THE HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

C.C.C.A. No.67 of 2003

JUDGMENT:

The unsuccessful plaintiff in the Court below preferred the instant appeal aggrieved by the judgment dt:10.12.2012 in O.S.No.1158 of 1991 passed by learned I Senior Civil Judge, City Civil Court, Hyderabad, whereby and whereunder learned Judge dismissed the plaintiff's suit filed for specific performance of agreement of sale.

2 a) The case of the plaintiff is that she entered into an agreement of sale on 07.06.1989 with the defendant No.1 for purchase of the suit schedule property i.e, open piece of land forming North Eastern portion of the premises bearing Municipal No.23-5-861 admeasuring 198 sq.yds situated at Shalibanda, Hyderabad for a total sale consideration of Rs.1,20,000/-. She paid Rs.40,000/- as earnest money on the date of agreement i.e, on 07.06.1989. The balance sale consideration has to be paid within three months. In the meanwhile, the D.1 shall furnish encumbrance certificate and in the event of any defect in the title before registration, the plaintiff is entitled to get back entire amount paid by her. She contends that she was always ready and willing to perform her part of contract. She called upon the D.1 to comply with the requirements of agreement of sale, receive balance sale consideration and to execute a regular sale deed.

b) The further case of the plaintiff is that she published a notice dt:13.08.1991 in “Hindu Milap” daily newspaper inviting objections from the general public in respect of suit schedule property. In response, the defendant No.2 got issued a legal notice dt:19.01.1991 informing the plaintiff that the suit schedule property and adjoining properties owned by D.1 were mortgaged by him with D.2 by depositing title deeds on 16.12.1976 for securing loan. The plaintiff was further informed that as D.1 failed to pay the loan amount, suit in O.S.No.1056 of 1983 was filed and the same was decreed and Execution Petition vide E.P.No.58 of 1991 for recovery of Rs.1,18,833.40ps is also pending against D.1. Again on 24.08.1991, the plaintiff got issued another legal notice to the D.1 requiring him to receive balance sale consideration and register the sale deed after releasing the property from the mortgage. But the D.1 did not come forward to receive the balance sale consideration and to execute a regular sale deed. Hence, the suit.

3) The defendant No.1 filed Written Statement denying the execution of agreement of sale deed dt:07.06.1989 and sale consideration mentioned therein. D.1 also denied the allegation that the suit schedule property was mortgaged with D.2. D.1 contended that he has sold only the land admeasuring 201 sq.yards adjoining the suit property vide document No.1367 of 1989 dt:09.08.1989 to plaintiff and initially the contended that plaintiff intended to purchase only 198 sq.yards and as such he passed receipt for Rs.40,000/- towards advance amount agreeing for sale of 198 sq.yards

but later the plaintiff requested him to give 201 sq.yards instead of 198 sq.yards. Accordingly he executed a sale deed on 09.08.1989. D.1 failed to amend the receipt to make it to 201 sq.yards and due to his innocence and his old age, the plaintiff took undue advantage of the receipt and filed the suit. D.1 further contended that there is no agreement of sale for 198 sq.yards by D.1 on 07.08.1991 or any other date and no consideration was passed. The suit is hopelessly barred by limitation and liable to be dismissed.

4) Defendant No.2 filed written statement contending that D.1 borrowed medium term loan of Rs.38,000/- in the year 1976 and deposited his title deeds of the suit schedule property by creating an equitable mortgage. As D.1 failed to repay the loan amount, a suit in O.S.No.1056 of 1983 was filed before the II Senior Civil Judge, City Civil Court, Hyderabad and the same was decreed on 12.12.1984. The Bank also filed E.P.No.58 of 1991 for recovery of Rs.1,18,833.40ps and the same is pending. D.2 submitted that on coming to know about the agreement of sale, it got issued a legal notice to the plaintiff mentioned the above facts.

5) Basing on the above pleadings, the trial Court framed following issues:

> *1) Whether the plaintiff is entitled for the relief of specific performance as prayed for?*
>
> *2) Whether there was a mortgage of the suit property prior to the sale agreement?*

3) Whether there is a bar for transfer under Sec.52 of T.P.Act as contended by D.2?

4) To what relief?

6) During pendency of the suit, D.2 filed additional written statement on 20.02.1997 stating that D.1 has discharged his loan liability on 27.01.1996 and his loan account has been closed and title deeds of the property have been returned to him. Since the mortgage is no longer subsisting, D.2 is not a necessary party and the suit is liable to be dismissed against D.2 with costs.

7) Basing on the Additional Written Statement of D.2, the following additional issue has been framed by the trial Court on 31.07.1991:

<u>Addl. Issue No.1</u>: *Whether Defendant No.2 is not a proper and necessary party to this case?*

8) During trial, PWs.1 to 4 were examined and Exs.A.1 to A.10 were marked on behalf of plaintiff. DW.1 was examined and no document was marked on behalf of defendants. Ex.X.1 was marked.

9) The trial Court having regard to the D.1's plea that he never entered into agreement under Ex.A.5 with the plaintiff, dismissed the suit on the following main observations:

(i) In respect of Ex.A.5, the trial Court observed that it throws any amount of suspicion as the said document contains 4 pages out of which first page is a Rs.5/- stamped paper and Pages 2 and 4 are ledger papers and Page 3 is a white paper. Pages 1, 2 and 4 were typed completely, whereas Page 3 was typed on half of the page and it was with a different typewriter that too on a white paper. It observed that the plaintiff has not offered any explanation as to why different pages were used and why Page 3 was typed only to half extent. Plaintiff had no necessity to use the 4th page if the typing was done to full extent of 3rd page. It also observed that the words "the above said balance consideration shall be payable within a period of 3 months subject to compliances" were subsequently typed to continue Page 3 by adding certain conditions as if D.1 was under the obligation to produce Nil encumbrance certificate for 15 years. It observed, the spacing was also different i.e, entire Page 3 was typed with double spaces, whereas the above mentioned words were typed with 1 ½ space.

(ii) Regarding plaintiff's making delay of about 2 ½ years in obtaining registered sale deed on the plea that D.1 did not obtain Nil encumbrance certificate for 15 years, the trial Court observed, that cannot be a ground for plaintiff to wait for such a long time as the plaintiff himself could have obtained the encumbrance certificate and get ready for the registration as normally purchasers will obtain E.C to make sure whether the subject property was having any encumbrances. The unusual practice adopted by the plaintiff and the inordinate delay in obtaining registered sale deed, it held, raises a doubt.

(iii) Another suspicious circumstance against Ex.A.5 noticed by the trial Court was that the boundaries mentioned in Exs.A.8 and A.5 are one and the same. It observed that as per plaintiff, by the date of Ex.A.8—sale deed, the agreement covered under Ex.A.5 was already in existence. In such a case in Ex.A.8, the southern boundary should have been described as the land purchased by the plaintiff under Ex.A.5 but such a description was not there in Ex.A.8 but the southern boundary was mentioned as house of the owner i.e, D.1. This creates a doubt about the execution of Ex.A.5 on the given date.

(iv) The trial Court further observed that as per plaintiff, Ex.A.8 was preceded by an agreement to sell and within few days after, the plaintiff obtained a regular registered sale deed under Ex.A.8. When Ex.A.5 was earlier in point of time, it is not known why the plaintiff leaving the same obtained registered sale deed in respect of Ex.A.8 which is subsequent in point of time to Ex.A.5. The trial Court observed that the plaintiff's explanation that the defendant had to produce nil encumbrance certificates for 15 years in respect of property covered by Ex.A.5 is not believable because when the plaintiff was ready to obtain a registered sale deed, she herself could have obtained such E.C without waiting for such a long time. The trial Court remarked, if really Ex.A.5 was in existence, plaintiff would not have kept quiet for nearly 2 years without issuing legal notice. She issued legal notice only on 24.08.1991. The trial Court opined that awaiting for D.1 to produce Nil encumbrance certificate is only a ruse. The properties covered under Exs.A.5 and A.8 are in fact a single property with the same Municipal Number and at the time of execution of Ex.A.8, the plaintiff must have obtained E.C for the said property and since the properties covered by Exs.A.8 and A.5 are having same Municipal Number, she could have obtained sale deed for Ex.A.5 also and therefore, the contention of plaintiff that she was waiting for production of Nil encumbrance certificate is a mere ruse to cover the laches.

(v) The trial Court observed that in suit—O.S.No.3698 of 1990 filed by the plaintiff against D.1, there was no whisper about existence of Ex.A.5—agreement of sale. It creates a doubt about the existence of Ex.A.5.

(vi) The trial Court commented that the plaintiff did not take any steps for about 2 ½ years to obtain registered sale deed and if really Ex.A.5 was in existence, she would not have kept quiet for such a long time.

(vii) Yet another suspicion entertained by the trial Court is with regard to the glaring price difference between the two properties covered by Exs.A.8 and A.5. It observed, both the properties were covered by same Municipal Number and situated under same condition but however the property covered by Ex.A.8 which is larger in extent of 201 sq.yards was sold for lesser price of Rs.62500/- whereas the property covered by Ex.A.5 which is lesser extent of 198 sq.yards was curiously sold for Rs.1,20,000/-. When property covered by Ex.A.5 was sold earlier to Ex.A.8, one would expect a lesser price to said property than the price of Ex.A.8. It was not the case of the plaintiff that lesser amount was shown in Ex.A.8 to avoid stamp duty.

(viii) Regarding the evidence of PW.2—the attestor of Ex.A.5, it observed that according to him D.1 executed Ex.A.5 in respect of open land which is just adjacent to the house of plaintiff but in the boundaries of Ex.A.5, the house of plaintiff is not shown. It also observed that PW.2 admitted in his cross-examination that Ex.A.5 does not contain his signature including 1st page and that he has not read the contents of Ex.A.5. Thus the trial Court did not believe his evidence.

(ix) Regarding the evidence of PW.4, the trial Court observed that his is only opinion evidence which cannot be given much weight in the light of suspicious circumstances. Further, he admitted in his cross-examination that there is a variation in the size of the letter *Sri* when compared to Q1, Q2 and Q3 and there is a variation of the letter *Sri* in Q4 when compared with Q1. Thus the trial Court gave a finding that plaintiff has fabricated Ex.A.5—agreement of sale and failed to come to Court with clean hands.

Hence, the appeal by plaintiff.

10) The parties in this appeal are referred as they were arrayed before the trial Court.

11) It may be noted that during pendency of the appeal, as per orders dt:14.08.2013 in CCCA MP No.536 of 2012, the 3rd respondent is added on the plea that pending appeal, 1st respondent entered into a registered agreement of sale dt:07.07.2012 with 3rd respondent and hence he is a necessary and proper party to the appeal. Further, pending appeal, 1st respondent died and his L.Rs are brought on record as respondents 4 to 6 as per orders dt:26.06.2015 in CCCA MP No.134 of 2015.

12) Heard the arguments of Smt.K.Pallavi, learned counsel for appellant; Sri E.Sambasiva Pratap, learned counsel for respondent No.3 and Sri N.Vasudev Rao, learned counsel for respondent Nos.4 to 6.

13 a) Severely fulminating the judgment of trial court, learned counsel for appellant/plaintiff argued that the trial Court grossly erred in dismissing the suit by taking objections against the genuinity of Ex.A.5 though some of which were not raised by the D.1 and thus creating a case for D.1. In expatiation, learned counsel argued that the case of D.1 was that he never executed Ex.A.5—agreement to sell and it was a forged document and except that he did not take any other pleas pointing out the alleged suspicious circumstances surrounding the Ex.A.5. Inspite of the absence of defence pleas, the trial Court assumed certain suspicious circumstances and denied the specific performance without there being proper plea on

the part of D.1. The trial Court should not have raised and entertained such pleas. In this regard, she relied upon the following decisions:

i) ***Beemaneni Mahalakshmi vs. Gangumalla Apparao*** [1]

ii) ***Mrs. Chandnee Widya Vati Madden vs. Dr.C.L.Katial and others*** [2]

b) Secondly, she argued that the plea in the written statement would show that D.1 admitted that there was an agreement between the parties for sale of 198 sq. yards of site and D.1 received Rs.40,000/- as advance. In view of such admission, the trial Court ought to have believed the genuinity of Ex.A.5. In this context, she cited the decision reported in ***Ranga Reddy and another vs. P.Aswarthappa and others*** [3].

c) Thirdly, learned counsel argued that against the forgery plea concerning to Ex.A.5, the plaintiff by examining PW.2—the attestor and PW.4—handwriting expert, discharged her burden to prove the genuinity of Ex.A.5. PW.2 categorically stated that D.1 executed agreement of sale for a valid consideration of Rs.1,20,000/- and received an advance of Rs.40,000/-. So also PW.4 deposed that the signatures found on Ex.A.5 were tallied with his specimen signatures, thus indicating that D.1 executed Ex.A.5. Inspite of the aforesaid clear evidence proving the genuinity of Ex.A.5, the trial Court rejected it on flimsy and untenable grounds. She argued that though the evidence of an expert is an opinion, the same cannot be rejected without any basis. To buttress this point, she cited the decision reported in ***Baddam Prathap Reddy vs. Chennadi Jalapathi Reddy and another***[4].

d) Fourthly carping the observation of the trial Court that the plaintiff failed to mention about Ex.A.5—agreement in her suit —O.S.No.3698 of 1990, learned counsel argued that the property covered by O.S.No.3698 of 1990 and the property covered by Ex.A.5 are different and subject matter is also different and therefore, there was no need or occasion for plaintiff to refer Ex.A.5 in O.S.No.3698 of 1990 and that omission should not have been taken as a suspicious circumstance against the genuinity of Ex.A.5. She relied upon the decision reported in ***Subhash Madan vs. Ramesh Madan***[5]***.***

e) Criticizing the trial Court's treating the delay on the part of plaintiff in seeking for registered sale deed as a suspicious circumstance against Ex.A.5, learned counsel argued that mere delay in demanding registered sale deed cannot be a ground to deny specific performance particularly when the suit is well within the period of limitation and in the instant case the delay cannot be attributed to the plaintiff because D.1 failed to secure nil encumbrance certificate for 15 years in respect of the subject property. She placed on record the following decisions on the point that mere delay is not a ground to reject specific performance:

i) ***Ram Niwas Gupta vs. Mumtaz Hasan and others***[6]

ii) ***S.Indira and another vs. Netyam Venkataramana and others***[7].

Learned counsel thus prayed to allow the appeal.

14 a) In oppugnation, learned counsel for 1st respondent, firstly argued that it is the specific case of D.1 that he never entered into an agreement under Ex.A.5 with the plaintiff agreeing to sell the suit property for Rs.1,20,000/- and received Rs.40,000/- as advance and the alleged agreement is a forgery and his further case that he only sold 201 sq.yards of the site to plaintiff under Ex.A.8—registered sale deed dt:09.08.1989 and during the said sale negotiations, originally the plaintiff wanted to purchase 198 sq.yards and a receipt was passed towards advance amount of Rs.40,000/- agreeing to sell 198 sq.yards but later the plaintiff requested D.1 that due to technical reasons she required 201 sq.yards and therefore, a sale deed was executed for 201 sq.yards under Ex.A.8. Except that, D.1 never intended or executed Ex.A.5—agreement in favour of plaintiff for another 198 sq.yards. However, D.1 failed to recover from the plaintiff the receipt showing advance of Rs.40,000/- for 198 sq.yards and plaintiff forged Ex.A.5 to illegally claim another 198 sq.yards. He argued that in view of the said stand taken by D.1, the question of D.1 admitting Ex.A.5 as contended by learned counsel for appellant does not arise. He argued that in view of the specific plea of D.1 that Ex.A.5 is a forged document, the

burden is heavy on the plaintiff to establish by cogent evidence that Ex.A.5 is a genuine document executed by D.1 agreeing to sell another 198 sq.yards apart from 201 sq.yards under Ex.A.8. Except examining PWs.2 and 4, the plaintiff could not produce any cogent material to prove the authenticity of Ex.A.5 and the evidence of PWs.2 and 4 apart from being inherently weak, the same could not dispel various suspicious circumstances surrounding Ex.A.5 and therefore, the trial Court rightly held that Ex.A.5 was a forged document.

b) Countering the argument of the appellant that without there being necessary pleas the trial Court itself considered so many objections against the genuinity of Ex.A.5, learned counsel argued that in the wake of forgery plea taken by D.1, the trial Court had every right to consider various suspicious circumstances, inconsistencies in the case of plaintiff and also the conduct of the plaintiff probablising the forgery plea and there is no irregularity or illegality in it. He argued that the decree for specific performance being an equitable relief, the Court will grant the same only when the plaintiff establishes the presence of a valid agreement and that he approached the Court with clean hands. On this aspect, he cited the decision reported in ***Mayawanti vs. Kaushalya Devi***[8]***.*** In this case, the suspicious circumstances against Ex.A.5 were so grave, such as the different types of papers were used to prepare Ex.A.5 and in one such paper, typing was done only to half extent and further, the boundaries for the properties covered by Exs.A.5 and A.8 are curiously same though it is the case of plaintiff that they are different properties and further, the sale consideration of subsequently sold property was unusually less than the previously sold property and the plaintiff made an inordinate delay of more than 2 years in obtaining sale deed and all these circumstances were considered by the trial Court and rightly held that Ex.A.5 was a forged one.

c) Nextly he argued that even assuming that Ex.A.5 is a genuine document, still the same is unenforceable for the reason though Ex.A5 is a bilateral agreement, it was signed by the vendor (D.1) alone and not by the purchaser. He thus prayed to dismiss the appeal.

15) In the light of above rival arguments, the point for determination in this appeal is:

"*Whether the judgment of the trial Court is factually and legally sustainable*?"

16) **POINT**: It is the case of the plaintiff that D.1 having agreed to sell the plaint schedule site admeasuring 198 sq.yards for Rs.1,20,000/- and received Rs.40,000/- as advance and executed Ex.A5, but failed to execute regular registered sale deed in her favour. Whereas the contention of D.1 as per Ex.A.2—reply notice and also his written statement is that he never agreed to sell suit property under Ex.A.5—agreement and the same is a rank forgery. His further case is that originally the plaintiff and D.1 entered into negotiation for selling 198 sq.yards of site and D.1 received an advance of

Rs.40,000/-. Later the plaintiff requested the D.1 that due to technical reasons, she required 201 sq.yards and accordingly D.1 executed Ex.A.8—sale deed dt:09.08.1989 for 201 sq.yards. However, the receipt for Rs.40,000/- which contained a mentioning about 198 sq.yards was left with plaintiff. Thus it is the clear case of D.1 that except the property covered by Ex.A.8 he never intended to sell the property covered by Ex.A.5 and the same is a rank forgery. In view of the said plea and in the light of the decision in ***Mayawanti***'s case (8 supra), the burden is on the plaintiff to establish the genuinity of Ex.A.5 on one hand and his deservedness for equitable relief on the other. The specific performance being an equitable relief, the plaintiff must prove the aforesaid aspects to qualify for a decree. Hence, it has now to be seen whether the plaintiff established the genuinity of Ex.A.5 and she approached the Court with clean hands.

17) In proof of Ex.A.5, the plaintiff examined PWs.1 to 4. PW.1 is the husband of plaintiff, PW.2 is the attestor, PW.3 is the plaintiff and PW.4 is the handwriting expert. No doubt PWs.1 to 4 have deposed as if D.1 executed Ex.A.5 by receiving Rs.40,000/- as advance. PW.3 deposed that she sold away some of her gold articles and paid the advance to D.1. Whereas PW.4 deposed that as per his opinion, the questioned signatures covered by Q1 to Q5 and standard signatures covered by S1 to S5 were written by the same person. Apparently the evidence of PWs.1 to 4 would show as if the plaintiff could establish the genuinity of Ex.A.5.

However, when their evidence and other circumstances are deeply analyzed, a grave suspicion as found by the trial Court would arise against the genuinity of Ex.A.5.

18) It is the specific case of the plaintiff that apart from the property covered by Ex.A.5, she purchased another property under Ex.A.8 from D.1. PW.1 in his chief-examination deposed that the property purchased from D.1 under Ex.A.8 and the property which is the subject matter of the present suit are different by extent, boundaries and sale consideration and the two properties are adjacent to each other. In the cross-examination, he stated that the sale deed under Ex.A.8 was preceded by an agreement of sale dt:03.08.1989. Thus it is the clear case of plaintiff that she purchased one site under Ex.A.8—sale deed and another site under Ex.A.5—agreement from D.1 and both the properties are different in extent, boundaries and sale consideration and they are adjacent to each other. Whereas the case of D.1 is that he sold only one site under Ex.A.8 but he never executed Ex.A.5—sale agreement.

a) In the above backdrop, when the boundaries of Ex.A.5 property i.e, suit property and Ex.A.8 are compared, one will be surprised to know that both the set of boundaries are one and the same. If properties are different and their boundaries are different as claimed by plaintiff, such difference should be manifested in the schedules of Exs.A.5 and A.8. However, the boundaries of the two properties are the same. Neither PW.1

nor PW.3 made any effort to explain as to how and why the two documents reflected the same boundaries. Both the parties admitted about Ex.A.8 and so there is no dispute with regard to the property covered by Ex.A.8. The bone of contention is only in respect of Ex.A.5. In this context, the contention of D.1 is worth recapitulation. His case is that at the time of negotiations of Ex.A.8, the plaintiff originally intended to purchase 198 sq.yards and admittedly an agreement to sell dt:03.08.1989 was entered into. However, subsequently on plaintiff's request, Ex.A.8—sale deed was executed for 201 sq.yards. So, his case was that there was only one transaction relating to sale of 201 sq. yards covered by Ex.A8—sale deed. Admittedly, there was an agreement of sale dated 03.08.1989 preceding Ex.A8. In such circumstances, the plaintiff in order to disprove the stand of D1 and establish her stand that in fact there were two agreements to sell one dated 03.08.1989 and another under Ex.A5, should have produced the agreement of sale dated 03.08.1989. If the said sale agreement is produced in Court it should have been established that the parties entered into two different sale agreements for two different properties. Due to non-filing of the sale agreement relating to Ex.A.8, a doubt is created about the genuinity of Ex.A5 as to possibility of plaintiff dubbing and projecting the agreement dated 03.08.1989 as the one under Ex.A5. This doubt further intensifies for the reason that the boundaries shown in Ex.A5 and Ex.A8 are one and the same which is unusual in the light of plaintiff's claim that properties purchased under two transactions are distinct and different.

b) The above doubt coagulates for another reason as rightly observed by the trial Court is that, in the southern boundary of Ex.A8 curiously the plaintiff has not shown the property covered under Ex.A5 as the one purchased under agreement. According to plaintiff by the date of Ex.A8—sale deed, the agreement under Ex.A5 was already in existence. In such a case one would expect plaintiff to get mention the southern boundary of Ex.A8 as the property purchased under Ex.A5—agreement. The plaintiff may argue that since on the date of Ex.A8, Ex.A5—sale agreement was not transformed into sale deed and therefore, the southern boundary of Ex.A8 was not shown as the property purchased by her under an agreement. In the normal circumstances that argument might be a valid one but in the light of Exs.A8 and A5 showing the same boundaries and non-production of agreement to sell relating Ex.A8 in the Court, the present non-mentioning of Ex.A5 transaction as southern boundary of Ex.A8 assumes importance and creates a doubt about the genuinity of Ex.A5.

c) The other doubts raised by the trial Court against the genuinity of Ex.A5 also cannot be easily brushed aside. For instance, the glaring price difference between Exs.A5 and A8. In spite of fact that both boundaries are one and the same, according to plaintiff, they are two separate bits. Be that it may, it is the admitted case of the plaintiff that both the bits are covered by the same single property and same municipal number. Ex.A5 was earlier in point of time and lesser in extent than Ex.A8. The time lag between Exs.A5 and A8 is only few months. However, curiously the price of Ex.A5 is higher than that of Ex.A8, as under Ex.A5 198 sq. yards were agreed to be sold for Rs.1,20,000/- whereas subsequently 201 sq. yards were sold for far lesser amount of Rs.62,500/- under Ex.A8. When both the properties situated in similar circumstances and covered by same municipal number and time lapse between the two transactions is only few months, there is no reason for such a difference in the price between the two. It also creates a doubt about the genuinity of Ex.A5.

d) Nextly, though Ex.A5 was prior in point of time, there was no reason why the plaintiff showed undue eagerness in obtaining registered sale deed for the property purchased under the subsequent agreement dated 03.08.1989 leaving the registration of earlier agreement under Ex.A5. No specific reason is forthcoming from the plaintiff for preferring Ex.A8 than Ex.A5. In this context, the claim of the plaintiff that D1 had to obtain nil encumbrance certificate for 15 years in respect of Ex.A5 property which he did not do in spite of demands and hence there was a delay of two years in demanding for registered sale deed is bereft of logic. As rightly observed by trial Court, before obtaining registered sale deed under Ex.A8, encumbrance certificate must have been obtained in respect of the property covered by Ex.A8. Since Exs.A5 and A8 are covered by same municipal numbers and in fact they are parts of whole lot, the plaintiff should have insisted D1 to obtain encumbrance certificate for Ex.A5 also to obtain registered sale deed along with Ex.A8 or atleast she should have obtained such an encumbrance certificate to complete both the registrations at a time. Waiting for D1 to obtain encumbrance certificate in respect of Ex.A5 property that too for a long period of two years is not a valid explanation.

19) Above all, a perusal of Ex.A5 shows it was engrossed on different types of papers. The first page is a 5 rupee non-judicial stamp; pages 2 and 4 are ledger papers and whereas page No.3 is a white paper. Curiously page No.3 was typed only to half extent leaving the remaining place blank. The plaintiff has not offered any explanation why different types of papers were used for typing Ex.A5 and particularly why page No.3 was typed to only half extent. A cogent explanation is expected from plaintiff in the light of D1's claim that he never executed Ex.A5 and it is a forged one. However, such explanation is soringly missing. In the appeal learned counsel for appellant sought to give the explanation that in fact page No.3 was also typed on a ledger paper but as D1 wanted modification of certain conditions at the last moment, fresh terms were typed on a white paper for want of ledger paper and that is why the difference in the papers. Apart from truth or otherwise of such explanation, the same cannot be accepted for the reason that such explanation is put forth for the first time in the appeal without offering the same during the trial stage.

20) When all the above unexplained suspicious circumstances are taken up cumulatively, they invariably point out that Ex.A5 must have been fabricated. The oral evidence of PWs.1 to 4 could not explain any of the above suspicious circumstances. PW4 is concerned, his is only opinion evidence. In the light of strong suspicious circumstances, his evidence cannot be given much weight.

21a) Coming to the arguments of appellant, the first argument that in spite of D1 not taking specific pleas relating to suspicious circumstances the trial Court had taken them for him is concerned, it should not be forgotten that the specific plea of D1 is that he never executed Ex.A5 and it is a rank forgery. Forgery plea is a broad one which encompasses within it every suspicious circumstance that goes against the genuinity of Ex.A5. Hence, in my considered view, the trial Court was not wrong in projecting such suspicious circumstances to consider the genuinity or otherwise of Ex.A5. In fact in para-6 of written statement D1 took the plea that boundaries of Ex.A5 and A8 are suspiciously shown as similar. Hence, this argument of appellant is untenable. Consequently the cited decisions in ***Beemaneni Mahalakshmi***'s case (1 supra) and ***Mrs. Chandnee Widya Vati Madden***'s case (2 supra) will not help her case.

b) The second argument is as if D1 admitting the agreement to sell in respect of 198 sq. yards and his receiving Rs.40,000/- as advance and therefore, the genuinity of Ex.A5 can be presumed and plaintiff need not further prove the said admitted fact. This argument is totally misconceived. Going by the reply notice and written statement, D1 never admitted the transaction under Ex.A5. He only admitted the sale transaction covered by Ex.A8. In that context, he incidentally pleaded that originally parties agreed for sale of 198 sq. yards and later on the request of plaintiff, D1 executed sale deed for 201 sq. yards. Hence, his admission for 198 sq. yards relates to Ex.A8 sale transaction, but not for Ex.A5 transaction. Hence, the plea of appellant is untenable and consequently the cited decision in ***Ranga Reddy***'s case (3 supra) has no application.

c) The next argument of appellant is that mere delay in making demand for registered sale deed should not be a ground to deny specific performance. It is true that in normal circumstances if delay is properly explained, the specific performance should be granted. However, in the instant case, the plaintiff slept over for a period of two long years and gave notice on the lame excuse that D1 did not produce nil encumbrance certificate for 15 years concerning to Ex.A5. The inordinate delay in conjunction with other suspicious circumstances would raise doubt about the existence of Ex.A5 and explanation offered for delay will not mitigate the suspicion. When registration under Ex.A8 was obtained within one week, there is no reason for plaintiff to wait for two years in respect of Ex.A5. As already observed supra, at the time of Ex.A8 encumbrance certificate for the entire property must have been obtained either by plaintiff or defendant and therefore, plaintiff need not wait for D1 to produce encumbrance certificate for the property covered by Ex.A5. By facts, the delay in the instant case is a crucial one weighing against plaintiff. Hence, the cited decisions in ***Ram Niwas Gupta***'s case (6 supra) and ***S.Indira and another***'s case (7 supra) will not help to the appellant. So at the outset, the evidence of PWs.1 to 4 is not able to dispel the suspicious circumstances surrounding Ex.A5. As already stated supra, the evidence of PW4 is only an opinion evidence and hence much weight cannot be attributed to it. The trial court having considered the facts and evidence has rightly held Ex.A5 as forged and there is no reason to come to a different conclusion in the appeal. Hence, the plaintiff does not deserve equitable relief of specific performance.

22) In the result, this appeal is dismissed by confirming the judgment of the trial Court in O.S.No.1158 of 1991. No costs in the appeal.

As a sequel, pending miscellaneous petitions, if any, shall stand closed.

U. DURGA PRASAD RAO, J

Date: 08.03.2016

Scs/Murthy

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[1] 2006(6) ALT 401 (S.B)

[2] AIR 1964 SC 978

[3] 2009 (2) ALT 127 (AP)

[4] 2008 (5) ALT 192

[5] LAWS (DLH) 2001 (5) 140 = 2001 (3) CCC 450

[6] 2003 (1) ALT 55 (SC)

[7] 1996 (3) ALT 1080 (D.B)

[8] (1990) 3 SCC 1