

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

* * * *

A.S.Nos.2091 and 2305 of 1991
1850 and 2074 of 1992

Between:

Bharathiya Vignana Mandiram (Regd.)
Rep.by its Secretary
And others

..... Appellants

AND

Veddi Sankara Rao and others

.....RESPONDENTS

DATE OF JUDGMENT PRONOUNCED: 07.04.2017

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE M.S.K.JAI SWAL

- 
1. Whether Reporters of Local newspapers may be allowed to see the Judgments? Yes/No
 2. Whether the copies of judgment may be marked to Law Reporters/Journals Yes/No
 3. Whether Your Lordships wish to see the fair copy of the Judgment? Yes/No

M.S.K.JAI SWAL,J

* THE HON'BLE SRI JUSTICE M.S.K.JAI SWAL

+ A.S.Nos.2091 and 2305 of 1991
1850 and 2074 of 1992

% 07.04.2017

Bharathiya Vignana Mandiram (Regd.)
Rep.by its Secretary and others

...Appellants

Versus

\$ Veddi Sankara Rao and others

....Respondents

! Counsel for the Appellants: Sri VSR Anjaneyulu and
Sri TVS Prabhakara Rao

^ Counsel for the respondents: Sri MSR Subhrahmanyam and
Sri P.N.Murthy

< Gist :

> Head Note:

? Cases Referred:

- 1) (1995) 1 SCC 47
- 2) AIR 1972 A.P., 178



HON'BLE SRI JUSTICE M.S.K.JAISWAL**A.S.Nos.2091 and 2305 of 1991,
1850 and 2074 of 1992****COMMON JUDGMENT:-**

These four appeals arise out of common Judgment in O.S.No.623 of 1982 and O.S.No.110 of 1983 on the file of the learned I-Additional Subordinate Judge, Vijayawada, dated 16-09-1991, by and under which, O.S.No.623 of 1982 filed by the land owner of the schedule property for recovery of possession was partly decreed, O.S.No.110 of 1983 filed by the possessor of the schedule property under an agreement of sale, dated 26-10-1973, was partly decreed.

2. The suit schedule property comprises of an extent of 1890 Sq.Yds., of land situated in Sy.Nos.45, 46, 47, 48 and 49 situated in Laxmi Nagar, Satyanarayanapuram within the limits of Vijayawada Municipal Corporation.

3. Since both the parties were aggrieved by grant of partial relief in their respective suits, the appeals in hand are filed. While the plaintiff in O.S.No.623 of 1982 has filed A.S.No.1850 and 2074 of 1992, the plaintiff in O.S.No.110 of 1983 has filed A.S.No.2091 and 2305 of 1991.

4. Both the suits were clubbed and tried jointly by the trial Court. The evidence was recorded in O.S.No.623 of 1982 which was filed by the owner of the schedule lands for recovery of possession. The defendant in the suit filed O.S.No.110 of 1983 for specific performance of the contract in respect of the same property. For the sake of convenience, the parties shall be referred to as they are arrayed in O.S.No.623 of 1982.

5. The pleadings of the respective parties may briefly be noticed.

6. **O.S.No.623 OF 1982:-**

The plaintiff filed the suit for recovery of possession of the plaint schedule properties and for damages of Rs.13,440/- and for future damages at Rs.1,000/- per month for use and occupation.

The plaintiff is the owner of Ac.2-09 cents of land in R.S.No.132/1 of Vijayawada Municipal Corporation. He obtained layout sanction vide 16/62 by the municipality. In that, an extent of 1260 Sq.Yds. of site was reserved as a park site but it continued to be in possession and enjoyment of the plaintiff. In June, 1974, an extent of 630 Sq.Yds., of site was given on lease to Sri K.Raghava Rao, the Secretary of the defendant, under an agreement on 6-6-1974, at the rate of Rs.80/- per month for the first year and subsequent years, at the rate of Rs.100/- per month and possession was also taken and structures were erected. In April, 1978, after the advent of the Urban Land Ceiling Act, the Secretary approached the plaintiff and requested to purchase 630 Sq.Yds., of site that was leased along with the reserved site of 1260 Sq.Yds., representing that he would get the dereservation from the Government and also exemption from the Urban Land Ceiling Authorities because an educational institution was being run it will be easy to get the above orders. Believing the said words of Raghava Rao, the plaintiff agreed to sell the suit property at Rs.27/- per Sq.Yd. and entered into an agreement. Finally, a sale agreement from the plaintiff was obtained on 23-05-1978 antedating the same as 26-10-1973 on the representation that unless the transaction appears to be long prior to the

commencement of the Urban Land Ceiling Act, it will not be possible to obtain the exemptions. After taking possession of the entire plaint schedule property, the defendant obtained permission from the Municipality for construction of class rooms.

It is alleged that several incorrect recitals were mentioned in the contract apart from the dates about the payment of money. It is further alleged that in fact a sum of Rs.3,000/- was paid on 23-05-1978 when the agreement was entered into, though the payments were shown earlier one of Rs.2,000/- on 26-10-1973 and Rs.1,000/- on 20-09-1976. A sum of Rs.7,000/- was paid on 27-06-1978 stating that the balance should be paid before 01-10-1979 and in case of failure, it has to be paid with interest of 12% per annum irrespective of the Urban Land Ceiling Permission whether obtained or not. The defendant stopped paying the rents for the leased site from 01-05-1978 onwards. The plaintiff waited nearly for two years expecting the defendant will obtain the dereservation order as well as the Urban Land Ceiling permission and when the plaintiff pressed for the early completion of transaction, a sum of Rs.10,000/- was paid on 31-08-1980 by endorsing the same on the agreement. The plaintiff would have got a monthly rent of Rs.600/- even in 1978 and at present Rs.1,000/- per month. The Urban Land Ceiling case has ended in favour of the plaintiff. Even though the plaintiff informed about the proceedings, the defendant did not complete the transaction by obtaining the dereservation order. The plaintiff received a notice dated 18-01-1982 from the Vijayawada Municipal Corporation directing him to handover the reserved site to the Corporation and then he could know that the defendant could not do anything for

obtaining the dereservation order and the plaintiff was bluffed. The said notice was shown to Raghava Rao and he filed a suit in O.S.No.96 of 1982 against the Municipal Corporation and obtained interim injunction and continuing in possession and enjoyment of the property. Therefore it is quite clear that no dereservation order was obtained and no steps were also taken by the defendant for that and an important condition of the agreement was flouted. The plaintiff would have never agreed to sell the property for a substantially low rate but for the persuasion, inducement and misrepresentation of Raghava Rao, the plaintiff was made to believe that what he was leasing by selling 630 Sq.Yds. of site at a concessional rate will be doubly compensated by the amount he gets by selling the reserved plot to the defendant. The agreement has become impossible for performance and has become unenforceable. The plaintiff gave a notice on 26-03-1982 to the defendant demanding possession of premises, and damages at the rate of Rs.600/- per month and the contract was rescinded. The said notice was returned. Another notice dated 18-06-1982 was also returned. Thereafter, the defendant got issued a notice, dated 25-09-1982 demanding specific performance of the contract of sale. The plaintiff gave a detailed reply for the said notice. Therefore, the suit is filed for recovery of possession of the suit schedule property and also for damages for use and occupation at the rate of Rs.600/- per month and subsequent damages at the rate of Rs.1,000/- per month. The amount of Rs.20,000/- paid by the defendant to the plaintiff was adjusted towards the rent payable from 01-05-1978 to 31-03-1981 and the balance amount is claimed.

The defendant filed the written statement. It is averred that defendant is a registered society and is represented by its Secretary. The plaintiff is the owner of the plaint schedule property. The plaintiff agreed to sell the plaint schedule property on 26-10-1973 at the rate of Rs.27/- per Sq.Yd. and received advance amount of Rs.2,000/- and delivered possession of the plaint schedule property as by that time the property was lying vacant and it was not fetching income and unnecessarily property tax was being paid. The plaintiff agreed to execute a registered sale deed along with his two sons. The plaint schedule property is an urban land within Vijayawada Municipal limits, and as such attracted the provisions of Urban Land Ceiling Act. Both parties contemplated this aspect and decided to apply and obtain clearance and permission from the Urban Land Ceiling Authorities and as the entire process would take considerable time, a period of one year was stipulated for completion of the sale transaction, by payment of the balance sale consideration. But the same was not mentioned in the contract by way of abundant caution. Subsequently, on 20-09-1976 the defendant paid a sum of Rs.1,000/- towards part payment of the sale consideration and the same was endorsed. Again on 27-06-1978 a sum of Rs.7,000/- was paid by way of cheque and made endorsement stipulating that the defendant should pay interest on the balance of sale consideration at 12% per annum from 01-12-1979 whether permission could be obtained or not. Subsequently, a sum of Rs.10,000/- was paid on 31-08-1980 and it was also endorsed on the agreement. Even by then, the plaintiff did not secure the permission from the Urban Land Ceiling Authorities or any

clearance to contemplate the transaction inspite of the fact that the defendant was ready and willing to pay the balance money with interest and take a registered sale deed. The plaintiff was promising to get the clearance and requested the defendant to wait for some time. The defendant raised temporary thatched sheds soon after taking possession of the suit schedule property under the suit contract of sale for accommodating ITI College and Oriental College, which were recognized by the Government and subsequently the defendant raised pucca sheds with cement sheets and other material. The above constructions were destroyed in 1979 cyclone and the Government granted a sum of Rs.25,000/- as relief. Thereafter, the defendant spent nearly Rs.4,00,000/- and raised constructions and at present, nearly 1000 students are accommodated. The defendant has been under the *bona fide* impression and belief that the plaintiff and his sons would perform their part of the contract. Vijayawada Municipality initiated proceedings to demolish the sheds in the suit site on the ground that portion of it was reserved for a public park and that the defendant filed O.S.No.96/1982 for permanent injunction and the plaintiff is aware of the above proceedings. The plaintiff never disclosed to the defendant whether necessary exemption and clearance were obtained from the concerned authorities even after the filing of the above suit. The defendant got issued a registered notice on 25-09-1982 stating that he is ready and willing to perform his part of the contract, and the same was replied on 10-10-1982 with false allegations. The defendant denied that the contract was antedated and the value of the property is more and that there was misrepresentation and fraud. The defendant did

not take 630 Sq.Yds. on lease on 06-06-1974 and there was no undertaking to get dereservation order of the Urban Land Ceiling permission, and the plaintiff himself undertook to obtain dereservation order. The defendant was never informed about the alleged reservation of the site for a park. Having executed the contract of sale and received a sum of Rs.20,000/-, it is not open to the plaintiff and his sons to contend that they are not bound to perform their part of the contract. The defendant is in possession and enjoyment of the property and is not liable to pay any damages claimed by the plaintiff. Non-obtaining of dereservation order is not a ground to refuse to perform the part of the contract and the defendant will take the risk in that regard and is prepared to take a sale deed from the plaintiff and his sons. On 06-11-1982 when the defendant was ready to file a suit for specific performance, the plaintiff along with others approached the defendant and requested not to file the suit and proposed a compromise, and at their request, the defendant did not file the suit. Later the plaintiff demanded Rs.100/- per Sq.Yd., for which the defendant did not agree, but the mediators promised to settle the matter at a reasonable price. Till the end of December, the plaintiff did not come forward for a settlement. While so, on 17-01-1983 the defendant received summons in the suit. On the promise of the mediators for settlement, the defendant could not file the suit earlier for specific performance of the contract. The defendant was in fact not aware of the reservation of the park site and entered into contract *bona fide* believing the representation of the plaintiff. The possession of the defendant and his interest in the suit land is protected and safe-guarded under Section 53-A of the

Transfer of Property Act and the defendant is not liable to be evicted. The plaintiff is not entitled for any *mesne profits* and the plaintiff cannot revoke the contract. Being a purchaser in possession, the defendant is not liable to pay any damages or rents. The suit is frivolous and vexatious and is liable to be dismissed. The estimate of damages is highly exaggerated and it will not fetch even a rent of Rs.100/- per month. The market value on the date of the suit does not exceed Rs.50/- per Sq.Yd. and exaggerated values are put in the plaint with ulterior motives. The defendant pleaded for dismissal of the suit with costs.

On the basis of the above pleadings, the following issues were settled:-

- 1) Whether the contract of sale was antedated?
- 2) Whether the plaintiff is entitled for possession of suit property?
- 3) Whether the plaintiff is entitled for any damages, if so, at what rate?
- 4) To what relief?

7. **O.S.No.110 of 1983:-**

The suit is filed for specific performance of the contract of sale dated 26-10-1973 executed by the defendant (owner of the land) in favour of the plaintiff and for costs.

The allegations in the plaint are mostly repetition of the allegations made in the written statement filed in O.S.No.623 of 1982 and therefore it is not necessary to repeat the same. The plaintiff claimed that he was always ready and willing to perform his part of the contract of sale and the defendants were evading to execute a regular sale deed after obtaining necessary Urban Land Ceiling permission or other concessions.

The 1st defendant filed a written statement reiterating most of the allegations made in the plaint in O.S.No.623 of 1982. It is alleged that the suit contract is antedated, vitiated by fraud and undue influence and that the plaintiff was never ready and willing to perform the part of the contract and the contract has become impossible of performance as no dereservation order is obtained and as such the suit contract is not enforceable.

Defendants 2 and 3 filed a written statement admitting that the 1st defendant is the manager of the family and they were not aware of the execution of the agreement of sale dated 26-10-1973. They also reiterated most of the allegations and contentions raised by the 1st defendant. These defendants claimed that they are not necessary parties to the suit and there is no cause of action against them, and pleaded for dismissal of the suit.

On the basis of the above pleadings, the following issues were settled:-

- 1) Whether the plaintiff's society has been registered under the Societies Registration Act?
- 2) Whether the suit agreement was obtained by the Secretary of the plaintiff from the defendants on 23-05-1978 and it was antedated and it is vitiated by fraud and misrepresentation as contended by the defendants?
- 3) Whether the alleged agreement of sale is not valid and not enforceable?
- 4) Whether the contract of sale has been frustrated due to impossibility of performance?
- 5) Whether the plaintiff is entitled for the specific performance of contract of sale?
- 6) Whether the defendants 2 and 3 are not necessary parties to the suit?
- 7) To what relief?

8. On behalf of the plaintiff in O.S.No.623 of 1982, PWs.1 to 5 were examined and Exs.A.1 to A.20 were marked. On behalf of the defendant, DWs.1 to 4 were examined and Exs.B.1 to B.24 were marked. Exs.X.1 to X.11 were also marked.

9. Learned Counsel appearing for the appellants in A.S.No.1850 and 2072 of 1992 (plaintiff in O.S.No.623 of 1982) submits that the learned trial Court has erred in refusing to grant the relief to the plaintiff as prayed for. While the trial Court has upheld the contention of the appellants insofar as 1260 Sq.Yds., of land is concerned, the Court has erroneously dismissed the claim insofar as 630 Sq.Yds., of land is concerned.

10. On the other hand, learned Counsel appearing for the respondents/agreement holder/defendant in O.S.No.623 of 1982 submits that the learned trial Judge having upheld the claim of the defendant insofar as 630 Sq.Yds., of land is concerned, has erroneously dismissed the relief of specific performance in respect of an extent of 1260 Sq.Yds., of land on the ground that the said site was reserved for park as per the layout and hence the same is inalienable. Learned Counsel submits that even during the trial, he offered his willingness to complete the contract at his own peril. It is further submitted that even if the said extent of 1260 Sq.Yds., of land was reserved for park, the ownership thereof do not vest with the Municipality so long as the same has not been acquired by the Municipality for the said purpose. Learned Counsel submits that merely because in the layout certain extent of land has been show as public utility area, the owner of the entire extent of land cannot be said to have been divested of his right or title over the said property. Learned Counsel submits that the utility of

the land left for public purpose has to be allowed for the public purpose to be enjoyed by the residents of the locality but it do not in any way confer title over the said property in favour of the Municipality so long as that land has not been acquired by it. It is submitted that the entire approach of the learned trial Judge insofar as this extent of land is concerned is erroneous and the suit filed by the agreement-holder/plaintiff in O.S.No.110 of 1983 ought to have been decree in toto but not partially only for 630 Sq.Yds., as has been done.

11. The points that arise for consideration are as to:

- 1) Whether the plaintiff in O.S.No.110 of 1983 is entitled to the relief of specific performance of the contract for the entire extent of 1890 Sq.Yds., of land?
- 2) Whether the plaintiff in O.S.No.623 of 1982 is entitled to recover possession of the entire extent of 1890 Sq.Yds., of land as against 1260 Sq.Yds., of land as has been decreed by the Court below?
- 3) Whether the impugned Judgment warrants any interference so as to modify, set aside or vary the same?

12. Having perused the voluminous oral and documentary evidence and also the impugned Judgment and after hearing the elaborate arguments of the learned Counsel appearing on either side, it can be straight away observed without fear of contradiction that substantial factual matrix is either admitted or is not seriously in controversy. The point in dispute boils down to the question as to whether the land that has been earmarked for public utility in a layout approved by the Municipality is alienable so long as the same has not been taken possession of or acquired

by the local authority. In other words, is it open to a vendor under an agreement of sale to refuse to register the property agreed upon in favour of the vendee on the ground that he or they have no alienable title over the property agreed to be sold under a contract.

13. The plaintiff is the owner of an extent of Ac.2-09 cents of land in Sy.Nos.45, 46, 47, 48 and 49 of Laxmi Nagar, Satyanarayanapuram, within the limits of Vijayawada Municipal Corporation. They submitted and obtained approval of a layout in the year 1962 in respect of the said land, bearing No.16 of 1962. As per the said layout, an extent of 1260 Sq.Yds., of land was reserved for park. The rest of the lands were made into plots. The defendant is an educational institution. In order to meet the expanding requirement of the educational institution, the defendant entered into an agreement of sale with the plaintiff for a total extent of 1890 Sq.Yds., of land and the agreed price was Rs.27/- per Sq.Yd., which comes to Rs.51,030/-. The agreement of sale has been produced by both the parties and document that is filed by the plaintiff is marked as Ex.A4 whereas the document produced by the defendant is marked as Ex.B.1. Out of the total consideration, the defendant paid a total of Rs.20,000/- to the plaintiff on different dates and the said aspect is admitted and acknowledged both orally and by documents viz., Exs.A5, A.6 and A.7. The last payment of Rs.10,000/- was made under Ex.A7 on 31-08-1980. Ex.A4/Ex.B.1 – agreement of sale was executed on 26-10-1973. The defendant was put in possession of the entire extent of land covered by the agreement and he erected structures thereon and had been running the school. In the devastating cyclone that hit the area in 1977, the structures of the school

being run by the defendant were damaged, for which the authorities paid a compensation of Rs.25,000/- to the defendant school. Thereafter, permanent and semi-permanent structures were raised on the suit site and admittedly, right from 1973-74, the defendant is running the school, which has ever been expanding. The fact that there was such an agreement is not disputed, on the other hand, the specific case of the plaintiff is that he has been acting all along under the influence of the defendant who pretended to be his well-wisher and had been obtaining his signatures on several papers and agreements.

14. A feeble attempt has also been made by the plaintiff to contend that the agreement of sale in between the parties though on the face of it is dated 26-10-1973, but in fact the same was entered into only on 23-05-1978 and it was antedated by more than five years by the defendant after assuring the plaintiff that the said antedating is necessary to overcome certain legal hurdles that may arise. Apparently, even if there is any antedate of the agreement, the same was with the consent of the plaintiff. However, the plea of the plaintiff that the actual agreement took place only on 23-05-1978 by putting the date as 26-10-1973 is falsified by an authenticated document viz. Exs.B.20 and B.21, which are the orders of the Special Officer and Competent Authority under the Urban Land Ceiling Act, dated 07-10-1980 and the deposition of the plaintiff herein recorded by the said authority on 25-07-1980. The plaintiff has filed the declaration under Urban Land Ceiling Act before the competent authorities in 1976 itself and the said file was assigned the number as Case No.227/76. The authenticity and genuineness of Ex.B.20 and

Ex.B.21 is neither disputed nor can it be doubted. It is manifest there from that in the year 1976, specific reference has been made by the plaintiff with regard to agreement of sale in respect of the schedule property with the defendant school. If the agreement was only in 1978 as claimed by the plaintiff, the same would not have been declared by the plaintiff in his declaration filed under ULC Act in the year 1976 itself.

15. The contention of the plaintiff that the defendant has used an old stamp paper available with him for preparation of the agreement of sale is difficult to be believed for the reason that two sets of agreements of sale were prepared on 26-10-1973 on stamp papers which were purchased on 31-01-1973. There are as many as 14 stamp papers, 4 of which were valued 0.25 paise each and the remaining 10 are worth 0.40 paise each. It is difficult to believe that the defendant school could have procured the stamp papers of more than five years old for the purpose of preparing the agreement of sale in the year 1978.

16. In addition to the above, on the reverse of the original agreement of sale, payment endorsements are made, which are marked as Exs.A5, A.6 and A.7 by the plaintiff evidencing payment of Rs.1,000/- on 20-09-1976; Rs.7,000/- by cheque on 27-06-1978; and Rs.10,000/- on 31-08-1980.

17. The plaintiff contended that the defendant was a lessee in respect of part of the suit schedule land under lease-deed and he relied upon Exs.A1 to A3. The defendant contends that the so-called lease was in respect of the other property belonging to the plaintiff but not the site covered by the agreement of sale under Ex.A4/Ex.B.1.

18. One more circumstance which belies the contention of the plaintiff with regard to antedating the agreement of sale is the evidence of PW.2, who is a witness produced by the plaintiff himself. It is categorically asserted by PW.2 in his evidence that he was informed by D.W.1 about the existence of agreement of sale in between the plaintiff and the defendant as long back as in June, 1975 itself. This assertion of the witness produced by the plaintiff which is reiterated more than once in his evidence is not challenged, which clearly shows that even prior to June, 1975, there was an agreement of sale in between the plaintiff and the defendant as was informed to him by the defendant.

19. In view of the above, I have no hesitation in confirming the finding of the learned trial Judge which is based on proper appreciation of the material on record which is to the effect that in between the plaintiff and the defendant there was a contract on 26-10-1973 by and under which an extent of 1890 Sq.Yds., of land was agreed to be sold by the plaintiff to the defendant @ Rs.27/- per Sq.Yd., and the registered sale deed was to be executed after obtaining the requisite clearances from the authorities.

20. It is also not in controversy that out of the total extent of 1890 Sq.Yds., agreed to be sold under Ex.A4/Ex.B.1, 1260 Sq.Yds., of land was originally earmarked for the purpose of park as per the approved layout obtained by the plaintiff as long back as in the year 1962. 13 years thereafter, the plaintiff himself entered into transaction with the defendant for selling the property including the site which was reserved for park. It is also borne out from the record that even though in the layout, this extent of land was earmarked for park but the same had been put to use by the

defendant for the purpose of running the school right from 1973 till date. Structures are also raised thereon. The local authority attempted to recover possession of the park area, for which the defendant filed a civil suit and obtained the relief. It is also admitted fact that though part of the suit site covered by Ex.A4/Ex.B.1 was reserved for park, the same has not been put to use, as such right from 1962 nor was it acquired by the Municipality for the purpose of developing it into a park.

21. In this connection, reference may be made to a decision of the Supreme Court reported in **PT.CHET RAM VASHIST v. MUNICIPAL CORPN. OF DELHI**¹, the Supreme Court observed as under:-

“6. Reserving any site for any street, open space, park, school etc., in a layout plan is normally a public purpose as it is inherent in such reservation that it shall be used by the public in general. The effect of such reservation is that the owner ceases to be a legal owner of the land in dispute and he holds the land for the benefit of the society or the public in general. It may result in creating an obligation in nature of trust and may preclude the owner from transferring or selling his interest in it. It may be true as held by the High Court that the interest which is left in the owner is a residuary interest which may be nothing more than a right to hold this land in trust for the specific purpose specified by the coloniser in the sanctioned layout plan. But the question is, does it entitle the Corporation to claim that the land so specified should be transferred to the authority free of cost. That is not made out from any provision in the Act or any principle of law. The Corporation by virtue of the land specified as open space may get a right as a custody and of public interest to manage it in the interest of the

¹ (1995) 1 SCC 47

society in general. But the right to manage as a local body is not the same thing as to claim transfer of the property to itself. The effect of transfer of the property is that the transferor ceases to be owner of it and the ownership stands transferred to the person in whose favour it is transferred. The resolution of the Committee to transfer land in the colony for park and school was an order for transfer without there being any sanction for the same in law.”

22. It shall now be seen as to whether the vendor under an agreement of sale having voluntarily entered into a contract of sale can refuse to perform his part of the contract on the ground that part of the suit site is inalienable, he having no valid title. This point has been answered by a Division Bench of our High Court in a decision reported in **M.A.H.KHAN v. A.M.KHADRI**². Paras 10, 13 and 16, which are relevant usefully be extracted as hereunder:-

“The reason for the absence of pleading that the defendant had no title or had defective title is obvious. It is settled law that if a person executes an agreement to sell property, the vendor is not entitled to put forward, in a suit for specific performance by the purchaser the defence that the vendor had no title. It is open to the purchaser to set up a defence that the vendor had no title or has defective title in a suit for specific performance by the vendor. But the vendor cannot set up defect in his own title as a defence in a suit for specific performance by the purchaser. In *Balushami Aiyar v. Lakshmna Aiyar* (ILR 44 Mad 605 at page 610 = (AIR 1921 Mad 172)(FB) it was observed:

“Where a person sues for specific performance of an agreement to convey and simply impleads the party bound to carry out to the agreement there is no necessity to determine the question of the

² AIR 1972 A.P., 178

vendor's title and the fact that the title which the purchaser may acquire might be defeasible by a third party is no ground for refusing specific performance if the purchaser is willing to take such title as the vendor has. But where a party seeking specific performance seeks to bind the interests of persons not parties to the contract alleging grounds which under Hindu law would bind their interests and enable the vendor to give a good title as against them and makes them parties, it is difficult to see how the question as to the right of the contracting party to convey any interest except his own can be avoided and a decree passed, the effect of which will merely be to create a multiplicity of suits”.

In this case there is no question of the plaintiff attempting to bind the interest of persons not parties to the contract and making them parties, the only party in this case being the defendant. The observations of the Full Bench were followed in *Muni Samappa v. Gurunanjappa* (AIR 1950 Mad 90). In that case, in a suit on foot of an agreement to sell a house impleading only the two executants, it was held that there was no necessity to determine the question of the vendor's title and the fact that the title which the purchaser may acquire might be defeasible by the sons of defendant was no ground for refusing specific performance if the purchaser was willing to take such title as the vendors had. In the same manner it is unnecessary in this suit which is filed only against the defendant who has executed the agreement and in whose name the patta of the lands stand, to go into the question whether his title is defective or whether the property belongs only to the partnership of which he is a partner.

We are therefore of the view that the question whether the property belonged to the partnership and not to the defendant ought not to have been gone into and the trial Court below was wrong in refusing specific

performance to the purchaser on the ground that the vendor's title was defective.

In *Silla Chandra v. Ramachandra Sahu* (AIR 1964 SC 1789) the Supreme Court had to consider a case where the manager of a family consisting of himself and his mother agreed to sell certain property and further agreed that he and his mother would execute a sale deed in favour of the purchaser within a period of one year. On his failing to do so the purchaser filed a suit for specific performance. The trial Court held that the sale was not for legal necessity and therefore, decreed the suit in part and directed the vendor to execute the sale deed in respect of his interest. The purchaser preferred an appeal to the High Court and during the pendency of the appeal the mother died. It was held by the Supreme Court that the purchaser had interest in the house along with his mother and on the death of the mother, the purchaser obtained title to and interest also in that portion of the house which on a private partition, partition subsequent to the contract to sell has taken place between him and his mother and therefore under Section 18(a) he had to make good his contract out of the property he acquired subsequent to the contract to sell. They also held that the expression "subsequently to the sale or lease" means 'subsequent to the contract to sell'.

In view of these decisions of the Supreme Court we are of the view that Section 18(a) applies to the facts of the case and the plaintiff is entitled to specific performance of the suit agreement on this ground also."

23. The authorities that are referred to above and cited by the learned Counsel appearing for the respondent/agreement-holder laid down the proposition that the vendor who enters into an agreement of sale cannot try to recuse himself from the contract or refuse to perform his part of the contract on the ground that he has defective title over the property in question.

24. In the instant case, the controversy is somewhat different. It is not the case where there is defect in title insofar as the plaintiff/vendor is concerned. Here is a case where the property that is agreed to be sold, though originally forming part of the larger extent of the property of the plaintiff/vendor, but in view of his carving it out into plots and getting a layout approved as long back as in 1962, substantial extent of the property that is covered by the agreement of sale – Ex.A4/Ex.B.1 was earmarked for the purpose of park to be used by the other plot-holders. It is not in controversy that out of 1890 Sq.Yds., of land transacted under Ex.A4/Ex.B.1, an extent of 1260 Sq.Yds., of land is the land which was earmarked for public utility viz., the park and subject to that condition only the local authority has approved the layout in file No.16 of 1962. Even if the plaintiff/vendor wants to execute the sale deed, he cannot do so since that extent of land is inalienable and there is a legal prohibition. As per the provisions of the Andhra Pradesh Municipalities Act, 1965, when any extent of land is left for park, it has to be utilized for the said purpose alone and no authority can put it to use for the purpose other than for which it is shown in the approved layout. As has been held by the Supreme Court in **Pt.Chet Ram Vashist's case (referred 1 supra)** the effect of such reservation is that the owner/plaintiff/vendor ceases to be a legal owner of the land in dispute and he holds the land for the benefit of the society or the public in general. The Supreme Court further observed that it may result in creating an obligation in nature of trust and may preclude the owner from transferring or selling his interest in it. The interest which is left in the owner is a residuary interest which may be nothing more than

a right to hold this land in trust for the specific purpose specified in the sanctioned layout.

25. Section 184 (2) and (3) of the Andhra Pradesh Municipalities Act, 1965, is relevant, reads as hereunder:-

“Section 184. Owner’s obligation to make a layout and to form a street or road when disposing of lands as building sites:-

- (1)
- (2) The owner of any land shall, before he utilises, sells, leases, or otherwise disposes of such land or any portion thereof, as sites for construction of buildings –
 - (a) make a layout and form a street or road giving access to sites and connecting them with an existing public or private street except in the cases where the sites abut on an existing public or private street;
 - (b) set apart in the layout adequate area of land on such a scale as may be prescribed for a play-ground, a park, an educational institution or for any other public purpose.
- (3) Unless the conditions specified in Clauses (a) and (b) of Sub-section (2) are satisfied, the owner shall not be entitled to utilise, sell, lease, or otherwise dispose of his land or any portion thereof for the construction of buildings.
- (4)

6. Once such vesting of interest is created, even the Municipality cannot use such land except for the purpose for which it was set apart.

27. Section 185 of the Andhra Pradesh Municipalities Act, 1965 requires that any person intending to make a layout and form a new private street or road shall sent to the Municipal Office a written application with plan showing the area set apart for public purpose.

28. Rule 3 of the Andhra Pradesh Municipalities (Layout) Rules, 1970 requires that every application under Section 185 of the Andhra Pradesh Municipalities Act, 1965 shall be sent to the Municipal Office in the form prescribed in Appendix 'A'. Appendix 'A' prescribes the form in which an application for layout has to be made. The said form requires the person seeking approval of the layout to give an undertaking not to utilize, sell, lease, or otherwise dispose of the land as sites for the construction of residential or non-residential buildings until all the amenities are provided and further undertakes to handover to the Municipality the lands set apart for parks and play-grounds, educational institutions or for any other public purpose under clause (b) of sub-section (2) of Section 184 of the Act.

29. What is apparent from the above is that when the owner of a land seeks approval of the layout and provides therein the land for the purpose of amenities such as park, play-ground, the said land cannot be sold, leased or put to use for a purpose other than for which it was earmarked.

30. In the instant case, it is not necessary to go into the question as to whether the vendor/plaintiff was not inclined to execute the sale deed but is a case where he is unable to perform the part of the contract in view of the fact that there is legal prohibition from executing the sale deed in respect of 1260 Sq.Yds., of land, which is the area earmarked for park in the layout approved as long back as in the year 1962.

31. Learned Counsel appearing for the respondent/agreement-holder vehemently submits that he is prepared to obtain the registered sale deed for this extent of the land as well at his own

peril knowing the consequences that the said extent of land has been earmarked for park. Such an adventurous act on the part of a vendee/purchaser cannot be countenanced in a case of this nature where it is not as though that the vendor/seller has a defective title, but here is a case where the property is inalienable. Even if the seller is willing to execute the sale deed, he cannot do so in view of the legal prohibition that the property which he seeks to alienate vests with the Municipality and the residents of the colony and only upon his undertaking that he will not sell, lease or utilise it for any other purpose, the Municipality has approved the layout, according permission to him to sell plots other than the land earmarked for public purpose.

32. Non-performing of the contract or its refusal by a vendor on the ground of defect in title, is quiet distinct from his inability or incapacity to perform the contract in view of the legal prohibition namely the fact that the land proposed to be sold is inalienable in view of the fact that it having been reserved for park to be utilized by the public at large. If such alienations are allowed, the very purpose of requiring the land to be left for public utilities in the Municipalities Act and Layout Rules will be defeated.

33. It is not as though that either the plaintiff or the defendant (vendor or vendee) were not aware of the fact that the land that is being included in contract – Ex.A4/Ex.B.1 is the land that is reserved for park. Neither of them appeared to have approached the authorities for de-reserving the said site and even if approached, it may not be possible for the Municipality to de-reserve the site earmarked for the park unless the due process of law is followed. As has already been observed above, even if the

reserved site vests with the Municipality, it has no authority to use it for any purpose other than for which it was earmarked.

34. Learned trial Judge has elaborately discussed this aspect and has come to a categoric conclusion that the extent of 1260 Sq.Yds., of land is inalienable and the plaintiff cannot be called upon to perform the contract insofar as this extent of land is concerned. However, with regard to the remaining extent of 630 Sq.Yds., of land, there was no such legal embargo and since the contract – Ex.A4/Ex.B.1 is proved, the plaintiff/owner of the land is liable to execute the sale deed therefor in favour of the defendant/purchaser/ agreement-holder as has been directed by the Court below. In view of the provisions of Section 12 of the Specific Relief Act, the direction of the learned trial Court that the defendant/purchaser is liable to pay the entire consideration for 1890 Sq.Yds., of land in order to obtain the sale deed for 630 Sq.Yds., of land cannot be said to be erroneous or onerous. The contract is dated 26-10-1973. The land is situated within the limits of Vijayawada Municipal Corporation. The record further discloses that when an extent of 630 Sq.Yds., of land falls within Sy.Nos.48 and 49, the remaining 1260 Sq.Yds., of land which is earmarked for park is in Sy.No.45, 46 and 47. The rate that is agreed for at that time was Rs.27/- per Sq.Yd., and for 1890 Sq.Yds., the total cost come to about Rs.51,000/-. Out of this, the defendant/purchaser has paid Rs.20,000/- by 1980. No payments are made thereafter. The defendant/purchaser had been utilizing the land in which he is running a school by raising permanent and semi-permanent structures.

35. Incidentally, in the case in hand, the contract is clearly divisible in two parts. The land 630 Sq.Yds., is in Sy.Nos.48 and 49 whereas the remaining 1260 Sq.Yds., of land is part and parcel of the land in Sy.Nos.45, 46 and 47.

36. Learned Counsel appearing for the defendant/agreement-holder submits that Vijayawada Municipality has sanctioned permission to them to construct school on the disputed sites as per Ex.A20 and having done so, the Municipality issued Ex.A8 – Notice to the plaintiff calling upon the plaintiff to deliver possession of 1260 Sq.Yds., of land reserved for park, against which the defendant in consultation with the plaintiff filed O.S.No.96 of 1982 and obtained injunction orders. Further more, in 1977 cyclone the structures raised by the defendant school were damaged, for which the Government has paid a sum of Rs.25,000/- towards the loss sustained by the school. On the basis of the above, learned Counsel submits that the execution of the sale deed in respect of 1260 Sq.Yds., of land said to have been earmarked for park cannot be denied.

37. The submissions made by the learned Counsel are no doubt borne out from the record, but it cannot be said that the site which was reserved for park gets automatically converted or de-reserved into residential plots or for that matter the plaintiff acquires the rights of alienation. Merely because the Municipality issued building permission to the school as per Ex.A20, it does not mean that the title of the parties over the site was considered. Granting permission to construct on a site, can never be taken as conferring any authority or recognizing the title of the person seeking the permission over the site proposed to be utilized for construction.

Similarly, merely because the defendant school in consultation with the plaintiff filed O.S.No.96 of 1982 against the Municipality challenging the notice – Ex.A8 and obtained injunction can also not be taken as changing the nature of the site in dispute vis-à-vis the rights of the parties over it. The fact that the defendant school was paid a compensation of Rs.25,000/- for the devastation caused to their structures during the cyclone was only intended to compensate for the loss of super structures but not in recognition of the rights of the parties over the land.

38. The very fact that the owner of land intends to carve out his vast extent of land into smaller residential plots earmarked certain areas for public purposes as mandated by the Act and Rules clearly shows his intention to divest himself of the authority to alienate the same. Once such a layout is prepared, submitted and got approved, it must be taken that such area is required to be used for common purposes such as park, school, playground, roads etc., and the owner cannot subsequently wriggle out of such a situation. In the process of obtaining plan, sanction of layout by showing certain area as common use and reserving it for specific purposes, it can be said that the owner of the land makes a promise to the persons interested in acquiring the plot and once such promise fortifies in an approved layout plan, the person cannot be permitted to take a different stand subsequently. When such are the obligations of the owner of the land, the position of an agreement-holder from such an owner in respect of the area left for common use cannot, in any way, be better than that of the owner.

39. Having carefully analysed the entire material on record and the impugned Judgment and having heard the submissions of the

learned Counsel appearing for either side, I find myself to be in agreement with the findings arrived at by the learned trial Court holding that the defendant/agreement-holder/school is entitled to seek for a direction to the plaintiff to execute the sale deed in respect of 630 Sq.Yds., of land in Sy.Nos.48 and 49 subject to condition that the defendant school should pay the total consideration of about Rs.51,000/- after deducting Rs.20,000/- already paid to the plaintiff and by depositing the said amount, obtain the sale deed. Consequently, the plaintiff is not entitled to recover possession of 630 Sq.Yds., of land which is being directed to be sold to the defendant subject to the above condition. With regard to 1260 Sq.Yds., of land in Sy.Nos.45, 46 and 47, the learned trial Court has directed the defendant to deliver its vacant possession. This can however be made subject to condition that while the plaintiff is entitled to recover possession of 1260 Sq.Yds., of land, the same shall be held by the plaintiff subject to the rights of the Municipality or the residents of the locality to take appropriate steps strictly in accordance with law to develop the said site as a park for use of public. The decision of the learned trial Court with regard to payment of Rs.300/- per month towards use and enjoyment of 1260 Sq.Yds., of land by the defendant from 01-02-1981 till the possession is delivered is liable to be sustained.

40. The cumulative effect of the foregoing discussion is that all the four appeals filed by the plaintiff and the defendant in O.S.No.623 of 1982 and O.S.No.110 of 1983 are liable to be dismissed confirming the Judgment and Decree of the Court below.

41. In the result, the appeals fail and the same are dismissed but in the circumstances of the case, there shall be no order as to costs.

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

M.S.K.Jaiswal, J

Date: 7th April, 2017

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Note: L.R.Copy to be marked
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