

***HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO**

+ C.C.C.A.Nos.147 and 149 of 1997

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% 03-02-2016

CCCA No.147 of 1997

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#Vijender Kumar KediaAppellant

Vs.

\$ Salesh Respondent

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CCCA No.147 of 1997

#Dhanraj and 2 othersAppellants

Vs.

\$ Salesh Respondent

!Counsel for the Appellants : Sri P.Jagadish Chandra Prasad

Counsel for the Respondent: Sri A.Narasimha Rao

<Gist :

>Head Note:

? Cases referred:

1. AIR 1989 SC 193
2. AIR 1987 SC 1242
3. AIR 1966 SC 735,
4. AIR 1954 SC 458
5. AIR 1953 SC 235
6. (2008)17 SCC 491
7. AIR 1995 SC 167
8. AIR 1988 SC 719(B)
9. 1991 (3) SCC 331
10. AIR 1999 SC 1441
11. AIR 2005 SC 439 = (2005)2 SCC 217
12. AIR 2009 SC 422
13. (2010)10 SCC 512
14. AIR 1995 SC 945
15. 2006(7) Supreme 388
16. (1996)4 SCC 593
17. AIR 2005 SC 5303
18. 2005(2) ALD 631
19. (2000)6 SCC 420
20. AIR 1971 SC 1238
21. (1999)6 SCC 337
22. (2008)5 SCC 676
23. Civil Appeal No.4841 of 2012, dt.03.07.2012
24. (2012)1 SCC 656
25. (2008)7 SCC 310
26. (2008)1 SCC 45
27. (1996)5 SCC 589

28. 2015 Law Suit (SC) 636
29. (2005)7 SCC 534
30. AIR 2008 SC 1786
31. (2005)6 SCC 243
32. AIR 2009 SC 2157
33. (2011)1 SCC 429
34. (2004)6 SCC 649
35. (2002)5 SCC 481
36. (1995)5 SCC 115
37. AIR 1997 SC 1751
38. (1993)1 SCC 519

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

CCCA Nos.147 & 149 of 1997

COMMON JUDGMENT:

The respective sole defendants are the appellants herein and the respective self-same sole plaintiffs in both the matters are the respondents. Both the suits in O.S. No.1960 of 1988 and 1959 of 1988 are filed by the self-same plaintiff Saleh against the respective defendants Dhanraj and Vijenderkumar Kedia. The trial Court on separate trial decreed both the suits for the relief of specific performance of the contract for sale respectively, to execute and register sale deeds on receiving balance sale consideration and to deliver possession and with costs.

2) The contentions in the grounds of appeal common almost in both the appeals of the respective suits are that the decree and judgment respectively of the trial Court supra are contrary to law, unlawful and against probabilities of the case, perverse and misconceived against the canons of justice.

3) It is specifically contended by the defendant-appellant respectively supra that the trial Court ought to have seen that sale agreements Ex.A-21 and A-1 respectively on which the suits are based, are spurious, plaintiff P.W-1 admitted that he was not in India at the time of execution of the agreement, the

trial Court should have seen that it was not the case of the plaintiff that the agreement was executed by his nominee on his behalf, that too when it bares signature of the plaintiff and therefrom trial Court ought to have dismissed the suit and by appreciating the fact that defendant respectively did not execute and sign the sale agreement, that the trial Judge should have sent the signatures of the defendant in dispute to an expert for examination and comparison and plaintiff's inaction in cause sending also substantiates the signature on the agreement respectively is not of the defendant respectively and it is a forged one respectively.

4) It is the further contest that the trial Court should have seen that there is no valid contract and agreement and the question of alleged readiness and willingness to perform his part of the contract by the plaintiff does not arise, that Guljarilal Kedia is not related to the defendant in O.S. No.1958 of 1988 and there is no relationship for his managing the property of the defendant to allege or presume, but for son to the defendant in O.S. No.1959 of 1988, that Ex.A-19 memorandum dated 11.02.1986 no way speaks Ex.A-21 agreement, merely because it is alleged other nominees of Guljarilal Kedia executed sale deeds in favour of plaintiff for the so called sale agreement Exs.A-2 to A-6 dated 05.11.1985 (pursuant to which alleged sale deeds said to have been obtained by plaintiff), that does not automatically follow that these defendants/appellants in A.S. No.147 & 149 of 1997 also should have executed sale deeds, when they not even executed so called agreements and any persons connected with the same even not examined and D.W-3 Govindam one of the alleged executants of Ex.A-6 agreement even denied said execution in favour of the plaintiff and thereby sought for setting aside the trial Court's suit decree for specific performance and to dismiss the suit claim by allowing the appeal respectively.

5) It is also the contention that the trial Court should have seen the Ex.A-17 plaint copy in O.S. No.1947 of 1988 will no way help the case of the plaintiff, it is a suit for injunction against plaintiff and merely because alleged nominees of Guljarilal Kedia, father of the defendant herein, executed the so called sale deeds in favour of the plaintiff pursuant to the agreements Exs.A-2 to A-6 that does not automatically follow defendant herein also should execute sale deeds and the trial Court therefrom went wrong in decreeing the suit for specific performance instead of dismissing the same to set aside the trial Court's

decree granting specific performance and dismiss the suit claim by allowing the appeal.

6) It is also the contest of the respective appellants/defendants through learned senior counsel Sri Venugopal in the course of hearing arguments in support of the grounds of appeal, that plaintiff is not ready and willing to perform his part of contract and there is delay and latches on his part and his silence for nearly three years after the agreement itself disentitles to the equitable relief and also from the factum of increase in land values even for argument sake the agreement is proved as if duly executed and enforceable and thereby sought for setting aside the trial Court's respective decree and judgments by allowing the appeals dismissing the plaintiff's suit claims respectively.

7) It is the contention of Sri Prakash Reddy, the learned senior counsel for the respondent/plaintiff in both the appeals common that the evidence on record proves due execution of the said contract for sale respectively by the two defendants for the plaint schedule respective extents and the two suits for specific performance filed within time and plaintiff pleaded readiness and willingness and the inadvertent version in a stray sentence in the deposition of P.W-1 cannot make a mountain of the molehill as the passport already exhibited covered by Ex.A-32 in both the suits clearly speak the factum of the plaintiff was staying in India and going abroad with frequent visits and it is not a continuous stay outside India, the sale agreements were executed in the presence of plaintiff by the defendants respectively and in other agreements the vendors executed sale deeds but for the two defendants respectively herein and the alleged non-execution of agreement or signature of the defendant in dispute is untrue and the suit sale agreements duly executed and plaintiff is ready and willing to perform his part of the contract and maintained the suit for specific performance and trial Court rightly decreed the suits and thereby for this Court while sitting in appeals, there is nothing to interfere, hence to dismiss both the appeals confirming trial Court's decree and Judgment for the relief of specific performance of the Contracts for sale with consequential reliefs of possession etc. It is also the contention of the learned senior counsel for the respondents/plaintiffs in both the appeals that there is an explanation for giving the notice well within limitation for earlier from the demands of plaintiff, the defendants respectively postponing and ultimately in issuing notice demanding

for specific performance and there are other agreement vendors from whom sale deeds the plaintiff obtained one after another and in that process from the demand and postponing it is the plaintiff that issued notice demanding for specific performance and filed suit and thereby there are no delays or latches for plaintiff always ready and willing to perform his part of contract respectively and the trial Court rightly decreed the suits and for this Court while sitting in appeal even merely because another view also possible, that cannot be the ground to interfere muchless to disturb the trial Court's reasoned findings with conclusions.

8) Heard at length both sides and perused the material on record and also the expressions referred in support of rival contentions. Now, the common points that arise for consideration in both the appeals are:

(i) Whether the respective defendants duly executed the suit sale agreements and if so, the plaintiff is entitled to the relief of specific performance of the contracts for sale to obtain sale deeds and to get delivery of possession within the judicial discretion?

(ii) If not the trial Court's decree and judgment in favour of the plaintiff/respondent herein respectively are unsustainable and requires interference by this Court while sitting in appeal and if so to what extent and with what observations?

(iii) To what result?

9) Before coming to further facts, while deciding the 1st appeal from entire matter at large in arriving at a just decision under Order 41 Rule 33 CPC, it is the duty of the appellate Court to consider the entire material on record for reapreciation of the same on facts and law and come to an independent conclusion even to support the decision of the trial court and in particular if to differ, where it is unsustainable including on any finding and to what extent, it is apt to refer the legal position on the specific performance of the contract for sale that plaintiff has to win or lose his case on own strength with pleading of ready and willing to perform his part of contract and it is not only readiness but also willingness to aver that is required to be established not only by plea but also by evidence right from entering into the contract for sale till the suit filed and even thereafter till delivery of judgment. Further Court has to consider the hardship and also increase in the land values by taking judicial notice more particularly of the urbanized properties in grant or refusal of the reliefs.

9(a). It is the well-settled proposition of law in general appreciation of all cases (though not in a suit for specific performance) from ***S.B. Noronal V. Prem Kundi*** that, pleadings are not statutes and legalism is not verbatim. Common sense should not be kept in cold storage, when pleadings are construed. In **Ram Sarup Gupta Vs. Bishur Narain Inter College** referring to the constitution Bench expression in **Bhagwati Prasad V.Chandramaul and Sheodhari Rai V. Suraj Prasad Singh Trojan and Company V. R M N N Nagappa Chettiar** it was held that the pleadings should receive a liberal and not pedantic approach as meant to ascertain the substance and not form. In ***Bachhaj Nahar V. Nilima Mandal*** at para No.12, it was held in a suit for injunction based on easementary right, that object and purpose of pleadings and issues is to ensure that litigants come to trial on clearly defined issues to prevent cases being expanded on grounds being shifted during trial. Though generally no plea, no evidence can be looked into and for no issue no finding can be given; it is not always the static principle from the fact that even a plea not made specifically from deficiency in pleadings, but if covered by implication and evidence let in and parties know the case, it can be looked into and even to give finding no issue framed is of no bar to formulate a point and decide. Burden of proof in such matters, pales significance as what is necessary is party shall aware of the plea and let in evidence for the Court to give finding from the hearing covering the lis but not outside the scope. It was also held therein that even alternative remedy not pleaded if entitled, Court can grant it where it is appropriate to do so, like no legal bar. In ***Balasankar Vs. Charity Commissioner, Gujarat*** at para-19-it was held that, burden of proof pales significance when both parties adduced evidence and it is the duty of the court to appreciate the entire evidence adduced by both sides in deciding the lis. Further the party proved in possession of best evidence is bound to produce the same to throw light on the lis and to unfold any truth and thereby cannot take shelter on the abstract doctrine of burden of proof saying burden not on him to prove by filing the same, as laid down in **NIC vs. Jugal Kishore**, and in **Lakhan Sao Vs. Dharam Chowdhary**.

9(b). It was also laid down regarding appreciation of evidence in some of

the expressions vividly that, appreciation of evidence is no doubt from experience and knowledge of human affairs depending upon facts and circumstances of each case and regard had to the credibility of the witness, probative value of the documents, lapse of time if any in proof of the events and occurrence for drawing inferences, from consistency to the material on record to draw wherever required necessary inferences and conclusions from the broad probabilities and preponderance and from the over all view of entire case to judge as to any fact is proved or not proved or disproved. In this context in ***Vidhyadhar V. Manikrao*** it was held where defendants alleged sale deed executed by another defendant in favour of plaintiff was fictitious and bogus but not supported the plea by entering into witness box on oath and having avoided for no reason and plaintiff's case when proved in the suit for possession held such a contention of defendant with no proof can be rejected also by drawing inference from not entering witness box for no reason. The principle therein is where it warrants Court can draw adverse inference, no doubt depends on facts and circumstances as part of appreciation of evidence as to any fact is proved or not proved or disproved. Further, as part of appreciation, in ***Janaki Vashdeo Bhojwani V. Indusind Bank Ltd.*** on the scope of power of attorney competence to depose in the place of principal held though it empowers to act on behalf of principal, confines only to the acts done by the power of attorney holder in exercise of the power of attorney and would not include to depose in place and instead of principal in respect of such acts done by the principal and not by power of attorney holder and principal can have a personal knowledge over and in respect of which, in appreciation of deposition of such power of attorney holder with reference to facts and his acts in contra distinction to acts of principal within his personal knowledge which power of attorney cannot depose and same proposition is later relied upon in several subsequent expressions including ***M/s.Shankar Finance & Investments V. State of A.P, Mankaur V. Hartar Singh Sangha.***

9(c). Coming to suits for specific performance of the contract, it was held by the Apex Court in ***Jugraj Singh Vs. Lab Singh*** and later even in ***Fakheer Chand Vs. Sudesh Kumar***, that the compliance with readiness and willingness has to be in spirit and substance and not from even mere pleadings and the continuous readiness and willingness that to be established has to be seen

from the conduct of the plaintiff throughout not only from the pleadings but also from the evidence and circumstances on facts. It was held therein that from raising prices after agreement and delay in seeking relief by plaintiff is attributable to him are no doubt the grounds to deny equitable relief for specific performance but for to suitably compensate the plaintiff. **Fakheer Chand** supra relied upon **Kanshi Ram Vs. Om Prakash**. Also in **Aniglance Vs. Ram Latha**, it was held that the basic principles behind Section 16 of the specific relief Act to consider for person seeking relief are that the plaintiff must manifest that his conduct has been blemishless throughout. No doubt mere pleading about the plaintiff's ready and willingness is not sufficient to show that he prepared to perform his part of contract as laid down in 1999 (2) L.S.(A.P) 186. In **Gomibai V. Uma Rastogi** held at para No.80 of merely because agreement of sale is proved, it is not necessary to pass decree for specific performance being a discretionary relief to exercise judiciously by referring to **Jugraj Singh** and **Vidhyadhar** among other expressions supra. In **Motilal Jain V. Ramdasi Devi**, it was held on sufficiency of pleading to comply Section 16(c) of the Act that the averment as to readiness and willingness in plaint is sufficient if the plaint on reading as a whole clearly indicates that plaintiff was always and is still ready and willing to fulfill his part of the obligation as such averment is not a mathematical formula. On facts held plaintiff paid not only 2/3rds of the consideration but also sent three notices after the agreement expressing readiness and willingness to say same is apparent therefrom, since delay in filing the suit arisen from third parties acquiring rights in the subject matter of the suit. It referred forms 47 and 48 of I schedule of C.P.C that were relied in **R.C. Chandiok V. Chunnilal** and a subsequent three Judge bench expression in **Sayyed Dastagir V. T.R.Gopalakrishna Shetty**. The subsequent expression of the apex Court in **Ramesh Rameshwar Prasad V. Basutilal**, it was held when plaint contained statement of readiness and willingness, rejection of plaint on that ground or dismissal of appeal as if pleaded not ready and willing won't sustain. In **Church of Christ Charitable Trust and Educational Charitable Society, rep. by its Chairman V. Ponniamman Educational Trust rep. by its Chairperson** it was held from para 10 to 14 referring to Forms 47 and 48 of Appendix-A of C.P.C and Order VII Rule 11 C.P.C of it is mandatory for the plaintiff to seek the relief to aver all material facts and in the suit for specific performance not only show cause of action but also the date of agreement and

same not barred by time and if there is no pleading of readiness and willingness, plaint liable to be rejected. It also discussed further that a power of attorney unless coupled with interest saved by Section 202 of the Contract Act, is revocable referring to **Suraj Lamp and Industries Pvt. Ltd. V. State of Haryana** and in further saying from Para No.6 of the relief from specific performance is discretionary under Section 20 of the Act as also held referring to the first decision of 1937 Madras in **Sirigineedi Subbarayudu** among others in **Mohammadia Cooperative Building Society Ltd. V. Lakshmi Srinivasa Cooperative Building Society Ltd.** In **Silvey V. Arun Varghese** it was held referring to Sections 16(c) and 20 of the Act in para Nos.8 to 14 also referring to **Lourdu Mari David V. Louis Chinnaya Arogiaswamy** that the conduct of the defendant in specific performance suit of plaintiff cannot even be ignored, while weighing the question of exercise of discretion for decreeing specific performance or not. In **Nandkishore Lalbhai Mehta V. New Era Fabrics** that even in a suit for specific performance, pleading is a pleading which does not contain evidence that required to be let in. In **Aniglase Yohannan V. Ramlatha** it was held that indication in the plaint that plaintiff's conduct had been blemishless throughout entitling him to seek for specific performance. Where the essential facts contained in the plaint let to an inference of plaintiff's readiness and willingness, same can be construed as compliance of Section 16(c) of the Act and for that referred **Motilal Jain** supra among other expressions. In **Bal Krishna V. Bhagwan Das** it was held that it is mandatory for the plaintiff to plead readiness and willingness to perform the contract while seeking specific performance which is no doubt depends on judicial discretion to satisfy from facts and circumstances to grant or not of the equitable relief and any unfair advantage to plaintiff and where it involve hardship to defendant also the factors for consideration in exercise of the judicial discretion and referred **Motilal Jain** supra and **Umabhai V. Nilkant D Chawan** of conduct of parties as per settled law necessary to appreciate to arrive at a finding whether plaintiff is all along and still and ready and willing to perform his part of the contract as is mandatorily required under Section 16(c) of the Act to determine not from bare averment in the plaint or statement or in examination in chief but from entire facts and attending circumstances in the evidence brought on record with reference to pleadings. No doubt, as held in **Azhar Sulthana V. D.Rajamani** it is not necessary that entire amount of consideration payable

should be kept ready by plaintiff but for able to secure in support of plea of readiness and willingness. On facts held plaintiff failed to establish readiness and willingness all along to perform her part of contract and it would be unnecessary then to go into bonafides of the defendants where plaintiff could not prove his case by preponderance of probabilities. In **J.P.Builders V. A.Ramdas Rao** on the test to determine readiness and willingness, it is held there cannot be a straight jacket formula but for to determine from entirety of facts and circumstances relevant showing intention and conduct of plaintiff as a condition precedent for grant of relief with plea and proof and in the absence of such plea plaintiff is liable to be rejected and even pleaded for absence of such proof not entitled to the relief and also referred **Chandiok** supra among other expressions. In **P.D'Souza V. Shondrilo Nadi** held referring to **Nirmala Anand** that agreement providing liquidated damages be attracted only where defendant commits breach of terms of the contract for plaintiff in the option to invoke and that no way bars entitlement or not to reside specific performance and escalation of prices no doubt not a sole ground to grant or refuse but for one of the factors with reference to it of unforeseen situation and hardship to the defendant etc., in refusing the relief. In **N.P.Thirugnanam V. R.Jaganmohana Rao** it was held referring to Section 16(c) and 20 of the Act of continuous readiness and willingness on the part of the plaintiff to plead and prove the condition precedents to consider for grant of the relief for specific performance and for that availability of consideration amounts conduct of plaintiff and attending circumstances with reference to plea of readiness and willingness always be looked into from evidence also and on facts held failed to make out case for disentitlement to the relief of specific performance. The Apex Court in **K.S.Vydyanadhan V. Vairavan** held that though time stipulated in the agreement even not made essence of the contract, it must not lose significance and attention of the Court. It was held that, it is high time to consider the time stipulated has some meaning, not for nothing, could such time limit would have been prescribed; the Court should bear in mind in deciding what is the time stipulated and what are the steps to be taken by the one or the other party and what was the part performance done pursuant to it. The stipulations in the agreement should be read in combination with subsequent events and conduct of the parties including in deciding as to really the party is ready and willing in granting or refusing the relief and for entitlement or not of the relief from

otherwise. On facts, it was held total inaction of the plaintiff seeking specific performance relief, for 2 ½ years in violation of the agreement stipulating time limit though not essence of the contract, it would be inequitable to give relief of specific performance to such purchaser and to that conclusion referred the constitution bench expression in ***Chandrani V. Kamalrani*** and with reference to it of time essence of the contract is not with any presumption. However, the Court may infer that it is to be performed in a reasonable time from the terms of the contract, nature of the property and surrounding circumstances relevant including the time limit specified in the agreement and from conduct of parties besides urban properties prices have been going up shortly over the last few decades particularly after 1973 in taking notice of the same as a relevant circumstance.

10) Thus, it is the settled law from above expressions placed reliance by one or other of both sides that in the suit for specific performance that plaintiff has to win or lose his case on his own strength and not on the weak case of the defendant and in seeking the equitable relief, he has to come with clean hands to do equity, thereby court has to look into the case of the plaintiff first and if able to show from his very case entitlement, then to consider the defence, if at all still disentitled, even to exercise the discretion only there from no doubt conduct of the defendant and any false plea of the defendant can also be weighed against in arriving to grant the relief where even from plaintiff's making out the case. It is further held that the limitation prescribed of three years or the suit claim made within that time itself does not entitle to the equitable relief. It is because, mean time there is possibility of value of lands go up made change may several other factors inference. Besides that the increase in prices and the hardship of the defendants is also the weighing factors even though plaintiff otherwise entitled to the relief to refuse the judicial discretionary relief.

11) From the above propositions, now coming to the facts further:

11(a). In O.S. No.1959 of 1988, it is the case of the plaintiff that the defendant executed the sale agreement Ex.A-1 dated 05.11.1985 in respect of the suit premises 19-2-224/E, Ramnasthpura, Niralam Tank road, Hyderabad saying the defendant is the owner and possessor of the same and the contract

for sale entered for Rs.2,27,400/- at Rs.200/- per Square yard and the defendant received advance of Rs.50,000/- from plaintiff and passed receipt and it was stipulated in the agreement to complete the sale transaction to obtain sale deed by payment of balance within three months from the agreement date. However, time mutually can be extended including for payment of balance sale consideration on or before registration of sale deed, the plaintiff was always ready and willing to pay balance from the date of agreement but defendant has not been cooperating and with ulterior motive avoiding execution of sale deed which made plaintiff to send telegraphic notice for which he received reply and he got published in Siyasat Daily on 07.11.1988 (Ex.A-12 with English translation in Ex.A-13) with false allegations for which the defendant got published reply under Ex.A-14 = A-15 on 13.11.1988 and as the defendant is avoiding execution of sale deed preventing plaintiff from obtaining possession, constrained to file suit for specific performance with relief of possession and profits.

11(b) The written statement of the defendant is while denying plaint averments and with contest of he never executed the sale agreement dated 05.11.1985 in favour of the plaintiff and did not receive from plaintiff Rs.50,000/- part consideration and there is no agreement between them muchless by payment of any amount and the alleged agreement was a forged one and created for suit purpose and defendant is not party to the agreement and question of alleged extension of time for getting registered sale deed fixed beyond three months does not arise, so also of any payment of balance sale consideration and readiness and willingness, that the alleged demands by plaintiff with readiness to receive balance consideration and execute sale deed are untrue and the plaintiff is not entitled to any of the reliefs either for specific performance of the contract or for possession or profits and sought for dismissal of the suit.

11(c). The trial Court therefrom framed the following issues:

- (i) Whether defendant executed the agreement of sale as allegedly by plaintiff?
- (ii) Whether plaintiff is entitled to get a registered sale deed from defendant as prayed for?
- (iii) Whether plaintiff is entitled for mesne-profits as claimed? And
- (iv) To what relief.

11(A). Similarly so far as O.S. No.1960 of 1988 concerned, the plaint averments are almost similar to the above of the agreement dated 05.11.1985 under Ex.A-1 for the premises bearing No.19/2/224/A for Rs.2,36,000/- at Rs.200/- per square yard on payment of Rs.50,000/- as advance and stipulated three months time to pay balance and to obtain sale deed with further condition of on mutual agreement to extend time and plaintiff always ready and willing and demanding defendant and the defendant is not cooperating and with ulterior motive avoiding to execute sale deed which made plaintiff to issue telegraphic notice and having received reply from defendant cause published a false notice in Siyasat, plaintiff cause issued paper publication and as defendant is avoiding to execute sale deed plaintiff is constrained to file the suit for specific performance with delivery of possession and profits.

11(B).The written statement of the defendant is while denying plaint averments with specific contest of he never executed the sale agreement dated 05.11.1985 in favour of the plaintiff muchless received Rs.50,000/- advance, there is no agreement between them and there is no payment of any amount and the alleged agreement is a forged and created one to which the defendant not party and question of demands or alleged extension of time to obtain sale deed does not arise, so also alleged readiness or willingness or in asking to receive any balance sale consideration and the sale agreement is a creation falsely and there are exchange of notices, that plaintiff is not entitled to any of the suit reliefs based on the forged and fabricated sale agreements and sought for dismissal of the suit claim.

11(C). Therefrom, the trial Court framed the self-same issues of another suit supra.

12) It is thereafter in the course of common trial of both suits, plaintiff examined as P.W-1 and cause examined two witnesses Mohd.Ali and Ansari and placed reliance on Exs.A-1 to A-32. The agreement of sale in O.S. No.1959 of 1988 is Ex.A-1, the agreement of sale in O.S. No.1960 of 1988 Ex.A-21, the other agreements said to have been obtained by plaintiff are Ex.A-2 to A-6, telegraphic notice of plaintiff dated 28.11.1988(after three years of the sale agreements dt.05-11-1985) is Ex.A-7, office copy of notice is Ex.A-8, postal acknowledgment is Ex.A-11, the publication and reply publication in Siyasat

daily with English translations of November, 1988 are covered by Ex.A-12 to A-15, plaint copy in O.S. No.1947 of 1988 is Ex.A-17 with summons Ex.A-16, plan Ex.A-18, memorandum dated 11.02.1986 and plan attached to it are Ex.A-19 and A-20, returned covers of Dhanraj(defendant in OS No.1960 of 1988) are Ex.A-22 to 31 and Photostat copy of passport of plaintiff Ex.A-32. On behalf of defendants, DWs 1 to 3 are examined by name Sri Veerendra Kedia(defendant in OS No.1959 of 1988), Thakur Anirudh Singh(GPA holder of DW1) and Govindam(one of other alleged vendors as per Ex.A2-6) and defendants placed reliance on Exs.B-1 to B-7 viz., Ex.B-1 is notice issued to Hafizunnisa Begum dated 14.12.1988, two passports, attested specimen signature of D.W-1 Vijender Kedia, original sale deed dated 23.11.1982, plan and G.P.A in favour of D.W-2 Thakur Anirudh Singh.

13) It is from said evidence on record outcome of common trial and from hearing common arguments, the trial Court delivered the common judgment. It is thus not left open to impugn by any of the parties having consented to said common trial and disposal, but for on merits of the matter to agitate.

14) Among the documents supra exhibited before the trial Court, Ex.A-17 which is the plaint copy in O.S. No.1947 of 1988 is of the suit filed by Guljarilal Kedia(father of defendant in O.S. No.1959 of 1988) against 8 defendants including the present plaintiff Saleh as D-8 and the other 7 defendants are Hafijunnisa Begum etc, the original owners of the vacant land in an extent of 7057 Sq. yds of Ranmaspura, opposite to Zoo park, Hyderabad, with premises bearing H.No.19-2-224 therein, with compound, that originally owned by late husband of 1st defendant-cum-father of defendants 2 to 7 of that suit and while so in possession and enjoyment, they entered into agreements for sale dated 31.07.1978 for Rs.3,00,000/- and received Rs.25,000/- and agreed to receive balance at the time of registration of sale deed, that defendants 1 to 7 partitioned orally in the year 1980 and executed individual registered sale deeds in favour of the persons nominated by plaintiff-Gulzarilal Kedia to the extent of 7842 Square yards by receiving a sale consideration in proportion to it of Rs.1,75,000/- and copy of the said sale deeds were filed with that plaint as documents 3 to 9 in saying after said sales, what remained of 7057 Square yards to be registered in favour of the plaintiff by defendants 1 to 7 pursuant to the agreement dated 31.07.1978 by receiving balance sale consideration out of

Rs.3,00,000/- due and even legal notice issued on 08.07.1984 to them who agreed to execute sale deeds saying some of the brothers and sisters are out of India and were making alternative arrangements to obtain G.P.A from those of outside India and it is averred therein that defendants 1 to 7 in view of the increase in the price of the lands in the vicinity are intending to alienate the same in favour of some others, in collusion with 8th defendant a real estate dealer in seeking specific performance against defendants 1 to 7, for that remaining 7057 square yards for part of the premises 19-2-224 shown in the sketch plan and to restrain defendants 1 to 8 from interfering with possession of plaintiff over the same or from alienating or transferring in any manner. In the Ex.A-17 plaint in O.S. No.1947 of 1988, the plaint schedule enclosed shows South; property of Dhanaraj (plaintiff in O.S. No.1960 of 1988) leave about the other three boundaries one including land of Kedia Solvent Oil and the other on West-N.H-7. By filing Exs.A-17 and A-18 plan, there could be nothing in favour of the plaintiff to say in the present suits for specific performance as Ex.A-17 plaint copy refers the sale deeds in favour of the respective two defendants of the two present matters covered by Ex.B-5 dated 23.11.1982. In fact, there is no dispute regarding source of title of the respective two defendants over the respective plaint schedule.

15) Ex.A-1 and A-21 agreements for sale dated 05.11.1985 said to have been executed by the two respective defendants in favour of the plaintiff already referred supra, leave about other agreements executed by other 5 vendors under Exs.A-2 to A-6, with time stipulated for payment of balance consideration and to obtain sale deeds was three months therefrom. However, there is nobody examined by plaintiff for not even a case of demanded through any of the PWs 2&3, much less of their any say for alleged demands if any of any defendant of the two suits, much less any specific plea in the pleadings of the respective two plaints supra of any time or date or through whom if any if at all demanded and what were the exact responses for plaintiff to sleepover for nearly three years, from the two sale agreements dated 05.11.1985 fixing time for performance of three months, till the telegram notice under Ex.A-7, dt.27.10.1988 as the first notice. Said telegraphic notice Ex.A-7 issued to the respective two defendants Vijender Kedia and Dhanaraj by plaintiff Saleh

through Advocate L.P.Sygal reads “my client Saleh calls upon you to receive the balance sale consideration and execute and register the sale deed in favour of my client on 02.11.1988 in pursuance of the agreement of sale dated 05.11.1985, my client always ready and willing to pay the balance sale consideration, had already paid to you Rs.50,000/- as advance. Your dodging is malafide. Failing my client will sue to enforce the said agreement at your costs and expenses”.

16) In fact, there is no whisper in said telegraphic notice as to earlier any demands made, muchless through any elders at any point of time and with what say for alleged dodging and if so what prevented to issue any notice muchless elderly oral demands. There is nothing even as to why, even three months time stipulated for payment of balance, any part of major consideration payable as balance not paid even any portion out of it for expressing alleged always readiness and willingness to perform the part of the contract remained to be performed by plaintiff. Is it believable of plaintiff is always ready and willing from date of agreement, but for pleading sake to comply, even in the telegram. Undisputedly even by the telegraphic notice dated 27.10.1988 after sale agreements dated 05.11.1985 there is no further payment but for advance payment at the time of agreement of the sum of Rs.50,000/-. For that also no reason assigned. To say the defendants were dodging malafide, there is no basis even. It is important to note on the next day of Ex.A-7 telegram dated 27.10.1988, the plaintiff cause issued the Ex.A-8 notice dated 28.10.1988 to the two defendants separately with self-same contents mostly, through said advocate Sygal. Practically there is no meaning once issued telegram to issue legal notice on next day. The Ex.A8 notice reads:

“You have entered into agreement of sale with my client for the premises bearing No.19-2-224/E and A respectively on 05.11.1985 by executed the agreement and my client paid Rs.50,000/- each as advance and you were under obligation to complete the sale transaction within three months, my client always ready and willing to pay balance but it was at your request time was extended for further period of three months and even thereafter you had failed to fulfill your obligations under the agreement. My client repeatedly demanded and called upon you to receive balance and execute and register sale deeds but you have been willfully and malafide avoiding on one pretext or the other. You are aware of the fact that sale deeds in respect of the premises B, C, D, E and F have already been executed in favour of nominees of my client. My client

calls upon you to receive balance sale consideration on 02.11.1988 and execute and register sale deeds in his favour on that date and in default will be constrained to file suit for specific performance by holding you liable for costs and consequences.”

17) Even from this notice, there is no basis to say the original period fixed for three months for performance, further extended to another three months. Same version of the notice appears a false plea, for no such whisper if true in the telegram notice of any extension of time after original time fixed of three months. There is no basis even to say despite what was extended of further three months and without further extension even, why the plaintiff kept quiet for more than 2 ½ years even after expiry of the six months time in issuing the telegram and regd. legal notices on 27/28.10.1988 for first time even by saying the defendants are failing to fulfill their obligations under the agreements by willful and malafide avoiding to the demands on one pretext or the other. It clearly indicates even defendants unwilling to perform, there is nothing to show plaintiffs ever readiness and willingness and it is not for the pleadings sake in the plaint with a sentence but it must be shown practically and in reality of the plaintiff is always ready and willing to perform his part of the contract right from the sale agreement date, that too even time stipulated of three months expired long back and to say further time extended of three months even with no basis as discussed supra, apart from that also expired long back to say nearly 2 ½ years before the notices given. The telegraphic notice and the legal notice Ex.A-7 and A-8 are sufficient to say from the tenor of those contents discussed supra of the plaintiff is not ready and willing to perform his part of the contract, from the beginning but for woke up by giving notice at the fag end of the three years to the agreement. The reply given under Ex.A-9 to plaintiff by Vijender Kedia defendant in O.s. No.1959 of 1988 dated 03.11.1988 speaks as reply to the telegraphic notice dated 28.10.1988 received only on 31.10.1988, that plaintiff misrepresented and misstated the facts and he never in fact entered any agreement for sale pertaining to unknown property and not stated total consideration for the unknown property to pay balance which he is not prepared to accept and he does not know the negotiations and alleged agreement of sale and plaintiff if created any forged and fabricated agreement in his name, the defendant is prepared to take necessary action and to avoid complications and litigation, to forward copy of the alleged agreement and alleged receipt of

payment to verify. The reply given is under Ex.A-10 saying the reply allegations as false and made with oblique motive to wriggle out from the execution and registration of sale deed and notice already sent by registered post on 28.10.1988 and as desired enclosing copy of the sale agreement with a request to perform the obligation by execution and registration of sale deed for which plaintiff is ready and willing always else to file suit. Ex.A-12 = A-13 and Ex.A-14 = A-15 are the Siyasat paper public notice and reply notice respectively of dated 07.11.1988 and the other undated the notice of Pramod Kumar Kedia in Siyasat as purchasers beware under Ex.A-12 = A-13 speak that he is absolute owner of the land with rooms 19-2-224/A to D at Ramnasthpur, opposite to Zoo Park and came to know that some self motivated persons without right of ownership and title are trying to sell it by misrepresenting facts stating there shall get sale deeds registered in favour of purchasers, thereby informed the plea as should be cautious and refrain from entering into any sort of transactions with self-styled bogus owners, else self-responsible for consequences and the reply public notice in Siyasat of plaintiff under Ex.A-14=A-15 speaks for premises No.19-2-224/A to D sale agreement were executed in favour of Saleh and the owners of the premises B to D executed registered sale deeds and as regards A and E already legal notice issued to Vijender Kedia and Dhanaraj to execute sale deeds in favour of Saleh and as desired in the reply notice sale agreement copies sent and the said publication given is with fraudulent intention to deceive the public and warns the public not to deal with or enter any transaction with Vijender kedia and Dhanaraj in respect of the premises A and E and else at their risk and responsibility.

18) It is subsequently the two suits were filed on 16.11.1988, whereas the sale agreements were dated 05.11.1985. As referred supra from the sale agreements the original time stipulated for performance is three months and the three years limitation commences from expiry of that three months i.e., three months after 05.11.1985 = 05.02.1986 to file suit before 05.02.1989. It is to say the telegraphic notice/notice and filing of suit thereafter within a gap of 20 days, are three years after the agreements practically though it is within the limitation period under Article 54 of the Indian Limitation Act as detailed supra, that is not the criteria to entitlement of the relief from the scope of law discussed supra. Ex.A-19 is the memorandum dated 11.02.1986 said to have been executed by Satyanarayana Gupta, Mohanlal Gupta, Banwarlal, Vijender Kedia, Govindaram

and Bajaranglal represented by Guljarilal kedia as first part and Saleh as second part which reads parties mutually settled the agreement in respect of the land bearing Door No.19-2-224/B to G of Ranmasthanpur and second party agreed to purchase the extents shown in the plan in red colour and second party already paid Rs.3,50,000/- to adjust the sale consideration at the time of final settlement and first party shall execute sale deeds in favour of second party or their nominee and the consideration is at Rs.200/- per square yard to calculate for the entire red colour portion and on half of the area covered by central road of 30 ft wide shown in green colour and first party on receipt of sale consideration shall execute sale deed. Undisputedly to the so called memorandum-Ex.A19, dt.11.02.1988 neither Vijender Kedia is a signatory nor Dhanaraj either party or signatory. In fact as referred supra legal notice was served only to Vijender Kedia and not to Dhanaraj. The telegram notice not even referred the memorandum, if true. These are the documents only the plaintiff placed reliance. Among the three witnesses examined on behalf of the plaintiff including the plaintiff as P.W-1; his evidence in chief is defendant respectively is owner of the premises A and E and he entered into agreement for sale on 05.11.1985 that original of Ex.A-1 and A-21 at the rate of Rs.200/- per square yard having paid only Rs.50,000/- advance and a non-possessory agreement and he has to pay the balance within three months to defendant to obtain sale deed and the other owners of the premises among Ex.A-2 F and Z viz., he also entered into sale agreements covered by Ex.A-2 to A-6 supra by payment of Rs.50,000/- advance to each to obtain sale deed by payment of balance and the other persons except Dhanaraj and Vijender Kedia executed sale deeds in favour of nominee of plaintiff in the year 1988 and the defendant/s extended the time stipulated under the agreement to execute sale deed in favour of plaintiff's nominee Bajranglal, plaintiff is always ready and willing to pay balance to get sale deed in favour of Bajranglal, defendants sought one month time to execute registered sale deed but they did not do so. Therefrom he got issued telegraphic notice dated 27.10.1988 and legal notice dated 28.10.1988 to execute sale deed on 02.11.1988 by receiving balance and as Vijender Kedia sought copy of sale deed he send the same, they with oblique motive cause published in Siyasat and he cause published reply and the reply notice issued also false. This chief examination version of one month time sought for performance by defendants after the three months stipulated time

expired is neither stated in the telegram, nor in the other legal notice-Exts.A7&8. His further chief examination version of from Ex.A-17 and A-18 plaint copy and plan, Yousuf Khan and others are owners of total 1500 Square yards, who entered sale agreements with Guljarilal Kedia and sold the properties in part by execution of sale deeds and for rest Guljarilal Kedia filed O.S. No.1947 of 1988 for specific performance against the vendors by also impleaded the plaintiff herein as D-8 and said Guljarilal Kedia executed Ex.A-19 memorandum on behalf of the vendors of 7 agreements on 11.02.1986 which includes Ex.A-1 agreement. What is contained in the memorandum is discussed supra. It is his chief examination version that Mohd.Ali and Zia-ul-huk are the attestors to Ex.A-19 memorandum and therefrom he filed the two suits for specific performance, that the so called fabrication and impersonation of agreements or sale deeds are untrue. It is further deposed in the chief examination of P.W-1 that in April, 1985 he was at Saudi Arabia and Ex.A-32 is the Photostat copy of his passport showing he was away in Gulf States during the years 1985 onwards upto 1988 and his nominees who purchased the properties from above five persons referred above, constructed in respective plots and the suits are relating to premises E and A. That what all the chief-examination of P.W-1. He did not even depose, why he did not demand through elders or earlier not given any telegram or notice and why he slept over for such a long time to file suit nearly at fag end of limitation of three years from three months time after the agreement date. It is there he blurred of his own for reasons better known of from 1985 onwards upto 1988 he was away in Gulf States. There was no any cross-examination version but it is the chief-examination deposition. No doubt what he deposed is running contrary to the Ex.A-32 passport details showing he was coming and going and not totally stayed away from India and Hyderabad. What he averred is his nominees purchased from other five persons to say under Ex.A-2 to A-6 sale agreements, sale deeds said to have been obtained by his nominees from other five persons and what is remained is for the two premises covered by the two suits for specific performance.

19) From the chief-examination of P.W-1 plaintiff supra what he alleged is only one month time extended for performance from the three months time

stipulated in the agreements Ex.A-1 and A-21 respectively dated 05.11.1985, allegedly at request of the defendants, even if it is believed, it is not known for he did not issue any notice thereafter expressing readiness and willingness to perform his part of the contract. This version also running contrary to his notice contents covered by Ex.A-7 telegram there, there was no whisper of extending such time and Ex.A-8 where alleged three months time extended at request of the defendants and not one month as averred in chief examination. Thus, it shows the inconsistent stands of the plaintiff also in approaching the Court with unclean hands, even if not a false plea, to the equitable relief and shows no truth in his plaint plea and notice plea of he is always ready and willing to perform his part of the contract, as had there been any little truth of either one month or three months as the case may be after original time of three months to the agreement dated 05.11.1985 extended thereafter, there is no meaning even for not demanding and for any demands and non-performance by not even issuing notice and not even by any further payment or even for waiting till fag end of limitation in seeking for specific performance. The fact that the other vendors if any executed sale deeds from their willingness, no way entitles to the equitable relief herein by plaintiff for always not ready and willing to perform his part of the contract as required by law apart from the Court cannot ignore the factum of increase in prices that is also there from the very plaint copy filed under Ex.A-17 of O.S. No.1947 of 1988 as averment of there is increase in the land values and there from the vendors therein are trying to avoid and are joining hands with the plaintiff herein as Ex.D-8 to create collusive documents. In the cross-examination plaintiff P.W-1 deposed that he did not go through the link documents of the vendor's vendor and there is no U.L.C permission and no lay out prepared for selling any plots. The vendors prepared plan dividing 8400 square yards into plots and the sale transaction against defendant Vijender Kedia is for 1000 square meters at Rs.3,50,000/- and he knows that for above Rs.2,00,000/- value, for every sale transaction, the owners have to obtain income tax clearance and he has not sent draft sale deeds to owners to obtain I.T clearance and there is a condition in the agreements that the defendant to obtain I.T certificate before executing and also to obtain U.L.C permission and in the notice he did not ask them to obtain the same and he did not file any lay out plan showing division of the plots. All these seven agreements (including Ex.A-2 to A-6) were executed on 05.11.1985 and in O.S. No.1947 of 1988 he

was impleaded as D-8 on his petition. However, did not file any written statement and he does not know as to the property stands in the names of Guljarilal Kedia. He did not obtain separate payment receipts of Rs.50,000/- each from seven agreement holders including the two defendants of the two suits for the advance amount paid. Guljarilal Kedia who executed Ex.A-19 memorandum dated 11.02.1988 is not the power of attorney holder for any of the vendors under the seven agreements and there is no authority to him on behalf of the vendors and in Ex.A-19 supra there is no mention of Guljarilal kedia was authorized on behalf of the vendors to execute so called memorandum. When he was in Gulf country, sale deeds executed by his vendors in favour of his nominees, that Mohd.Ali is his man and not his G.P.A holder to obtain the sale deeds from five other vendors and for the five agreements he obtained sale deeds in favour of 26 or 27 nominees and he did not file certified copies of all the sale deeds. He denied the suggestion of he got executed the sale deeds by impersonation of original vendors. He also denied the suggestion of the sale agreements and the so called sale deeds are forged and fabricated. He denied the suggestion of defendants have not entered into any agreements of sale and did not receive any part sale consideration.

20). Apart from the above evidence in proof of the suit sale agreements, the so called man of the plaintiff Mohd. Ali came to witness box as P.W-2, who says from his chief-examination that on 05.11.1985 the two defendants herein and four other persons signed on the respective agreements of sale and thereafter P.W-1 signed on the agreements and the typed agreements of sale Exs.A-1 to A-6 and 21 were produced for execution by Guljarilal Kedia and himself and Mohd.Nawab attested the same and he is the second attestor and on Ex.A-3 agreement Guljarilal Kedia signed as vendor and all the vendors of the agreements respectively signed in his presence and plaintiff P.W-1 paid to each of them Rs.50,000/- in his presence and two or three months after execution of the agreements, plaintiff taken him to Guljarilal Kedia`s factory where Kedia executed a memorandum(Ex.A-19) and he attested the same, so also Mohd.Nawab and Yusuf Nawab and he is the first attesting witness therein and Mohd.Nawab second attesting witness. In the cross-examination he deposed that first time he got acquaintance with Guljarilal Kedia in 1985 when he signed as a witness to the documents and plaintiff purchased the property that was owned by Guljarilal Kedia as the entire transaction took place with

Kedia and he does not know how much property he was owning and he cannot say the agreements respective extent of each plot and he does not know the price fixed for each plot in the agreements executed with Kedia and he was asked to sign as a witnesses and thereby he signed and he never joined any transaction of plaintiff and never managed any affairs of plaintiff while plaintiff was in Saudi Arabia, that Mohd.Nawab also attested the documents along with him. He denied the suggestion of on request of plaintiff he and Mohd.Nawab signed Exs.A-1 to A-6 without knowing and Exs.A-1 to A-6, A-19 and A-21 are by impersonation. He deposed that he does not know signatures of vendors on the documents. From the evidence of PW2, there is nothing to say any executant of the agreements signed in his presence, but for saying he attested at request of plaintiff along with Mohd.Nawab. PW3 Ansari speaks that he attested the agreements of sale Exs.A-1 to A-6, A-21 and also A-19 and his name is Zia-ul-Hak and also known as Mohd.Nawab. So, Mohd.Nawab is not his correct name, but for also so knowing and one has to sign with correct name and also with also alleged knowing name. He deposed that he knows the persons who signed the documents as they executed in his presence and the other attestor with him of the documents is PW2 whom also he knows viz., Exs.A-1 to A-6 and A-21 are the seven sale agreements and it is after the executants signed and plaintiff signed in his presence he attested, and the documents were executed at the office of Guljarilal Kedia near Zoo Park and the lands originally belongs to his cousin brother and family, lying opposite to Zoo park and on the date of execution of Ex.A-1 to A-6 and A-21 Kedia and other executants and plaintiff and P.W-2 besides himself present and he does not know his brother Yusuf was present or not at that time. He deposed that to each of the seven agreement holders plaintiff paid Rs.50,000/- and three or four months after the agreements, Guljarilal Kedia executed Ex.A-19 memorandum and there also he attested along with PW2. His said evidence in chief is not consistent with that of PW2, but for improvements to cover legal requirement of attestation and further of payment of advance and execution by each executant. It is not the deposition of both PWs.2&3 of any of them demanded at the instance of plaintiff for specific performance or got any acquaintance with any of the seven agreements executants, but for knowing Guljarilal Kedia and place of execution at his office. In the cross-examination, PW3 deposed that plaintiff transacted with Guljarilal Kedia to purchase the lands and he does not

remember whether Yusuf Khan was original owner of the lands and he was not present at the time of execution of sale deeds by Yusuf Khan and as to who were the vendors that sold to Guljarilal Kedia and for what price. If the lands really originally belonged to his cousin brother and family, could it be believed of he does not know the transactions, that too deposed why in chief examination, in judging his credibility of facts not even known to accommodate. The further deposition in cross examination is that, the agreements of sale were already prepared and his signatures were obtained and he does not remember how much amount was paid and whether any receipt was passed as he did not attest any receipt and the sale transactions did not take place in his presence and he does not know the contents of the sale agreements and he does not know about any impersonation of execution of registered sale deeds. So, what he deposed in chief examination of amounts of advance paid in his presence and execution of agreements in his presence is not correct fully. This is the evidence on the plaintiff's side in all in proof of the agreements execution by respective defendants among total seven persons on 05.11.1985 under Exs.A-1 to A-6 and A-21 of which the two suit transactions agreements are covered by the Ex.A-1 and A-21, leave about for the other five sale deeds said to have been obtained by the plaintiff in favour of about 25 nominees of him and none in his name.

21). PWs 2&3 evidence as discussed supra, though not consistent regarding the entire sale agreements transaction, one thing is certain of their role of attestation as part of execution, to say proved from appreciation by reading together of the entire evidence of PWs.2&3 coupled with that of PW1 and in particular to say it proves execution of the Exs.A-1 & A-21 sale agreements by the two defendants, leave about the other Exs.A-2 to A-6. No doubt, contest of the defendants respectively is said signatures on the sale agreements are forgery. PWs 1&2, leave about PW3 also deposed about the respective executants signed in their presence as piece of corroboration to PW1's evidence of the execution, those separate appreciation of PW2 or PW3 not credible to act as ring of truth on any of their depositions from improvements and interestedness. From this, if the respective two defendants did not execute and those are created by impersonation if any and forgery of their signatures, once PW1 plaintiff positively deposed and corroborated at least of their signing

by PWs 2&3, it can be safely said the execution is proved by preponderance of probabilities of the civil lis as required by law to say therefrom of burden shifts on the defendants to rebut. Dhanraj-defendant in one of the two suits did not even come to witness box. No doubt there was once joint trial of both suits, court has to read evidence of DWs1-3 as defence evidence in both the suits. However the fact remains of even signature of Dhanraj-defendant in Ex.A21 if not of him, he should have come to the witness box and deny, which he did not and for no explanation of any inability to come and depose, it definitely leads adverse inference against him to draw in support of plaintiff's proof of execution of his sale agreement. The evidence on record from proper appreciation of Ex.A32 with reference to what PW1 deposed of he was in abroad during 1985 to 1988 is not fully correct but for and on by coming and going and the evidence speaks on the sale agreement dates plaintiff was present and the agreements were executed after payment of Rs.50,000/- each including to the two defendants herein.

22). It is to be seen how far the defendants rebutted above said evidence of the plaintiffs respectively. Among the DWs 1 to 3, DW1 is Vijender Kedia defendant in O.S.No.1959 of 1988 deposed that he did not enter into Ex.A-1 sale agreement with plaintiff for his 1137 Square yards at 200 per square yard and Ex.A-1 does not bear his signature and he received no advance and he received notice under Ex.A-8 and issued reply under Ex.A-9 and he cause published the paper publication Ex.A-12 and the reply publication of plaintiff is Ex.A-14 and he is in possession of the suit property and his father Guljarilal Kedia no way concerned with the suit property of him. He deposed that he obtained passport Ex.B-2 in the year 1982 and the second passport Ex.B-3 in the year 1983 and denied the signatures in the two passports with Ex.A-1 sale agreement correlates and tallies. He deposed that Ex.B-4 is the specimen signatures of his bank account at S.B.H, Mahaboobgunj dated 09.07.1996. He deposed that the property originally belonged to S.Alikhan and after his death succeeded by Hafijunnisa Begum and others and he does not know whether his father entered into agreement with those owners for entire 15000 Square yards on 03.07.1978 and obtained sale deeds in favour of several persons out of it for 7942 square yards. He answered that the property he purchased from his

vendors is of his own and he is in custody of the original sale deed and he do not know the other persons Dhanraj-defendant of O.S. No.1960 of 1988 Satyanarayana Gupta, Mohanlal, Banwarilal, Govindaram, Bajaranglal are whether nominees of his father. He deposed that his father is doing business in Khandasari Sugar with office at Kishangunj and his G.P.A is T.A.Singh DW2 and he does not know said T.A.Singh is G.P.A holder for other six persons also. In fact no such GPAs filed to prove, more particularly for Dhanraj, leave about a GPA holder cannot speak facts with in personnel knowledge of principal. DW1 further deposed that, he is doing business in the name Sruthi Oil Industries. He denied the suggestion of he and other six persons including Dhanraj executed in favour of the plaintiff, the sale agreements supra on 05.11.1985 and in the presence of his father and he does not remember to whom plot Nos. A, B, C, D, F and G belong and that his is 'E'. He deposed that his G.P.A holder T.A.Singh DW2 gave instructions in preparing written statement and counters in the suit. He denied the suggestion of he knows PW3 Ansari and speaking falsely as if does not know. He also denied the suggestion of having duly executed by them the agreements under Ex.A-1 to A-6 and A-21 by signed respectively including by him the Ex.A-1, he is now trying to wriggle out even having received Rs.50,000/- advance under the Ex.A-1 on 05.11.1985 in the presence of PWs-2&3 and his father from plaintiff. He denied the suggestion of Ex.A-19 was executed by his father representing all vendors of agreements and he stated he cannot identify the signature on Ex.A-20 plan is of his father and he deposed the signature on Ex.A-18 plan annexed to Ex.A-18 plan is not of his father. He denied the suggestion of he promised the plaintiff to execute sale deed pursuant to Ex.A-1 agreement after plaintiff obtaining sale deeds from other agreement holders among the seven and even he and his father away of five agreement holders executed sale deeds in September, 1988 and he assured to execute sale deeds in favour of the plaintiff within one month thereafter for demands of plaintiff avoiding he deposed that after received suit summons he filed injunction suit in O.S. No.4382 of 1988 and denied the suggestion of he is falsely deposing of Ex.A-1 sale agreement signature is not of him or after filing of the suit he is admitting to sell away the property. Said suggestion of he promised the plaintiff to execute sale deed pursuant to Ex.A-1 agreement after plaintiff obtaining sale deeds from other agreement holders among the seven, is a new version not finding place in telegram or notice or

publication in paper or plaint or PW1 chief examination to give any credence to the suggestion. DW2-T.A. Singh, G.P.A holder of DW1-Vijender Kedia, deposed that defendant is owning 1180 square yards with door No.19-2-224/A which he purchased from Fatima and others in the year 1982 under registered sale deeds and he is looking after the property with shed therein. He denied the suggestion of plaintiff entered into sale agreement with defendant at the rate of Rs.200/- square yard, having received Rs.50,000/- advance and executed the sale agreement that it contains his signature. He deposed that Ex.B-5 is the original sale deed executed by Fatima and others in favour of the defendant and the plan of the site is Ex.B-6 and Ex.B-7 is the G.P.A executed by defendant-DW1 in his favour. In the cross examination DW2 deposed that he never was the G.P.A of Guljarilal Kedia-the father of defendant but for of Vijender Kedia-DW1. He denied the suggestion of Dhanraj is one of the employees of Guljarilal Kedia. He denied the suggestion of DW1 executed the sale agreement(Ex.A1) for sub-plot 'A' at Rs.200/- per square yards for Rs.2,36,000/- and received Rs.50,000/- advance from plaintiff and other vendors also executed similarly agreements under Ex.A-2 to A-6 for respective sub-plots B to F and I and the five agreement holders executed sale deeds but for the two defendants. He deposed that the plot number shown in Ex.A-18 plan is correct. He denied the suggestion of the signature of Ex.A-1 agreement is of the defendant or plaintiff after 23.09.1988 demanded the defendant to receive balance and execute sale deed. He deposed that plaintiff issued telegraphic notice and also issued notice to the defendant for which defendant got issued reply and he also knows about the publication by defendant in Siyasat Daily. He deposed that the plot No.A is that of the defendant. He deposed that he cause prepared written statement of the defendant and signed the same as G.P.A holder saying the sale agreement is a forged one and denied the suggestion of it is genuine. He deposed that PW3 did not sign in his presence as attestor on the agreement and he does not know PW2. It is a meaningless suggestion for not a case of his presence on 05-11-1985 and execution of any agreements by anybody. DW2's evidence is of no help to defendants, but for plaintiff, to say DW1 did not even cause prepare his written statement by his instructions and GPA holder could not give for its preparing without knowing personally of the Ex.A1 transaction. DW3-Govindaram is one of the agreement holders among the seven agreements according to the plaintiff. He deposed that he is the owner of plot F, 1168

Square yards and he did not sign Ex.A-6 agreement in favour of the plaintiff and did not enter the agreement and he does not know Guljarilal Kedia and he was partner of R.G. Khandasari and the other partner was one Mahesh Kumar and he denied the suggestion of he is nominee of Guljarilal Kedia in the purchase of the premises F under sale deed dated 28.11.1992. He deposed that at the request of DW2 he came to Court to give evidence in the suit and the signatures shown in Ex.A-6 is not that of him and denied the suggestion contra. This is what all the evidence of the defendants on record.

23). Even coming to DW1-Kedia-defendant in OS No.1959 of 1988 deposed by coming to witness box of denying his signature, there is other material like Bank Account and pass port etc., exhibited with his signatures for the Court to compare in further substantiating the evidence of PWS1-3 in proof of the sale agreements. What the defendants contesting of PW1 chief examination last lines of he was in Gulf countries during the years 1985 to 1988 and it belies the sale agreements as if he personally entered by presence concerned, it is not sufficient from that stray sentence to belie entire evidence on record and case of plaintiff, but for appreciation with reference to that also from entire evidence with reference to pleadings also from surrounding circumstances to arrive the truth from the voyage of trial. If it is so as required by law, said contention from that stray sentence is not correct, even from bare perusal of the entries of the passport of PW1-Plaintiff under Ex.A-32 and evidence of PW1 corroborated by that of PW3 in particular and also of PW2 showing presence of PW1-plaintiff at the time of the sale agreements obtained on 05.11.1985, the burden thus once shifts on the defendants to rebut said reliable evidence as proved, as the defendants are not the laymen, muchless claimed as so, being well versed and the contest is forgery, once the signatures and due execution proved, suffice to say from the settled propositions of law that contents follow from proof of execution, that too to rebut, the defendants not even ask even to send for expert opinion if sure of not signed despite evidence of plaintiff proved signed and executed, for DW2 is only GPA of DW1, who cannot speak any facts personally with in knowledge of DW1 and nothing more from him and even of DW3-claimed not signed as one of the executants of sale agreement among the Exts.A2-6, viz.Ex.A4, even sale deed already obtained if not executed as party to the document, he could have filed suit for cancelation and atleast given notice repudiating by conduct to take

further legal recourse as any ordinary prudent person supposed to do without silence. Mere denial of signature of DW1 by coming to witness box on Ex.A1 is not sufficient to rebut from proved evidence of the Ex.A1 as discussed supra, to rebut. A comparison of the Ex.A1 with other undisputed signatures on record of DW1 including deposition though of large time gap in natural strokes and pattern correlates to substantiate evidence of Plaintiff discussed supra.

24). Even there is nothing even from PWs 2&3 muchless through any witness of plaintiff about any demand for specific performance pursuant to Ex.A-1 and A-21 agreements for proof of readiness and willingness, even as discussed supra, the plaintiff's side evidence proves execution of the sale agreements by defendants respectively. The defendant Dhanraj in O.S. No.1960 of 1988 did not come to witness box even to deny his signature of sale agreement despite above evidence though defendant in O.S. No.1959 of 1988 DW1-Vijender Kedia denied the signature, a comparison of his signature with Exs.B-2, B-3 and B-4 and with his deposition as referred supra, correlates to conclude coupled with evidence of PWs. 1 to 3 as that of him which is within the power of the Court under Section 73 of the Indian Evidence Act. In fact, the defendant's evidence supra, from DW1's mere denial of signature on Ex.A1 no way rebuts the proved evidence of plaintiff, the defendants could have chosen to rebut the above evidence of plaintiff by cause sending the agreements of sale to expert if not executed for comparison and opinion with reasons to say anything further with reference to it. It is in this context important to say even the DW1-Vijender Kedia, in his reply notice asked to send the sale agreements and even sale agreements sent by plaintiff, he did not issue any rejoinder denying his signature on the sale agreement if not executed by him and though in the reply threatened to give police report if not that of him and asked to send copy of agreement to verify, admittedly he did not give any police report if at all the agreement is a forged one as expressed by his intention in the reply. These are also the circumstances supporting the case of the plaintiff of the suit sale agreements were to conclude as proved duly executed by the defendant respectively in favour of the plaintiff for the respective lands having received Rs.50,000/- as advance.

25). However, the fact remains from the evidence on record for the urbanized property even from Ex.A-17 plaint copy placed reliance by plaintiff speaks of the land values increased exorbitantly from said own evidence of plaintiff, there is nothing to prove what is required by law if true to support the plea of always readiness and willingness on the part of the plaintiff in seeking for specific performance of the contract to get the equitable relief of specific performance as out of the sale consideration of more than Rs.2,27,400/ to Rs.2,36,000/- or so at Rs.200/- per square yard against the two defendants for the respective suit schedule extents, what plaintiff proved paid is Rs.50,000/- each and nothing more after the agreements dt.05-11-1985 as even by date of the suits on 16-11-1988, despite the suit sale agreements stipulated three months' time only for performance by plaintiff to pay entire balance and to obtain sale deeds and not even send any written notice , not even demanded through anybody orally, to say personnel demands there is no basis as when and with what reply and even the evidence is quite inconsistent of what is discussed supra of sought one month time or extended three more months time, for nothing endorsed if true on the agreements with him to believe and for further total inaction despite knowing of not performing, for there is no further extension in writing and there is no any exchange of notices and there is no any evidence of witness including P.Ws 2 and 3 of any demanding through them for specific performance and from also say of to plaintiff's knowledge allegedly dodging by defendants from the beginning, what all whispered for the first time nearly three years after the agreements date in the telegraphic and legal notice dated 27/28.10.1988 of the agreements dated 05.11.1985 as if defendants are dodging and with inconsistent versions as if three months' time was again extended either for one month or three months, if true when thereafter even there is nothing to prevent to give notice or file suit without waiting for fag-end period of limitation period, suffice is say, plaintiff was not really and practically ready and willing but for pleading sake to get over plaint rejection propounded in notice And plaint. It is how apart from no truth even for the silence of the plaintiff without even expressing his readiness and willingness to perform his part of the contract to seek specific performance to obtain sale deed by payment of major portion of consideration remained unpaid and from hardship to the defendant/s if ordered performance from showing from plaintiff's own evidence from contents of Ex.A17 of value of lands later abnormally increased,

plaintiff not entitled to the equitable relief of specific performance and for not even pleaded any alternative relief for refund or damages or compensation, not entitled even to order refund though under general law of contract Act from Sections 65 to 70 it could be , from the specific legal bar under the special law of specific relief Act. The trial Court thereby went wrong totally in ignoring these vital legal and factual aspects which go to the root of the matter in decreeing the suit for specific performance instead of dismissing for specific performance. Thus, the trial Court's decrees in both suits covered by the common judgement for both suits are liable to be set aside by allowing the appeals.

26). Accordingly and in the result, both the appeals are allowed by setting aside the trial Court's common judgement and the respective decrees in both the suits granting specific performance of the contract for sale with possession respectively for the plaintiff is not entitled to the relief of specific performance or for refund of advance amount even for no prayer from the legal bar to grant otherwise even with no prayer and further the question of any entitlement to profits does not arise for such a claim by non-possessory agreement holder against true owner vendor/s in lawful possession. There is no order as to costs in both the appeals.

27) Miscellaneous petitions, if any pending in these two appeals shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date:03-02-2016

NOTE: L.R copy to be marked.

(b/o) ksh