

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

APPEAL SUIT No.778 OF 1997

AND

APPEAL SUIT No.61 OF 2002

COMMON JUDGMENT:

These two Appeals are separately preferred, by the defendants, against the decree and judgment dated 23.04.1997, passed in Original Suit No.18 of 1989, on the file of the Court of Subordinate Judge, Kovvur, West Godavari District (for short, 'the trial Court') wherein the suit filed by the plaintiff for the primary relief of specific performance of agreement of sale dated 09.12.1985, or the alternative relief of refund of advance sale consideration of Rs.5,000/- with interest at 12½% thereon and damages of Rs.50,000/- totally an amount of Rs.56,897/-, is decreed, granting primary relief of specific performance.

2. For convenience of reference, the ranks given to the parties before the trial Court will be adopted throughout this common judgment.

3. The case of the plaintiff, in brief, is that the 1st defendant is the owner of the schedule property. As the 1st defendant and her husband became old and their children became inimical to them, they could not cultivate their agricultural land, wanted to convert their immovable property into cash, to utilize the same for their better peaceful living, offered to sell the schedule property to the plaintiff and the plaintiff settled the bargain at Rs.10,000/- per acre, paid an amount of Rs.5,000/- on the date of agreement towards advance, while agreeing to pay balance sale consideration on or before 15.04.1986. Though the plaintiff is ready and willing to perform his part of obligation, the 1st defendant postponed execution of registered sale deed, and put the

plaintiff in possession of the schedule property, in pursuance of the agreement dated 09.12.1985.

4. The male children of the 1st defendant opposed sale of the schedule property and obstructed the 1st defendant, at every moment. Thereupon, the 1st defendant along with the plaintiff herein filed O.S. No.220 of 1986 on the file of the Court of Principal District Munsif, Kovvur, for permanent injunction and on contest, injunction was granted restraining sons of the 1st defendant from interfering with the schedule property. The 2nd defendant, Venkata Swamy, who is none other than the son of the 1st defendant, set up a false case of tenancy to defeat the plaintiff's agreement, preferred Appeal which ended in dismissal. Hence, he was impleaded as proper and necessary party to the proceedings in the suit.

5. As the 1st defendant was in continuous possession and enjoyment of the schedule property, the plaintiff expressed his readiness and willingness by 25.04.1986 to pay balance sale consideration and obtain regular registered sale deed, the 1st defendant represented that due to pendency of suit in O.S. No.220 of 1986, the plaintiff herein waited to get the obstruction, caused by sons of the 1st defendant, removed by order of the Court. After grant of permanent injunction by the Principal District Munsif, Kovvur in O.S. No.220 of 1986, the plaintiff demanded the 1st defendant personally and through her husband to receive balance of sale consideration and execute regular registered sale deed, but she postponed the same on one pretext or the other. In those circumstances, about 20 days prior to filing of the suit, the plaintiff requested the 1st defendant to execute registered sale deed by receiving balance sale consideration, but the 1st defendant did not co-operate. Thereupon, the plaintiff got issued a legal notice dated 12.12.1986, receipt of the same was acknowledged

by the 1st defendant, but did not come forward to execute registered sale deed by receiving balance sale consideration. Hence the plaintiff, having no other alternative, approached the trial court for the aforesaid reliefs.

6. The 1st defendant filed written statement admitting execution of agreement of sale, but explained under what circumstances she executed agreement of sale, while specifically contending that the schedule property was in possession of the 2nd defendant, who caused endless troubles to her regarding payment of rent and eviction. Under such circumstances, the plaintiff, who happened to know the 1st defendant, assured that he can easily get rid off strangle-hold of the 2nd defendant, if a particular strategy is adopted. Accordingly, the 1st defendant nominally executed agreement in favour of the plaintiff allegedly agreeing to execute sale deed, on receipt of balance of sale consideration, incorporating usual terms. Thereafter, the plaintiff and the 1st defendant jointly filed the suit against the 2nd defendant for permanent injunction to restrain him from interfering with the possession of the 1st defendant and her vendee, the plaintiff herein. To achieve the plan hatched by the 1st defendant, her husband-Akkayya took her to Chinnaigudem, and made her to execute agreement of sale. She denied settlement of any bargain at Rs.10,000/- per acre for sale of property and receipt of Rs.5,000/- as advance. She further contended that the time fixed for payment of balance sale consideration is only to give colour of reality to a nominal transaction. Thus, the agreement of sale dated 09.12.1985 is sham, nominal and never intended to act upon, but aimed to ward off the contingency that arose at that moment. Hence, the agreement of sale is not enforceable under law.

7. The 1st defendant simply acted as per the fraudulent intention

of the plaintiff in the scheme, at every stage, in the Court proceedings in O.S. No.220 of 1986, to avoid immense troubles from her children, who did not allow her to enjoy her own property. As such, she entered into sham and nominal transaction, which is un-enforceable under law. This defendant never promised to execute any registered sale deed nor was there any occasion to make such promise. The question of readiness and willingness would arise only if the agreement is real and intended to act upon. The tenancy set up by the 2nd defendant is genuine and not intended to defeat the plaintiff's claim based on the agreement of sale; filing of suit in O.S. No.220 of 1986 is only colourable device to get rid off the 2nd defendant, who was obstructing her and on the strength of the pleadings in O.S. No.220 of 1986, the agreement cannot be inferred, since it was obtained by practicing fraud on the 1st defendant.

8. The plaintiff approached the Court with abnormal delay and never paid any amount under the agreement of sale; thereby, the question of delivery of possession to the plaintiff by the 1st defendant and execution of registered sale deed, receiving balance sale consideration does not arise. The claim of the plaintiff for recovery of damages is not based on any material and finally prayed to dismiss the suit.

9. The 2nd defendant filed detailed written statement. However, the relevant contentions which decide the suit therein are only adverted to herein. The 2nd defendant denied the execution of agreement of sale, by taking advantage of old age of his parents; the plaintiff engineered the agreement of sale to knock away the suit schedule property and filed the suit in O.S. No.220 of 1986 along with the 1st defendant with false allegations. By the year 1975, father of the 2nd defendant alone was not able to cultivate the schedule property

and other family property, the 2nd defendant and his brothers used to cultivate the schedule property. However, the 2nd defendant's father, Akkaiah, being the litigious person, with the support of his eldest son filed O.S.No.18 of 1978 for partition; and in the said suit, the suit property was allotted to the share of the 1st defendant. Since then A. Suryaprakasarao, eldest brother of the 2nd defendant and the 2nd defendant are cultivating the same on sharing basis. Later, differences arose between the 1st and 2nd defendants and again 1st defendant filed O.S. No.47 of 1983 against him for possession, the suit document is a collusive document, not intended to act upon. As the 2nd defendant himself was ready and willing to purchase the schedule property as per the prevailing market value and as per the provisions of Andhra Pradesh (Andhra Area) Tenancy Act, 1956, it is contended that the brother-in-law of 2nd defendant and other sisters wanted to knock away the money and the property registered in the name of his parents, they might have brought into existence the alleged agreement of sale dated 09.12.1985 but the document is a *void* one.

10. The oral tenancy between defendants 1 and 2 is within the personal knowledge of the plaintiff since 1985 and the plaintiff himself is responsible for the entire litigation as she deprived the 2nd defendant and his brothers from enjoying the schedule property to knock away the same by the plaintiff at a throw-away price; as the value of the land increased manifold, the earlier suit in O.S. No.47 of 1983 was compromised and the 2nd defendant was continuing in possession and enjoyment of the schedule property on lease for an amount of Rs.2,800/- per year from the year 1984-1985, the 2nd defendant is not liable to execute the registered sale deed and deliver vacant possession of the schedule property to the plaintiff and, in fact, no relief was claimed against him and thereby no decree can be passed and the suit is liable for dismissal; accordingly, prayed for

dismissal of the suit.

11. On the basis of above pleadings, the trial Court framed 4 issues, including 2 additional issues on 15.09.1995, which are as follows:

1. Whether the agreement of sale, set up by the plaintiff was executed in the circumstances mentioned in the written statement and it is only a nominal document?
2. Whether any consideration was paid or received at the time of agreement as alleged by them?
3. Whether the first defendant was joined as a party in O.S. No.220 of 1986 on account of misrepresentation or played fraud by the plaintiff?
4. To what relief?

Additional issues:

1. Whether the suit agreement of sale is binding on the defendant No.2?
2. Whether the alleged tenancy pleaded by the second defendant is true and if so the suit is not maintainable against him?

12. During course of trial, on behalf of the plaintiff, P.Ws.1 to 5 were examined and Exs.A-1 to A-11 were marked. On behalf of the defendants, D.Ws.1 to 5 were examined and Exs.B-1 to B-4 and Exs.X-1 to X-4 were marked.

13. Upon hearing argument of both the counsel, considering oral and documentary evidence available on record, the trial Court decreed the suit, wherein the operative portion reads as follows:

“.....the suit is decreed for specific performance of agreement of sale dated 09.12.1985 with costs. The plaintiff shall deposit the balance of sale price payable to the first defendant into the court on or before 02.05.1997 and on such deposit being made, the first defendant shall receive the said amount and execute a registered sale deed in favour of the plaintiff for the suit land and both defendants shall put him in

possession of the same, failing which the plaintiff is at liberty to obtain a sale deed and possession through process of law.”

14. Aggrieved thereby, the 1st defendant preferred Appeal Suit No.778 of 1997. During pendency of the Appeal, the 1st defendant-appellant died and A. Nagalaxmi was brought on record as her legal heir *vide* order of this Court in A.S.M.P.No.1521 of 2006 dated 14.08.2006. The 1st defendant-appellant raised the following specific contentions in the grounds of Appeal:

- a) The trial Court did not consider the specific plea of the 1st defendant that Ex.A-1, agreement of sale, is a sham and nominal document and not intended to act upon, with reference to the evidence available on record;
- b) The trial Court did not appreciate evidence of PW.5 scribe of Ex.A-1. According to his evidence, no attestors were present at the time of execution of Ex.A-1 at his residence; except PW.2 no other person attested the same but the attestors signed on the document, on the ground of material alteration, the trial Court would have rejected the relief of specific performance;
- c) Ex.A-1 is not supported by any consideration and the alleged advance payment under Ex.A-1 is false as per the evidence of PW.5, at whose residence Ex.A-1 was executed, but the trial Court totally ignored the admission of PW.5 and passed the decree erroneously;
- d) The trial Court did not appreciate the evidence adduced by the defendants to establish that Ex.A-1 was executed nominally and not intended to act upon and under what circumstances O.S. No.220 of 1986 was filed obtaining thumb impression of the 1st defendant. The trial Court totally ignored the oral evidence adduced and accepted the contention of the plaintiff erroneously. Thus,

the trial Court failed to appreciate the evidence on record in proper perspective and requested this Court to reappraise the evidence, to come an independent conclusion and prayed to set aside the decree and judgment under challenge.

15. The 2nd defendant feeling aggrieved by the decree and judgment preferred Appeal Suit No.61 of 2002. During pendency of Appeal, Appeal against the 1st defendant-2nd second respondent herein was dismissed for default on 18.10.2011. The contentions raised by the 2nd defendant-appellant in the grounds of Appeal are as follows:

- a) The trial Court did not consider oral and documentary evidence to come to a conclusion that the 2nd defendant is in possession and enjoyment of the schedule property on the date of execution of Ex.A-1, the said fact was admitted by PW.2, and committed an error in arriving at a specific conclusion while directing both the defendants to put the plaintiff in possession of the property;
- b) The trial Court ignored the circumstances under which O.S. No.47 of 1983 was filed and, in fact, it was only due to disputes between the 1st defendant and her sons and did not appreciate various circumstances which led the parties to file O.S. No.47 of 1983 and O.S. No.220 of 1986;
- c) The trial Court also failed to consider specific contention that Ex.A-1 was brought into existence in various circumstances narrated by the 1st defendant and on the strength of such sham and nominal document, which is not supported by any consideration, a decree cannot be passed, but the trial Court erroneously held

the issues in favour of the plaintiff and against the defendants, ignoring the relationship between the defendants. The Special Officer under the A.P. Tenancy Act alone is competent to pass eviction order against the 2nd defendant. Even after the alleged execution of agreement of sale, the 2nd defendant alone is tenant under the A.P. Tenancy Act, in occupation of the property and his possession cannot be disturbed by passing any decree in the absence of any specific claim in the plaint and prayed to set aside the decree and judgment passed against him.

16. During course of argument, Mr. K. Chidambaram, learned counsel for the 1st defendant-appellant in A.S. No.778 of 1997, while reiterating the contentions raised before the trial Court urged in the grounds of Appeal, drawn the attention of this Court to several paragraphs in the evidence of PWs.1 to 5, to probablize that Ex.A-1 was executed nominally and not intended to act upon and no consideration was passed, thereby agreement of sale Ex.A-1 is not enforceable under law. Yet, another improbability is brought to the notice of this Court that prevailing market rate of the property covered by Ex.A-1 was Rs.5,000/- per acre, but the plaintiff allegedly purchased the property at Rs.10,000/- per acre, though it is in litigation, which is not in dispute between 1st and 2nd defendants regarding tenancy. In the ordinary course of events, when the property is in litigation, no third party would come forward to purchase the property for more than the market value. That itself is suffice to disbelieve the case of the plaintiff regarding execution of Ex.A-1.

17. He further contended that the trial Court did not frame any issue though the 1st defendant in clear terms denied readiness and willingness of the plaintiff, as mandated under Section 16(c) of the

Specific Relief Act, 1963 (for short, 'the Act of 1963'), but recorded a finding without affording any opportunity to the 1st defendant to rebut the evidence adduced by the plaintiff to establish his readiness and willingness. On this ground also, the Appeal is liable to be allowed setting aside the decree and judgment or in the alternate, a direction is required to be given to the trial Court, by exercising power under Order XLI Rule 33 of the Code of Civil Procedure, 1908 (for short, 'the C.P.C.'), to frame an issue, permit the parties to adduce evidence and send the finding recorded thereon.

18. The trial Court granted a decree for specific performance against the 1st defendant-appellant though the plaintiff failed to establish his readiness and willingness to pay balance of sale consideration to obtain registered sale deed, so also the enforceability of Ex.A-1 under law. Apart from granting the relief of specific performance, the trial Court directed both the defendants to put the plaintiff in possession of the property, after receiving balance sale consideration and execute regular registered sale deed in terms of Ex.A-1, though no relief was claimed against the 2nd defendant in the plaint, the trial Court granted decree against the 2nd defendant, erroneously. The trial Court also failed to consider the limitation aspect. Finally, learned counsel requested this Court to re-appraise entire evidence to come an independent conclusion, set-aside the decree and judgment under challenge, and dismiss the suit against the 1st defendant, by allowing this Appeal.

19. In support of his contention, learned counsel placed reliance on the decisions of the Apex Court reported in ***Ahmmadsahab Abdul Milla (dead) by proposed L.Rs. Vs. Bibijan and others***^[1], ***Hotel Asrani Private Limited, Secunderabad Vs. Trilok Singh (died) per L.R. and another***^[2], ***Daparthi Seetharamayya and others Vs. Kurukuri Chinna Satyam @ Chinna Sathi Raju and another***^[3], ***M.***

***Rangaiah Vs. T.V. Satyanarayana Rao and another*^[4], *Malireddy Butchiramanna Dora and another Vs. Dasari Veerabhadra Rao and another*^[5], *Chennupati Satyanarayana Vs. Mundru Venkateswarlu (died) and Others*^[6].**

20. Learned counsel for the 2nd defendant contended that the second defendant is not proper and necessary party and on account of mis-joinder of 2nd defendant to a suit for specific performance, in the absence of any privity of contract, the suit is liable to be dismissed. The 2nd defendant is only a third party to the agreement and by executing the agreement of sale, rights of the third party cannot be decided in a suit for specific performance.

21. One of the major contentions of the 2nd defendant is that the document was meddled or altered by obtaining signatures of the attesters subsequently, and on this ground alone, the plaintiff is not entitled to claim the relief of specific performance, which is purely discretionary under Section 20 of the Act of 1963.

22. The suit was filed belatedly on 18.12.1988 and no explanation was offered for the delay and no evidence adduced. In the absence of any explanation for the delay, both the in the pleadings and evidence, the suit is liable to be dismissed, as it was filed beyond three years from the date of agreement; the suit is liable to be dismissed as it is barred by limitation. It is further contended that an endorsement was brought into existence to save limitation with the consent of the 1st defendant, though it was not signed. When the plaintiff is guilty of misconduct, he is not entitled to claim discretionary relief of specific performance. Thus, both the defendants challenged the decree on four grounds viz., agreement of sale is not genuine, the agreement is not binding on the 2nd defendant as there is no privity of contract between

himself and the plaintiff, the suit claim is barred by limitation as it was filed beyond three years from the date of execution of Ex.A-1 and the plaintiff did not approach the Court with clean hands to claim discretionary relief. Finally, it is contended that the most improbable circumstance regarding the value of the property on the date of execution of Ex.A-1 and the un-ending litigation between defendants 1 and 2 regarding the rights of the property, approaching Court by the plaintiff with false allegation that the 1st defendant alone is in possession of the property, disentitled to claim relief of specific performance, but the trial Court did not consider any of these contentions and committed an error in passing decree against the 2nd defendant; finally, requested this Court to reappraise entire evidence with specific contentions raised before this Court and set-aside the decree and judgment passed against the 2nd defendant.

23. *Per contra*, Sri V.L.N.G.K. Murthy, learned counsel for the plaintiff-respondent, argued totally in support of the findings recorded by the trial Court and drawn attention of this Court to various judicial admissions in the earlier round of litigation between the plaintiff and 1st defendant as one set and the 2nd defendant as another set in O.S. No.220 of 1986, which clinchingly establishes the execution of agreement of sale, receipt of Rs.5,000/- as advance, while agreeing to execute registered sale deed on receipt of balance sale consideration.

24. The improbable circumstance pointed out by the learned counsel for the defendants is not sufficient to reject the plaintiff's claim for specific performance and, consequential relief of recovery of possession and it is for the plaintiff to settle the bargain and mere agreeing to purchase the property at Rs.10,000/- per acre though the market value by the date was Rs.5,000/- per acre, is not a ground to set aside the decree.

25. The learned counsel for the 2nd defendant in support of his contention placed reliance on the decisions reported in ***M. Rangaiah***^[4], ***Anil Kumar Singh Vs. Shivnath Mishra Alias Gadasa Guru***^[7], ***Mumbai International Airport Private Limited Vs. Regency Convention Centre and Hotels Private Limited and Others***^[8], ***Lavu Sri Krishna Rao and others Vs. Dr. Moturi Nagendra Rao***^[9], ***M. Harinarayana @ Haribabu Vs. Smt. P. Swaroopa Rani***^[10], ***Bal Krishna and another Vs. Bhagwan Das (Dead) by Legal Representatives and Others***^[11].

26. The 2nd defendant is admittedly not a party to the agreement of sale and there is no privity of contract between the plaintiff and 2nd defendant; no specific performance was claimed against the 2nd defendant and thereby the 2nd defendant is not entitled to raise various contentions regarding genuineness of agreement of sale, limitation and the plaintiff's approach to the Court with un-clean hands, in view of bar under Section 9 of the Act of 1963. Apart from that, the contentions raised before this Court during argument are not based on or without any factual foundation in the pleadings, so also in the grounds of Appeal. Therefore, such contentions require no consideration by the appellate Court. Insofar as the contentions of the 1st defendant is concerned, the matter cannot be remanded or call for any finding from the trial Court, since both the parties went on trial, knowing the issues involved therein and adduced evidence in support of their contentions, with regard to requirement under Section 16(c) of the Act of 1963 and this Court without calling for any finding or remanding the matter based on sufficient evidence available on record, record a finding about readiness and willingness pleaded by the plaintiff to pay balance sale consideration to obtain registered sale deed. Finally, it is contended

that when the trial Court came to a conclusion that the 2nd defendant is in possession and enjoyment of the property, directed both the defendants to deliver vacant possession and as such there is no error much less error on fact or on law, which warrants interference of this Court to set-aside or modify the decree passed by the trial Court and prayed to dismiss both the Appeals confirming the decree and judgment of the trial Court in all respects.

27. Considering rival contentions and perusing the material available on record, the points that arise for consideration are:

1. Whether the agreement of sale, Ex.A-1, is a sham and nominal document, not intended to act upon? If not, whether the agreement of sale is enforceable under law?
2. Whether the plaintiff claimed both reliefs of specific performance of agreement of sale and recovery of possession of property? If so, whether they are barred by limitation?
3. Whether the plaintiff was ready and willing to perform his part of obligation under Ex.A-1?
4. Whether under the agreement of sale, Ex.A-1, the 2nd defendant is bound to put the plaintiff in vacant possession of the property, though there is no contractual obligation with the plaintiff to do so?
5. Whether the plaintiff approached the court suppressing any facts? If so, is he disentitled to claim the discretionary relief of specific performance of agreement of sale, Ex.A-1?
6. Whether Ex.A-1 is materially altered by the plaintiff?

28. **POINT No.1** The first and foremost contention of learned counsel for the plaintiff is that the 1st defendant executed an agreement of sale; as the 1st defendant and her husband became old

and unable to cultivate the schedule property, bargain was settled by the plaintiff at Rs.10,000/- per acre, obtained agreement of sale from the 1st defendant, whereunder the 1st defendant agreed to sell the property and execute regular registered sale deed, on receipt of balance sale consideration. The 1st defendant contended that the agreement of sale was not intended to act upon and it was only a sham and nominal document, executed in favour of the plaintiff to ward off any threat from the 2nd defendant. Similarly, the 2nd defendant also contended that the agreement is not binding on him and it was only a sham and nominal document, the 1st defendant never executed any such agreement - Ex.A-1. In fact, the specific plea in the 2nd paragraph of the written statement of the 1st defendant is that she executed agreement of sale in favour of the plaintiff as the 2nd defendant was giving endless troubles to her regarding payment of rent and eviction. The plaintiff is a person, who had acquaintance with the 1st defendant, stating that he can get rid off the strangle-hold, the plaintiff and the husband of 1st defendant took the 1st defendant to Chinnayagudem, the house of the scribe, executed agreement of sale nominally in his favour incorporating usual terms but denied the settlement of bargain and receipt of advance *etc.*,

29. The plaintiff claimed relief of specific performance only against the 1st defendant and the 2nd defendant was impleaded only as proper party, since he is claiming tenancy over the schedule property with the 1st defendant, as per the last sentence in paragraph 4 of the plaint; the said fact was not denied in one way or the other by the defendants specifically in their written statements. Thus, it is clear from the pleadings of the plaintiff that the 2nd defendant was only a proper party. In paragraph 10 of the plaint, the plaintiff specifically claimed a decree for specific performance against the 1st defendant and delivery

of possession against both the defendants. Thus, it is clear from the relief claimed in the plaint, relief of specific performance was claimed against the 1st defendant and the trial Court granted the same. At this stage, it is better to advert to Section 9 of the Act of 1963, which deals with the defences available to a party in a suit for specific performance based on contract. According to it, where any relief is claimed under Chapter-II of the Act of 1963 in respect of a contract, the person against whom the relief is claimed may plead by way of defence any ground which is available to him under any law relating to contracts. Section 9 of the Act of 1963 prescribes various defences that are open to the defendants, in a suit for specific performance, under law relating to contracts. As such the 1st defendant, against whom the relief of specific performance is claimed, can raise any plea under the law relating to contracts like incapacity of the parties, absence of concluded contract *etc.*

30. Since the relief of specific performance, under Chapter-II of the Act of 1963, is claimed against the 1st defendant alone, the 2nd defendant is not competent to raise any defence that is available under the Indian Evidence Act, 1872 (For short, 'the Act of 1872'). In view of the interdict under Section 9 of the Act of 1963, defences set up by the 2nd defendant, against whom no relief of specific performance was claimed, needs no consideration and, thus, the defence can altogether be ignored. When the 1st defendant, while admitting execution of agreement of sale, contended that Ex.A-1 was executed nominally under the circumstances narrated in her written statement, she has to prove her specific case by adducing cogent and satisfactory evidence. If she is able to establish, then the onus of proof will shift to the plaintiff to prove that Ex.A-1 is genuine and enforceable under law.

31. The 1st defendant was examined as DW.1. In her examination-in-chief, she totally resiled from the plea raised in her written

statement, testified that the 2nd defendant used to pay rent, as the scheduled property was leased out to him, and as he delayed payment of rent for one year; thereupon, herself and her husband enraged by the delay caused by 2nd defendant, approached father of PW.1 and sought his suggestion to evict the 2nd defendant from the land; thereupon, father of PW.1 advised husband of 1st defendant, Akkayya, to obtain her thumb impression on blank paper and he would see rest of the things. By that time there were disputes between herself and her sons, as they were unable to provide any maintenance to her. She further testified that she does not know what transpired between her husband and the plaintiff's father. Few days later, her husband took her to Chinnayyagudem, there the plaintiff and her father asked her to put her thumb impression on a paper; accordingly, she put her thumb impression on the paper without going through the contents, she does not know whether it is lease deed or agreement before obtaining thumb impression, and no amount was paid much less Rs.5,000/- as advance on the date of affixing her thumb impression on the document. The evidence adduced by the plaintiff is self contradictory, since her specific plea was that she was taken to Chinnayyagudem, to the house of scribe, where she executed agreement of sale, (*vide* para 2 of the written statement). If really, she affixed her thumb impression, at the house of plaintiff and his father, at their request, she would have pleaded the same in the written statement. On the contrary, her consistent contention in the written statement is that she nominally executed an agreement of sale in favour of the plaintiff, agreeing to execute registered sale deed, incorporating the usual terms and both the plaintiff and 1st defendant, filed a suit for injunction and that she was taken to Chinnayyagudem made to execute agreement referred in the suit. It is clear from the plea of the 1st defendant that she executed an agreement of sale, but totally changed her version in her examination-in-chief contending that she was made to affix her thumb

impression on a paper without disclosing the contentions of the document. Therefore, the evidence of DW.1 is contrary to the plea set up by her regarding the circumstances under which she executed agreement of sale.

32. Curiously, she admitted about filing of suit in O.S. No.220 of 1986 in her written statement and the 2nd defendant also admitted about filing of suit in O.S. No.220 of 1986. At this stage it is relevant to advert to the contents of plaint in O.S. No.220 of 1986 on the file of District Munisif Court, Kovvur. The Certified Copy of the plaint in O.S. No.220 of 1986 was marked as Ex.A-2. In paragraph 4 of Ex.A-2, she specifically admitted as follows:

“4. Under these circumstances, the first plaintiff and her husband became very old and they are unable to cultivate the plaint schedule property land the first plaintiff thought of disposing the plaint schedule property and deposit the sale proceeds in a bank and live peacefully of the interest that will be earned on the deposit. With that view in mind she put up the plaint schedule property for sale. The second plaintiff agreed to purchase the same and the bargain was settled at Rs.10,000/- per acre and a written agreement of sale was also executed by the first plaintiff in favour of the second plaintiff and the second plaintiff paid an advance of Rs.5,000/- to the first plaintiff and an agreement was written on stamped paper on 09.12.1985. The time was fixed for specific performance of agreement of sale by 15.04.1986. By the time the first plaintiff has to get the land measured and deliver the possession of the same to the second plaintiff and register the sale deed and put the second plaintiff in possession of the property. The defendants are not willing for the first plaintiff selling the plaint schedule property and they wanted to put some spokes in the transactions. As the time for execution of the sale deed is coming nearer the plaintiffs with the help of elders since two days have been attending to the measurements of the land and proceed with the execution of the sale deed.”

33. The admission made in the plaint in O.S. No.220 of 1986, marked as Ex.A-2, is a judicial admission. In the admission made in

the earlier litigation, the 1st defendant along with the plaintiff in O.S. No.220 of 1986 asserted that the 1st defendant executed an agreement of sale in favour of the plaintiff agreeing to sell the schedule property at the rate of Rs.10,000/- per acre, obtained interim injunction against the 2nd defendant, who is no other than her son, alleging that he was causing troubles to her but the suit was dismissed finally, as it was not prosecuted by the 1st defendant herein. Exs.A-3 and A-4 are the certified copies of decree and order in I.A. No.1018 of 1986 in O.S. No.220 of 1986. These documents would clinchingly establish that the 1st defendant admitted execution of the agreement of sale Ex.A-1 in favour of the plaintiff. Having obtained an interim injunction, she cannot now resile from her admission to contend that Ex.A-1 was nominally executed to ward off litigation or threats by the 2nd defendant, who is no other than her son; At one stage, she admitted that she executed agreement of sale and obtained necessary order from the Courts and when the plaintiff filed the suit, she totally went back and set-up a different theory to avoid execution of agreement of sale, which is nothing but playing fraud on the Court in obtaining interim injunction in I.A. No.1018 of 1986 in O.S. No.220 of 1986. Now she cannot be allowed to approbate and reprobate having acted upon Ex.A-1, making the plaintiff to believe that she executed agreement of sale with an intention to sell the same by applying the principle of estoppel by conduct and admission.

34. The admissions made in earlier proceedings are sufficient to uphold execution of agreement of sale, Ex.A-1 in favour of the plaintiff by the 1st defendant with an intention to act upon. If really, she had no intention to sell the property and to act upon Ex.A-1, she would not have filed the suit asserting execution of agreement of sale in favour of the plaintiff in O.S. No.220 of 1986. Suddenly, she invented a story that the plaintiff herein obtained her thumb impression on the plaint and

filing of the same in O.S. No.220 of 1986, which is not denied by any pleading in the entire plaint. Therefore, in the absence of any pleading, the evidence adduced by the 1st defendant to contend that the plaintiff himself utilized the signed papers to file plaint *etc.*, cannot be believed since it is an afterthought. It appears that she invented this theory only to avoid execution of regular registered sale deed in pursuance of Ex.A-1. When the unequivocal admission made by the 1st defendant with regard to execution of Ex.A-1 in the earlier round of litigation in O.S. No.220 of 1986 comes to the present case, she made a qualified admission in the written statement.

35. Admission is the best piece of evidence. Admissions are of two types one is judicial admission and the other is evidentiary admission. In the instant case on hand, a qualified judicial admission in the written statement and in evidence was made by the 1st defendant. Admissions are not conclusive proof but the admissions may estopp a person who made such admission under Section 31 read with Section 18 of the Act of 1872. Moreover, the judicial admission is on different footing than the evidentiary admission. When a judicial admission, regarding particular fact in issue, is made in the pleadings, such fact need not be proved by adducing any evidence, in view of Section 58 of the Act of 1872.

36. It is settled principle of law that admission is the best piece of substantive evidence that an opposite party may rely upon though not conclusive is decisive of the matter unless successfully withdrawn or proved erroneous. Admission may in certain circumstances, operate as an estoppel. The question which needs to be considered is what weight is to be attached to an admission and for that purpose it is necessary to find out as to whether it is clear, unambiguous and a relevant piece of evidence, and further it is proved in accordance with the provisions of the Act of 1872. It would be appropriate that an

opportunity be given to the person in cross-examination to tender his explanation and clear the point on the question of admission.

37. In ***Sita Ram Bhau Patil Vs. Ramachandra Nago Patil (dead) by L.Rs. and another***^[12], ***Nagubai Ammal and others Vs. B. Shama Rao and others***^[13] the Apex Court placing reliance on *Slatterie Vs. Pooley* observed that admission made by a party is admissible as best evidence, unless it is proved that it had been made under a mistaken belief, when a party himself admits to be true, may reasonably be presumed to be so.

38. In ***Union of India Vs. Ibrahim Uddin and another***^[14], after reviewing the entire law laid down earlier, the Apex Court concluded that the admission is the best piece of evidence.

39. In view of plethora of parallel citations and perceptive pronouncements of the Apex Court, coupled with Section 58 and Section 31 Read with Section 18 of the Act of 1872, it is abundantly clear that the judicial admission made by the party need not be proved and it estopps the person who made such admission to contend otherwise, unless it is proved that admission is false or explained in the evidence. Therefore, admission made by the 1st defendant regarding execution of Ex.A-1 and enforcing her right joining with the plaintiff herein as one of the plaintiffs in O.S. No.220 of 1986 indicates that she executed Ex.A-1 with an intent to act upon but she totally took 'u' turn to avoid execution of regular sale deed, inventing a different story than the pleas raised in the plaint in O.S. No.220 of 1986. This conduct of the 1st defendant led this Court to conclude that to avoid execution of registered sale deed she invented a story of execution of Ex.A-1, in the circumstances explained in her written statement.

40. Adverting to the evidence and pleadings on record, it is clear

that in the written statement she explained under what circumstances she was made to execute Ex.A-1; more particularly, to avoid constant troubles in payment of lease amount by her son she approached the plaintiff, who is well versed in the Court affairs and her husband Akkaiah made her to execute Ex.A-1 to ward off any defence set up by her son 2nd defendant. She did not explain as to why she signed or affixed her thumb impression on the plaint and filed earlier suit, obtained interim injunction in O.S. No.220 of 1986 in the entire pleadings. Suddenly, she stooped to the extent of blaming the plaintiff herein for filing earlier suit, having obtained her thumb impressions on some papers. She has not only signed on vakalath, plaint and affidavit in I.A. No.1018 of 1986, obtained interim injunction restraining the 2nd defendant herein from interfering with her possession and enjoyment, but this piece of evidence regarding obtaining her signatures on some papers and filing of suit by the plaintiff herein in O.S. No.220 of 1986 is not supported by any factual foundation in the pleadings but to overcome the situation she appears to have invented this theory; hence, the same cannot be accepted. Regarding execution of Ex.A-1 under the circumstances pleaded in the written statement, it is not totally supported by any evidence in her examination. Moreover, in view of the admissions made in the earlier round of litigation regarding execution of Ex.A-1 and its enforceability, it is difficult to accept her contention that Ex.A-1 was executed in the circumstances as narrated in her written statement at a belated stage. However, she was conscious about the earlier litigation between the plaintiff, 1st defendant and her son, 2nd defendant herein regarding execution of Ex.A-1 but now she totally changed her stand; the same cannot be accepted since she conveniently invented the same to avoid execution of regular sale deed; when the plaintiff filed a suit to enforce the terms of Ex.A-1 to compel her to perform her obligation to execute registered sale deed and receive balance sale consideration. Therefore, the plea

of the 1st defendant cannot be sustained under law.

41. The 2nd defendant also raised a plea that Ex.A-1 was executed nominally. However, further in his evidence, he contended that it was only a sham and nominal document. As discussed in the earlier paragraphs more particularly in view of Section 9 of Act of 1963, it is not open to the 2nd defendant to raise any such defence as he was impleaded as a formal party to the suit and no relief was claimed specifically against him. Therefore, his evidence is of no consequence to disprove that Ex.A-1 was not intended to act upon and the same is not enforceable. Therefore, the contention of the 2nd defendant is also not believable.

42. Though the learned counsel for the 1st defendant would contend that the document is a sham and nominal one and the same need not be enforced, no material is brought on record to substantiate his contention; more particularly, in view of the admissions in earlier litigation and obtaining interim injunction from the competent Court. In such case, it is difficult to accept the contention. In ***P.S. Rama Krishna Reddy Vs. M.K. Bhagyalakshmi and another***^[15], the Apex Court had an occasion to consider similar case and rejected the contention of learned counsel for the defendant while restoring the judgments of trial Court and 1st appellate Court, setting-aside the order of the High Court on thorough examination of the documents and contents therein. It was the contention of the defendant in the facts of the decision that the document was sham and nominal one, not meant to act upon. The Apex Court adverted to terms and conditions of the documents, agreement of sale and notice, that the vendor agreed to sell the property and received earnest money of Rs.1,000/-, fixed Rs.500/- as damages in the event of failure to perform the obligations of both the parties. Basing on unequivocal terms contained in the agreement of sale, the Apex Court concluded that the facts on record would not give

rise to any inference that the plea raised by the defendant is true and it was an after thought.

43. Present facts of the case are worse than the case of ***Bhagyalakshmi*¹⁵**, for the reason that the 1st defendant herein being one of the plaintiffs in O.S. No.220 of 1986 admitted about execution of agreement of sale, joined with the purchaser who was 2nd plaintiff in the said suit, claimed a perpetual injunction against the 2nd defendant herein, restraining him from interfering with their possession and enjoyment, obtained an interim injunction but suddenly changed her plea when the plaintiff herein filed the suit for specific performance. In those circumstances, it can safely be held that the plea of the 1st defendant that the document was sham and nominal, not intended to act upon is an after thought and invented the said theory only to avoid performance of her obligation under the contract *i.e.*, agreement of sale between the plaintiff and 1st defendant.

44. In view of the foregoing discussion, I find that Ex.A-1 is true, valid and enforceable under law and not executed by 1st defendant in favour of the plaintiff, in the alleged circumstances mentioned in her written statement. Accordingly, the point is answered in favour of the plaintiff and against the defendants.

45. **POINT No.6:** One of the contentions raised by the learned counsel for the 2nd defendant is that Ex.A-1 is materially altered or meddled by obtaining signatures of the attestors and the same was not explained by the plaintiff in his evidence. Therefore, the agreement of sale Ex.A-1 is un-enforceable under law; whereas, the 1st defendant, executant of Ex.A-1 did not raise any such plea. Moreover, the learned counsel for the 2nd defendant drawn the attention of this Court to certain admissions in the evidence of witnesses examined on behalf of

the plaintiff.

46. I have already discussed about the rights of the 2nd defendant to raise any pleas which are permissible under any other law relating to the contracts, and Section 9 of the Act of 1963. However, he being a party to the suit without laying any factual foundation in his written statement, surprisingly for the first time raised a plea of alteration or material alteration of Ex.A-1.

47. Whereas, learned counsel for the plaintiff contended that in the absence of any pleading before the trial Court, this Court need not look into the contention raised for the first time and apart from that no specific ground is raised in the grounds of Appeal enabling the plaintiff to explain the reason for his failure to cross-examine about the alleged material alteration or meddling of the document Ex.A-1. It is settled proposition of law that pleading is the foundation for claim; more particularly, when the plea of material alteration is pleaded, it is for the plaintiff to explain whether the signatures of the attesters are obtained at the time of execution of Ex.A-1 or whether acknowledged the signatures on the document by the executant in the presence of attesters and attesting the document on such acknowledgment. In fact, Ex.A-1 is only a simple agreement of sale of immovable property, not a compulsory attestable document. At this stage, it is relevant to advert to examination-in-chief of PW.5, scribe of the document, who worked as Village Karanam of Chinnayagudem village and the evidentiary admission of PW.5, who clearly stated that the party would obtain the thumb impression of the attesters later that means that the attesters did not sign on Ex.A-1 at the time of execution of Ex.A-1.

48. In the cross-examination, he made a categorical admission that in his presence attesters 2 and 3 have not attested Ex.A-1. Admission of PW.5 is the basis to contend that it was meddled or materially altered to non suit the plaintiff or to deny the discretionary relief of

specific performance under Section 20 of the Act of 1963.

49. Material alteration or alteration can be explained by a party who is in possession of the document; whether such alteration took place with the consent of the executant or not. If any such plea of alteration or material alteration was raised in the written statement filed by any of the defendants, it would afford an opportunity to the plaintiff to explain the alleged material alteration or alteration but no such plea was raised in the written statements of any of the defendants. Thereby, material alteration is a fact to be proved or explained by the parties to the litigation. The importance of purity of pleadings is highlighted by the Apex Court in ***Maria Margarida Sequeria Fernandes Vs. Erasmo Jack De Sequeria***^[16] and held that pleadings are extremely important for ascertaining the title and possession of the property in question. In order to do justice, it is necessary to direct the parties to give all details in pleadings with particulars. The Court must also insist for documentary proof in support of the pleadings to examine the pleadings for specificity as also the supporting material for sufficiency and then pass appropriate orders. If the pleadings do not give sufficient details, they would not raise any issue and the Court can reject the claim or pass a decree on admission. On vague pleadings, no issue arises. Only when the party so establishes, does the question of framing an issue arises. Framing of issues is an extremely important stage in a civil trial. Judges are expected to carefully examine the pleadings and documents before framing of issues in a given case. In pleadings, whenever a person claims right to continue in possession of another property, it becomes necessary for him to plead with specificity about the true owner.

50. Applying the principle laid down in the above decision to the present facts of the case, it is difficult to sustain the contention raised by the counsel for the 2nd defendant, without any pleadings, for the

reason that the 2nd defendant did not lay foundation in the pleadings, regarding alteration or material alteration of Ex.A-1, to enable the plaintiff to explain the alleged alteration or material alteration.

51. Learned counsel for the 2nd defendant drawn the attention of this Court to Ex.B-1 dated 09.12.1985 *i.e.*, photostat copy of agreement of sale-Ex.A-1, to demonstrate that the signatures of the attesters were obtained subsequent to filing of suit in O.S. No.220 of 1986. No doubt, a perusal of Ex.B-1, it is clear that signatures of attesters 2 and 3 were not found but whereas in Ex.A-1 signatures of attesters 2 and 3 were found.

52. Section 3 of the Transfer of Property Act, 1882 (for short, 'the Act of 1882'), defined the word 'attestation'. At this stage, it is relevant to extract the definition of 'attestation' as defined under the Act of 1882, which is as follows.

“*attested*”, in relation to an instrument, means and shall be deemed always to have meant attested by two or more witnesses each of whom has seen the executant sign or affix his mark to the instrument, or has seen some other person sign the instrument in the presence and by the direction of the executant, or has received from the executant a personal acknowledgment of his signature or mark, or of the signature of such other person, and each of whom has signed the instrument in the presence of the executant; but it shall not be necessary that more than one of such witnesses shall have been present at the same time and no particular form of attestation shall be necessary.”

53. On close analysis of the meaning of the word 'attestation', it means witnessing a person signing on the document or signing on a document, on acknowledgment of signing on a document by the executant can be said to be an attestation. It is not known whether the executant, 1st defendant acknowledged her signature in the presence of attesters 2 and 3 whose signatures are appearing on Ex.A-1. If 1st defendant acknowledges execution of Ex.A-1 in the presence of

attesters 2 and 3, they can sign as attesters at any stage even subsequent to earlier suit in O.S. No.220 of 1986 but no such explanation was given by the plaintiff regarding attestation of Ex.A-1 subsequent to filing of suit in O.S. No.220 of 1986 since no plea was raised, no issue was framed by the trial Court. Therefore, the disabling method adopted by 2nd defendant to explain the subsequent attestation or the alleged material alteration cannot be accepted. Hence, the admission of PW.5 and Ex.B-1 are of any little assistance to disbelieve the plaintiff to claim right by enforcing Ex.A-1. At the cost of repetition, it is made clear that the 2nd defendant is disentitled to raise such pleas in view of bar under Section 9 of the Act of 1963 as he is only a formal party and no relief of specific performance is claimed against him.

54. In view of my foregoing discussion, this Court is of the view that it is not open to the 2nd defendant to raise such plea and that too in the absence of any pleadings, the 2nd defendant is disentitled to raise such contention and, even if it is raised, it cannot be accepted as no opportunity was afforded to the plaintiff to explain under what circumstances the signatures of the attesters 2 and 3 were obtained, subsequent to execution of Ex.A-1 or filing of O.S. No.220 of 1986. Accordingly, the point is answered.

55. **POINT No.2:** One of the major contentions raised by learned counsel for the defendants in both the Appeals is that the suit claim, for specific performance and recovery of possession, is barred by limitation. In fact, in the written statements neither of the defendants did raise any such plea of bar of limitation of the plaintiff's claim; however, it is open to the parties to raise such plea, as it is a pure question of law and at the same time Section 3 of the Limitation Act, 1963 obligates the Court to find out whether the suit claim is within the limitation or not and even if no defence of limitation was set-up by the

defendants, it is the duty of the Court to find out whether the suit claim is within time or not; therefore, such plea is open to the parties to the suit even at the appellate stage.

56. The agreement of sale Ex.A-1 was executed on 09.12.1985 whereunder time for performance of the agreement of sale was fixed as 15.04.1986 but no condition to terminate the agreement was incorporated in the event of failure to perform obligation of the parties; thereby, time is not the essence of the contract. As seen from the contents of Ex.A-1, the 1st defendant agreed to get the land measured and receive balance of sale consideration at the rate of Rs.10,000/- per acre, having received Rs.5,000/- as advance and the consistent case from the beginning is that the plaintiff and 1st defendant went to the schedule property to get the land measured; the 2nd defendant interfered and set-up a false plea of tenancy claiming interest over the property. Therefore, both the plaintiff and 1st defendant herein filed the suit in O.S. No.220 of 1986. Visiting the schedule property by both the plaintiff and 1st defendant is admitted in the plaint in O.S. No.220 of 1986 in clear terms. However, the plaint in O.S. No.18 of 1989 was presented on 19.12.1988 as per decree copy so also the seal of the Court affixed on the original plaint. At this stage it is relevant to advert to the limitation for specific performance under Article 54 of the Limitation Act. The period of limitation prescribed under Article 54 for filing a suit for specific performance is 3 years from the date fixed for performance or, if no such date is fixed, when the plaintiff has noticed that performance is refused.

57. In the present case, the time fixed for performance was 15.04.1986 subject to getting the land measured; since both the plaintiff and 1st defendant filed suit in O.S. No.220 of 1986, the plaintiff did not compel the 1st defendant to execute registered sale deed. However, he got issued a legal notice dated 12.12.1988 demanding

the 1st defendant to execute registered sale deed receiving balance of sale consideration, expressing his readiness and willingness but as no purpose was served, filed the suit immediately on the next date even without waiting. Taking advantage of filing of the suit on 19.12.1988, without waiting at least for a period of 10 days, it is contended that the suit was filed only to get benefit out of the litigation between the mother and son *i.e.*, 1st and 2nd defendants taking advantage of the agreement, Ex.A-1 but this is not relevant at this stage. Moreover, the 3 years time from the date fixed *i.e.*, 15.04.1986 expired on 15.04.1989. Thus, the suit is filed within the limitation of 3 years as per Article 54 of the Limitation Act.

58. Learned counsel for the 1st defendant contended that when the suit was filed long prior to the time fixed would itself suffice to conclude that the suit is barred by limitation, drawn the attention of this Court to a decision of the Apex Court in ***Ahmmadasahab Abdul Milla*¹** wherein it was held that the inevitable conclusion is the expression '*date fixed for the performance*' is a crystallized notion. This is clear from the fact that the second part '*time from which period begins to run*' refers to a case where no such date is fixed. To put it differently, when date is fixed it means that there is a definite date fixed for doing a particular act. Even in the 2nd part the stress is on '*when the plaintiff has notice that performance is refused*'. Here again, there is a definite point of time, when the plaintiff notices the refusal. In that sense both the parts refer to definite dates. So, there is no question of finding out the intention from other circumstances. Whether the date was fixed or not the plaintiff had notice that performance is refused and the date thereof is to be established with reference to materials and evidence to be brought on record. The expression '*date*' used in Article 54 of the Schedule to the Limitation Act definitely is suggestive of a specified date in the calendar.

59. In the facts of above decision relied on by learned counsel for the 1st defendant, a date was fixed for performance; however, before the expiry of date fixed for performance of obligation there was correspondence between the parties to the agreement and as the 1st defendant denied the right of the plaintiff to claim specific performance, it amounts to refusal. Therefore, the Apex Court in the decision referred supra concluded that limitation would run from the date of knowledge about refusal to perform the obligation by the vendor not from the date fixed for performance of obligation in the agreement of sale. In that view of the matter, the Apex Court concluded that the limitation starts from the date of knowledge about refusal to perform. In the present case, notice marked as Ex.A-5 was issued on 12.12.1988; even before refusal to execute registered sale deed in terms of Ex.A-1 by the 1st defendant, the plaintiff filed the suit. Hence, the law declared in the above decision will have no direct application to the present facts of the case.

60. In ***Van Vibhag Karamchari Griha Nirman Sahkari Sanstha Maryadit Vs. Ramesh Chander and others***^[17], the Apex Court had an occasion to deal with identical facts and held that when a notice was issued, the 1st respondent clearly made its intention about refusing the performance of the agreement and cancelled the agreement but in stead of filing the suit for specific performance, the purchaser filed suit for different reliefs without including the relief of specific performance, though he is competent to seek the relief of specific performance; 11 years from thereafter filed a petition to amend the plaint to seek the relief of specific performance and the same was allowed and such amendment would not relate back to the filing of original plaint. Therefore, the Apex Court is of the view that the limitation starts from the date when notice was issued refusing performance of agreement and cancelled the agreement. The present

facts are totally different and the principle laid down therein cannot be applied to the present facts of the case.

61. In ***Rathnavathi Vs. Kavita Ganashamdas***^[18], the Apex Court while dealing with limitation under Article 54 of the Limitation Act held that when the suit was filed beyond the period of 3 years from the date of accrual of cause of action, as provided under Article 54 of the Limitation Act, the suit is deemed to have been barred.

62. In the facts of above decision, the plaintiff came to know on two different dates that the owner of the suit house along with the so called intending purchaser are trying to dispossess her from the suit house on the strength of their ownership over the suit property; thereby, the limitation starts from the date of refusing to perform the agreement by the owner resulting in issue of notice to the vendor by the vendee and filed suit within 25 days from the date of notice. Therefore, limitation starts from the date when the vendor refused to perform his obligation and made an attempt to dispossess the vendee from the schedule property and thereby the suit is within time.

63. In the facts of present case, the 1st defendant-vendor of the plaintiff did not refuse to execute registered sale deed. On the other hand, she herself asserted in the earlier litigation that she executed Ex.A-1 in favour of the plaintiff agreeing to sell the property and subsequently the plaintiff and 1st defendant filed a suit in O.S. No.120 of 1986, obtained interim injunction against the 2nd defendant, obviously for different reasons the suit was not prosecuted. However, there was no refusal on the part of 1st defendant to execute registered sale deed either explicitly or implicitly. In such circumstances, the cause of action for filing the instant suit would arise only when 1st defendant refuses to perform her part of obligation or from the date fixed for performance. The suit shall be filed within 3 years from the

date of accrual of cause of action. Here, the plaintiff filed the suit within 3 years from the date fixed for performance of his obligation in Ex.A-1.

64. In view of my foregoing discussion, I find no substance in the contention that the suit is barred by limitation while holding that the suit is filed within the limitation. Accordingly, the point is held in favour of the plaintiff and against the defendants. The suit for recovery of possession based on title is 12 years under Article 65 of the Limitation Act, when the possession of the defendants becomes adverse to the plaintiff. The suit for recovery of possession of immovable property based on previous possession and not on title is 12 years from the date of dispossession.

65. Here the plaintiff is not claiming recovery of possession either based on title or based on long continuous possession but claiming relief of recovery of possession as a consequence of execution of registered sale deed under Section 22 of the Act of 1963. Therefore, the claim for recovery of possession is not at all barred by limitation. Accordingly, the point is answered.

66. **POINT No.4:** One of the contentions of 2nd defendant is that he is not a party to Ex.A-1 thereby not bound to put the plaintiff in vacant possession of the property since there was no contractual obligation between himself and the plaintiff but the trial Court directed the defendants 1 and 2 to deliver vacant possession without recording any specific finding as to the relationship between the defendants 1 and 2. In any view of the matter, the consistent plea of the 2nd defendant from the beginning *i.e.*, from the date of filing suit in O.S. No.220 of 1986 is that the relationship of land lord and tenant exists between defendants 1 and 2, though they are mother and son, and he is cultivating the schedule property. The said plea is supported by the 1st defendant in the written statement in the instant suit though she denied the same in the earlier round of litigation in O.S. No.220 of 1986.

67. The plaintiff entered into an agreement of sale, marked as Ex.A-1 to purchase the property and in terms of Ex.A-1, the plaintiff has to pay balance of sale consideration on or before 15.04.1986 after getting the land measured, and on such payment, the 1st defendant has to execute registered sale deed and deliver possession on the same date; as such, there exists contractual relationship between the plaintiff and 1st defendant but there is no privity of contract between the plaintiff and the 2nd defendant; when the 2nd defendant is claiming tenancy through the 1st defendant, the course open to the plaintiff is only to evict the tenant in possession by following due process of law subject to establishing the relationship of landlord and tenant between the defendants 1 and 2. If the tenancy is not established by 2nd defendant to prove his possession, even then the remedy of the plaintiff is recovery possession invoking jurisdiction of the Court under Section 5 of the Act of 1963.

68. In a suit for specific performance of agreement of sale, the controversy raised by the 2nd defendant against the plaintiff can never be adjudicated upon and in such a *lis* the Court cannot decide the title and possession of others in the absence of any privity of contract.

69. In ***M.C. Chacko Vs. State Bank of Travancore and others***^[19], the Apex Court held as follows in Para 9 :

“9. Clause (d) of Section [2](#) of the Contract Act widens the definition of 'consideration' so as to enable a party to a contract to enforce the same in India in certain cases in which the English Law would regard the party as the recipient of a purely voluntary promise and would refuse to him a right of action on the ground of *nudum pactum*. Not only, however, is there nothing in [Section 2](#) to encourage the idea that contracts can be enforced by a person who is not a party to the contract, but this notion is rightly excluded by the definition of 'promisor' and 'promisee'.”

70. In view of the principle laid down by the Apex Court in the decision referred supra, unless there is a privity of contract between the plaintiff and 2nd defendant, 2nd defendant cannot be directed to deliver vacant possession of the property to the plaintiff. More particularly, when the 2nd defendant contended that there exists relationship of landlord and tenant between defendants 1 and 2, the trial Court without recording any specific finding as to who is in possession of the property, by the date of suit ignoring the contentions of the defendants, as regard to the possession recorded an erroneous finding directed them to deliver vacant possession of the schedule property.

71. Both the defendants raised several contentions regarding mis-joinder of parties; impleading the 2nd defendant who is not a party to the agreement Ex.A-1, the relief of specific performance cannot be granted. No doubt, the 2nd defendant is not a necessary party but he set-up tenancy between himself and the 1st defendant, who is his mother. In the plaint itself, it is clearly stated that the 2nd defendant is impleaded only as a proper party as he claimed tenancy over the 1st defendant but rights of 3rd party in a suit for specific performance cannot be decided and on account of mis-joinder of parties, the suit claim cannot be dismissed in view of Section 99 of the C.P.C. which clearly says that no decree shall be reversed or substantially varied, nor shall any case be remanded, in appeal on account of any mis-joinder of parties or causes of action or any error, defect or irregularity in any proceedings in the suit, not affecting the merits of the case or the jurisdiction of the Court. Therefore, in view of Section 99 of C.P.C. the decree and judgment under challenge in these Appeals cannot be reversed.

72. Learned counsel for the defendants while contending that mis-joinder of party is a serious illegality and the Court cannot mould the

relief granting a decree against the 2nd defendant who is not a party to Ex.A-1, placed reliance on a decision of this Court in **Lavu Sri Krishna Rao**⁹, wherein this Court held that grant of larger relief in a suit for permanent injunction without any pleading, issues and evidence, title to the property is impermissible in law. The law laid down by this Court is not in quarrel and it is not helpful to the 2nd defendant but as per my foregoing discussion, grant of relief of delivery of possession against the 2nd defendant is an illegality in the judgment of the trial Court and the same is liable to be set-aside; to that extent only the claim of 2nd defendant is acceptable. The Apex Court in **Mumbai International Airport Private Limited Regency Convention Centre**⁸, held that mere likelihood of a third party to secure a right/interest in suit property in case of dismissal of specific performance suit does not make such party a necessary party or proper party to the suit. In a petition filed under Order 1 Rule 10(2) of C.P.C. on the ground that a proposed party is expected to secure right or interest in the suit schedule property, the Apex Court in Para 13, held as follows:

“13. The general rule in regard to impleadment of parties is that the plaintiff in a suit, being *dominus litis*, may choose the persons against whom he wishes to litigate and cannot be compelled to sue a person against whom he does not seek any relief. Consequently, a person who is not a party has no right to be impleaded against the wishes of the plaintiff. But this general rule is subject to the provisions of Order 1 Rule 10(2) of the Code of Civil Procedure, which provides for impleadment of proper or necessary parties.”

73. Even as per the principle laid down in the above decision, the 2nd defendant is neither necessary party nor proper party to the suit; consequently, the suit is liable to be dismissed against the 2nd defendant.

74. In **Anil Kumar Singh**⁷, the Apex Court held that Order 22 Rule

10 postulates continuation of suit by or against a person who has, by devolution, assignment or creation, acquired any interest during the pendency of a suit by leave of the Court. Obtaining of a decree and acquiring the status as a co-owner during the pendency of a suit for specific performance, is not obtaining, by assignment or creation or by devolution, an interest. Therefore, Order 22 Rule 10 of C.P.C. has no application but the principle laid down in the above decision is of no assistance to the defendant's case. Therefore, based on the principles laid down in the above decision, the suit of the plaintiff against the 2nd defendant is liable to be dismissed but the trial Court even without advertent to the pleadings to find out as to the relief claimed against the 2nd defendant, granted a decree for delivery of possession by the 2nd defendant issuing a specific direction but such nonchalant approach cannot be encouraged by the Courts.

75. One of the contentions of learned counsel for the defendants is that the value of the property rose to too many folds and thereby the plaintiff cannot be allowed to gain undue advantage; thereby, a decree for specific performance cannot be granted under Section 20 of the Act of 1963. The agreement was entered in the year 1985; even according to the plaintiff the value of the land was about Rs.5,000/- per acre but the plaintiff purchased the same at Rs.10,000/- per acre; thereby, question of undue advantage to the plaintiff does not arise. Even otherwise, hike in the price, on account of pending litigation, is not a ground to exercise discretion to deny the relief of specific performance under Section 20 of the Act of 1963. In fact, the defendants did not raise such plea in the written statements and no issue was framed by the trial Court and I find no discussion regarding undue advantage gained by the plaintiff at the time of entering into contract. In the absence of any pleading, issue and finding thereon, the relief of specific performance cannot be denied in view of the principles laid

down in *Prakash Chandra Vs. Narayan*^[20], *Zarina Siddiqui Vs. A. Ramalingam @ R. Amarnathan*^[21], *K. Prakash Vs. B.R. Sampath Kumar*^[22], wherein the Apex Court held that hike in price during pendency of the litigation is not a ground to deny the relief of specific performance according to Section 20 of the Act of 1963.

76. Even in the entire plaint, no relief of recovery of possession was claimed by the plaintiff against the 2nd defendant. On the other hand, it is contended that the 2nd defendant is only a proforma party when no relief is claimed against the 2nd defendant, the plaintiff is not entitled to claim recovery of possession in view of Section 22 of the Act of 1963 but the trial Court erroneously granted such relief. Hence, the same is hereby set-aside holding that the 2nd defendant is not liable to deliver vacant possession of the schedule property in the suit. Accordingly, the point is answered in favour of the 2nd defendant and against the plaintiff.

77. **POINT Nos.3 & 5:** As both these points are interconnected, they are decided by way of common discussion. The plaintiff filed the suit for specific performance while contending that he is always ready and willing to perform his part of obligation in the agreement of sale and he got issued a legal notice dated 12.12.1988, marked as Ex.A-5 demanding the 1st defendant to execute registered sale deed, receiving balance of sale consideration but she did not comply the legitimate demand of the plaintiff. Hence, he filed the suit in O.S. No.18 of 1989 for the said relief of specific performance. Though the 1st defendant contended that the agreement of sale was sham and nominal not intended to act upon the same was disbelieved by the trial Court. At the same time, the 2nd defendant also contended that the agreement is not binding on him and it was only nominal. As per my

discussion on Point No.1, 2nd defendant is not entitled to raise plea that Ex.A-1 was not executed intending to act upon and that it is a sham and nominal document, in view of bar under Section 9 of the Act of 1963. Therefore, at best, this Court is required to consider the plea of 1st defendant with regard to readiness and willingness pleaded by the plaintiff which is *sine-qua-non* as per Section 16(c) of the Act of 1963.

78. In Para 6 of the plaint, it is alleged that the plaintiff is always ready and willing to perform his part of obligation under the agreement of sale, requested the 1st defendant to execute registered sale deed, in pursuance of the agreement of sale, receiving balance of sale consideration but she evaded to comply the legitimate demand. Thereupon, he got issued a legal notice dated 12.02.1988 demanding the 1st defendant to execute registered sale deed; receipt of the notice was acknowledged on 13.12.1988 by the 1st defendant but no useful purpose was served. He also alleged that he is always ready and willing to perform his part of obligation under the agreement of sale, paying balance of sale consideration. Thus, the plaintiff complied one of the requirements out of two *i.e.*, pleading readiness and willingness to perform his part of obligation, as required under Section 16(c) of the Act of 1963.

79. The plaintiff himself was examined as PW.1, to substantiate his contention that he is always ready and willing to perform his part of obligation. In the examination-in-chief, he asserted that he is always ready and willing to pay balance of sale consideration and obtain registered sale deed after execution of Ex.A-1; further contended that before one week prior to the stipulated time for execution of sale deed, the plaintiff, 1st defendant, her husband and Village Karnam went to suit land for taking measurement but 2nd defendant obstructed and prevented them from measuring the land; of course, it is an explanation

for failure of the plaintiff to make a demand prior to the time stipulated in Ex.A-1. At this stage it is relevant to advert to Ex.A-1 to find out the terms contained therein and order of performance. As per the terms contained in Ex.A-1, the 1st defendant has to get the land measured and thereafter the plaintiff has to pay balance of sale consideration on or before 15.04.1986. Thus, it is evident from the terms of Ex.A-1 that the 1st defendant has to get the land measured to find out the total extent enabling the plaintiff to pay balance of sale consideration after adjusting Rs.5,000/- paid on the date of execution of Ex.A-1. Unless the land is measured, it is difficult for the plaintiff to pay balance of sale consideration as there is no possibility of ascertaining the actual extent on ground. Thus, the order of performance is that the 1st defendant has to get the land measured and ascertain the exact extent on ground; thereupon, the plaintiff has to pay balance of sale consideration at the rate of Rs.10,000/- per acre for the land on ground. The 1st defendant did not raise any plea in the written statement but it is her consistent case from the beginning even in the plaint in O.S. No.220 of 1986 filed against the 2nd defendant, marked as Ex.A-2, that when the 2nd defendant wanted to knock away the crop raised by the 1st defendant in the schedule property, she approached the Court for grant of permanent injunction.

80. Further, in Para 5 of the plaint in O.S. No.220 of 1986, the plaintiff and 1st defendant asserted that the cause of action for the suit arose on 09.12.1985 when the plaintiff herein entered into agreement of sale of the schedule property and on 04.04.1986 when the 2nd defendant proclaimed that he would forcibly and highhandedly enter into the plaint schedule property and prevent them from enjoying the suit schedule property. No doubt, there is no pleading regarding the plaintiff, 1st defendant and her husband visiting the schedule property to get the land measured but the pleading indirectly indicates that the

2nd defendant was obstructing; even otherwise, when the terms and conditions of Ex.A-1 were fixed in the order of performance of obligation, the question of the plaintiff demanding for execution of regular registered sale deed does not arise since land on ground is to be ascertained by the 1st defendant to pay the balance of sale consideration after adjusting the advance. Admittedly the land was not got measured by the 1st defendant; thereby, the question of plaintiff demanding the 1st defendant to execute registered sale deed receiving balance of sale consideration would not arise. Therefore, failure to plead that they visited the plaint schedule property to get the land measured is of no consequence and on this ground the plaintiff's claim cannot be thrown out, disbelieving his readiness and willingness.

81. The agreement of sale of immovable property is a reciprocal promise made by the parties thereto and performance of the obligation of one person depends upon the performance of the other, in the order of performance. The parties must adhere to order of performance in view of Sections 52 to 54 of Indian Contract Act, 1872. Section 52 of the Indian Contract Act deals with order of performance and where the order in which reciprocal promises are to be performed is expressly fixed by the contract, they shall be performed in that order; and where the order is not expressly fixed by the contract, they shall be performed in that order which the nature of the transaction requires.

82. In the present case, the order of performance was fixed and thereby the 1st defendant has to perform her obligation initially and on performance of her obligation *i.e.*, getting the land measured and ascertained the extent on ground; then only the plaintiff's obligation to pay balance of sale consideration would arise; as the 1st defendant failed to perform her part of obligation, non payment of balance of sale consideration within the specified date or at least demanding to

execute registered sale deed tendering balance of sale consideration does not arise. When similar question came up before the Apex Court in ***Saradamani Kandappan Vs. S. Rajyalakshmi and others***^[23], the Apex Court considered the order of performance and concluded that the order of performance of reciprocal promises does not depend upon the order in which the terms of the agreement are reduced into writing. The order of performance should be expressly stated or provided *i.e.*, the agreement should say only after performance of obligations of vendors, the purchaser will have to perform her obligations and when the agreement provided specifically that having paid balance of sale price. If the purchaser is not satisfied about the title or if the vendor fails to satisfy the purchaser about the title, all amount paid towards the price should be refunded to the purchaser. This clearly demonstrates that the payment of balance sale price in terms of the contract was not postponed nor made conditional upon the purchaser being satisfied about the title but that payment of balance should be made to the vendor as agreed unconditionally.

83. Similarly in ***Smt. Chand Rani and others Vs. Smt. Kamal Rani and others***^[24], the Apex Court held as follows:

“In case of immovable property, there is no presumption as to time being the essence of the contract. Even if it is not of the essence of the contract the court may infer that it is to be performed in a reasonable time if the conditions are [1] from the express terms of the contract [2] from the nature of property and [3] from the surrounding circumstances.

Where in an agreement to sell the immovable property it was stipulated that amount in part was to be paid within 10 days of the execution of the agreement and the balance has to be paid at the time of registration of deed and it was agreed that the vendor would redeem the property which was mortgaged and also obtain the Income tax clearance certificate and the word 'only' was used twice *i.e.*, to qualify the amount and to qualify the period of payment of such amount *i.e.*, ten days it was held that the intention of the parties was to make time as

essence of contract and in such case, when the purchaser was not ready and willing to pay the amount in part as agreed, before delivery of possession and income tax clearance certificate and redemption of property, it was contrary to the conditions of the agreement and the purchaser was not entitled to the specific performance of contract”

84. The same principle was reiterated by the Apex Court in **K.S. Vidyadnam and others Vs. Vairavan**^[25]. In view of the consistent principle laid down by the Apex Court in **Saradamani Kandappan**²³, when an order of performance is specifically stipulated in the agreement of sale, unless the first party performs their obligation, the question performing the obligation of the second party does not arise. In the present case, ascertainment of actual extent on ground is a condition precedent or primary obligation to be performed by 1st defendant but she did not perform the same; thereby, failure to demand for execution of registered sale deed, receiving balance of sale consideration by the plaintiff to the 1st defendant before stipulated date is not a ground to deny the relief.

85. One of the major contentions in the entire argument of learned counsel for the defendants is that the plaintiff failed to prove his readiness and willingness to perform his part of obligation and pointed out several improbabilities regarding purchase of the property for higher value than the actual value prevailing as on that date filing of suit in O.S. No.18 of 1989. For failure of the plaintiff to tender the amount, even if the agreement is accepted, on the strength of those improbabilities, the plaintiff has to be non-suited, according to the contentions of defendants.

86. This contention cannot be accepted for the reason that the bargain was settled at Rs.10,000/- per acre and no evidence was brought on record to establish that the existing value of the property, by the date of Ex.A-1, was Rs.5,000/- per acre; except a stray admission

in the evidence of witnesses, regarding the market value, would not come to the aid of defendants. However, it is for the parties to agree for the price and there is no restriction to purchase the property only as per the prevailing market value. Hence, this contention holds no substance.

87. Learned counsel appearing for the defendants mainly contended that in the absence of proof of pleading about readiness and willingness, the plaintiff is not entitled to claim discretionary relief of specific performance, placed reliance on a decision of this Court in ***M. Rangaiah***⁴, wherein this Court held that to claim relief of specific performance the main requirement is readiness and willingness on the part of the plaintiff to perform his part of contract and it is not only mandatory in the Code but also under Section 16(c) of the Ac of 1963; what is essential is the readiness and willingness on the part of the plaintiff to perform his part of contract and this may include not only payment of balance of consideration but also compliance with the other conditions that are stipulated under the agreement. Learned counsel relied on another decision of this Court in ***M. Harinarayana***¹⁰, wherein this Court held that the party who approach the Court with unclean hands seeking relief of specific performance of agreement of sale is not entitled to claim equitable and discretionary relief of specific performance.

88. In ***Bal Krishna***¹¹, the Apex Court held that the relief of specific performance lies in the discretion of the Court and the Court is not bound to grant such relief merely because it is lawful to do so. Exercise of the discretion to order specific performance would require the Court to satisfy itself that the circumstances are such that it is equitable to grant decree for specific performance of the contract. While exercising the discretion, the Court would take into consideration the circumstances of the case, the conduct of parties,

and their respective interests under the contract. No specific performance of a contract, though it is not vitiated by fraud or misrepresentation, can be granted if it would give an unfair advantage to the plaintiff and where the performance of the contract would involve some hardship to the defendant, which he did not foresee. In other words, the Court's discretion to grant specific performance cannot be exercised if the contract is not equal and fair, although the contract is not void.

89. In **Daparthi Seetharamayya³, M. Rangaiah⁴, Malireddy Butchiramanna Dora⁵ and Chennupati Satyanarayana⁶** this Court consistently held that before a suit for specific performance of agreement of sale is filed, the plaintiff must issue notice to the defendant calling upon him to perform his part of contract and must show that he is ready and willing to perform his part of contract not only in respect of payment of balance of consideration but also for compliance of other conditions stipulated under the agreement of sale. Thus, the plaintiff must not only prove that he possessed adequate means from the beginning but also to comply with other conditions.

90. The law laid down by this Court in the decisions referred supra is not in quarrel but what determines the readiness and willingness of the party is only conduct of the parties as held by the Apex Court in **Bal Krishna¹¹**.

91. In **Man Kaur and others Vs. Hartar Singh Sangha^[26], J.P. Builders and another Vs. A. Ramdas Rao and another^[27] and Telikicherla Sesibhushan Vs. Kalli Raja Rao and others^[28]**, the Apex Court consistently held that the test to determine readiness and willingness is the conduct of a person seeking relief. If the pleadings manifest that the conduct of the party entitles him to get the relief, the relief of specific performance should not be denied since there is no

straight jacket formula as observed by the Apex Court in ***R.C. Chandiok and another Vs. Chuni Lal Sabharwal and others***^[29].

92. In view of the parallel citations of the Apex Court referred supra, the conduct of the party who approach the Court seeking relief of specific performance and other attending circumstances are alone relevant. In the present case, as per the agreement of sale Ex.A-1, the 1st defendant agreed to sell the property at the rate of Rs.10,000/- per acre, received Rs.5,000/- as advance while agreeing to get the land measured to ascertain the actual extent on ground and on such ascertainment, the plaintiff has to pay balance of sale consideration on or before 15.04.1986. Ascertainment of actual extent on ground is a precondition for payment of balance of sale consideration; till the property is measured and ascertained the actual extent on ground, the question of payment of balance of sale consideration by the plaintiff would not arise but the 1st defendant did not get the land measured till date though the plaintiff got issued a legal notice, marked as Ex.A-5 before filing the suit. Therefore, on equitable consideration of conduct of the parties, the 1st defendant is at fault in performing her part of obligation since payment of balance of sale consideration depends upon the ascertainment of actual extent on ground. If the payment is de-linked with ascertainment of actual extent on ground, then the conduct of the plaintiff is blameworthy but here payment of consideration is linked with ascertainment of actual extent on ground, in terms of Ex.A-1. Therefore, if the conduct of the plaintiff is taken into consideration, he did not violate or breach the terms of contract; thereby, his conduct would not disentitle him to claim the equitable and discretionary relief of specific performance.

93. The principles laid down in the decisions referred supra are of little assistance to the defendants; however, these principles are nothing but reiteration of the principles laid down by the Apex Court

earlier. Hence, taking into consideration the conduct of the plaintiff and other attending circumstances, the trial Court rightly found that the plaintiff pleaded and proved his readiness to perform his part of obligation and approached the Court with clean hands. Even after reappraisal of entire evidence, I find no ground to come to any other conclusion than the conclusion arrived by the trial Court as the 1st defendant changed her version in the instant suit.

94. It is also contended that the plaintiff suppressed several facts but nothing were brought to my notice about such suppression except Ex.X-1, which is unsigned endorsement. In fact the plaintiff is not relying on such endorsement on the reverse of Ex.A-1; if he placed reliance on such endorsement it is fatal to his case. Therefore, alleged suppression of Ex.X-1 is not a ground to deny discretionary and equitable relief of specific performance. Hence, the finding of the trial Court is hereby confirmed holding these points in favour of the plaintiff and against the defendants.

In the result, the Appeal Suit No.61 of 2002 filed by 2nd defendant is allowed and the Appeal Suit No.778 of 1997 filed by the 1st defendant is dismissed directing only the 1st defendant to execute registered sale deed. However, liberty is given to the plaintiff to evict 2nd defendant following due process of law.

In consequence, miscellaneous petitions, if any, pending in these Appeals shall stand closed. No order as to costs.

M. SATYANARAYANA

MURTHY, J

Date: 11-03-2016.

Dsh

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

314

APPEAL SUIT Nos.778 OF 1997 & 61 OF 2002

Date.11-03-2016

DSH

-
- [\[1\]](#) AIR 2009 SC 2193
 - [\[2\]](#) 2013 (6) ALD 579 (DB)
 - [\[3\]](#) 2014 (1) ALD 762 (DB)
 - [\[4\]](#) 2009 (6) ALT 709
 - [\[5\]](#) 2012 (1) ALT 509
 - [\[6\]](#) 2009 (4) ALT 35
 - [\[7\]](#) (1995) 3 SCC 147
 - [\[8\]](#) (2010) 7 SCC 417
 - [\[9\]](#) 2006 (6) ALT 496
 - [\[10\]](#) 2008 (6) ALT 378 (DB)
 - [\[11\]](#) AIR 2008 SC 1786
 - [\[12\]](#) AIR 1977 SC 1712
 - [\[13\]](#) AIR 1956 SC 593
 - [\[14\]](#) 2012 (8) SCC 148
 - [\[15\]](#) AIR 2007 SC 1256
 - [\[16\]](#) AIR 2012 SC 1727
 - [\[17\]](#) AIR 2011 SC 41
 - [\[18\]](#) (2015) 5 SCC 223
 - [\[19\]](#) AIR 1970 SC 504
 - [\[20\]](#) AIR 2012 SC 2826
 - [\[21\]](#) 2015 (1) SCC 705
 - [\[22\]](#) 2015 (1) SCC 597
 - [\[23\]](#) 2011 (12) SCC 18
 - [\[24\]](#) AIR 1993 SC 1742
 - [\[25\]](#) AIR 1997 SC 1751
 - [\[26\]](#) 2010 (10) SCC 512
 - [\[27\]](#) 2011 (1) SCC 429
 - [\[28\]](#) 2014 LS (SC) 733
 - [\[29\]](#) AIR 1970 SC 340