

THE HON'BLE SRI JUSTICE SURESH KUMAR KAIT

APPEAL SUIT No.836 of 2015

JUDGMENT:

Vide the present appeal, the appellants/plaintiffs challenged the judgment and decree dated 1.6.2015 passed in O.S.No.311 of 1990 by the court of I Additional Senior Civil Judge, Visakhapatnam, whereby the learned court decreed the above suit in part as under:

1. that the suit be and the same is hereby decreed in part against D-1, D-4 and D-5;
2. that the main relief of specific performance of agreement of sale dated 26.11.1983 in respect of the suit schedule property be and is hereby refused;
3. that however, the alternative relief of refund of advance amount of Rs.48,000/- (rupees forty eight thousand five hundred only) be and is hereby decreed against D-1 personally and against the estate of late Pydayya lying in the hands of D-1, D-4 and D-5, together with interest @12% p.a., from the date of Ex.A-4 i.e, 26.11.1983 till the date of decree, with further interest @ 6% p.a., till realisation on the principal sum adjudicated to Rs.48,500/-;
4. that the rest of the suit claim for damages be and is hereby dismissed;
5. that the suit against D-3 be and is hereby dismissed as not pressed in pursuance of the memo filed by the plaintiff on 8.8.94;
6. that the defendants 1, 4 and 5 do pay to the plaintiffs a sum of Rs.8,333/- towards costs of the suit.

The present appeal is filed *inter alia* that the learned trial court erred in observing that in paragraph No.3(a) of the plaint it has been averred that, within stipulated time of three months, the defendants could not obtain ULC permission and as such the plaintiffs obtained the same by spending huge amounts and thereby they were ready and willing to perform their part of contract. Thus appellants/plaintiffs made a wrong statement, which clearly show that the appellants/ plaintiffs made wrong pleadings and that they did not approach the court with clean hands.

The appellant No.1 is an Advocate by profession and he contested his case before this Court as a party-in-person. Appellant No.2 is the wife of appellant No.1. Appellant No.1 argued that it is evident that the trial court misread the relevant portion of the plaint wherein it is stated that late Pydayya (original owner) could not obtain necessary permission. The 1st plaintiffs/appellants after spending considerable amounts obtained permission from the Urban Land Ceiling Authorities and was ready and willing to perform his part of contrary by paying the balance of sale price,

which is not a wrong pleading as observed by the trial court.

The lower Court ought to have noted as mentioned in paragraph No.3 of the plaint that an amount of Rs.10,000/- was paid as advance under the said agreement and the balance of sale consideration was agreed to be paid within three months of permission from the ULC authorities and Land Acquisition Authority. The trial court erred in holding that there is no satisfactory explanation forthcoming from the appellants/plaintiffs.

The appellant No.1/plaintiff No.1 further submitted that the trial court ought to have held that the appellants/plaintiffs through mediators and elders of the village such as Karnam Rambabu, Sarpanch at that time by name Narasimha Raju, made efforts and called upon D.W.1/D-1 etc., to come and register the property as deposed to by D.W.1 in his cross-examination on 20-03-2014. He submits that this shows that the appellants/plaintiffs were demanding defendants to execute registered sale deed, but the defendants turned hostile and refused to come for registration. However, the trial court erred in holding that there was total inaction on the part of the appellants/plaintiffs for a considerable time of 36 months, which makes the appellants/plaintiffs in not getting the discretionary relief of specific performance and the lower court erred in holding that there is no satisfactory explanation forth coming from the appellants/plaintiffs in offering the reasons for keeping the matter in abeyance.

He further submitted that this court in its earlier judgment dated 22.9.1995 accepted the payment of Rs.500/- by the appellants/plaintiffs, holding total payment paid by the plaintiffs to the defendants at Rs.48,500/- and, therefore, the failure of filing receipt dated 28.10.1986, will not result in drawing adverse inference by payment of Rs.500/- on 28.10.1986 which is accepted by the trial court in its judgment dated 22.9.1995, shows that there was performance of obligation on the part of the appellants/plaintiffs in pursuance of agreement of sale.

The trial court erred in holding that the plaintiffs were not ready and willing to perform their part of contract during the period from 29.6.1984 till Exs.A-5 and A-12 in view of evidence of D.W.1 that the appellants/plaintiffs

demanding the defendants through mediators to execute registration of sale deed in their favour, as the judgment dated 22.9.1995 of trial court which held that the appellants/plaintiffs paid Rs.500/- on 20.10.1986, vindicated the stand of the appellants/plaintiffs after the death of late Sri Pydayya, the original owner.

The appellant No.1 in person further submitted that the trial court erred in holding that the reply notice issued by the appellants/plaintiffs to Ex.A-11 to the defendants also issued a copy of reply to the 1st defendant, demanding them to execute sale deed in their favour and the balance sale consideration was not tendered to the defendants. He submits that the reply notice marked as Ex.A-12 clearly shows that the appellants/plaintiffs demanded the defendants to receive the balance of sale consideration and execute a proper sale deed. It shows that the appellants/plaintiffs tendered balance of sale consideration to defendants.

The trial court further erred in holding that the appellants/plaintiffs have not issued notice to late Pydayya during his life time. However, it will not affect the case of the plaintiffs. Various payments made to Pydayya during his life time towards sale consideration shows that the appellants/plaintiffs were acting in pursuance to the agreement of sale.

The lower court erred in holding that there that there was land acquisition proceedings even by the date 14.8.1982 as per Ex.A-13 dated 10.09.1984.

It is further submitted that the trial court erred in holding that the appellants/plaintiffs having taken the plea in the plaint as well as Ex.A-1 and Ex.A-12 reply notice and Ex.A-13 that there were land acquisition proceedings in respect of suit schedule property, are estopped from stating that the land acquisition proceedings were commenced in the year 1987. It is mentioned in Ex.A-1 executed by Saripalli Pydayya and others in favour of the appellants/plaintiffs that permissions from Government under the Land Acquisition Act, were to be obtained by the appellants/plaintiffs at their cost. It does not mean that the land acquisition proceeding is pending at that time.

The document writers write the same as a precautionary measuring in routine course. It is stated in Ex.A-4, which is in reply to Ex.A-11 date 7.3.1987, that the appellants/plaintiffs were always ready and willing to perform their part of contract, meanwhile, it came to light that the land in question was under acquisition and plaintiffs wanted to clarify by late Pydayya. It does not mean that the land acquisition proceedings started. The same is expressed by the plaintiffs in the year 1987 long after Ex.A-1, which states that it is decided to acquire the land but does not state that the land acquisition proceedings started. Ex.A-13 is long after Exs.A-1 and A-4. Exs.A-1, 12 and 13 do not disclose that the land acquisition proceedings started at the time of Exs.A-1 and A-4.

The trial court erred in holding that the appellants/plaintiffs are estopped from relying on Ex.A-14, the Andhra Pradesh Gazette dated 4.6.1987 publishing notification under Section 4(1) of the Land Acquisition Act, 1894. The lower court ought to have held that on publication of notification under Section 4(1) of the said Act, though it is not conclusive till declaration under Section 6 was published, the owner of the land is interdicted to deal with the lands as a free agent.

It is further submitted that the trial court erred on relying on various judgments cited by the defendants to hold that the appellants/plaintiffs are estopped from relying on Ex.A-12, as they do not apply to the facts of the case.

The appellant No.1 further submitted that the trial court erred in holding that the last payment made by appellants/plaintiffs under Ex.A-10, was on 29.6.1986. He submits that the lower court ought to have seen that the direct last payment of Rs.500/- was made by the appellants/plaintiffs to defendant No.1 was on 28.10.1986 as held by the judgment dated 22.9.1995, by the trial court.

The trial court further erred in holding that the appellants/plaintiffs have not explained the delay in getting registration of sale deed. The trial court erred in relying on evidence of P.W.2, which is contrary to Ex.A-14, gazette notification.

The appellant No.1 in person argued that the trial court erred in holding that no hardship would be caused to the appellants/plaintiffs as the appellants/plaintiffs cannot shift their chemical industry from Guntur to Visakhapatnam. He submits that there was no clause in suit agreement Ex.A-4 that the suit land was for shifting and setting up of any chemical industry at that spot, and therefore the observation of the trial Court was without any basis.

The trial court further erred in relying upon the judgment of the Supreme Court reported in **GIAN CHAND vs. GOPALA AND OTHERS**^[1] that the agreement of sale stands on application of notice under Section 4(1) of the Land Acquisition Act. However, notice under Section 4(1) of the Land Acquisition Act was not made at the time of Exs.A-1 and A-4 agreement of sale and also the acquisition proceedings of plaint schedule lapsed pending disposal of suit by Ex.A-15. Hence, sale agreement in this case is not frustrated.

The trial court also erred in adopting the ratio laid down in **GIAN CHAND (1 supra)** as the facts of the present case are different. In **GIAN CHAND (1 supra)** this case of Apex Court, the appellants therein approached the court for refund of earnest money because there was a condition in the contract that it has to be refunded if the suit land was found to be under land acquisition in future. But in the present case, there is no such impediment to grant specific performance of agreement as prayed by appellants/plaintiffs.

The trial court erred in relying on Ex.A-1, since it is superseded by Ex.A-4, a later agreement, as held in judgment dated 22.2.1995 by the trial court. The appellants/plaintiffs filed the suit for specific performance of agreement dated 26.11.1993 and not on Ex.A-1 dated 14.8.1982.

Before referring to the case of the respondents/defendants, the facts of the case are necessary to adjudicate the present appeal.

Katta Anjaneyulu was owner of the plaint schedule properties.

Sudhekshnamma was his third wife. The relations between Katta Anjaneyulu and his third wife Sudhekshnamma were not good. The said third wife filed suit against Katta Anjaneyulu for maintenance. Defendants 1 and 2 are daughters of Katta Anjaneyulu through his third wife. Said Katta Anjaneyulu was alone in the house and nobody looked after him. Katta Anjaneyulu brought third plaintiff Seetakusuma Harnadhababarani Kumari as a child to his house and fostered her. Plaintiffs 1 and 2 are daughters of paternal uncle of third wife. In bringing third plaintiff, Katta Anjaneyulu requested the plaintiffs 1 and 2 to help him, then onwards plaintiffs 1 and 2 lived in the house of Katta Anjaneyulu. Katta Anjaneyulu looked after the third plaintiff as his own daughter and he had done all required to her as her own father and also performed the marriage of 3rd appellant/3rd plaintiff.

Katta Anjaneyulu executed registered will dated 7.5.1971 bequeathing all his estate in favour of appellants/plaintiffs 1 and 2 for their life time and vested remainder to the 3rd appellant/3rd plaintiff. He died on 30.03.1974. He filed suits in O.S.Nos.129 of 1969 and 643 of 1973 on the file of District Munsif Court, Sattenapalle for recovery of rents from the tenants of his agricultural lands and same are pending at the time of his death. Plaintiff filed legal heir petition in both the suits basing on the registered will. Defendant No.1 (second daughter of Katta Anjaneyulu) also filed legal heir petition in both the suits basing on un-registered will dated 10.01.1973. The said will is a rank forgery and brought into existence with a mala fide intention to grab the properties of Katta Anjaneyulu. The registered will dated 7.5.1971 is the last testament of Katta Anjaneyulu.

As argued by the appellant No.1 in person, that due to the fraud of third defendant and defendants 1 and 2, appellants/plaintiffs forced to seek for reference for arbitration dated 7.8.1974. Defendant No.3 has been showing favour to defendants 1 and 2. Defendants No.3 managed to obtain all documents from the appellants/plaintiffs. Defendants also obtained lease deeds of agriculture lands fraudulently representing that he would release amount of Rs.968/-. The defendant No.3 wrongfully appropriated amount for himself. Defendant No.3 fraudulently obtained thumb impressions and

signatures of appellants/plaintiffs 1 and 2 on 19.6.1975 since at that time, third plaintiff was a minor. Under the threat and coercion, prepared the statements of contents of which the appellants/plaintiffs have no knowledge. The 1st appellant/1st plaintiff's husband issued notice to defendant No.3 cancelling the reference.

Appellants/plaintiffs filed O.S.No.129 of 1969 on the file of District Munsif court, Sathenapally for injunction restraining the defendant No.3 from making any enquiry. Appellants/plaintiffs also filed I.A.No.1242 of 1975 for interim order in the said suit seeking stay of enquiry in arbitration proceedings. Defendant No.3 filed O.P.No.190 of 1975 on 15.4.1976 on the file of sub-Court, Narasaraopet, seeking extension of time for conducting enquiry and passing of award. Defendant No.3 took time in O.S.No.129 of 1969 to file counter. Court granted stay of Arbitration proceedings till 20.4.1976. On 20.4.1976, defendant No.3 filed counter stating that he passed Award on 12.4.1976 and he also filed award duly signed along with the counter in the court. Appellants/plaintiffs filed O.P.No.84 of 1976 on the file of Sub-Court Narasaraopet for setting aside the award passed by defendant No.3 dated 12.4.1976.

It is further argued that the 1st appellant/1st plaintiff's husband fell unwell and admitted in the hospital. Defendant No.3 obtained signatures of the plaintiffs on blank papers. Defendant Nos.1 to 3 illegally possessed and occupied the plaint schedule properties. Accordingly, the plaintiffs filed the suit.

The defendant No.1 (second daughter of Katta Anjaneyulu) filed written statement and additional written statement. Inter alia she stated that her mother Sudhakshnamma filed suit for maintenance against Katta Anjaneyulu and the same was dismissed. Defendant No.1 filed suit for recovery of Acs.10-00 of land against her father Katta Anjaneyulu, alleging that Katta Anjaneyulu announced as a gift the said land to her at the time of her marriage towards 'pasupukunkuma'. The said suit was dismissed on merits.

Defendants 1 and 2 with their respective husbands have been living in Hyderabad due to employment of their husbands. Katta Anjaneyulu lived in the village with plaintiffs 1 and 2. Katta Anjaneyulu executed will in May, 1971 and registered the said will by him. He executed another will dated 10.01.1973 and cancelled his earlier registered will 07.05.1971. He conveyed his properties to defendant No.1. Katta Anjaneyulu did not give any property to first daughter (defendant No.2) through the said will. D-1 stated in paragraph No.4 of the written statement as follows: “.. . . . *While so, he repented for his foolish and mistakes of youth and otherwise executed a will dated 10.01.1973 in a sound and disposing state of mind cancelling his earlier registered will dated 07.05.1971. . . .*” Katta Anjaneyulu died on 30.3.1974. Reference to arbitration dated 7.8.1974 in favour of defendant No.3. Ultimately on 19.6.1975, defendant No.3 could enter the reference and started enquiry.

The learned trial court framed the following issues:

1. Whether the registered will dated 7.5.1971 is not valid?
2. Whether the un-registered will relied on by the defendant is true and valid?
3. Whether the order of dismissal in O.P.No.84 of 1976 is to be set aside?
4. Whether the order in O.P.No.190/75 is liable to be set aside?
5. whether the plaintiffs are entitled to possession?
6. Whether the plaintiffs are entitled to mesne profits, if so at what rate and for what period?

Additional issue framed on 7.8.1981:

Whether the suit is maintainable in view of the award of the arbitrator and the award is made the rule of court pursuant to plaintiffs not pressing the earlier proceedings initiated by them for setting aside the award and final orders passed by the Court in those proceedings?

On behalf of the plaintiff, the second plaintiff was examined as P.W.1 and P.Ws.2 to 5 were examined and Exs.A-1 to A-56 were marked.

It is pertinent to note that on behalf of the defendants, none is examined. Portions of depositions of P.W.1 were marked as Exs.B-2 to B-6 and B-8 to B-13.

The appellants/plaintiffs filed I.A.No.2492/1978 in O.S.No.22/1978 for appointment of Receiver for the suit properties. The defendants did not file counter in the said I.A. in spite of taking adjournments for filing counter. The trial court ordered petition and appointed receiver as prayed for, even though the defendants did not file counter affidavit.

The respondents/defendant No.1 challenged the said order in A.A.O.No.1176/1982 before this Court. The counsel for defendant No.1/appellant in the aforesaid AAO, argued validity of arbitration award (Ex.B1) basing on the judgment of the Allahabad High Court in KEDARNATH vs. AMBICA PRASAD^[2], which was based on the judgment of the Supreme Court in SATISH KUMAR vs. SURIDEV KUMAR^[3]. The Division Bench of this court in V.SANJEVAMMA v. Y.PURNAMMA^[4] went into the judgment of the Supreme Court and held at paragraph No.6 of the judgment as under:

“From these observations of the Supreme Court two things appear to be clear beyond a shadow of doubt. The award which has been passed and filed into the court by the arbitrator would be incapable to create or extinguish the rights in the immovable property which the plaintiffs claim to have been acquired by reason of registered will dated 07.05.1981. Secondly, for want of registration such an award could not have been admitted as a piece of evidence at all. In view of the fact that the present suit is concerned with a declaration of title to the suit scheduled property and for recovery of possession of that property, we must hold, following the above judgments of the Supreme Court, that the unregistered award in this case is not only inadmissible in evidence, but it is also incapable of affecting the rights of the plaintiffs. In that view we prefer to follow our Full Bench decision in Pamandass Sugnaram vs. T.S.Manikyam Pillai (AIR 1960 Andhra Pradesh 59) (supra). We hold that the judgment of the Allahabad High Court in Kedaranath VS. Ambika Prasad (AIR 1974 All 37) (supra) did not understand the judgment of the Supreme Court in Satish Kumar vs. Sureinder Kumar (AIR 1970 SC 833) (supra) correctly. In view of the above, we are unable to agree with the learned counsel for the appellant before us that the award is a piece of evidence or that it even operates as res judicata between the parties. We accordingly reject this argument of the learned counsel.”

The appellant No.1 submitted that Division Bench of this court in the above paragraph held that unregistered award in this case is not only inadmissible in evidence, but it is also incapable of affecting the rights of the plaintiffs.

He stated that the defendant No.1 did not file appeal against the above order in the Supreme Court. Thus the said order became final. The above

order is binding on the trial court. Therefore, the suit before the trial court was maintainable. Accordingly, the principles of res judicata are applicable and the defendants cannot be allowed to re-agitate the matter again in a subsequent stage of the suit. To strengthen his arguments, the appellant No.1 in person relied upon the case of **C.V.RAJENDRAN vs. N.M.MUHAMMED KUNHI**^[5], wherein the Supreme Court held as follows:

“6. The principle of res judicata applies as between two stages in the same litigation so that if an issue has been decided at an earlier stage against a party, it cannot be allowed to be re-agitated by him at a subsequent stage in the same suit or proceedings. . . .”

Further reliance is placed on the Full Bench judgment of the Supreme Court in **Y.B.PATIL vs. V.L.PATIL**^[6], wherein it was held as under:

“4. . . . It is well settled that principles of res judicata can be invoked not only in separate subsequent proceedings, they also get attracted in subsequent stage of the same proceedings. Once an order made in the course of a proceeding became final, it would be binding at the subsequent stage of that proceeding.. . . .”

In the case of **SATYADHYAN GHOSAL vs. SMT. DEORJIN DEBI**^[7], the Supreme Court held as under:

“The principle of res judicata applies also between two stages in the same litigation to this extent that a court whether trial court or higher court having at an earlier stage decided a matter in one way will not allow the parties to re-agitate the matter again at a subsequent stage of same proceedings. . . .”

The case of defendant No.1 as constructed in written statement and additional written statement whereby he admitted the pleadings of the appellants/plaintiffs and evidence of the plaintiffs. The defendant No.1 filed written submissions, however did not choose to enter into witness box. However, the case of the appellants is that they examined P.W.5 for a particular purpose. As per Section 68 of the Indian Evidence Act, 1872, if a document is required by law to be attested, it shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution.

Mr. Ram Gopal advocate appearing on behalf of the 1st respondent

drawn the attention of this court to the order dated 18.8.2011 passed by the Supreme Court in Civil Appeal No.4536 of 2006 filed by the appellants/plaintiffs , which reads as under:

“In our opinion, there was a valid agreement to sell between the parties. But it is to be decided by the trial court on remand whether the discretionary relief of specific performance should be granted to the plaintiff or not by taking into consideration various aspects. The right to lead additional evidence may be confined only to evidence relating to this issue as to whether the discretionary relief of specific performance should be granted or whether instead payment of compensation should be granted to the plaintiff.

With the aforesaid modification, we uphold the impugned judgment of the High Court. The appeal is disposed of accordingly..

The suit shall be decided expeditiously.”

The learned counsel further submitted that as per Section 16 (c) of the Specific Relief Act, the appellants/plaintiffs have to aver in the plaint with proof that he is willing to perform the contract. It has to be inferred from his conduct. Notice dated 7.5.1986 was issued. From the said date the limitation to file suit for specific performance starts and within three years, the suit has to be filed. However, the suit was filed on 4.6.1990, one day prior to limitation. He stated that despite denial notice, the appellants/plaintiffs did not take steps to approach the court, and hence the conduct of the appellants is contrary to Section 16 (c) of the said Act, and it is the discretion of the Court whether to grant the relief of specific performance or reject the said relief.

The learned trial court in the impugned judgment held as under:

22. Whereas perusal of the recitals of Ex.A-1 would go to show that the balance sale consideration was agreed to be paid within three months obtaining land acquisition, ceiling etc., permissions by the plaintiffs with their expenditure but there is no recital to the effect that the balance sale consideration was agreed to be paid within three months of permission from the ULC etc., as pleaded in the plaint. There is no satisfactory explanation forthcoming from the plaintiffs. It is seen from Ex.A-2 that it was obtained on 23.9.1982, within forty days from the date of Ex.A-1 dt. 14.8.82. In Ex.A-4 as rightly contended by the counsel for D.1 that there is no recital to the effect that Ex.A-1 was cancelled and Ex.A-4 was being executed afresh. The learned counsel for D-1 argued that being an Advocate knowing fully well that there were land acquisition proceedings by the time of Ex.A-1, the plaintiff entered into Ex.A-4, which clearly shows the evil motive of the plaintiffs behind the litigation and further he had drawn my attention to Ex.A-5 which is the order of District Registrar, Visakhapatnam dt. 14.7.1987 on the representation of the 1st plaintiff dt. 3.6.87 and 9.7.87 where under has informed that the land noted in the subject falls under visakhapatnam Urban Agglomeration and Urban Land Ceiling Act. Saripalli Pydayya who owned the land was certified as agricultural land in the reference 2nd as long back as 1982, several changes might have taken place as regards the classification of land from 1982 to

87 and in view of the demise of Saripalli Pydayya, it was advised that a certificate as to the classification of the land from Urban Land Ceiling is to be filed before registering any document under question. Then what prevented the plaintiffs from making the said representation after Ex.A-10 receipt dated 29.6.1984 passed by late Pydayya and his son Appalanaidu (D-1) in favour of the plaintiffs in token of receipt of Rs.3,000/- till 3.6.87 approximately for a period of 36 months. Only after receipt of Ex.A-11 notice from the defendants 2, 4 and 5 dated 7.5.1987 he had approached the District Registrar and obtained Ex.A-5 on 14.7.87 which speaks the total inaction on the part of the plaintiffs for a considerable of 36 months which makes the plaintiffs in not getting the discretionary relief of specific performance. Indeed there is no satisfactory explanation forthcoming from the plaintiffs offering the reasons for keeping the matter in abeyance or under a cold storage for a considerable period of 36 months. Though the plaintiff pleaded that there was an agreement dated 28.10.1986 by D-1 acknowledging all the payments of Rs.48,000/- and further recited that D-1 also received Rs.500/- but such document is not placed before the Court by the plaintiffs for the reasons best known to them and nothing prevented the plaintiffs in bringing on such important document by which they could have an opportunity to submit that there was some performance of the obligations in pursuance of Ex.A-1, Ex.A-4 by which of such third document dt. 28.10.1986. This clearly shows that the plaintiffs were not ready and willing to perform their part of contract particularly during the period from 29.6.84 till Ex.A-5 and Ex.A-12 reply notice dt. Nil and that there is inordinate delay in moving the court by the plaintiffs for the relief of the specific performance. It is relevant to note here that in the cross-examination of P.W.1 it was brought out that after receipt of Ex.A-11 notice from the other defendants only, he got issued a reply to the defendants and a copy of the same was marked to D.1 and demanded all the defendants to execute a sale deed in his favour and the balance sale consideration was not tendered to the defendants. Apart from this the plaintiffs did not chose to issue any notice to late Pydayya during his life time. In view of the circumstances, the authority relied upon by the plaintiffs in the case of **Motilal Jain, Appellant VS. Smt. Ramdasi Devi and others, respondents reported in AIR 2000 SC Supreme Court 2408** which was rendered in a different circumstances is not helpful to the plaintiffs.

23. It is contended in the written arguments of D.1 that under Ex.A-13 which is the copy of memo dt. 10.09.1984 in r.A. 9157/81 of District Collector, Visakhapatnam, where under the Saripalli Pydayya was addressed that after perusing the request letter filed by Pydayya and report of the Regional Housing engineer, the land in Krishnarayapuram village an exetnt of Ac.1.82 cents in S.No.30/1 is decided to be acquired for A.P. Housing Building Construction Society. Therefore, it is clear that there were land acquisition proceedings even by the date 14.9.82. It is his further contention that under Ex.A-14 which is the A.P. Gazette dated 4.6.87, where under the proceedings vide R.C.No.113382/84 FG8 dt. 25.7.87 of the Collector, Visakhapatnam, RC. No.157/87/R.1 dt. 30.4.87 and from of notification to be issued under Sec. 4 of Act 1 of 1894 L.A. Act as amended by Act XXXVIII of 1923 whereunder the Governor of A.P. authorized the Spl. Tahsildar (L.A.) revenue Division, Visakhapatnam his staff and work men to exercise the powers conferred by Sec. 4(2) of the Act and under Sec. 3(c) of the same Act, the Spl. Tahsildar (L.A.) Revenue Division, Visakhapatnam was appointed to perform the functions of a Collector under Sec. 5(a) of the Act. The suit schedule property is shown in page 31. Once the plaintiffs have taken plea in the plaint as well as in Ex.A-1, A-12 reply notice and Ex.A-123 that there were land acquisition proceedings in respect of the suit schedule property now wanted to say that the land acquisition proceedings were commenced in the year 1987. According to the defendants the plaintiffs cannot take two inconsistent pleas and they are estopped from reply on Ex.A-14 to contend that as on the date of agreement there were no land acquisition proceedings pending and thus the said document is hit by doctrine of estoppel. In this regard, the defendant cited the following judgments:

2005(8) SCJ page 27 Joint Commissioner, HR and CE Administration Department vs. **JAYARAMAN AND OTHERS** whereunder the Hon'ble Apex Court had to hold that:

"The respondents having accepted that H.R. and CE act applies to the Trust, they are estopped from contending that the act had no application or that they did not require permission of Commissioner under the act for alienation of land of the temple."

2001(5) SRJ 155 M/s Tandan Bros., vs. State of West Bengal and others the Hon'ble Apex Court held to the effect that:

“The doctrine of estoppel is a doctrine of prudence. It is a doctrine of ethics and justice and equality. Governmental action must be based on utmost good faith, belief and ought to be supported with reason on the basis of state of law if the actions otherwise or run counter to the same. The action cannot but be scribed to be mala fide and it would be a plain exercise of judicial power to countenance such action and set the same aside for the purpose of equity, good conscience and justice. After finding that notice for acquisition of 1151 acres of land but orders passed for 3059 acres and held that government acted on *ipse dixit* and no reason to justify such action, land owner continuing to pay the land revenue for land in question – Lack of reasoning and fair play in action, action of government is arbitrary and illegal.”

2001(3) ALT PAGE 164 (DB) Bharat Heavy Electricals, Ramachandrapuram, Medak District & others Vs. Bharat Heavy Electricals Limited represented by its Chairman and Managing Director, New Delhi and others rep., by its New Delhi and others wherein our Hon'ble High Court of A.P. held in para Nos. 47, 49, 50, 51, 52 are as follows:

Para 47”

In this view of the matter, this Court will have to accept the fact that 117 employees out of 173 had given option to become the employees of the society and, thus, it is not permissible for them now to urge contra. If they themselves opted for being the employees of society on its formation as far back in 1985, it is too late in the day to contend that they are in truth and effect are employees of the respondent-company. They would be estopped for doing so.”

Para 49:

Section 115 of the Indian Evidence Act lays down the principles of estoppel as a rule of evidence, as a result, whereof, the petitioners have become disabled and thus precluded from alleging or proving that they did not opt for the service of the society. Reference in this connection may also be made to Packward Vs. Sears (1837) 6 Ad. & El 469. the teaching and non-teaching staff who had opted for becoming the employees of the society are, therefore, bound by their wilful conduct.”

Para 50:

“In any event, having regard to the aforementioned judgments, the petitioners must be held to be estopped by record and are bound by their options. It is now well settled principle of law that where a Court or judicial tribunal of competent jurisdiction has finally adjudicated a subject matter in litigation, any party or privy thereto, would in subsequent proceedings before the courts be estopped from disputing or questioning the previous decisions on merits. Having regard to the provisions of Sections 40 to 44 of the Indian Evidence Act, unless and until any fraud or coercion or want of jurisdiction is alleged, the said judgment would be relevant apart from operating as *res judicata*.”

Para 51:

“. . . . the reliefs sought for in both the proceedings are absolutely identical, the privity of interest between the parties to the litigation is also the same. Thus, as the issue of fact has been tried by a Court of competent jurisdiction on previous occasion, the same would constitute estoppel by record in a subsequent trial or proceedings. Thus, in the instant case, the doctrine of issue of estoppel also can be invoked as the facts in issue in the earlier writ proceedings are identical to the facts in issue in the present case. There does not arise any subsequent events, which lead to the creation of a new right between the parties.”

Para 52:

“. . . Thus, it is not for this court to arrive at a finding contra by going into the question as to whether such settlement has been arrived at under threat or coercion or whether the teaching and non-teaching staff of the school in question were duped by the concerned authorities.”

2006(6) ALT Page 75 Shankarlal Pallad and others vs. Zaheerabad Municipality,

Medak District wherein our Hon'ble High Court was held to the effect that:

"Municipality have taken a stand in land grabbing case that schedule in municipal is estopped from contending otherwise and refused to grant permission to proceed with construction in the said land."

Thus, the defendants contended that the plaintiffs are estopped from relying on Ex.A-14.

25. No doubt the contentions of the learned counsel for the plaintiffs appears to be quite interesting, attractive and alluring but when they are examined with reference to the circumstances of the case more particularly Ex.A-1 where under there were specific recitals placing obligation on the plaintiffs to see that the land acquisition and ceiling permissions and clearances etc., are obtained within three months therefrom, then has to how can the plaintiffs now take 'U' turn. Moreover the plaintiffs pleaded and stated in their evidence that such fact had come to their light subsequent to Ex.A-1 agreement which is nothing but a patent lie. Added to this, according to the plaintiffs, the last payment was made by them under Ex.A-10 on 29.6.1984. Till 3.6.1987 they have considerably consumed time and slept over for the reasons best known to them for a period of three years without making any efforts to get the acquisition proceedings dropped in pursuance of the obligation rests on them under Ex.A-1 and only after a legal notice under Ex.A-11 got issue by D-4, D-5 and D-2, they became alert and ventured to issue a reply notice under Ex.A-12 calling upon them and D-1 herein to come and execute and register the sale deed in his favour in pursuance of Ex.sA-1 and A-4. No satisfactory or tenable explanation has been brought on record for such inordinate delay. Moreover even after Ex.A-12 reply notice the plaintiffs slept over for a considerable period and only on the last date of limitation filed the present suit.

26. It is not out of place to mention here that in a suit for specific performance the plaintiffs shall always be ready and willing to perform their part of contract and in other words should be continuous ready and willingness since the date of agreement till the date of filing the suit. The jurisdiction to decree the specific performance is a discretionary one as provided under Sec.20 of the Specific Relief Act and that the Court is not bound to grant such relief merely because it is lawful to do so. In addition to this it is pertinent to note here that the party who seeks to avail the opportunity for specific performance being equitable one must come to the Court with clean hands. Besides this, it is for the plaintiff to establish tht the covenants in th contract are clear, cogent and fair and that they are ready and willing to perform their essential terms of the contract from its date till the date of suit. If at all the conduct of the plaintiff is found to have been tainted with falsity of the case or unworthy of acceptance, the equity denies them such relief.

27. The P.W.1 in his cross-examination stated that subsequent to the execution of the agreement he came to know of the land acquisition proceedings. Indeed the statement is nothing but a patent lie inasmuch as the proposed land acquisition proceedings and its clearance have been clearly mention in Ex.A-1. This apart, P.W.2 in his cross-examination stated that he knew that the suit land was under the land acquisition proceedings by the date of Ex.A-1 and notification under Section 4(1) of the Land Acquisition Act was already issued and that he knew that there shall not be any alienation with regard to the land under acquisition and that D-1 had been cultivating the suit schedule property. In addition to the above, P.W.1 in the cross-examination stated that there are recitals in Ex.A-1 to the effect that the plaintiffs agreed to get the land acquisition proceedings dropped at their own costs, that he had not filed any document to show that he got an application filed for dropping the land acquisition proceedings. There is a recital in Ex.A-1 to the effect that in case the government acquires the land, the option left open to the plaintiff is to recover the sale consideration paid by them as if it were a loan. P.W.1 also stated that there is no recital in ex.A-4 to the effect that Ex.A-1 agreement was cancelled. Therefore, he cannot and should not say that Ex.A-1 was superseded by Ex.A-4. What is required to consider is to understand the agreement between the parties only with reference to Ex.A-1 and Ex.A-4 and as such both documents have to be looked and read so as to arrive at a right conclusion in regard to the agreement between the parties. It is no doubt true that it was brought out from the cross-examination of D.W.1 that himself and his father filed an application for excluding the suit land from the acquisition. Therefore, it is crystal clear that efforts were being made to get the land acquisition proceedings dropped in respect of the suit schedule property. But as on the date of the suit, such proceedings were not dropped and on the other hand it is

admitted by P.W.1 that the acquisition proceedings were dropped by lapse of time but not by his efforts, which is proved by Ex.A-15 is the memo dt. 6.4.2001 vide Rc.No.405/88/R.1-1 Office of the Special Tahsildar (LA), Revenue Division, Visakhapatnam, issued on the application of 1st plaintiff dt. 23.3.2001 and he was informed tht the land acquisition notification under Sec. 4(1) of the act to acquire the land measuring Acs.1.82 cents covered by S.No.30/1 of Krishnarayapuram village of Pendurthi mandal, Visakhapatnam district for the A.P. Housing Board, Visakhapatnam, was lapsed by limitation of time and even in his cross-examination, he admitted that as per Ex.A-13 the land acquisition proceedings were commenced in the year 1981. It is not brought on record by the plaintiff as to on which date it was lapsed. However, it is proved that during the pendency of the appeal, as it is evident from Ex.A-15, which is dt. 6.4.2001, land acquisition proceedings were dropped by lapse of time. In those circumstances, the plaintiffs were found to have not taken steps such as issuance of notice to the Padayya and his son D-1 or after his demise to his legal representatives but only after they received notice under Ex.A-11 they got issued a reply notice under Ex.A-12 calling upon the defendants to execute and register the regular sale deed after receiving balance sale consideration. Having noticed the pendency of acquisition proceedings, the plaintiffs are proved to have not expressed their readiness and willingness till they received the notice under Ex.A-11. However, the way in which the amounts were paid by the plaintiffs and received by the defendants after Ex.A-1 and A-4 the conduct of the parties to the suit appear to be blameworthy and such conduct of the parties is because of the result of the threat of land acquisition at the relevant point of time.”

Heard learned counsel for the parties in length and perused the trial court record.

On the strength of the pleadings the following issues were settled for trial:

1. Whether the suit is true, valid and binding on the defendants? (by mistake “agreement” is not mentioned after the word ‘suit)
2. Where the suit is not maintainable in law?
3. Whether the advance alleged to be paid in the plaint is true, valid and binding on the defendants?
4. To what relief?

On 22.09.1995, Additional Senior Civil Judge, Visakhapatnam pronounced judgment and decreed the suit in part with costs refused the relief of specific performance of EX.A4 agreement. However, respondents/defendants were directed to pay a sum of Rs.48,500/- with interest @ 12% p.a. from the date of Ex.A4 till the date of decree i.e., from 26.11.1983 to 22.09.1995 and thereafter at the rate of 6% p.a. on Rs.48,500/- till the date of realization to the appellant/plaintiff. However, the rest of the suit claim was dismissed.

Being aggrieved by the judgment dated 22.09.1995, the appellant preferred the appeal vide A.S.No.676 of 1998 before this Court. As per the judgment dated 8.10.2005, this Court by setting the aside the judgment and

decree dated 22.09.1995 remanded the matter holding in point 3 as under:

“ In the light of the findings recorded above, inasmuch as this Court had virtually confirmed the findings relating to the payment of consideration which had been recorded by the learned judge, the only question that may have to be decided is whether in the facts and circumstances of the case the plaintiffs are entitled to the main relief of specific performance or whether alternative relief of refund as granted by the trial court to be confirmed. In the light of the peculiar facts and circumstances inasmuch as several of the contentions which had been advanced in elaboration whether the discretionary relief of specific performance be granted in the peculiar facts and circumstances of the case, had not been adverted to and especially in the light of the additional evidence which had been placed before this Court, this Court is of the considered opinion that it is a fit matter to be remanded.

Defective pleadings or inchoate pleadings many a time land the parties in trouble who otherwise may have fair chances of success. Contentions without factual foundation may take the parties nowhere and the same may be a cry in wilderness. Powers of the first appellate Court to appreciate the entire evidence on record are well settled. Questions of law arising out of facts of a particular given case can be considered by the appellate Court but not contentions unsupported by pleadings and proof. Several of the defences and contentions which would be advanced in a suit for specific performance may have to be appreciated in the backdrop of the facts of a particular given case and the evidence available on record and at the same time pleadings also cannot be totally ignored. On appreciation of the evidence available on record, the way in which the payments had been made and the way in which the payments had been received would go to show that the conduct of both the parties appear to be blameworthy and the said conduct may be a result of the threat of acquisition at the relevant point of time. The said conduct of the parties also may have a bearing on the motive in relation to the lis between the parties and this appears to be in the light of the cloud over the property in view of the hanging sword of acquisition at the relevant point of time. In view of the peculiar facts and circumstances the parties are at liberty to move appropriate applicators for amendment of pleadings if they are so advised. It is needless to say that the learned judge is at liberty to frame appropriate suitable issues for further deciding the questions in controversy between the parties. In the light of the same, the judgment and decree made in O.S No.311 of 1989 on the file of I Additional Subordinate Judge, Visakhapatnam are hereby set aside and the matter is remanded for the purpose of deciding the matter afresh in the light of what had been observed supra after affording opportunity to both the parties in relation to the amendment of respective pleadings and also adduction of additional evidence if any, in addition to the additional evidence which had been already entertained by this court and decide the matter in accordance with law as expeditiously as possible within a period of six months from the date of receipt of this order. Inasmuch as an order of remand is being made, parties to bear their own costs.”

Accordingly, on 23.01.20016 after carrying out the amendment as per orders in CMP No.23520 of 2002 in A.S.No.676 of 1998 dated 8.10.2005, D1, D4 and D5 are the L.Rs., who are taken on record. On 25.01.2006, additional written statement of D.1 filed with the following averments:

“The alleged suit agreements are void agreements under the Indian Contract Act and the specific performance cannot be enforced under void agreements as there are contingencies in the alleged agreements, the said agreements cannot be enforced. Sec.31 of the Indian Contract Act says that if contingent contract imposes a clause of object ad purpose of the contract and if that object is not achieved the contract will become

unenforceable and Section 65 of the Indian Contract Act says that obligation of a person who has received advantage under void agreement or contract, that becomes void.

In a suit for specific performance the plaintiff would always ready and willing to perform his part of contract. Ready and willingness is a condition precedent to grant specific performance. Even if it is presumed that the suit agreements are valid, the plaintiff has to aver and prove that he is always ready and willing to perform his part of contract and there should be continuous readiness and willingness since the date of agreement till the date of filing of the suit. The documents filed by the plaintiff clearly show that he was never ready and willing to perform his part of contract and he never demanded the defendant for execution of the sale deed and no prudent man would wait for a period of three years to approach the court even after refusing to execute a sale deed in his favour by the defendants. The plaintiff documents for getting some illegal benefits and they are no way related to the schedule property. Hence, specific performance cannot be granted in favour of those persons."

Learned trial Court observed in para-9 of the judgment dated 1.6.2015 that in a suit for specific performance the plaintiffs would always ready and willing to perform their part of contract. Ready and willingness is a condition precedent to grant specific performance. Even if it is presumed that suit agreements are valid, the plaintiffs have to aver and prove that they were always ready and willing to perform their part of contract and there should be continuous readiness and willingness since the date of agreement till the date of filing. It further observed that the documents filed by the appellants/plaintiffs clearly show that they were never ready and willing to perform their part of contract and they never asked the respondents/defendants for execution of the sale deed and no prudent man would wait for a period of three years to approach the court even after refusing to execute a sale deed in his favour by the respondents/defendants. Thus, the plaintiffs approached the court with unclean hands with fabricated and concocted documents for getting some legal benefits and they are no way related to the schedule property. Accordingly, the court below opined that specific performance cannot be granted in favour of those persons.

It is pertinent to mention here that on 27.1.2006 the following additional issue was framed:

Whether the plaintiffs ever ready to perform their part of contract ?

Subsequently, on 17.02.2006, a memo was filed by the

plaintiffs/appellants along with certified copy of the order that the matter was stayed by the Hon'ble Supreme Court of India in Special Leave to Appeal (SLP Nos.1471-72/2006, dated 18.01.2005 in A.S.No.676 of 1998 and CMP No.2350 of 2002 of this Court. Subsequently, as per judgment and decree dated 18.08.2011, the Hon'ble Supreme court of India, remanded the matter to the trial Court. Thereafter, on 15.03.2013, I.A.No.25 of 2013 and another I.A.No. /2013 were allowed. Additional written statement of D1 and D5 were filed.

It is further pertinent to note the additional written statement of D.1 filed on 15.3.2013:

“Under Sec.20 of the Specific Relief Act the jurisdiction to decree for specific performance is discretionary and the Court is not bound to grant such relief merely because it is lawful to do so. Hence specific performance cannot be granted. The plaint schedule property is a residential area surrounded by lot of residential apartments and a water tank. To establish a chemical industry as pleaded by the plaintiff, the government has to classify and declare the said area as industrial zone, but till today, either the plaint schedule property or the surrounding areas are not classified as industrial zone, as such, the prime purpose of plaintiff to shift the chemical industry to the schedule property was defeated and on this ground also the main relief cannot be granted.

Considering the additional written statement of D1, learned Court below observed that since more than six decades, the defendant/D1 has been enjoying the schedule property by raising seasonal crops and at the fag end of his life, if this defendant is evicted from the plaint schedule property, he will be put to much loss and hardship. Except the plaint schedule property, this defendant has no other immovable properties and by raising seasonal crops, he and his wife are leading their lives. Thus relief of specific performance cannot be granted. The learned trial Court further observed that in the case of specific performance it is for the appellants/plaintiffs to establish that the covenants in the contract are clear, cogent and fair; if the appellants/plaintiffs conduct is tainted with falsity of the case or unworthy of acceptance equity denies them the relief. The alleged suit agreement is

dated 26.11.1983, even after the death of father of the D1 the appellants/plaintiffs never demanded him to execute the sale deed till 1987, he kept quiet without asking. After receipt of legal notice from the other defendants, he got issued reply and since then also, the plaintiffs waited for another 3 years and filed the suit on the last date of limitation which clearly shows that the plaintiffs were not willing to perform their contract. Accordingly the learned trial court opined that the plaintiffs are not entitled for any reliefs.

It is not out of place here to note that defendant No.5 on 15.3.2013 had filed additional written statement.

The learned Court below noted that the defendants are agriculturists. Except agriculture, there is no livelihood. The government acquired most of the lands belong to the defendants. Only the plaint schedule property remained unacquired. They have been cultivating the plaint schedule property and earning their livelihood. If the defendants loose the property, they become pauper and virtually a civil death for them.

In 1982, the Government proposed to acquire the plaint schedule property as well as the vast lands in Krishnarayapuram for the purpose of developing residential colonies, schools etc., through A.P. Housing Board. The defendant No.1's father Saripalli Pydayya was under the threat and fear that the lands would be acquired by the Government. At that juncture, the plaintiffs being the realtors, howred on the defendants father and imposteriously made him to enter into a sale agreement for a throw away price. As the sword of acquisition was hanging on, the defendants father innocently entered into that agreement and went into the clutches of the appellants/plaintiffs. Therefore, there is no free will or consent for entering into such transaction.

The agreement is of the nature "Heads I win, tales you loose". In view of the above, the learned court below opined that it is very clear from the recitals of the agreement that in case the vendors fail to get the acquisition dropped by the Government within three months, the plaintiffs can realize the advance they paid. The appellants/plaintiffs are well aware

that there are acquisitions proceedings at the relevant time of the agreement and they were also well aware that the acquisition will be dropped. The plaintiffs did not spend a single pie for getting the acquisition dropped. The plaint schedule property is surrounded by residential quarters, agricultural lands and schools etc., it is not an industrial area. The Government did not demarcate that area for industries. However, the plaintiffs averred in the plaint that they intend to shift the industry from Guntur to the outskirts of Visakhapatnam to the plaint schedule property. There is a water tank adjacent to the plaint schedule property, which is the only source for water for agriculture and drinking to the entire village. If the chemical industry is established in the plaint schedule property the water will be polluted and it will be endangered to the lives of the people in the village. No permission is granted by the government for establishing the chemical industry in the plaint schedule property. As such, the alleged purpose of shifting the industry by the plaintiffs cannot be served. In fact, the shifting of industry is not only baseless but a lame cause to snatch away the defendants' property. The plaintiffs are chronic litigants. To grab the property of the defendants at a throw away price, they created false documents and attempted to mislead the court. The real market value of plaint schedule property in 1982 is very high but under the threat of acquisition that the defendants agreed for such a low price. The plaintiffs managed to get the agreements speculatively, knowing fully well that there will be high in the value of the properties. They create false market value certificate. The actual market value certificate as on that date will be more than a crore per acre. The price per square yard is more than Rs.10,000/- as there are residential colonies around the plaint schedule property. The plaintiffs intentionally dragged on the matter for years together as the price of land is increased very high in the recent past. The D.1 entertained an idea of cheating D.3 and D.5. He colluded with the plaintiffs and as such sailing with them and gained heavily himself outside the Court. D.3 died during the pendency of the suit leaving behind him his wife and children. He is none other than the son of D.1. He knows very well the particulars of legal heirs of D.3 But as he is in league with the plaintiffs, he is not supplying the particulars of at least filed a memo into the Court giving particulars of the legal heirs of D.3. The rights of widow and minor

children of D3 will be effected. They are innocent and have no wordly knowledge at all. The D.1 kept them under darkness.

In view of the above observation, the learned court below opined that the judgment dated 22.9.1995 passed by that Court was very sound. The plaintiffs are only entitled to refund of the advance without interest.

It is important to note that on 20.3.2013 additional affidavit of PW.1 in chief examination filed. Exs.A16 to A22 are marked. Subsequently, after allowing IA... /2013, through PW.1, Exs.A23 to A26 are marked. On 11.6.2013 and 01.07.2013, PW.1 was further cross-examined. On 19.7.2013, affidavit of DW.1 in chief examination was filed. He was cross-examined on 20.3.2014. Ex.B2 was marked. D4 and D5 failed to lead any evidence.

Learned court below noted that having due regard to the direction of the Hon'ble High Court and Supreme Court, confirming the judgment of the Hon'ble High Court, which virtually confirmed the findings relating to the payment of consideration. The only question that may had to be decided by the court below was whether in the facts and circumstances of the case the appellants/plaintiffs are entitled to the main relief of specific performance or whether alternative relief of refund to be granted. Learned court below opined that issues No. 1 o 3 were framed need no finding to be given at that juncture.

Now the question before court below and before this court is that:

whether the appellants/plaintiffs are ever ready to perform their part of contract?

Ex.A1 is the agreement of sale deed dated 14.08.1982 filed by the plaintiffs, executed by Saripalli Pydayya and Appalanaidu and on behalf of his minor son, Ramana in favour of the plaintiffs. Ex.A2 is the proceedings of the Special Officer and competent authority, Urban Land Ceiling, Visakhapatnam dated 23.09.1982 and an enquiry was conducted upon the statement filed by Saripalli Pydayya in form No.1 under Section 6(1) of Urban Land (Ceiling and Regulation) Act, 1976 and held that the declarants land is an agricultural land situated outside the Visakhapatnam Municipal

Corporation Limits and is not attracted by the provisions of Urban Land (Ceiling and Regulation) Act, 1976 as long as it is used for agricultural purpose. Ex.A3 is receipt dated 13.11.1982 in respect of receipt of Rs.5,000/- passed by Saripalli Pydayya and his son. Ex.A4 is the sale agreement dated 26.11.1983 executed by Pydayya and his son Appalanaidu (D1) in favour of the appellants/plaintiffs, wherein referred to the agreement under Ex.A1 and it was recited that by then the total amount received by them was Rs.20,000/- and on the date of -Ex.A4 received Rs.25,000/-(in all Rs.45,000/- received).

It is pertinent clear after going through trial court record. It was agreed to deliver the possession of property in favour of the appellants/plaintiffs as and when they requested and to register the same by receiving the rest of sale consideration before the Registrar. Ex.A5 is the orders of District Registrar, Visakhapatnam dated 14.07.1987 on the representation of the first plaintiff dated 03.06.1987 and 09.07.1987 whereunder he was informed that the land noted in the subject falls under Visakhapatnam Urban Agglomeration and Urban Land Ceiling Act. Saripalli Pydayya, who owned the land was certified as agricultural land in the reference and as long as back 1982. Several changes might have taken place as regards the classification of land from 1982 to 1987 and in view of the demise of Saripalli Pydayya, it was advised that a certificate has to the classification of the land from Urban Land Ceiling is to be filed before registering any document under question. Ex.A6 is bank pass book in the name of fist plaintiff. Ex.A7 is the death certificate of Pydayya dated 21.11.1985 issued by M.R.O., Pendurthi. Ex.A8 is the legal heir certificate issued by M.R.O., Pendurthi dated 22.01.1986. Ex.A9 is the Pattadar passbook. Ex.A10 is the receipt dated 29.06.1984 passed by late Pydayya and his son Appalanaidu (D1) in favour of the appellants/plaintiffs in token of receipt Rs.3000/-. Ex.A11 is the legal notice dated 07.05.1987 got issued by Pydamma (D2), W/o Pydayya, Sannamma and Dalamma (D4 and D5 i.e., daughters of Pydayya) to the first plaintiff and D1. Ex.A12 is the reply to D2, D4, D5 and D.1 calling upon them to receive the balance sale consideration and execute proper sale deed in their favour. Ex.A13 is the copy of memo dated 10.9.1984 in R.A. No.9157 of 1981 of District Collector,

Visakhapatnam, whereunder Saripalli Pydayya was addressed that after pursuing the request letter filed by Pydayya and report of the Regional Housing Engineer, the land in Krishnarayapuram village an extent of Ac.1.82 cents in Sy No.30/1 was decided to be acquired for A.P. Housing Building Construction Society. Ex.A14 is the A.P. Gazette dated 04.06.1987 whereunder mentioned the proceedings vide R.C. No.113382/84 G8 dated 25.07.1987 of the Collector, Visakhapatnam, RC No.157/87/R.1-1 dated 30.04.1987 and form of notification was to be issued under Section 4 of the Act 1 of 1984 L.A.Act as amended by Act XXXVIII of 1923 whereunder the Governor of A.P., authorized the Special Tahsildar (L.A), Revenue Division, Visakhapatnam his staff and workmen to exercise the powers conferred by Section 4(2) of the Act and under Section 3 (c) of the same Act the Special Tahsildar (LA) Revenue Division, Visakhapatnam was appointed to perform the functions of a Collector under section 5(a) of the Act. The suit schedule property is shown in page-31. Ex.A15 as the memo dated 06.04.2001 vide Rc.No.405/88/R.1-1 Office of the Special Tahsildar (LA), Revenue Division, Visakhapatnam, issued on the application of first plaintiff dated 23.03.2001 and he informed that the land acquisition notification under section 4 (1) of the act to acquire the land measuring Ac1.82 cents by Sy.No.30/1 of Krishnarayapuram village of Pendurti Mandal, Visakhapatnam district for the A.P. Housing Board, Visakhapatnam, was lapsed by limitation of time.

Ex.A16 is annexure-II form of application for issuance of market value certificate at immovable properties involved in the suit, issued by Joint Registrar, Visakhapatnam, dated 9.11.2005 stating S.No.30/1 of Krishnarayapuram Village of Pendurti Mandal, rate per acre is Rs.12,000/- as on 14.8.1982.

Ex.A17 is the Xerox copy of the letter dated 03.01.1983 vide memo No.3120/Dsk.2/A2/82 by the Commissioner of Industries, A.P. Hyderabad, permitting to allow the shifting of the unit M/s. Kalyan Chemicals, Kokkaravur to Visakhapatnam subject to the conditions mentioned thereunder.

Ex.A18 is the award No.3/90 dated 10.7.1990 under Section 11 of the L.A Act.

Ex.A19 is the Xerox copy of the award in PLC 876/2007 LAC No.161/08 dated 18.02.2008 in between first defendant and Pillala Satyavathi in respect of cancellation of registered sale deed No.1347/2003 dated 6.03.2003 before S.R.O., Gopalapatnam, after receiving Rs.4 lakhs by said Satyavathi from D.1 and undertook the she will not claim any right under such sale deed and that delivered the possession of the land to the petitioner on the said date and that she returned the original sale deed to the petitioner on the same date.

Ex.A20 is the certified copy of the application for permission to file additional document as volume-II, filed by the plaintiff No.1 before the Hon'ble Supreme Court of India vide I.A.No.3-4/2006 in SLP (Civil) No.1471-72 of 2006.

Ex.A21 is the letter in Rc No.357/87-B1 dated 04.09.1987 of Special Officer, ULC, Visakhapatnam, addressed to the plaintiff No.1 in response to his letter dated 18.7.1987 where under he was informed that the matter is pending with the government in regard to the subject i.e., grant of two (o) certificates for registering agricultural lands.

Ex.A22 is the letter in Rc No.9560/87 B2 dated 9.9.1987 addressed from the Collector, Visakhapatnam to the Special Officer, ULC, Dwarakanagar, Visakhapatnam with reference to the letter of the first plaintiff dated 16.07.1987 with a request to examine the question on issue of certificate under Urban Land Ceiling Act to the first plaintiff and to take action as per rules.

Ex.A23 is the original of annexure-II which was already marked under Ex.A16 i.e., market value certificate.

Ex.24 is the carbon copy of Ex.A17. Ex.A25 is the Xerox copy of award attested by Special Tahsildar (LA), Revenue Division, Visakhapatnam, corresponding to Ex.A18.

Ex.A26 is the certified copy of registered sale deed dated 6.3.2013 whereunder D.1 sold the plaint schedule property to Pillala Satyavathi. Regarding this sale deed, an award was passed between them vide PLC

which was marked as Ex.A19.

On the other hand, Ex.B1 is the certified extract of sale deed dated 22.1.1947 stands in the name of the father of D.5 (late Pydayya) in respect of Ac 1.20 cents in Sy.No.265/266 known as Jayamma Chilaka.

The first appellant, who is an advocate argued that the plaintiffs are the agreement holders of the suit schedule property having paid the consideration. This aspect has been confirmed by the Hon'ble Supreme Court and ordered that there need not be any further enquiry on this issue. So far as the specific performance of the suit agreement is concerned, the plaintiffs had been always ready and willing to get the registration after payment of balance amount of Rs.2,400/- and they made demand to the defendants under Ex.A12. Even after such notice, the plaintiffs had early demanded and requested the defendants several times through mediators and elders to perform their part of contract. This fact has been confirmed by D1 in his cross-examination dated 20.3.2014 where under he admitted that the plaintiffs through mediators and elders such as Karanama Rambabu and Sarpanch at that time by name Narasimha Raju made efforts and called him to come and registered the property. Since the defendants are not coming forward for registration, the plaintiffs have been compelled to file the suit. His endeavour was that there are no laches on their part and they have to be granted specific performance under Section 20 of the Specific Relief Act.

It is pertinent to note that learned counsel for D.1 argued before the trial court and before this court that under Ex.A1 it was recited that the plaintiffs had paid an amount of Rs.10,000/- towards advance and the balance amount to be paid within three months and by that time the plaintiffs have to obtain land acquisition and land ceiling permissions with their own amount. And if the plaintiffs failed to get such permission within three months, they can get back the advance by giving the schedule property to others. If it is not possible, in case, the government acquires the property, the D.1 and his late father would get the compensation from the government and out of the same the plaintiffs are entitled to receive the advance amount. Further stated that second payment of Rs.5,000/- shall be made by the defendants within 15 days there from. By drawing the attention of the Court

to Ex.A1, the learned counsel for D.1 contends that as seen from the terms and conditions of agreement, the time is essence of the contract. Moreover, Ex.A1 reveals the fact that by that time there were land acquisition proceedings which fact was known to the plaintiffs. There is a further recital in Ex.A1 that on 13.11.1982 an amount of Rs.5,000/- was paid by the plaintiffs and time was further extended for two months there from again on 17.01.1983 the plaintiffs paid Rs.1,000/- and balance amount was stipulated to be paid within three months and by that time the clearance certificates have to be obtained by the plaintiffs. It has been further recited that the plaintiffs paid Rs.1,000/- and time was further extended by two months and further recited that again on 25.5.1983 the plaintiffs paid Rs.3,000/- but there was no recital with regard to the extension of further time.

Since more than six decades, these defendants have been enjoying the schedule property by raising seasonal crops and, if this defendant is evicted from the plaint schedule property he will be put to much loss and hardship. Except the plaint schedule property, the defendants have no other immovable properties and by raising seasonal crops, they are leading their lives, as such the relief of specific performance cannot be granted. In the case of specific performance it is for the plaintiffs to establish that the covenants in the contract are clear, cogent and fair; if the plaintiffs conduct is tainted with falsity of the case or unworthy of acceptance equity denies them the relief. The alleged suit agreement is dt.26.11.1983, even after the death of father of the D.1 the plaintiff never demanded him to execute sale deed till 1987, he kept quiet without asking. After receipt of legal notice from the other defendants he got issued reply and since then also the plaintiff waited for another three years and filed this suit on the last date of limitation which clearly shows that the plaintiffs are not willing to perform their contract.

In view of the above discussion, I find no discrepancy in the judgment and decree dated 01.06.2015 passed in O.S No.311 of 1990 by the Court of I Additional Senior Civil Judge, Visakhapatnam.

Therefore, I find no merit in the instant appeal, the same is accordingly dismissed. There shall be no order as to costs. Miscellaneous petitions, if any, pending in this Appeal suit shall stand dismissed.

JUSTICE SURESH KUMAR KAIT.

Dated: 24.08.2016
Avs/Gvl

THE HON'BLE SRI JUSTICE SURESH KUMAR KAIT

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APPEAL SUIT No.836 of 2015

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Avs/Gvl

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[\[1\]](#) (1995)2 SCC 528
[\[2\]](#) AIR 1974 ALL. 37)
[\[3\]](#) AIR 1970sc 833)
[\[4\]](#) AIR 1984 AP 28
[\[5\]](#) (2002)7 SCC 447
[\[6\]](#) AIR 1977 SC 392
[\[7\]](#) AIR 1960 SC 941)