

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

CCCA No.57 of 1999

Between:

Seelam Mallaiah (died) per LRs.
and others.

... Appellants

And

P.Narasinga Rao (died) per LRs.
and others.

.... Respondents

DATE OF JUDGMENT PRONOUNCED: 28.02.2017

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

- 
1. Whether Reporters of Local Newspapers
may be allowed to see the judgments? Yes / No
 2. Whether the copies of judgment may be
marked to Law Reporters / Journals? Yes / No
 3. Whether His Lordship wish to
see the fair copy of the Judgment? Yes / No

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

+ C.C.C.A. No.57 of 1999

% 28.02.2017

Between:

Seelam Mallaiah (died) per LRs.
and others.

... Appellants

And

P.Narasinga Rao (died) per LRs.
and others.

.... Respondents

! Counsel for Appellants : Sri T.Viswanadha Sastry

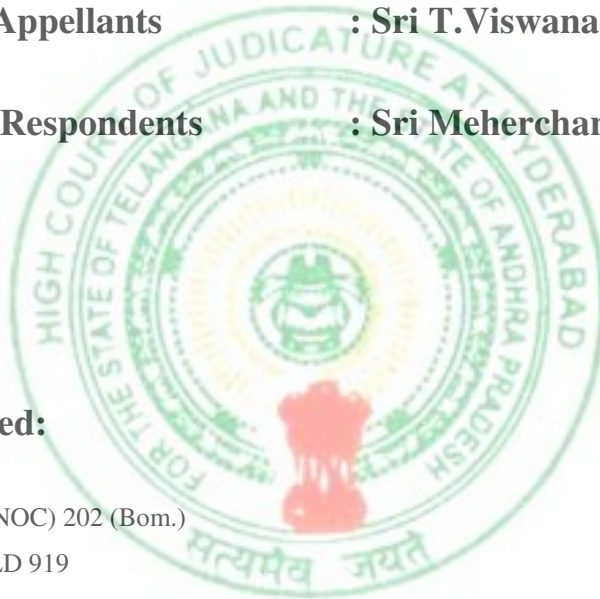
^ Counsel for Respondents : Sri Meherchand Nori

< Gist:

> Head Note:

? Cases referred:

- 1) AIR 2015 (NOC) 202 (Bom.)
- 2) 1996 (3) ALD 919
- 3) AIR 2015 Rajasthan 24
- 4) (1977) 4 Supreme Court Cases 402
- 5) 1995 (1) ALT 511
- 6) 1993 Supp (3) Supreme Court Cases 549
- 7) 2003 (2) ALD 640
- 8) 1999 (6) ALD 160
- 9) AIR 2003 SC 4548
- 10) MANU/AP/0041/2016
- 11) (2006) 11 SCC 331



HON'BLE SRI JUSTICE U. DURGA PRASAD RAO**C.C.C.A.No.57 of 1999****JUDGMENT:**

The unsuccessful defendant in the Court below preferred the instant appeal aggrieved by the common judgment dated 16.12.1998 in O.S.No.630 of 1988 passed by V Senior Civil Judge, City Civil Court, Hyderabad, whereby and whereunder the learned Judge decreed the plaintiffs' suit filed for specific performance of agreement of sale dated 19.12.1986.

2) The parties in this appeal are referred as they stood before the trial Court in O.S.No.630 of 1988 and defendants 2 and 3 in O.S.No.901 of 1995 are referred as third parties.

3) The factual matrix of the case is thus:

a) The case of the plaintiffs is that defendant is the absolute owner of suit schedule property bearing House No.4-7-412 to 415 admeasuring 110 sq. yards situated at Esamiah Bazar, Hyderabad which was purchased by him through registered sale deed dated 22.12.1962 and ever since he had been in possession and enjoyment of the same. While so, the defendant entered into an agreement of sale dated 19.12.1986 (Ex.A1) with the plaintiffs in respect of suit schedule property for total consideration of Rs.1,80,000/- and received Rs.1,40,000/- towards advance, agreeing to receive balance amount of Rs.40,000/- at the time of registration. After entering the agreement the defendant evicted the

tenants and delivered physical possession of the suit schedule property to the plaintiffs on 05.03.1988 and since then the plaintiffs are in possession and enjoyment of the same.

b) The further case of the plaintiffs is that while the matter stood thus, the defendant tried to alienate the suit schedule property to third parties hence, they lodged a criminal complaint on 05.04.1988 before the SHO, Sultan Bazar and they also issued a notice to the defendant asking him to execute registered sale deed stating that they were ready and willing to pay the balance sale consideration at the time of registration, but there was no response from the defendant side.

c) The further case of the plaintiffs is that when the defendant tried to dispossess them from the suit premises on 02.04.1988 and 05.04.1988, they filed suit—O.S.No.1365 of 1988 (renumbered as O.S.No.901 of 1995) on the file of VI Assistant Judge, City Civil Court, Hyderabad for perpetual injunction and they also filed I.A.No.275 of 1988 for interim injunction which was granted. Despite the injunction order the defendant tried to alienate the suit property to third parties.

Hence the suit.

d) The defendant filed written statement denying execution of Ex.A1—agreement; receipt of advance amount of Rs.1,40,000/- and delivery of physical possession. His case was that he never intended to sell the suit schedule property to the plaintiffs, but they by force, compulsion and playing fraud obtained his signatures on blank papers.

The plaintiffs paid Rs.90,000/- on different dates and got released the documents. He also contended that Ex.A1—suit agreement is vexatious. He never delivered possession of the suit property to the plaintiffs, but they filed police complaint and forcibly thrown him out from the suit schedule property. The suit agreement which was obtained on blank papers, was bad and unenforceable. He also contended that suit was bad for non-joinder of parties such as D.Balaiah and others who are parties to the suit—O.S.No.1365 of 1988 (renumbered as O.S.No.901 of 1995).

e) Basing on the above pleadings, the trial Court framed the following issues:

- 1) *Whether the plaintiffs were always ready and willing to perform their part of the contract?*
- 2) *Whether the plaintiffs are entitled for specific performance of agreement of sale dt.19.12.1986?*
- 3) *Whether the suit is bad for non-joinder of necessary parties?*
- 4) *To what relief?*

f) During trial PW.1 was examined and Exs.A1 to A13 were marked on behalf of plaintiffs. DWs.1 to 3 were examined on behalf of defendant but no documents were marked.

g) The trial Court after hearing both sides and on considering the oral and documentary evidence, on issue No.3 observed that D.Balaiah and his sons were neither necessary nor proper parties to the suit; on issue Nos.1 and 2 the trial Court observed that Ex.A1—agreement of sale was true, valid and enforceable and plaintiffs were always ready

and willing to perform their part of contract and they are entitled for specific performance and accordingly decreed the suit.

Hence, the appeal.

4 a) During the pendency of appeal, sole appellant died and his LRs. were brought on record as appellants 2 to 6 in CMP No.7796 of 2000 dated 16.06.2000. Pending appeal, appellant No.4 died and his L.Rs. were brought on record as appellants 7 to 11 in CCCA MP No.589 of 2015 dated 15.06.2016.

b) R1 died and his LRs. were brought on record as respondents 5 to 10 in CCCA MP No.383 of 2006 dated 03.07.2006.

5) Heard arguments of Sri T.Viswanadha Sastry, learned counsel for appellants and Sri Meherchand Nori, learned counsel for respondents.

6 a) Deprecating the judgment, learned counsel for appellants firstly argued that the defendant never executed Ex.A.1—agreement and delivered possession thereafter and the plaintiffs taking advantage of his illiteracy, fabricated Exs.A.1 to A.3 obtaining his signatures on blank papers by playing fraud on him. This fact was amply established through the evidence of DWs.1 and 2 but the trial Court miserably failed to consider their evidence in proper manner and erroneously decreed the suit.

b) Secondly, he would argue that the defendant never delivered the link documents connecting to Ex.A.1 as alleged by the plaintiffs and on

the other hand, sometime prior to the alleged agreement, the defendant mortgaged suit property to the plaintiffs and in that connection he delivered his documents and keeping those documents with them, the plaintiffs fabricated Ex.A.1 and falsely claimed as if the link documents were delivered to them.

c) Thirdly and alternatively he would argue, even assuming the defendant executed Ex.A.1, the same is not valid because the suit property is an ancestral property wherein the defendant and his five sons have equal share, in which event, the suit for specific performance without impleading them is bad for non-joinder of necessary parties. He vehemently argued that though issue No.3 was framed to that effect, the trial Court failed to answer the same. Regarding the legal effect of non-joinder of other coparceners, he placed reliance on the decision reported in *Shri Kashinath Rajaram Kasabe and others vs. Shri Ramchandra Tukaram Kasabe and others*¹.

d) Fourthly, he contended that Exs.A.1 and A.3 are compulsorily registrable and exigible to stamp duty penalty without meeting which requirements, they are inadmissible in evidence and therefore, they are liable to be rejected. He would further argue that though delivery of possession was not effected through Ex.A.1 and allegedly effected through another document i.e, Ex.A.3, still they require registration and

¹ AIR 2015 (NOC) 202 (Bom.)

stamp duty. He cited the decision in *Dauluru Ramachandra Rao vs. Bhogi Venkata Ramana*².

e) Fifthly, learned counsel would argue that Ex.A.11—GPA executed by defendant in favour of Ramagiri Venkata Ramanaiah is compulsorily registrable and amenable to stamp duty penalty and since such requirements were not met, the same is liable to be rejected. He relied upon the decision in *Jai Kumar vs. Hanuman and others*³.

f) Sixthly, he argued that even assuming that Ex.A.1 is genuine, still plaintiffs are not entitled to specific performance as they failed to perform their part of contract scrupulously.

g) Finally, he argued that the suit—O.S.No.901 of 1995 filed by the plaintiff for perpetual injunction in respect of the suit property was dismissed and since no appeal is filed against the said judgment, the plaintiff cannot maintain the suit for specific performance as he is not entitled to possession. He thus prayed to allow the appeal.

7 a) Per contra, while supporting the judgment learned counsel for respondents in reply to arguments 1 to 3 of the appellants, submitted that in the suit the sheet anchor of the defence was that the defendant never executed agreement to sell and it was fabricated and that he never delivered the link documents to the plaintiffs. Except that there was no pleading that the suit property was his ancestral property and therefore,

² 1996 (3) ALD 919

³ AIR 2015 Rajasthan 24

he had no right to execute agreement to sell. In fact, in Ex.A.1 he claimed suit property as self-acquired property. His two sons who acted as attestors did not dispute this fact. Therefore, the defence argument in the suit that the suit property was an ancestral property and defendant had no right to execute agreement to sell and that the suit was bad for non-joinder of necessary parties was rightly rejected by the trial Court. Learned counsel vehemently argued that a party cannot for the first time raise a plea during trial or arguments without taking such plea in his pleadings. Such a plea taken at a later stage will not be accepted by the Court. On this aspect he relied upon on the following decisions:

- (i) *Smt. Chander Kali Bai and others vs. Shri Jagdish Singh Thankur and another*⁴
- (ii) *K.Venkateswarlu vs. Nagarjuna Grameena bank rep. by its Chairman, Khammam and another*⁵
- (iii) *Ramchandra Kulkarni (dead) by LRs. vs. Dinkar*⁶

He thus argued that the said argument cannot be raised by the appellants again in this appeal. Regarding the argument that Ex.A.1 was fabricated by obtaining the signatures of the defendant on blank papers, learned counsel argued that the plaintiffs established the genuinity of Ex.A.1 through voluminous documentary and oral evidence and further, in the cross-examination of PW.1 the defendant suggested as if he executed another agreement to sell in favour of D. Balaiah and others

⁴ (1977) 4 Supreme Court Cases 402

⁵ 1995 (1) ALT 511

⁶ 1993 Supp (3) Supreme Court Cases 549

since the plaintiffs failed to pay the balance sale consideration under Ex.A.1, which implies the defendant admits the execution of Ex.A.1. Then delivery of link documents is concerned, learned counsel argued that the defendant failed to establish that earlier he executed a mortgage in favour of plaintiffs whereunder he delivered those documents. Hence, such an argument is preposterous. Against argument No.4 of the appellants, learned counsel would submit that Exs.A.1 and A.3 were in fact not required stamp duty and penalty and even assuming so, since those documents were marked as there being no objection, the appellants are debarred from raising such objection in the appeal. Against argument No.6, he would contend that plaintiffs were always ready and willing to perform their part of contract and in fact, they paid a substantial portion of the contracted amount i.e, Rs.1,40,000/- out of Rs.1,80,000/- on the date of agreement to sell itself and further, they requested him to intimate his bank account number so as to deposit the balance amount but the defendant kept mum and therefore, plaintiffs cannot be blamed.

b) Finally, he argued that the dismissal of O.S.No.901 of 1995 will not have any bearing on O.S.No.630 of 1988 as the said suit was dismissed on the technical ground that an agreement to sell can only be used as a shield but not as a sword and the suit for mere injunction without seeking for the relief of specific performance was not maintainable. He thus prayed to dismiss the appeal.

8) In the light of above rival arguments, the points that arise for consideration in this appeal are:

- (i) *Whether Ex.A.1—agreement to sell is genuine?*
- (ii) *If point No.1 is held in affirmative, whether defendant had no right to execute Ex.A.1 on the ground that the suit property was ancestral property and whether such a plea was specifically taken in the suit and if not what was its consequence?*
- (iii) *Whether plaintiffs scrupulously performed their part of contract?*
- (iv) *Whether the argument that Ex.A.1 is inadmissible in evidence for want of registration and stamp duty penalty is available to the defendant?*
- (v) *Whether the judgment in O.S.No.901 of 1995 had any adverse impact on O.S.No.630 of 1988?*
- (vi) *To what relief?*

9) **POINT No.1:** Much ink need not be flown to decide the genuinity of Ex.A.1—agreement to sell, for, the plaintiffs through their oral evidence and Exs.A.1 to A.3—documents relating to sale transaction and Exs.A.4 to A.10—link documents could establish the genuinity of sale agreement. Though the defendant in his written statement denied execution of Ex.A.1 and took the plea that the plaintiffs by playing fraud on him and applying force and compulsion obtained his signatures on blank paper and created Ex.A.1, he did not further specify under what circumstances and in what manner the plaintiffs played fraud on him and applied force and compulsion on him. It should be noted, as per Order VI Rule 4 CPC when a party takes the plea of misrepresentation, fraud, breach of trust, willful default or undue influence etc., particulars of such act must be given. It is not enough to use general words such as

“fraud”, “deceit” etc., without narrating the method and manner of perpetrating such acts for Court to take notice. However, in the instant case, the defendant woefully failed to give the particulars of the fraud alleged. Hence there was no strong basis in the pleadings about the fraud. Further, in Ex.A.1 none other than the two sons of the defendant namely Ramesh (appellant No.5) and S.Rajeshwar (appellant No.4) signed as attestors. If really fraud was committed on defendant, certainly the defendant and his sons would not have kept silent. Their conspicuous silence itself shows Ex.A.1 was a genuine document. Further, the defendant did not give evidence in support of his plea that Ex.A.1 was a fraudulent document. He only examined one of his sons Seelam Narsaiah (DW.1) who stated that he did not know about the agreement to sell. In such circumstances, though defendant was aged and unable to move, still he ought to have taken steps to get him examined through an Advocate Commissioner. Hence, the evidence of DW.1 will not help to establish the aspect of fraud. DW.2 no doubt stated as if in the middle of December, 1986, the first plaintiff forcibly evicted the defendant from the suit house and at that time he obtained the signatures of the defendant on blank stamp papers. However, his evidence proved false in the light of the suggestion given by the defendant in the cross-examination of PW.1. It was suggested that since the plaintiffs have not paid the balance of sale consideration under Ex.A.1, the defendant executed another agreement in favour of D.Balaiah and others. This crucial suggestion itself implies the

admission of defendant about the genuinity of Ex.A.1. Therefore, as rightly observed by the trial Court, there can be no demur that Ex.A.1 is a genuine document. The presence of link documents in the custody of plaintiffs also gives strength to the genuinity of Exs.A.1 and A.3. Then delivery of link documents is concerned, there was no plea in the written statement that earlier the defendant executed a mortgage in favour of plaintiffs and in that context he delivered all the link documents. Hence, such an argument is not available to the defendant now. This point is answered accordingly in favour of plaintiffs and against defendant.

10) **POINT No.2:** As discussed in point No.1 infra, except the plea of fraud, defendant did not take a specific plea to the effect the suit property was his ancestral property and himself and his sons constituted a coparcenary and therefore, he had no right to execute Ex.A.1. On the other hand in Ex.A.1, the defendant styled himself as absolute owner and possessor of the suit schedule property. His two sons who signed on Ex.A.1 as attestors did not raise any objection for execution of Ex.A.1. It cannot be assumed that the other sons of the defendant did not know about Ex.A.1 and that they did not approve it because DW.1 and his brothers did not take any action against Ex.A.1 till now on the ground that the property was ancestral property. Hence, due to absence of specific plea in the written statement and also due to the conduct of the defendant and his sons, the said argument is not available to the defendant. In the decisions cited by the respondents, the rule laid down was that the decision of the Court in a case cannot be based outside the

pleadings of the parties. In that view, the decision in *Shri Kashinath Rajaram Kasabe*'s case (1 supra), cited by appellants has no application. In view of the above discussion, it is held defendant was empowered to execute Ex.A.1. This point is answered accordingly.

11) **POINT No.3:** It is contended that plaintiffs do not deserve specific performance as they failed to perform their part of contract scrupulously. This argument, it must be held, is not tenable. Exs.A1 and A2 would show that out of sale consideration of Rs.1,80,000/- the plaintiffs paid substantial amount of Rs.1,40,000/- on the date of agreement itself. As per Ex.A1 the balance amount has to be paid at the time of registration. Under Ex.A13—telegraphic notice the plaintiffs made clear that they were ready and willing to pay the balance sale consideration. PW1 stated they requested the defendant to furnish his bank account number to enable them to deposit balance sale consideration but defendant failed to furnish his bank account. In view of all these, plaintiffs are held to have performed their part of contract.

12) **POINT No.4:** Regarding this point, the argument is that though under Ex.A1—agreement to sell possession was not delivered, however, delivery of possession was effected through Ex.A3—letter dated 05.03.1988 pursuant to the agreement to sell and therefore, even though delivery was subsequent to Ex.A1, still Exs.A1 and A3 would fall within the ambit of Article 47-A of Schedule I-A of Indian Stamp Act and they are liable for registration and stamp duty and penalty and since those

requirements were not met, Exs.A1 and A3 are liable to be de-exhibited and consequently suit is liable to be dismissed.

13) Ex.A1 is the agreement to sell dated 19.12.1986 whereunder the defendant agreed to sell the suit property to the plaintiffs. In this document there is no recital to the effect that possession of the sale agreement property was delivered to plaintiffs. Therefore, naturally Ex.A1 does not fall within the mischief of Article 47-A. Then, Ex.A3 is concerned, it is a letter dated 05.03.1988 executed by defendant in favour of 1st plaintiff stating that pursuant to Ex.A1 agreement, physical possession of the suit property was handed over w.e.f. 05.03.1988. Thus, as rightly argued by the appellants though the property was not delivered under Ex.A1, it was delivered under Ex.A3. The legal effect of such a subsequent delivery under a different instrument needs to be discussed.

a) In *Jannuchander Babu vs. Manchikatla Satyanarayana and others*⁷ a learned single Judge of this Court placing reliance on earlier Division Bench decision in *B.Ratnamala vs. D.Rudramma*⁸ held thus:

“Para 5: In all cases where a document contains a recital recording delivery of possession of property in pursuant of an agreement of sale, whether by way of an endorsement on the reverse of the agreement, or under a separate receipt, it has to be stamped as a sale deed as contemplated by Article 47-A Schedule 1-A of Stamp Act.

Para 6: The contention that a document evidencing receipt of money need be stamped only as a receipt in spite of the fact that

⁷ 2003 (2) ALD 640

⁸ 1999 (6) ALD 160

it contains a recital recording delivery of possession of property in pursuance of an agreement of sale, cannot be accepted in view of Sections 5 and 6 of Stamp Act. As stated earlier since an agreement of sale “followed by” or evidencing delivery of possession” of property agreed to be sold, is chargeable as a sale deed, as per Article 47-A of Schedule I-A of Stamp Act, a document evidencing receipt of the balance of sale consideration due and payable as per the agreement, coupled with a recital recording delivery of possession of property agreed to be sold, also has to be stamped as a sale deed (Emphasis supplied). In view thereof the contention that collecting stamp duty on a document (receipt) containing a recital recording delivery of possession of property subsequent to the agreement of sale, in cases where the possession of the property is not delivered on the date of agreement of sale, tantamounts to collecting stamp duty on the ‘transaction’ but not the ‘instrument’ has no force.”

In **Dauluru Ramachandra Rao**’s case(2 supra) cited by the Appellants also, same view is expressed.

In view of the above, though Ex.A1 does not fall within the ambit of Article 47-A since no delivery of possession was effected there under, still Ex.A3 falls under Article 47-A because delivery of possession was effected through it. Ex.A3 was written on plain paper and no stamp duty and penalty were paid. This is with regard to the requirement under Stamp Act.

b) Sofaras registration is concerned, sub-section (g) was introduced to Section 17(1) of the Registration Act, 1908 to the effect that agreement of sale of immovable property of the value of 100 rupees and

upwards requires compulsory registration. However, this amendment was brought under A.P. Act 4 of 1999 w.e.f. 01.04.1999. Since Exs.A1 and A3 were executed long prior to the aforesaid amendment, they do not require registration.

c) Thus, in essence, Ex.A1 is admissible in evidence, but Ex.A3 is not admissible. However, the record shows that the defendant has not raised any objection when Exs.A1 and A3 were tendered in evidence during trial and hence, they were admitted in evidence. Hence, the point is whether the defendant can raise such argument in the appeal.

14) Divergent views were expressed by the Apex Court in this regard. In *R.V.E.Venkatachala Gounder vs. Arulmigu Viswesaraswami and V.P. Temple and another*⁹ the question before the Apex Court was whether Ex.A30—photostat copy of the order passed by Assistant Commissioner H.R. and C.E. Administration Department, Coimbatore, and Ex.A34—photo copy of rent agreement, which were marked as Exhibits in the trial without objection, can be questioned in the appeal. In this context, the Apex Court while classifying the objections as to the admissibility of documents in evidence into two classes held thus:

“Para 20: xx xx xx.. The objections as to admissibility of documents in evidence may be classified into two classes:- (i) an objection that the document which is sought to be proved is itself inadmissible in evidence; and (ii) where the objection does not dispute the admissibility of the document in evidence but is directed towards the mode of proof alleging the same to be

⁹ AIR 2003 SC 4548

irregular or insufficient. In the first case, merely because a document has been marked as 'an exhibit', an objection as to its admissibility is not excluded and is available to be raised even at a later stage or even in appeal or revision. In the latter case, the objection should be taken when the evidence is tendered and once the document has been admitted in evidence and marked as an exhibit, the objection that it should not have been admitted in evidence or that the mode adopted for proving the document is irregular cannot be allowed to be raised at any stage subsequent to the marking of the document as an exhibit. The later proposition is a rule of fair play. The crucial test is whether an objection, if taken at the appropriate point of time, would have enabled the party tendering the evidence to cure the defect and resort to such mode of proof as would be regular. The omission to object becomes fatal because by his failure the party entitled to object allows the party tendering the evidence to act on an assumption that the opposite party is not serious about the mode of proof. On the other hand, a prompt objection does not prejudice the party tendering the evidence, for two reasons; firstly, it enables the Court to apply its mind and pronounce its decision on the question of admissibility then and there; and secondly, in the event of finding of the Court on the mode of proof sought to be adopted going against the party tendering the evidence the opportunity of seeking indulgence of the Court for permitting a regular mode or method of proof and thereby removing the objection raised by the opposite party, is available to the party leading the evidence.. Such practice and procedure is fair to both the parties. Out of the two types of objections, referred to hereinabove in the later case, failure to raise a prompt and timely objection amounts to waiver of the necessity for insisting on formal proof of a document, the document itself which is sought to be proved being admissible in evidence. In the first case, acquiescence would be no bar to raising the objection in a superior court.”

15) A learned single Judge of this Court in *Srinivasa Builders vs. A. Janga Reddy*¹⁰ placing reliance on *R.V.E.Venkatachala Gounder*'s case (9 supra) and some other decisions has observed that the mode of proof of document is a matter of procedure while its admissibility is substantive law, such as Registration Act, Stamp act or other specific provisions. He held that the objection regarding insufficient stamp of a document can be raised even at a later stage. It may be noted that the learned Judge also considered a contra decision of Apex Court reported in *Shyamal Kumar Roy vs. Sushil Kumar Agarwal*¹¹. In the said case the Apex Court held that when once the document is admitted without being objected on the ground of insufficiency of stamp, such an objection cannot be raised later in view of Section 36 of Indian Stamp Act. However, learned Judge of this Court preferred *R.V.E. Venkatachala Gounder*'s case (9 supra) to *Shyamal Kumar Roy*'s case (11 supra) on the ground that *Venkatachala Gounder*'s case was not referred in the later decision of *Shyamal Kumar Roy*.

16) In view of the above discussion, the defendant is entitled to raise the objection regarding admissibility of Ex.A3 in evidence though such an objection was not raised during trial. Since no stamp duty and penalty were paid on Ex.A3, the said document is directed to be de-exhibited from the record.

¹⁰ MANU/AP/0041/2016

¹¹ (2006) 11 SCC 331

In the result, Ex.A1—agreement to sell shall hold good but since Ex.A3 is de-exhibited from the record, the plaintiffs cannot claim possession of the suit property w.e.f. 05.03.1988 as recited in Ex.A3. However, since Ex.A1 is held to be genuine, and as the plaintiffs along with specific performance, sought for granting any other relief, this Court in the interest of justice, can exercise its discretion and grant delivery of possession also.

This point is answered accordingly.

17) **POINT No.5:** The dismissal of O.S.No.901 of 1995 will not have any adverse impact on O.S.No.630 of 1988 because the former suit was dismissed on the technical ground that an agreement to sell can only be used as a protective shield but not as a sword to file injunction suit and the plaintiff has to seek alternative and efficacious relief of specific performance. The plaintiffs have, in fact, filed the specific performance suit and therefore, the dismissal of O.S.No.901 of 1995 is not a consequence.

18) It may be noted, the argument that since Ex.A.11—GPA executed by defendant in favour of one Ramagiri Venkata Ramanaiah was not registered, the same is not valid has no force and significance because, the suit was filed by the plaintiffs directly against the defendant and not against his GPA holder and the defendant also contested the suit by himself but not through his GPA holder. As such, the deficiency if any in Ex.A.11 is of no consequence.

19) In the result, this Appeal is dismissed by confirming the decree and judgment dated 16.12.1998 passed by the trial Court in O.S.No.630 of 1998 and ordered as follows:

- a) The respondent Nos.2 and 5 to 10 are directed to deposit the balance sale consideration of Rs.40,000/-(Rupees Forty Thousand only) before the trial Court on or before 28.03.2017 if not deposited already.
- b) The appellant Nos.2 to 11 are directed to receive the said balance sale consideration and execute the registered sale deed in favour of respondent Nos.2 and 5 to 10 in terms of Ex.A.1—agreement to sell dated 19.12.1986 within one month from 28.03.2017 and put them in possession of the suit schedule property, failing which the respondent Nos.2 and 5 to 10 are at liberty to get it done through the process of Court.
- c) No costs in the appeal.

As a sequel, miscellaneous petitions pending if any, shall stand dismissed.

Dt. 28.02.2017
Murthy/Scs

U. DURGA PRASAD RAO, J