per annum. In the subsequent paragraphs, the defendant has stated that the amounts paid by her would be totalling to Rs.99,000/- and thus, concluded that the total amount paid was Rs.99,000/-.

40. In paragraph Nos.8 to 10, the defendant insisted on furnishing income tax clearance certificate, estate duty clearance certificate, previous title deeds and the order that the executant late Smt. T. Lakshamma did not come within the Ceiling Act and expressed readiness and willingness to take a regular sale deed. She got stated in the reply notice that she was always demanding personally and through mediators, but the plaintiffs were not cooperating in the matter. Thus, she asked the plaintiffs' lawyer to instruct the plaintiffs to deliver to her the documents and intimate her as to the date, the plaintiff will execute a regular sale deed in her favour within a month and in case, the plaintiffs commit default, she intends to file suit for specific performance of contract of sale.

Assigning the reason that due to her ill-health, immediate reply could not be sent, concluded the reply.

41. That has been the reply under Ex.A-8. Nowhere, did she express her intention to abandon the contract of sale either expressly nor did she indicate in any manner that she did entertain such an intention. The only disputed facts in the reply notice relate to two things. The first, in relation to payment of disputed amounts; second, the stipulation in regard to payment of interest under Ex.A-1.

42. The learned Single Judge, extracting relevant portions in Ex.A-8 as to payment of interest under Ex.A-1, the payment of total consideration of Rs.99,000/- as against Rs.73,440/- towards sale consideration for Acs.5-44 cents of land in paragraph No.9 and excess payment of Rs.35,989/- in paragraph No.13 and referring to the assertion of the defendant in her chief-examination, observed that the said averments in the reply notice, written statement and the oral evidence of the defendant would clearly demonstrate that she had repudiated her obligation to pay interest at 18% per annum and by such declaration, the defendant repudiated the contract and committed breach of the same. Thereafter, by referring to Section 39 of the Contract Act, observing that refusal to accept one of the terms of the contract viz., the quantum of interest provided in Ex.A-1, opined that the repudiation was so vocal that it was communicated through her reply in Ex.A-8 and its reiteration in the written statement, made the plaintiffs to infer that the defendant had put an end to the contract as

provided for under Section 39 of the Contract Act and, thereby, plaintiffs elected to seek the relief of recovery of possession and no prior notice indicating rescission of the contract by the plaintiffs was obligatory in view of the law declared by the Hon'ble Supreme Court in **Ranchhoddas's Case** (Supra 2). The learned Single Judge then held that the defendant is not entitled to the benefit of Section 53-A of the Act.

43. Now, adverting to the inference drawn and the finding recorded by the learned Single Judge that Section 39 of the Contract Act aids the plaintiffs in construing the conduct of the defendant from the contents of reply notice would amount to recession of contract of sale under Ex.A-1, we intend to refer to the evidence of PWs.1 and 2, who are plaintiff Nos.2 and 1, respectively. Incidentally, we would like to observe at the cost of repetition, that the notice under Ex.A-7 got issued by the plaintiffs would not convey any intention on the part of the plaintiffs to abandon the contract. We have also adverted to in the above that Ex.A-8, reply got issued by the defendant does not contain anything in the direction of abandoning the contract. When the evidence of PW.1 is intrinsically examined, he gives an answer that the amount of Rs.22,000/- out of Rs.36,500/- paid to their grandmother, was even before the execution of Ex.A-1, and the said payment was made out of confidence in them without any receipt. Yet another answer given by him in his cross-examination to the effect that they did not talk about the cancellation of the contract of

sale at any time for any reason, is sufficient enough to demolish the very foundation on which the relief of recovery of possession was introduced and sought. At this stage itself, we would like to observe that there is no clause incorporated in Ex.A-1 providing option to either party to abandon the contract. Yet another answer given by him to the effect that if it is proved that they received the entire sale consideration, they have no objection to execute the corresponding sale deed. These are all sufficient to view, that the inference drawn by them that the conduct of the defendant in issuing Ex.A-8 amounted to abandoning the contract is wholly wrong.

44. When PW.2's evidence is evaluated, he asserts in his chief examination that they got issued a notice to the defendant to pay the amount by or before 30-09-1988, failing which to get the document cancelled and, therefore, the said document stands cancelled. We have already adverted to the contents of Ex.A-7. The plaintiffs did ever at least whisper that they would rescind the contract under Ex.A-1 in case the balance amount due with interest was not paid by the defendant. Such an intention was never expressed in Ex.A-7. Thus, this witness was asserting to improve their case, perhaps, in an attempt to substantiate the relief of recovery of possession by searching out a cause, in which direction, assumed inference was attempted to be drawn.

45. In the instant case, the burden heavily rests on the plaintiffs to prove that the conduct of the defendant amounted to renunciation or absolute refusal to perform the contract, such as would amount to rescission in case the plaintiffs established that they had the power to rescind. In our view, the plaintiffs completely failed to establish anything in the direction of pointing out that the conduct of the defendant, did amount to draw the inference that the defendant renounced the contract. Thus, the reasons assigned, in the above, would completely negative the stand of the plaintiffs that the defendant by such conduct did give rise to an inference that the defendant abandoned the contract under Ex.A-1. A mere dispute in regard to stipulation of interest in Ex.A-1 cannot lead to give rise to such an inference that the conduct of the defendant did amount to abandon the contract.

46. To sum up, we find that the three payments made by the defendant, disputed by the plaintiffs were, in fact, made by the defendant for the reasons mentioned in the above and therefore, the findings recorded by the learned trial Court and the learned Single Judge that the said payments were not proved are incorrect.

47. We also do not see that the provisions of Section 39 helps the plaintiffs for the reasons assigned in the above, more particularly, when there is no absolute refusal on the part of the defendant in Ex.A-8 and when there is also nothing to indicate in Ex.A-7 that the plaintiffs ever intended to put an end to the contract. This section,

cannot, therefore, help the plaintiffs. The finding recorded by the learned Single Judge acceding to the stand of the plaintiffs applying the provisions of Section 39 of the Contract Act is, therefore, liable to be set aside and, accordingly, set aside. The result, therefore, is that the defendant is entitled to the protection of Section 53-A of the Act. Further, the law declared by the Hon'ble Supreme Court in **Mahadeva's Case** (Supra 4), relied on by the learned counsel for the defendant squarely applies to the fact-situation occurring in the present case. Therefore, we are of the considered view, that the finding recorded by the learned Single Judge that the defendant is not entitled to the protection of Section 53-A of the Act is erroneous and, therefore, the same is hereby set aside. The consequence is, the suit of the plaintiffs fails.

48. Having regard to the view we have taken, as recorded in the above, the rulings relied on by the learned counsel for the respondents - plaintiffs in **Tyagaraju, Kommisetti Venkatasubbayya, Ranchhoddas Chhaganlal, Achal Reddy, K. Ramabrahmam, T.K. Mohammed Abubucker, Kalepu Subbarajamma, Mohan Lal, Ram Kumar Agarwal and V.P. Subramaniam Cases** (Supra), would not assist the respondents - plaintiffs in advancing their case for grant of relief of recovery of possession.

49. Hence, the present Letters Patent Appeal is allowed setting aside the judgment and decree, dated 13-03-2002, passed by the learned Single Judge of this Court in A.S. No.709 of 1995, and the

judgment and decree, dated 28-04-1995, passed by the learned trial Court in O.S. No.6 of 1989. In the circumstances, we make no order as to costs.

As a sequel, Miscellaneous Applications, if any, pending in the appeal, stand closed.

V. RAMASUBRAMANIAN, J

A. SHANKAR NARAYANA, J

November 11, 2016.

PV/MGR

