

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA
PRADESH**

C.C.C.A. No.215 of 2001

Between:

Smt. K. Bhudamma

and others.

....

Appellants

And

Smt. Vidyadevi

and others.

....

Respondents

DATE OF JUDGMENT PRONOUNCED: **07.01.2016**

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

1. Whether Reporters of Local Newspapers

may be allowed to see the judgments?

Yes /

No

2. Whether the copies of judgment may be

marked to Law Reporters / Journals?

Yes /

No

3. Whether Their Lordship wish to

see the fair copy of the Judgment?

Yes / No

*** THE HON'BLE SRI JUSTICE U. DURGA PRASAD RAO**

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Respondents

! Counsel for Appellants : Sri M. Vijay Reddy

**^ Counsel for Respondent No.1 : Sri K. B. Ramanna
Dora**

< Gist:

> Head Note:

? Cases referred:

- 1) 2011 (3) ALD 774
- 2) 2006 4) ALD 41 (SC)
- 3) 2011 (4) ALD 577
- 4) AIR 1989 SC 1269
- 5) (2003) 135 PLR 840 = MANU/PH/0818/2003
- 6) AIR 1922 PC 20

THE HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

C.C.C.A. No.215 of 2001

JUDGMENT:

Aggrieved by the Judgment and Decree dt.28.06.2001 in O.S.NO.588 of 1999 passed by the learned V Senior Civil Judge, City Civil Court, Hyderabad, granting specific performance decree in favour plaintiff in respect of 42 sq. yds. of site containing one Mulgi and one room situated in Jawaharnagar, Chikkadpally, Hyderabad, the defendants preferred the instant appeal.

2. First defendant is the mother, defendant Nos. 3 to 5 are her sons and second defendant is her daughter-in-law i.e., wife of the deceased son—Ramalingam. The Plaintiff's case in brief is that the defendants are the owners of the premises bearing No. SRT 344 admeasuring 170 sq.yards in Jawaharnagar, Chikkadpally, Hyderabad and out of the said property, they offered to sell a portion admeasuring 42 sq. yards consisting of one Mulgi and one room and the plaintiff agreed to purchase the said property for Rs.2,15,000/- and the defendants executed an Agreement of Sale dt. 2.8.1997 in favour of plaintiff and received an advance of Rs.5,000/- as part payment of sale consideration. It was agreed that the plaintiff should pay the balance of Rs.2,10,000/- at the time of delivery of possession or registration of the sale deed by defendants. Subsequently, the defendants periodically received Rs.22,000/- from the plaintiff and issued receipts. It is the further case of the plaintiff that inspite of personal request and issuing notices by the plaintiff asking the defendants to execute a register sale deed in his favour, the defendants did not yield and he came to know that they were making efforts to sell the suit property to some 3rd parties. Finally, on 10.05.1999 when the plaintiff sent her husband to pursue the matter, the defendants bluntly refused to execute a sale deed. The plaintiff averred that she was ready and willing to perform her part of contract. With these averments, she filed the suit.

3. The defendants filed common Written Statement

denying the plaint allegations:

a) Their primary contention was that the alleged sale agreement dt. 2.8.1997 is a fabricated document as the said agreement was allegedly executed by D.4 and his wife alone, but the signatures of other defendants were present in the document. D.4 and his wife are not the exclusive owners of the suit property. The alleged notices and plaint averments would show that as if the agreement of sale was executed on 22.08.1997, but the agreement would read as if executed on 2.8.1997 and hence it was a forged document and the plaintiff came to Court with unclean hands.

b) It is further averred that though the defendants are owners of the premises bearing No. SRT 344 admeasuring 170 sq. yards but they are not the absolute owners. The said property was originally allotted to the husband of the first defendant namely K. Yellaiah by the Commissioner of Labour, Government of Andhra Pradesh on 8.6.1989. Subsequently, possession was handed over to K. Yellaiah and since then all the defendants were staying in the suit premises. K. Yellaiah paid entire installments to the Commissioner of Labour, but the Sale Deed was not executed in his favour inspite of his request. Subsequently,

K. Yellaiah died on 7.05.1995. Thereafter also, the defendants requested the Commissioner of Labour to execute the Sale Deed in favour of defendants, but so far the Sale Deed is not executed in favour of the defendants. As the Sale Deed was not executed in favour of defendants, the

question of their executing Agreement of Sale in favour of plaintiff does not arise. It was further contended that the plaintiff and her husband are pawn brokers and money lenders running their shop opposite to the residence of the defendants and due to personal needs and financial difficulties, D.4 approached the plaintiff and her husband and requested to lend him Rs.5,000/- as loan. While paying Rs.5,000/- to D.4 on 2.8.1997, the plaintiff and her husband obtained signatures of D.4 and his wife on two blank non judicial stamp papers worth Rs. 50/- each and on several other blank papers affixed with revenue stamps on them. The plaintiff and her husband demanded D.4 to obtain signatures of other defendants on non judicial stamp papers and also on plain papers as surety. Out of innocence and acute necessity for money, D.4 insisted other defendants to sign on papers and they obliged him. D.4 could not repay the loan amount of Rs.5000/- and requested time for repayment. The plaintiff and her husband fabricated the Agreement of Sale. The defendants never received the notices allegedly sent by the plaintiff. They never agreed to sell the suit house to the plaintiff.

4. Basing on the above pleadings, the trial Court framed following issues:

- 1) *Whether the suit Agreement of Sale dt. 2.8.1997 is true, valid and supported by consideration?*
- 2) *Whether the plaintiff is always ready and willing to perform his part of the Contract?*
- 3) *Whether the plaintiff is entitled for specific*

*performance of the suit agreement of sale dt.
2.8.1997?*

4) *To what relief?*

5) During trial, Pws.1 to 3 were examined and Exs.A.1 to A.23 were marked on behalf of plaintiff. DWs. 1 and 2 were examined and Exs.B.1 to B.5 and Ex.C.1 were marked on behalf of defendants.

6) The trial Court having regard to the evidence of PW1—the plaintiff, PW2—one of the attestors of Ex.A.1 and Pw.3-Bank Manager stating about passing of Rs.5,500/- from the account of Pw.1 to D.4, has come to the conclusion that the agreement of sale was genuine. In this process, the trial Court disbelieved the contention of the defendants that Ex.A.1 was fabricated after obtaining the signatures of the defendants on blank papers. The trial Court also disbelieved the contention of the defendants that they were not the absolute owners of the suit property and accordingly decreed the suit as prayed for.

Hence, the present appeal by the defendants 1, 3 and 4.

7) The parties in the appeal are referred as they were arrayed in O.S.No.588 of 1999 before the trial Court.

8) Heard the arguments of Sri M. Vijay Reddy and J. Sreenivasa Rao, learned counsel for appellants/defendants and Sri K. B. Ramannadora, learned counsel for respondent/plaintiff.

9) Now the points that arise for consideration in this appeal are:

1) *Whether Ex.A.1—Agreement of Sale and Exs.A.2 to A.10—Receipts were fabricated by the plaintiff?*

2) *If Point No.1 is held in negative, whether the defendants Nos. 1 to 3 and 5 are only attestors to Ex.A.1 and there was no privity of contract between them and the plaintiff and thereby Ex.A.1—Agreement of Sale is unenforceable ?*

3) To what relief?

10) **POINT NO.1:** The contention of learned counsel for appellants/defendant is that D.4 for his personal needs borrowed Rs.5,000/- from plaintiff and her husband, who are money lenders and in that context, they obtained signatures of D.4 and his wife on some blank stamp papers and blank white papers containing revenue stamps and they also obtained the signatures of Defendant Nos. 1 to 3 and 5 as sureties for the loan and later the plaintiff and her husband fabricated Ex.A.1--Agreement of Sale and Exs.A.2 to A.10—Receipts. He vehemently contended that when execution is denied by the defendants, mere proof of their signatures on the document will not be sufficient to hold that the plaintiff discharged his burden. The burden of proof will be on the plaintiff to establish the contents of the documents and knowledge and consent of defendants thereof. On this legal point, he relied upon a decision reported in ***Chodi Mahalakshmi v. Koppada Sathiraju***^[1].

a) Per contra, while admitting the burden of proof, learned

counsel for respondent/plaintiff submitted that the plaintiff through the oral evidence of PWs.1 to 3 coupled with Exs.A.1 to A.10, amply established that the agreement of sale was not a fabricated document. Referring the evidence of PWs.1 and 2, he submitted that they have categorically stated that all the defendants have executed agreement of sale in favour of plaintiff after receiving Rs.5000/- as advance and their evidence could not be shattered in the cross examination. Apart from it, he argued that if really the plaintiff and her husband fabricated Exs.A1 to A10, they would have mentioned in Ex.A1 the entire 170 sq. yards of the property of defendants instead of a paltry portion of 42 sq. yards and similarly, they would have fabricated Exs.A2 to A10—receipts as if entire sale consideration or a substantial portion thereof was paid by them instead of only Rs.27,000/-. Learned counsel argued that the suit property lies adjacent to the shop of plaintiff and if they fabricated the agreement of sale to cover entire 170 sq. yards, it would be more advantageous to them. That they did not do such acts would indicate that Exs.A1 to A10 were not fabricated documents.

b) There is no demur on the legal point that mere admission of signatures of the executants will not relieve the burden of other party to establish the contents of the document and consent of the executants for such contents. It is in this context, the evidence placed by the plaintiff has to be scrutinized to know how far the plaintiff could discharge her burden. The first argument of the defendants is that Exs.A1 to

A10 were fabricated after obtaining their signatures on blank papers. This argument has no force because PWs.1 and 2 clearly deposed that all the defendants were present and executed Exs.A1 to A10. Their evidence could not be shattered. As rightly pointed out by learned counsel for respondent/plaintiff, if really the documents were fabricated, the plaintiff would have mentioned entire 170 sq. yards in Ex.A1 and payment of entire sale consideration or substantial part thereof in Exs.A2 to A10 but that was not the case here. Further, the payments under Exs.A1 to A10 could be believed for the reason that PW3 avouched encashment of the instrument for Rs.5,500/- covered by Ex.A6 by D4 from the bank account of plaintiff. So, if D4 borrowed only Rs.5,000/- and blank documents were obtained by plaintiff, there was no reason for him to receive the subsequent amounts. Therefore, the theory put-forth by the defendants that Exs.A1 to A10 were fabricated can be discarded.

c) It should be noted that in the appeal the defendants sought to file some material documents which include the Xerox copies of blank stamp papers and blank signed papers. The defendants sought to establish that on the original of those blank signed stamp papers, Ex.A1 was fabricated. For many reasons this proposed material papers can not be accepted. Firstly, they have not sought to produce these documents along with Order XLI Rule 27 CPC petition. Secondly, they have not adduced any reason as to why these documents were not produced by them before the trial Court to establish their defence plea. Thirdly, it is not

explained how the defendants got Xerox copies of blank stamp papers and blank signed papers. So, the fabrication theory has no legs to stand. This Point is answered accordingly.

Now, it has to be seen in the point infra, as to whether the defendants executed Ex.A1 knowing its contents or they are mere attestors.

11) **POINT NO.2:** Since in point supra it was held that Exs.A1 to A10 were not fabricated, it is now to be seen whether Ex.A1 can be enforced against the defendants and the wife of D4. A perusal of Ex.A1 would show that only D4 and his wife —Pramila are mentioned as full owners and possessors of 42 sq. yards of plot consisting of one Mulgi and a small room in the premises bearing No.SRT No.344 and there is no mention about ownership of other defendants thereof. In such a case a genuine doubt would arise as to why signatures and thumb impressions of other defendants were obtained on Ex.A1.

The argument of learned counsel for respondent/plaintiff is that all the defendants and wife of D4 were present and after understanding the contents of Ex.A1 only they affixed their signatures and thumb impression and this fact was clearly deposed by PWs.1 and 2 and in that view, it cannot be said that D1 to D3 and D5 are mere attestors of Ex.A1. Alternatively, he argued that out of total extent of 170 sq. yards, D4 had 1/4th share which is equivalent to 45 sq. yards out of which, he agreed to sell 42 sq. yards of site along with one Mulgi and one room and the

other defendants in agreement thereof must have attested Ex.A1 and in that view, the plaintiff is entitled to decree for specific performance as observed by the trial court. He pointed out that plaintiff is always ready and willing to perform her part of contract and there were no laches on her part and on that ground also she deserves a decree. He further submitted that when the theory of fabrication is discarded, the genuinity of Exs.A1 to A10 can be accepted. He relied upon the decision of the Apex Court reported in ***Sugani v. Rameshwar Das***^[2]

a) Per contra, learned counsel for appellants/defendants argued that specific performance is an equitable relief and to obtain a decree the plaintiff must establish that he approached the Court with clean hands and performed his part of contract and in this process he cannot take advantage of the weakness in the defence of other side. He would argue that merely because the theory of fabrication propounded by the defendants is rejected, there cannot be an automatic conclusion that D1 to D4 and D5 took part in the sale agreement knowing its contents fully well and consented thereof. The plaintiff has to independently establish that fact as the burden lies on her. He argued that the plaintiff failed to establish that other defendants affixed their signatures and thumb impression as consenting parties to the transaction upon knowing its contents. Neither the recitals of Ex.A1 nor the evidence of PWs.1 and 2 will give such understanding. On the other hand, in Ex.A1 it is mentioned as if D4 and his wife alone are executants as being owners of 41 sq. yards of

site. When such is the case, the plaintiff has to explain as to why the other defendants were made to sign on the document. So, they can at best be called as attestors to Ex.A1 but not as executants. He vehemently contended that there is a lot of difference between an executant and attestor as the latter is not bound by the recitals of the document except having knowledge to the transaction and mere knowledge is not sufficient to bind him with the document. On this legal point he relied upon the decision of this Court reported in ***S.Kondaiah v. C.Sreenivasa Rao***^[3]. He submitted that unfortunately trial Court without understanding the distinction between executant and attestor has erroneously held as if all the defendants executed the sale agreement after coming to the conclusion that sale agreement was not a fabricated document.

b) In the light of above rival arguments, the crucial aspect is whether D1 to D3 and D5 joined in Ex.A1 as executants after knowing its contents or whether they were mere attestors to the document.

c) As rightly pointed out by appellant/defendants, the relief of specific performance is an equitable relief and the party who claims such relief shall approach the court with clean hands and establish his case without depending on the weakness of the other side. In that view, merely because Ex.A1 is held not a fabricated document, there cannot be an automatic conclusion that D1 to D3 and D5 are consenting parties to it. The burden is on the plaintiff to establish that

after fully knowing about the contents they endorsed their signatures and thumb impression on Ex.A1. As already stated supra, in Ex.A1 only D4 and his wife are shown as full owners and possessors of 42 sq. yards of plot along with one Mulgi and a small room and there is no mention about the ownership of other defendants. When the other defendants are not shown as owners of the plot, the burden will be on the plaintiff to explain as to what made the other defendants to join in the document. Though PWs.1 and 2 in their evidence have plainly stated that all the defendants executed Ex.A1—sale agreement, they did not explain the reason for other defendants to endorse their signatures and thumb impressions on Ex.A1. The trial Court presumed that since the portion of the site and rooms proposed to be sold by D4 comprise his 1/4th share in the total extent of 170 sq. yards, himself and his wife were shown as owners of the said property and other defendants too joined in the document as consenting parties. When such recital is not there in Ex.A1 nor spoken by PWs.1 and 2 it is not permissible to draw such inference. Therefore, D1 to D3 and D5 can at best be held as mere attestors but not executants of Ex.A1. As rightly argued by learned counsel appellants/defendants, there is a marked difference between an attestor and executant of a document.

12) In **S.Kondaiah's** case (3 supra) a learned single Judge of this High Court observed thus:

“The terms of the agreement are binding on the executant, and none else. The role played by the witness is nothing, but the one, connoting his or her presence at the time of the

transaction. At the most, one can attribute knowledge of the transaction, to the witness. The terms of a contract are not binding on every one who knows the transaction. By no stretch of imagination, a witness can be treated, or become a party to the transaction, nor would he be bound by the terms of the contract."

13) In the case of **Smt. Chandrakantaben vs. Vadilal Bapalal Modi**^[4] the Honourable Apex Court reiterated the same point and held that there is no presumption that an attesting witness of a document must be assumed to be aware of its contents.

14) In **Ramesh Chander v. Budha Singh**^[5] the High court of Punjab and Haryana held that mere attestation will not act as estoppel. The Punjab and Haryana High Court relied upon the decisions reported in **Pandurang Krishnaji v. M.Thukaram**^[6] and **Chandrakantaben's** case (4 supra). It extracted the observation of the Privy Council reported in **Pandurang Krishnaji's** case (6 supra) thus:

"And then further issue is raised as to whether he attested with knowledge and consented to the transfer. Before their Lordships consider the circumstances in which that attestation took place, they think it is desirable to emphasize once more that attestation of a deed by itself estops a man denying nothing what ever excepting that he has witnessed the execution of the deed. It conveys neither directly nor by implication any knowledge of the contents of the document and it ought not to be put forward alone for the purpose of establishing that a man consented to the transaction which the document effects. It is, of course possible as was pointed out by their Lordships in the case of Banga Chandra Dhur Biswa v. Jagat Kishore Acharya Chowdhuri A.I.R. 1916 P.C. 110 that an attestation may take place in circumstances which would show that the witness did in fact know of the contents of the document but no such knowledge ought to be inferred from the mere fact of the attestation."

So, the precedential jurisprudence on the legal issue tells us that mere attestation of a document is not a proof of the attestor knowing the contents and consented. Such proof is to be independently established. In the instant case, as already pointed out supra, the documents spelled out as if D4 and his wife alone are owners of the subject matter of sale and they alone were shown as executants. No doubt, PWs.1 and 2 deposed that all the defendants and wife of D4 were present and executed the document but that is not a sufficient explanation for the question as to why the other defendants were made to affix their signatures and thumb impression when they were not allegedly the owners of the property. The trial court made an endeavor by presuming that D4 and his wife are owners of 1/4th of joint family property and hence they were shown as executants and other defendants as consenting parties. When that fact is not borne out either in pleadings or in the oral and documentary evidence, in my considered view, the court cannot make such presumption. Admittedly, the suit property is a joint family property devolved upon the defendants through K.Yellaiah, the husband of first defendant. Hence, D3, D4, D5 and husband of D2 and late Yellaiah were coparceners and no division took place among them. Further, though the plot was allotted to Yellaiah by Commissioner of Labour, Government of Andhra Pradesh on 08.06.1989, the same was not registered in his favour or in favour of defendants after his demise. So, the defendants have only possessory title in respect of suit property. In this backdrop, D4 and his wife should not have

ventured to alienate a part of suit property without the consent of other defendants. Added to it, in the course of road widening, about 60 sq. yards of site was already lost by the defendants. So, the remaining extent would be roughly 100 to 110 sq. yards. Out of which if 42 sq. yards is to be sold to the plaintiff, it will be difficult for the defendants to make a living in the remaining portion as submitted by the counsel for appellants/defendants. Unfortunately, the trial Court has not taken into consideration all the above facts. Merely because the plaintiff is ready and willing to perform her part of contract, that itself is not sufficient to grant equitable relief particularly when she failed to establish that the defendants are full-fledged owners of the property and that the other defendants have consented for the transaction and further, allowing specific performance cause undue hardship to the defendants. Hence, the plaintiff is not entitled to specific performance but having regard to the circumstances of the case, she deserves refund of advance money from D4. This point is answered accordingly.

15) In the result, this appeal is allowed and decree and judgment in O.S.No.588 of 1999 on the file of V Senior Civil Judge, City Civil Court, Hyderabad is set aside and D4 is directed to refund the advance amount of Rs.27,000/- to plaintiff with interest @ 6% p.a. from the date of filing suit till realization. No costs in the appeal.

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

Date: 07.01.2016

Eha/Murthy

[\[1\]](#) 2011 (3) ALD 774

[\[2\]](#) 2006 4) ALD 41 (SC)

[\[3\]](#) 2011 (4) ALD 577

[\[4\]](#) AIR 1989 SC 1269

[\[5\]](#) (2003) 135 PLR 840 = MANU/PH/0818/2003

[\[6\]](#) AIR 1922 PC 20